

(Reprinted with amendments adopted on May 22, 2017)

SECOND REPRINT

A.B. 267

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; providing for the payment of a benefit penalty and 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
- 8 for these occupational diseases and the claimant ultimately prevails, the
- 9 Administrator of the Division of Industrial Relations of the Department of Business



* A B 2 6 7 R 2 *

10 and Industry is required to order the employer, insurer or third-party administrator
11 to pay the claimant a benefit penalty of \$200 for each day that the claim is under
12 appeal. **Sections 4 and 5** further require the employer, insurer or third-party
13 administrator to pay all medical costs that are associated with the occupational
14 disease and incurred by the claimant on or after the date of the hearing before the
15 hearing officer but provide for the recovery of such amounts paid if the employer,
16 insurer or third-party administrator ultimately prevails.

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

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

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

1 **Section 1.** NRS 616C.400 is hereby amended to read as
2 follows:

3 616C.400 1. Temporary compensation benefits must not be
4 paid under chapters 616A to 616D, inclusive, of NRS for an injury
5 which does not incapacitate the employee for at least 5 consecutive
6 days, or 5 cumulative days within a 20-day period, from earning full
7 wages, but if the incapacity extends for 5 or more consecutive days,
8 or 5 cumulative days within a 20-day period, compensation must
9 then be computed from the date of the injury.

10 2. The period prescribed in this section does not apply to:

11 (a) Accident benefits, whether they are furnished pursuant to
12 NRS 616C.255 or 616C.265, if the injured employee is otherwise
13 covered by the provisions of chapters 616A to 616D, inclusive, of
14 NRS and entitled to those benefits.

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

17 (c) *A claim which is filed pursuant to NRS 617.453, 617.455 or*
18 *617.457.*



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

2 617.420 **1.** No compensation may be paid under this chapter
3 for *temporary total* disability which does not incapacitate the
4 employee for at least 5 cumulative days within a 20-day period from
5 earning full wages, but if the incapacity extends for 5 or more days
6 within a 20-day period, the compensation must then be computed
7 from the date of disability.

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

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

13 617.454 **1.** Any physical examination administered pursuant
14 to NRS 617.455 or 617.457 must include:

15 (a) A thorough test of the functioning of the hearing of the
16 employee; and

17 (b) A purified protein derivative skin test to screen for exposure
18 to tuberculosis.

19 **2.** Except as otherwise provided in subsection 8 of NRS
20 617.457, the tests required by this section must be paid for by the
21 employer.

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

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

29 **(1)** *The examining physician;*

30 **(2)** *The employee;*

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

33 **(4)** *If the employee has filed a claim pursuant to NRS*
34 *617.455 or 617.457, the insurer.*

35 **(b)** *A person who receives the results of a physical*
36 *examination pursuant to paragraph (a) may only use the results*
37 *for the purposes of:*

38 **(1)** *Complying with the requirements of NRS 617.455 or*
39 *617.457, as applicable; or*

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

41 **(c)** *The employer's officer who is responsible for risk*
42 *management or human resources or his or her designee may*
43 *create and release a report that is based on the results of a*
44 *physical examination administered pursuant to NRS 617.455 or*
45 *617.457 to any person whom the employer's officer determines has*



1 *a need to know the information in the report. The report must only*
2 *contain the following information:*

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

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

6 *(I) Satisfies the physical qualifications required for his*
7 *or her employment; or*

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

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

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

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

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

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

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

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

37 (a) A physical examination upon employment and upon
38 commencement of the coverage; and

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

42 ↪ until the volunteer firefighter reaches the age of 50 years. Each
43 volunteer firefighter who is 50 years of age or older shall submit to a
44 physical examination once every 2 years during his or her
45 employment. As used in this subsection, "physical examination"



1 includes the making of an X-ray film of the volunteer firefighter's
2 lungs but excludes a thorough test of the functioning of his or her
3 lungs.

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

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

12 (a) During the course of that employment;

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

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

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

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

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

34 8. A person who is determined to be:

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

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

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

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



1 **10. Except as otherwise provided in this subsection, if an**
2 **employer, insurer or third-party administrator denies a claim that**
3 **was filed pursuant to this section and the claimant ultimately**
4 **prevails, the Administrator shall order the employer, insurer or**
5 **third-party administrator, as applicable, to pay to the claimant a**
6 **benefit penalty of \$200 for each day from the date on which an**
7 **appeal is filed until the date on which the claim is adjudicated to a**
8 **final decision. Such benefit penalty is payable in addition to any**
9 **benefits to which the claimant is entitled under the claim and any**
10 **fines and penalties imposed by the Administrator pursuant to NRS**
11 **616D.120. If a hearing before a hearing officer is requested**
12 **pursuant to NRS 616C.315 and held pursuant to NRS 616C.330,**
13 **the employer, insurer or third-party administrator, as applicable,**
14 **shall pay to the claimant all medical costs which are associated**
15 **with the occupational disease and are incurred from the date on**
16 **which the hearing is requested until the date on which the claim is**
17 **adjudicated to a final decision. If the employer, insurer or third-**
18 **party administrator, as applicable, ultimately prevails, the**
19 **employer, insurer or third-party administrator, as applicable, is**
20 **entitled to recover the amount paid pursuant to this subsection in**
21 **accordance with the provisions of NRS 616C.138.**

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

23 617.457 1. Notwithstanding any other provision of this
24 chapter, diseases of the heart of a person who, for 2 years or more,
25 has been employed in a full-time continuous, uninterrupted and
26 salaried occupation as a firefighter, arson investigator or police
27 officer in this State before the date of disablement are conclusively
28 presumed to have arisen out of and in the course of the employment
29 if the disease is diagnosed and causes the disablement:

30 (a) During the course of that employment;

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

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

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

41 2. Frequent or regular use of a tobacco product within 1 year,
42 or a material departure from a physician's prescribed plan of care by
43 a person within 3 months, immediately preceding the filing of a
44 claim for compensation excludes a person who has separated from



1 service from the benefit of the conclusive presumption provided in
2 subsection 1.

3 3. Notwithstanding any other provision of this chapter, diseases
4 of the heart, resulting in either temporary or permanent disability or
5 death, are occupational diseases and compensable as such under the
6 provisions of this chapter if caused by extreme overexertion in times
7 of stress or danger and a causal relationship can be shown by
8 competent evidence that the disability or death arose out of and was
9 caused by the performance of duties as a volunteer firefighter by a
10 person entitled to the benefits of chapters 616A to 616D, inclusive,
11 of NRS pursuant to the provisions of NRS 616A.145 and who, for 5
12 years or more, has served continuously as a volunteer firefighter in
13 this State by continuously maintaining an active status on the roster
14 of a volunteer fire department.

15 4. Except as otherwise provided in subsection 5, each
16 employee who is to be covered for diseases of the heart pursuant to
17 the provisions of this section shall submit to a physical examination,
18 including an examination of the heart, upon employment, upon
19 commencement of coverage and thereafter on an annual basis during
20 his or her employment.

21 5. During the period in which a volunteer firefighter is
22 continuously on active status on the roster of a volunteer fire
23 department, a physical examination for the volunteer firefighter is
24 required:

- 25 (a) Upon employment;
- 26 (b) Upon commencement of coverage; and
- 27 (c) Once every 3 years after the physical examination that is
28 required pursuant to paragraph (b),
29 → until the firefighter reaches the age of 50 years. Each volunteer
30 firefighter who is 50 years of age or older shall submit to a physical
31 examination once every 2 years during his or her employment.

32 6. The employer of the volunteer firefighter is responsible for
33 scheduling the physical examination. The employer shall mail to the
34 volunteer firefighter a written notice of the date, time and place of
35 the physical examination at least 10 days before the date of the
36 physical examination and shall obtain, at the time of mailing, a
37 certificate of mailing issued by the United States Postal Service.

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

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

- 44 (a) Applies to the department for the first time as a volunteer
45 firefighter; and



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

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

6 (a) Paid for the physical examination in accordance with
7 subsection 8;

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

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

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

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

19 12. A person who is determined to be:

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

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

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

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

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

36 *15. Except as otherwise provided in this subsection, if an*
37 *employer, insurer or third-party administrator denies a claim that*
38 *was filed pursuant to this section and the claimant ultimately*
39 *prevails, the Administrator shall order the employer, insurer or*
40 *third-party administrator, as applicable, to pay to the claimant a*
41 *benefit penalty of \$200 for each day from the date on which an*
42 *appeal is filed until the date on which the claim is adjudicated to a*
43 *final decision. Such benefit penalty is payable in addition to any*
44 *benefits to which the claimant is entitled under the claim and any*
45 *finest and penalties imposed by the Administrator pursuant to*



1 *NRS 616D.120. If a hearing before a hearing officer is requested*
2 *pursuant to NRS 616C.315 and held pursuant to NRS 616C.330,*
3 *the employer, insurer or third-party administrator, as applicable,*
4 *shall pay to the claimant all medical costs which are associated*
5 *with the occupational disease and are incurred from the date on*
6 *which the hearing is requested until the date on which the claim is*
7 *adjudicated to a final decision. If the employer, insurer or third-*
8 *party administrator, as applicable, ultimately prevails, the*
9 *employer, insurer or third-party administrator, as applicable, is*
10 *entitled to recover the amount paid pursuant to this subsection in*
11 *accordance with the provisions of NRS 616C.138.*

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

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