

SENATE BILL NO. 314—COMMITTEE ON COMMERCE AND LABOR

MARCH 12, 2001

Referred to Committee on Commerce and Labor

SUMMARY—Makes various changes to provisions governing occupational safety and health. (BDR 53-765)

FISCAL NOTE: Effect on Local Government: No.  
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 occupational safety and health; creating a panel to advise the division of industrial relations of the department of business and industry, the governor and the legislature on procedures applied to inspections relating to the protection of employees from falling at residential construction sites; requiring the division of industrial relations to report to the legislature on the number of inspections of construction sites that are conducted; authorizing an employer to contest certain citations or penalties on the basis that an employee removed or failed to use a required safety device or safeguard when an employer did not know and could not have known of the employee's action; requiring the division of industrial relations to adopt regulations governing its internal policies and procedures concerning certain of its duties and programs; clarifying that proof of an employer's knowledge of a violation of a safety or health standard or proof that the employer should have known of the violation is necessary to a finding that an employer has committed a serious violation; revising provisions governing the determination of an appropriate penalty for a serious violation of a safety or health standard; and providing other matters properly relating thereto.

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

- 1     **Section 1.** Chapter 618 of NRS is hereby amended by adding thereto  
2     the provisions set forth as sections 2 to 10, inclusive, of this act.  
3     **Sec. 2.** *As used in sections 3 to 8, inclusive, of this act, unless the*  
4     *context otherwise requires, "panel" means the panel for advisement on*  
5     *inspections at residential construction sites.*  
6     **Sec. 3.** *1. The panel for advisement on inspections at residential*  
7     *construction sites is hereby created. The panel consists of five members*  
8     *who are appointed by the governor.*  
9     *2. The governor shall appoint five members who each have*  
10    *experience in the field of construction generally and, if practicable, who*



1 *have expertise in a particular field of construction, such as roofing,*  
2 *electrical work or steel work.*

3 *3. After the initial terms, members shall serve terms of 2 years,*  
4 *except when appointed to fill unexpired terms.*

5 *4. A vacancy in the membership of the panel must be filled by the*  
6 *governor. If practicable, the newly appointed member must have the*  
7 *same qualifications, experience or expertise as the vacating member.*

8 *5. No person employed by the division may serve as a member of the*  
9 *panel.*

10 *Sec. 4. 1. The members of the panel shall annually select a*  
11 *chairman and secretary from among themselves.*

12 *2. The chairman and secretary shall hold office for 1 year.*

13 *3. The chairman shall:*

14 *(a) Schedule the time and place of the meetings of the panel;*

15 *(b) Establish the agenda for each meeting of the panel; and*

16 *(c) Ensure that the meetings of the panel are conducted in an efficient*  
17 *manner.*

18 *4. The secretary shall perform any administrative functions*  
19 *delegated to him by the chairman.*

20 *Sec. 5. 1. The panel shall meet, at least annually, at the times and*  
21 *places specified by a call of the chairman.*

22 *2. Three members of the panel constitute a quorum to transact all*  
23 *business, and a majority of those present must concur on any decision or*  
24 *action of the panel.*

25 *Sec. 6. Each member of the panel is entitled to receive, for his*  
26 *attendance at the meetings of the panel, the per diem allowance and*  
27 *travel expenses provided for state officers and employees generally.*

28 *Sec. 7. The panel shall:*

29 *1. Review procedures currently applied by authorized representatives*  
30 *of the administrator to inspections relating to the protection of employees*  
31 *from falling at residential construction sites.*

32 *2. Collect and compile data on alternative procedures that could be*  
33 *applied to inspections relating to the protection of employees from falling*  
34 *at residential construction sites.*

35 *3. Create and submit a report to the administrator and the chief*  
36 *officer of the section of the division created pursuant to NRS 618.257 for*  
37 *enforcement that:*

38 *(a) Presents the compiled data on alternative procedures that could be*  
39 *applied to inspections relating to the protection of employees from falling*  
40 *at residential construction sites; and*

41 *(b) If the panel believes it is appropriate, makes suggestions on how*  
42 *current procedures for inspections applied by authorized representatives*  
43 *of the administrator may be tailored to the special considerations of the*  
44 *residential construction industry.*

45 *4. On or before February 1 of each year, submit an annual report to*  
46 *the governor and to the director of the legislative counsel bureau for*  
47 *transmittal to the appropriate committee or committees of the legislature*  
48 *during the regular session of the legislature, or in a year that the*



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1 *legislature is not in session for transmittal to the legislative commission,*  
2 *that summarizes the panel's activities and recommendations.*

3 **Sec. 8.** 1. *The chief officer of the section of the division created*  
4 *pursuant to NRS 618.257 for enforcement shall attend each meeting of*  
5 *the panel called by the chairman pursuant to section 5 of this act.*

6 2. *The section of the division created pursuant to NRS 618.257 for*  
7 *enforcement shall review the information contained in the report*  
8 *submitted to it by the panel pursuant to subsection 3 of section 7 of this*  
9 *act when it establishes new procedures to be applied to inspections*  
10 *relating to the protection of employees from falling at residential*  
11 *construction sites.*

12 **Sec. 9.** *On or before February 1 of each odd-numbered year, the*  
13 *division shall submit a report to the director of the legislative counsel*  
14 *bureau for transmittal to the appropriate committee or committees of the*  
15 *legislature during each regular session of the legislature that indicates*  
16 *the number of inspections that the division has conducted during the*  
17 *previous 2 years on construction sites as compared to the number of*  
18 *inspections it has conducted at all other places of employment.*

19 **Sec. 10.** *An employer may contest a citation or proposed assessment*  
20 *of a penalty for a serious or nonserious violation on the basis that the*  
21 *administrator or his authorized representative failed to demonstrate*  
22 *adequately that such a violation occurred. If the alleged serious or*  
23 *nonserious violation is the failure to use a safety device or safeguard that*  
24 *is required by a provision of this chapter or a standard, rule, regulation*  
25 *or order promulgated or prescribed pursuant to this chapter, the*  
26 *employer can demonstrate that such a violation did not occur by proving*  
27 *that the:*

28 1. *Employee removed or failed to use the safety device or safeguard*  
29 *that the employer had provided and directed the employee to use; and*

30 2. *Employer did not know and could not have known, even with the*  
31 *exercise of reasonable diligence, that the employee removed or failed to*  
32 *use such safety device or safeguard.*

33 **Sec. 11.** *NRS 618.295 is hereby amended to read as follows:*

34 618.295 1. *The division shall adopt such regulations as are necessary*  
35 *to provide safe and healthful employment in those employments within its*  
36 *jurisdiction. Notwithstanding the provisions of subsection 2 of NRS*  
37 *233B.038 and in addition to any regulations adopted pursuant to a*  
38 *provision of this chapter that require or authorize the division to adopt*  
39 *regulations on a particular subject related to occupational safety and*  
40 *health, the division shall adopt regulations that govern:*

41 (a) *Its internal policies on the priority of conducting inspections and*  
42 *its policies and procedures applicable to the conduct of inspections of*  
43 *places of employment, generally;*

44 (b) *Its internal policies and procedures applicable to the conduct of*  
45 *inspections of certain types of employment and of certain types of*  
46 *complaints;*

47 (c) *The types of violations for failing to comply with requirements of*  
48 *this chapter or any standard, rule, regulation or order promulgated or*  
49 *prescribed pursuant to this chapter with which an employer may be cited*



1 *and any internal policies on how an authorized representative of the*  
2 *administrator is to determine whether a violation has occurred;*

3 *(d) The citations, notices and penalties that may be imposed for a*  
4 *violation set forth pursuant to paragraph (c) and any internal policies*  
5 *concerning the manner in which an authorized representative of the*  
6 *administrator is to determine whether a citation, notice or penalty is*  
7 *appropriate and, if so, which citation, notice or penalty;*

8 *(e) Its internal policies and procedures for writing, amending or*  
9 *withdrawing a citation or a notification of penalty;*

10 *(f) Its internal policies and procedures for the acceptance and*  
11 *processing of a:*

12 *(1) Complaint or notice of a violation filed by any person with the*  
13 *division; and*

14 *(2) Written appeal or notice of contest to a decision made or action*  
15 *taken by the division, including the assessment of a penalty;*

16 *(g) Its internal policies and procedures concerning the manner in*  
17 *which the employees of the division act on documents filed with the*  
18 *occupational safety and health review board or the division and the*  
19 *manner in which employees of the division may communicate or*  
20 *otherwise deal with persons who file documents with the board or the*  
21 *division or appear before the board;*

22 *(h) Its internal policies and procedures regarding confidentiality,*  
23 *disclosure and reproduction of any documents containing information*  
24 *about investigations and inspections; and*

25 *(i) Its internal policies and procedures concerning the:*

26 *(1) Processing of applications for licensing and renewal of licenses*  
27 *of persons who wish to engage in projects for the control of asbestos in a*  
28 *specific occupation pursuant to NRS 618.750 to 618.850, inclusive, and*  
29 *the regulations adopted pursuant thereto;*

30 *(2) Processing and approval of notifications that a contractor*  
31 *intends to engage in a project for the abatement of asbestos or an*  
32 *emergency project for the abatement of asbestos;*

33 *(3) Conduct of investigations of projects for the abatement of*  
34 *asbestos;*

35 *(4) Determination of whether a violation of a requirement of this*  
36 *chapter or any standard, rule, regulation or order promulgated or*  
37 *prescribed pursuant to this chapter concerning the control of asbestos*  
38 *has occurred that would subject a person to administrative violations,*  
39 *citations, penalties or revocation of a license; and*

40 *(5) Imposition of an administrative fine for a violation of a*  
41 *regulation adopted by the division concerning the control of asbestos.*

42 2. The division shall not propose standards or regulations for products  
43 distributed or used in interstate commerce which are different from federal  
44 standards for such products unless such standards are required by  
45 compelling local conditions and do not unduly burden interstate commerce.

46 3. The division may adopt by emergency regulation temporary  
47 emergency standards for the protection of employees who are exposed to  
48 grave danger from exposure to substances or agents determined to be toxic  
49 or physically harmful or from new hazards.



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1 4. Standards established under this chapter must apply equally to all  
2 places of employment.

3 5. Standards or regulations must provide for furnishing prompt  
4 information to employees by means of labels or warning signs regarding  
5 hazards in the workplace. The information must include the suitable  
6 precautions, the symptoms and emergency treatment in case of exposure to  
7 hazards.

8 6. If an employee has been exposed to a hazard and the division  
9 considers a medical examination necessary, the cost of the examination  
10 must be paid by the employer. The results of the examination must be  
11 furnished only to the division and, at the request of the employee, to the  
12 employee's physician.

13 7. Standards or regulations must prescribe the use of suitable  
14 protective equipment and control methods or procedures to include  
15 monitoring or measuring any exposures. The employees are entitled to be  
16 apprised of such monitoring and to obtain the results.

17 8. All federal occupational safety and health standards which the  
18 Secretary of Labor promulgates, modifies or revokes, and any amendments  
19 thereto, shall be deemed Nevada occupational safety and health standards  
20 unless the division, in accordance with federal law, adopts regulations  
21 establishing alternative standards that provide protection equal to the  
22 protection provided by those federal occupational safety and health  
23 standards.

24 **Sec. 12.** NRS 618.625 is hereby amended to read as follows:

25 618.625 1. The division may assess administrative fines provided for  
26 in this chapter, giving due consideration to the appropriateness of the  
27 penalty with respect to the size of the employer, the gravity of the  
28 violation, the good faith of the employer and the history of previous  
29 violations.

30 2. For purposes of this chapter, a serious violation exists in a place of  
31 employment if there is a substantial probability that death or serious  
32 physical harm could result from a condition which exists, or from one or  
33 more practices, means, methods, operations or processes which have been  
34 adopted or are in use in that place of employment unless the employer did  
35 not and could not, with the exercise of reasonable diligence, know of the  
36 presence of the violation. *A serious violation has not occurred if the  
37 employer did not know and could not have known, even with the exercise  
38 of reasonable diligence, of the presence of the violation.*

39 3. Administrative fines owed under this chapter must be paid to the  
40 division. The fines may be recovered in a civil action in the name of the  
41 division brought in a court of competent jurisdiction in the county where  
42 the violation is alleged to have occurred or where the employer has his  
43 principal office.

44 **Sec. 13.** NRS 618.645 is hereby amended to read as follows:

45 618.645 1. Any employer who has received a citation for a serious  
46 violation of any requirement of this chapter, or any standard, rule,  
47 regulation or order promulgated or prescribed pursuant to this chapter,  
48 must be assessed an administrative fine of not more than \$7,000 for each  
49 such violation. If a violation is specifically determined to be of a



1 nonserious nature an administrative fine of not more than \$7,000 may be  
2 assessed.

3 *2. To determine the amount of an administrative fine for a serious*  
4 *violation, the administrator or his authorized representative:*

5 *(a) Shall determine the gravity of the violation by assessing whether*  
6 *the:*

7 *(1) Severity of the injury or illness that resulted from the violation*  
8 *was high, medium or low; and*

9 *(2) Probability that an injury or illness could have occurred as a*  
10 *result of the violation is greater or lesser,*  
11 *and assign an unadjusted penalty pursuant to subsection 3;*

12 *(b) May reduce the unadjusted penalty assigned pursuant to*  
13 *subsection 3 by not more than:*

14 *(1) Sixty percent of the unadjusted penalty, if the employer has not*  
15 *less than one and not more than 25 employees;*

16 *(2) Forty percent of the unadjusted penalty, if the employer has not*  
17 *less than 26 and not more than 100 employees; or*

18 *(3) Twenty percent of the unadjusted penalty, if the employer has*  
19 *not less than 101 and not more than 250 employees;*

20 *(c) Except a penalty assessed for a violation that is classified pursuant*  
21 *to subsection 3 as having a high severity and a greater probability, may*  
22 *reduce the unadjusted penalty assigned pursuant to subsection 3 by not*  
23 *more than a total of 25 percent of the unadjusted penalty, including a*  
24 *reduction of:*

25 *(1) Fifteen percent of the unadjusted penalty, if the evidence of*  
26 *good faith includes the existence of an effective, written safety program;*  
27 *and*

28 *(2) Ten percent of the unadjusted penalty, if the evidence of good*  
29 *faith includes the fact that the employer abated the violated condition*  
30 *within 24 hours; and*

31 *(d) May reduce the unadjusted penalty assigned pursuant to*  
32 *subsection 3 by not more than 10 percent of the unadjusted penalty if the*  
33 *employer has not been cited by the division for any serious, willful or*  
34 *repeated violations in the previous 2 years.*

35 *3. The possible unadjusted penalties for a serious violation are:*

<u>Severity and Probability</u>	<u>Unadjusted Penalty</u>
<i>Injury or illness with high severity and</i>	
<i>greater probability.....</i>	<i>\$5,000 to 7,000</i>
<i>Injury or illness with medium severity and</i>	
<i>greater probability.....</i>	<i>\$3,500</i>
<i>Injury or illness with low severity and</i>	
<i>greater probability.....</i>	<i>\$2,500</i>
<i>Injury or illness with high severity and lesser</i>	
<i>probability.....</i>	<i>\$2,500</i>
<i>Injury or illness with medium severity and</i>	
<i>lesser probability.....</i>	<i>\$2,000</i>
<i>Injury or illness with low severity and lesser</i>	
<i>probability.....</i>	<i>\$1,500</i>



1 *The unadjusted penalty for a violation with a classification of high*  
2 *severity and greater probability may exceed \$5,000 only if the*  
3 *administrator or the chief officer of the section of the division created*  
4 *pursuant to NRS 618.257 for enforcement determines that a penalty that*  
5 *is greater than \$5,000 but not more than \$7,000 is necessary to achieve a*  
6 *deterrent effect.*

7 *4. As used in this section:*

8 *(a) An injury or illness with a high severity means an injury or illness*  
9 *that caused death or resulted in a permanent disability or an illness that*  
10 *was chronic and irreversible.*

11 *(b) An injury or illness with a medium severity means an injury or*  
12 *illness that resulted in a temporary disability and that required*  
13 *hospitalization.*

14 *(c) An injury or illness with a low severity means an injury or illness*  
15 *that resulted in a temporary disability and that did not require*  
16 *hospitalization.*

17 *(d) An injury or illness with a greater probability of occurring means*  
18 *an injury or illness that has a likelihood of occurrence that is relatively*  
19 *high.*

20 *(e) An injury or illness with a lesser probability of occurring means an*  
21 *injury or illness that has a likelihood of occurrence that is relatively low.*

22 **Sec. 14.** As soon as practicable after July 1, 2001, the governor shall  
23 appoint to the panel created pursuant to section 3 of this act:

- 24 1. Two of the members to terms that expire on June 30, 2004.  
25 2. Two of the members to terms that expire on June 30, 2003.  
26 3. One of the members to a term that expires on June 30, 2002.

27 **Sec. 15.** This act becomes effective on July 1, 2001.

