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ASSEMBLY BILL NO. 502—COMMITTEE ON COMMERCE AND LABOR

(ON BEHALF OF THE EMPLOYMENT SECURITY DIVISION)

MARCH 28, 2005

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Referred to Committee on Commerce and Labor

SUMMARY—Makes various changes to provisions governing unemployment compensation. (BDR 53-323)

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.

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AN ACT relating to unemployment compensation; requiring the Administrator of the Employment Security Division of the Department of Employment, Training and Rehabilitation to adopt certain regulations relating to unemployment insurance contributions; revising provisions relating to certain transfers of unemployment experience records; revising provisions relating to the timeliness of a request for review of or an appeal from certain actions of the Division; providing criminal and civil penalties; 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 612 of NRS is hereby amended by adding  
2     thereto a new section to read as follows:

3     1. *The Administrator shall adopt regulations establishing*  
4     *procedures to identify:*

5     (a) *Transactions in which the transfer or acquisition of a*  
6     *business entity is for the sole purpose of obtaining a lower*  
7     *unemployment insurance contribution rate; and*



1       (b) *Common ownership, management or control between two*  
2 *or more business entities, including, without limitation, through*  
3 *the movement of workforce between such business entities.*

4       2. *If, for any rate year, the Administrator determines that an*  
5 *employer has, through deliberate ignorance, reckless disregard,*  
6 *intent to evade, fraud, misrepresentation or willful nondisclosure,*  
7 *obtained or attempted to obtain a more favorable rate of*  
8 *contribution, the Administrator shall assign to the employer the*  
9 *maximum contribution rate plus 2 percent for each applicable rate*  
10 *year, the current rate year and the subsequent rate year. In*  
11 *addition to any penalty imposed pursuant to NRS 612.730, the*  
12 *Administrator shall impose on the employer a civil penalty of the*  
13 *greater of:*

14       (a) *Five thousand dollars; or*

15       (b) *Ten percent of the total amount of any resulting*  
16 *underreporting of contributions and any other penalties and*  
17 *interest imposed.*

18       3. *If the Administrator determines that a person or business*  
19 *entity knowingly advised another person or business entity to*  
20 *violate or attempt to violate any provision of this chapter, in*  
21 *addition to any penalty imposed pursuant to NRS 612.730, the*  
22 *Administrator shall impose on such person or business entity a*  
23 *civil penalty of the greater of:*

24       (a) *Five thousand dollars; or*

25       (b) *Ten percent of the total amount of any resulting*  
26 *underreporting of contributions and any other penalties and*  
27 *interest imposed.*

28       4. *All money collected pursuant to the provisions of this*  
29 *section must be deposited in the Unemployment Compensation*  
30 *Fund.*

31       5. *The exemption provided for in of paragraph (a) of*  
32 *subsection 4 of NRS 612.606 does not apply to an employer whose*  
33 *assigned contribution rate is 5.4 percent or higher pursuant to the*  
34 *provisions of subsection 2.*

35       6. *As used in this section:*

36       (a) *“Business entity” means a partnership, corporation,*  
37 *association, limited liability entity, Indian tribe or any other legal*  
38 *entity.*

39       (b) *“Knowingly” means having actual knowledge of or acting*  
40 *with deliberate ignorance or reckless disregard of the law.*

41       **Sec. 2.** *NRS 612.245 is hereby amended to read as follows:*

42       612.245 1. *The Administrator may, upon his own motion or*  
43 *upon application of an employing unit, and after notice and*  
44 *opportunity for the employing unit to submit facts, make*  
45 *determinations with respect to whether an employing unit*



1 constitutes an employer and whether services performed for or in  
2 connection with the business of an employing unit constitute  
3 employment for that employing unit.

4 2. *The Administrator may, upon his own motion or upon the*  
5 *application of an employing unit, make a determination that*  
6 *substantially common ownership, management or control exists*  
7 *between any two or more employers.*

8 3. Appeal from any such determination may be taken in the  
9 manner prescribed by this chapter for the appeal of determinations  
10 respecting benefits.

11 ~~3.4~~ 4. A determination of the Administrator which has not  
12 been appealed, or of the Appeal Tribunal, the Board of Review or  
13 the district court on appeal, together with the record, may be  
14 introduced in any proceeding involving a claim for benefits, and is  
15 conclusive as to the facts and the determination, unless the claimant  
16 introduces substantial evidence controverting a material fact so  
17 found.

18 **Sec. 3.** NRS 612.365 is hereby amended to read as follows:

19 612.365 1. Any person who is overpaid any amount as  
20 benefits under this chapter is liable for the amount overpaid unless:

21 (a) The overpayment was not due to fraud, misrepresentation or  
22 willful nondisclosure on the part of the recipient; and

23 (b) The overpayment was received without fault on the part of  
24 the recipient, and its recovery would be against equity and good  
25 conscience, as determined by the Administrator.

26 2. The amount of the overpayment must be assessed to the  
27 liable person, and he must be notified of the basis of the assessment.  
28 The notice must specify the amount for which the person is liable. In  
29 the absence of fraud, misrepresentation or willful nondisclosure,  
30 notice of the assessment must be mailed or personally served not  
31 later than 1 year after the close of the benefit year in which the  
32 overpayment was made.

33 3. At any time within 5 years after the notice of overpayment,  
34 the Administrator may recover the amount of the overpayment by  
35 using the same methods of collection provided in NRS 612.625 to  
36 612.645, inclusive, 612.685 and 612.686 for the collection of past  
37 due contributions or by deducting the amount of the overpayment  
38 from any benefits payable to the liable person under this chapter.

39 4. The Administrator may waive recovery or adjustment of all  
40 or part of the amount of any such overpayment which he finds to be  
41 uncollectible or the recovery or adjustment of which he finds to be  
42 administratively impracticable.

43 5. Any person against whom liability is determined under this  
44 section may appeal therefrom within ~~10~~ 11 days after the date the  
45 notice provided for in this section was mailed to, or served upon, the



1 person. An appeal must be made and conducted in the manner  
2 provided in this chapter for the appeals from determinations of  
3 benefit status. The ~~[10-day]~~ **11-day** period provided for in this  
4 subsection may be extended for good cause shown.

5 **Sec. 4.** NRS 612.371 is hereby amended to read as follows:

6 612.371 1. Any person who has been awarded back pay  
7 because he was unlawfully discharged is liable for the amount of the  
8 benefits paid to him during the period for which the back pay was  
9 awarded, without regard to the length of time that has passed since  
10 the benefits were paid. The employer's reserve account must be  
11 credited, effective as of the date the benefits were paid, with the  
12 amount of those benefits. Before an employer pays the employee, he  
13 shall ascertain the amount of the benefits received by the person  
14 during the period for which back pay was awarded and shall  
15 withhold that amount from the payment of back pay. He shall  
16 deliver the amount withheld to the Division.

17 2. The Administrator may recover from the person liable, the  
18 amount due within 3 years after the payment of back pay, if the  
19 employer does not withhold it, by using the method of collection  
20 provided in NRS 612.625 to 612.645, inclusive, or by deducting the  
21 amount due from any benefits payable to the person liable for  
22 repayment.

23 3. The Administrator may waive recovery or adjustment of all  
24 or part of the amount due which he finds to be uncollectible or the  
25 recovery or adjustment of which he finds to be administratively  
26 impracticable.

27 4. Any person who is liable pursuant to this section may appeal  
28 the repayment within ~~[10]~~ **11** days after the award of back pay. The  
29 appeal must be made in the manner provided in this chapter for the  
30 appeals from determinations of benefit status. The ~~[10-day]~~ **11-day**  
31 period provided for in this subsection may be extended by the  
32 Administrator for good cause.

33 **Sec. 5.** NRS 612.380 is hereby amended to read as follows:

34 612.380 1. Except as otherwise provided in subsection 2, a  
35 person is ineligible for benefits for the week in which he has  
36 voluntarily left his last or next to last **covered** employment:

37 (a) Without good cause, if so found by the Administrator, and  
38 until he earns remuneration in covered employment equal to or  
39 exceeding his weekly benefit amount in each of 10 weeks.

40 (b) To seek other employment , **including, without limitation,**  
41 **self employment,** and for all subsequent weeks until he secures other  
42 **covered** employment ~~[or until he]~~ **and** earns remuneration in  
43 covered employment equal to or exceeding his weekly benefit  
44 amount in each of 10 weeks, if so found by the Administrator.



2. A person is not ineligible for benefits solely because he left employment which was not suitable to enter training approved pursuant to 19 U.S.C. § 2296.

3. As used in subsection 2, employment is "suitable" if the work is of a substantially equal or higher level of skill than the person's past adversely affected employment, and the wages are not less than 80 percent of his average weekly wage at his past adversely affected employment.

**Sec. 6.** NRS 612.385 is hereby amended to read as follows:

612.385 A person is ineligible for benefits for the week in which he has filed a claim for benefits, if he was discharged from his last or next to last **covered** employment for misconduct connected with his work, and remains ineligible until he earns remuneration in covered employment equal to or exceeding his weekly benefit amount in each of not more than 15 weeks thereafter as determined by the Administrator in each case according to the seriousness of the misconduct.

**Sec. 7.** NRS 612.475 is hereby amended to read as follows:

612.475 1. The last employing unit of any unemployed claimant and the next to last employing unit of an unemployed claimant who has not earned remuneration with his last covered employer equal to or exceeding his weekly benefit amount in each of 16 weeks must be notified of any new claim or additional claim filed by the unemployed claimant following his separation.

2. The notice of the filing of a claim must contain the claimant's name and social security number and may contain the reason for separation from the employing unit affected as given by the claimant, the date of separation and such other information as is deemed proper.

3. Upon receipt of a notice of the filing of a claim, the employing unit shall, within ~~H0~~ **11** days after the date of the mailing of the notice, submit to the Division any facts which may affect the claimant's rights to benefits.

4. Any employing unit that receives a notice of the filing of a claim may protest payment of benefits to the unemployed claimant if the protest is filed within ~~H0~~ **11** days after the notice is filed.

5. Any employing unit which has filed a protest in accordance with the provisions of this section must be notified in writing of the determination arrived at by the Administrator or his Deputy, and the notice must contain a statement setting forth the right of appeal.

6. As used in this section:

(a) "Additional claim" means a claim filed during the benefit year when a break of 1 week or more has occurred in the series of claims with intervening employment.



(b) "New claim" means an application for a determination of eligibility and benefits, benefit amount and duration of benefits which certifies to the beginning date of a first period of unemployment in a benefit year or the continuance of a period of unemployment into a new benefit year.

**Sec. 8.** NRS 612.485 is hereby amended to read as follows:

612.485 1. Any determination or redetermination is final ~~10~~ 11 days after the date of notification or mailing of the notice of determination or redetermination unless a request for reconsideration or an appeal is filed within the ~~10-day~~ 11-day period.

2. Nothing in this section limits or abridges the authority of the Administrator to make a redetermination as provided in NRS 612.480.

3. Any notice of a determination or redetermination must clearly indicate the interested persons' right to appeal.

**Sec. 9.** NRS 612.495 is hereby amended to read as follows:

612.495 1. Any person entitled to a notice of determination or redetermination may file an appeal from the determination with an Appeal Tribunal, and the Administrator shall be a party respondent thereto. The appeal must be filed within ~~10~~ 11 days after the date of mailing or personal service of the notice of determination or redetermination. The ~~10-day~~ 11-day period may be extended for good cause shown. Any employing unit whose rights may be adversely affected may be permitted by the Appeal Tribunal to intervene as a party respondent to the appeal.

2. An appeal shall be deemed to be filed on the date it is delivered to the Division, or, if it is mailed, on the postmarked date appearing on the envelope in which it was mailed, if postage is prepaid and the envelope is properly addressed to the office of the Division that mailed notice of the person's claim for benefits to each employer entitled to notice under NRS 612.475.

3. The ~~10-day~~ 11-day period provided for in this section must be computed by excluding the day the determination was mailed or personally served, and including the last day of the ~~10-day~~ 11-day period, unless the last day is a Saturday, Sunday or holiday, in which case that day must also be excluded.

4. The Appeal Tribunal may permit the withdrawal of the appeal by the appellant at the appellant's request if there is no coercion or fraud involved in the withdrawal.

**Sec. 10.** NRS 612.510 is hereby amended to read as follows:

612.510 1. After a hearing an Appeal Tribunal shall make its findings promptly and on the basis thereof affirm, modify or reverse the determination. Each party must be promptly furnished a copy of the decision and the supporting findings.



2. The decision is final unless an appeal to the Board of Review or a request for review or appeal to the Board of Review is filed, within ~~10~~ 11 days after the decision has been mailed to each party's last known address or otherwise delivered to him. The ~~10-day~~ 11-day period may be extended for good cause shown.

3. A request for review or appeal to the Board of Review shall be deemed to be filed on the date it is delivered to the Division, or, if it is mailed, on the postmarked date appearing on the envelope in which it was mailed, if the postage was prepaid and the envelope was properly addressed to one of the offices of the Division.

4. The time provided for in this section must be computed in the manner provided in NRS 612.495.

**Sec. 11.** NRS 612.515 is hereby amended to read as follows:

612.515 1. An appeal to the Board of Review by any party must be allowed as a matter of right if the Appeal Tribunal's decision reversed or modified the Administrator's determination. In all other cases, further review must be at the discretion of the Board of Review.

2. The Board on its own motion may initiate a review of a decision or determination of an Appeal Tribunal within ~~10~~ 11 days after the date of mailing of the decision.

3. The Board may affirm, modify or reverse the findings or conclusions of the Appeal Tribunal solely on the basis of evidence previously submitted, or upon the basis of such additional evidence as it may direct to be taken.

4. Each party, including the Administrator, must be promptly furnished a copy of the decision and the supporting findings of the Board of Review.

**Sec. 12.** NRS 612.525 is hereby amended to read as follows:

612.525 1. Any decision of the Board of Review in the absence of an appeal therefrom as herein provided becomes final ~~10~~ 11 days after the date of notification or mailing thereof, and judicial review thereof is permitted only after any party claiming to be aggrieved thereby has exhausted his administrative remedies as provided by this chapter.

2. The Administrator shall be deemed to be a party to any judicial action involving any such decision, and may be represented in any such judicial action by:

(a) Any qualified attorney employed by the Administrator and designated by him for that purpose; or

(b) The Attorney General, at the Administrator's request.

3. The Administrator may appeal from any decision of the Board of Review to the courts as may any other party to that decision.





**Sec. 13.** NRS 612.530 is hereby amended to read as follows:

612.530 1. Within ~~10~~ 11 days after the decision of the Board of Review has become final, any party aggrieved thereby or the Administrator may secure judicial review thereof by commencing an action in the district court of the county where the employment which is the basis of the claim was performed for the review of the decision, in which action any other party to the proceedings before the Board of Review must be made a defendant.

2. In such action, a petition which need not be verified, but which must state the grounds upon which a review is sought, must be served upon the Administrator, unless he is the appellant, or upon such person as he may designate, and such service shall be deemed completed service on all parties, but there must be left with the party so served as many copies of the petition as there are defendants, and the Administrator shall forthwith mail one such copy to each defendant.

3. With his answer or petition, the Administrator shall certify and file with the court originals or true copies of all documents and papers and a transcript of all testimony taken in the matter, together with the Board of Review's findings of fact and decision therein. The Administrator may certify to the court questions of law involved in any decision.

4. In any judicial proceedings under this section, the finding of the Board of Review as to the facts, if supported by evidence and in the absence of fraud, is conclusive, and the jurisdiction of the court is confined to questions of law.

5. Such actions, and the questions so certified, must be heard in a summary manner and must be given precedence over all other civil cases except cases arising under chapters 616A to 616D, inclusive, or chapter 617 of NRS.

6. An appeal may be taken from the decision of the district court to the Supreme Court of Nevada in the same manner, but not inconsistent with the provisions of this chapter, as is provided in civil cases.

7. It is not necessary, in any judicial proceeding under this section, to enter exceptions to the rulings of the Board of Review, and no bond may be required for entering the appeal.

8. Upon the final determination of the judicial proceeding, the Board of Review shall enter an order in accordance with the determination.

9. A petition for judicial review does not act as a supersedeas or stay unless the Board of Review so orders.

**Sec. 14.** NRS 612.545 is hereby amended to read as follows:

612.545 1. For the purposes of NRS 612.535, 612.540 and 612.606, wages do not include that part of the wages paid for





1 employment to a person by an employer during any calendar year  
2 which exceeds  $66 \frac{2}{3}$  percent of the average annual wage, rounded  
3 to the nearest hundred dollars, for the preceding calendar year unless  
4 that part of the wages is subject to a tax under a federal law  
5 imposing a tax against which credit may be taken for contributions  
6 paid under this chapter. The average annual wage for employers  
7 who do not elect reimbursement in lieu of contributions must be  
8 computed as follows: On or before July 1, the total wages reported  
9 for the preceding calendar year by those employers who are subject  
10 to the provisions of this chapter must be divided by the average of  
11 the 12 mid-month totals of all workers in employment for employers  
12 as reported in that year.

13 2. For the purpose of this section:

14 (a) Any employer who acquired *a part of or* the entire ~~for a~~  
15 ~~distinct and severable portion of the~~ organization, trade or business  
16 or substantially all of the assets of an employer must be treated as a  
17 single unit with its predecessor for the calendar year in which the  
18 acquisition occurs.

19 (b) The wages paid by an employer to an employee performing  
20 services for him in another state upon which contributions are  
21 required to be paid by that employer under the unemployment  
22 compensation law of that state, must be included as part of the  
23 wages used to calculate the contributions in subsection 1.

24 **Sec. 15.** NRS 612.550 is hereby amended to read as follows:

25 612.550 1. As used in this section:

26 (a) "Average actual duration" means the number of weeks  
27 obtained by dividing the number of weeks of benefits paid for weeks  
28 of total unemployment in a consecutive 12-month period by the  
29 number of first payments made in the same 12-month period.

30 (b) "Average annual payroll" for each calendar year means the  
31 annual average of total wages paid by an employer subject to  
32 contributions for the 3 consecutive calendar years immediately  
33 preceding the computation date. The average annual payroll for  
34 employers first qualifying as eligible employers must be computed  
35 on the total amount of wages paid, subject to contributions, for not  
36 less than 10 consecutive quarters and not more than 12 consecutive  
37 quarters ending on December 31, immediately preceding the  
38 computation date.

39 (c) "Beneficiary" means a person who has received a first  
40 payment.

41 (d) "Computation date" for each calendar year means June 30 of  
42 the preceding calendar year.

43 (e) "Covered worker" means a person who has worked in  
44 employment subject to this chapter.



1 (f) "First payment" means the first weekly unemployment  
2 insurance benefit paid to a person in his benefit year.

3 (g) "Reserve balance" means the excess, if any, of total  
4 contributions paid by each employer over total benefit charges to his  
5 experience rating record.

6 (h) "Reserve ratio" means the percentage ratio that the reserve  
7 balance bears to the average annual payroll.

8 (i) "Total contributions paid" means the total amount of  
9 contributions, due on wages paid on or before the computation date,  
10 paid by an employer not later than the last day of the second month  
11 immediately following the computation date.

12 (j) "Unemployment risk ratio" means the ratio obtained by  
13 dividing the number of first payments issued in any consecutive  
14 12-month period by the average monthly number of covered  
15 workers in employment as shown on the records of the Division for  
16 the same 12-month period.

17 2. The Administrator shall, as of the computation date for each  
18 calendar year, classify employers in accordance with their actual  
19 payrolls, contributions and benefit experience, and shall determine  
20 for each employer the rate of contribution which applies to him for  
21 each calendar year in order to reflect his experience and  
22 classification. The contribution rate of an employer may not be  
23 reduced below 2.95 percent, unless there have been 12 consecutive  
24 calendar quarters immediately preceding the computation date  
25 throughout which he has been subject to this chapter and his account  
26 as an employer could have been charged with benefit payments,  
27 except that an employer who has not been subject to the law for a  
28 sufficient period to meet this requirement may qualify for a rate less  
29 than 2.95 percent if his account has been chargeable throughout a  
30 lesser period not less than the 10-consecutive-calendar-quarter  
31 period ending on the computation date.

32 3. Any employer who qualifies under *paragraph (b) of*  
33 subsection 9 and receives the experience record of a predecessor  
34 employer must be assigned the contribution rate of his predecessor.

35 4. Benefits paid to a person up to and including the  
36 computation date must be charged against the records, for  
37 experience rating, of his base-period employers in the same  
38 percentage relationship that wages reported by individual employers  
39 represent to total wages reported by all base period employers,  
40 except that:

41 (a) If one of the base period employers has paid 75 percent or  
42 more of the wages paid to the person during his base period, and  
43 except as otherwise provided in NRS 612.551, the benefits, less a  
44 proportion equal to the proportion of wages paid during the base  
45 period by employers who make reimbursement in lieu of



1 contributions, must be charged to the records for experience rating  
2 of that employer. The proportion of benefits paid which is equal to  
3 the part of the wages of the claimant for the base period paid by an  
4 employer who makes reimbursement must be charged to the record  
5 of that employer.

6 (b) No benefits paid to a multistate claimant based upon  
7 entitlement to benefits in more than one state may be charged to the  
8 experience rating record of any employer when no benefits would  
9 have been payable except pursuant to NRS 612.295.

10 (c) Except for employers who have been given the right to make  
11 reimbursement in lieu of contributions, extended benefits paid to a  
12 person must not be charged against the accounts of his base-period  
13 employers.

14 5. The Administrator shall, as of the computation date for each  
15 calendar year, compute the reserve ratio for each eligible employer  
16 and shall classify those employers on the basis of their individual  
17 reserve ratios. The contribution rate assigned to each eligible  
18 employer for the calendar year must be determined by the range  
19 within which his reserve ratio falls. The Administrator shall, by  
20 regulation, prescribe the contribution rate schedule to apply for each  
21 calendar year by designating the ranges of reserve ratios to which  
22 must be assigned the various contribution rates provided in  
23 subsection 6. The lowest contribution rate must be assigned to the  
24 designated range of highest reserve ratios and each succeeding  
25 higher contribution rate must be assigned to each succeeding  
26 designated range of lower reserve ratios, except that, within the  
27 limits possible, the differences between reserve ratio ranges must be  
28 uniform.

29 6. Each employer eligible for a contribution rate based upon  
30 experience and classified in accordance with this section must be  
31 assigned a contribution rate by the Administrator for each calendar  
32 year according to the following classes:

33	
34	Class 1 .....0.25 percent
35	Class 2 .....0.55 percent
36	Class 3 .....0.85 percent
37	Class 4 .....1.15 percent
38	Class 5 .....1.45 percent
39	Class 6 .....1.75 percent
40	Class 7 .....2.05 percent
41	Class 8 .....2.35 percent
42	Class 9 .....2.65 percent
43	Class 10 .....2.95 percent
44	Class 11 .....3.25 percent
45	Class 12 .....3.55 percent



1	Class 13 .....	3.85 percent
2	Class 14 .....	4.15 percent
3	Class 15 .....	4.45 percent
4	Class 16 .....	4.75 percent
5	Class 17 .....	5.05 percent
6	Class 18 .....	5.40 percent

7  
8 7. On September 30 of each year, the Administrator shall  
9 determine:

10 (a) The highest of the unemployment risk ratios experienced in  
11 the 109 consecutive 12-month periods in the 10 years ending on  
12 March 31;

13 (b) The potential annual number of beneficiaries found by  
14 multiplying the highest unemployment risk ratio by the average  
15 monthly number of covered workers in employment as shown on  
16 the records of the Division for the 12 months ending on March 31;

17 (c) The potential annual number of weeks of benefits payable  
18 found by multiplying the potential number of beneficiaries by the  
19 highest average actual duration experienced in the 109 consecutive  
20 12-month periods in the 10 years ending on September 30; and

21 (d) The potential maximum annual benefits payable found by  
22 multiplying the potential annual number of weeks of benefits  
23 payable by the average payment made to beneficiaries for weeks of  
24 total unemployment in the 12 months ending on September 30.

25 8. The Administrator shall issue an individual statement,  
26 itemizing benefits charged during the 12-month period ending on  
27 the computation date, total benefit charges, total contributions paid,  
28 reserve balance and the rate of contributions to apply for that  
29 calendar year, for each employer whose account is in active status  
30 on the records of the Division on January 1 of each year and whose  
31 account is chargeable with benefit payments on the computation  
32 date of that year.

33 9. ~~[The]~~ *If an employer transfers its trade or business, or a*  
34 *portion thereof, to another employer:*

35 *(a) And there is substantially common ownership,*  
36 *management or control of the employers, the experience record*  
37 *attributable to the transferred trade or business must be*  
38 *transferred to the employer to whom the trade or business is*  
39 *transferred. The rates of both employers must be recalculated and*  
40 *the recalculated rates become effective on the date of the transfer*  
41 *of the trade or business. If the Administrator determines,*  
42 *following the transfer of the experience record pursuant to this*  
43 *paragraph, that a substantial purpose of the transfer of the trade*  
44 *or business was to obtain a reduced liability for contributions, the*  
45 *Administrator shall combine the experience rating records of the*



1 *employers involved into a single account and assign a single rate*  
2 *to the account.*

3 *(b) And there is no substantially common ownership,*  
4 *management or control of the employers, the* experience record of  
5 an employer may be transferred to a successor employer as of the  
6 effective date of the change of ownership if:

7 ~~[(a)]~~ (1) The successor employer acquires the entire or a  
8 severable and distinct portion of the business, or substantially all of  
9 the assets, of the employer;

10 ~~[(b)]~~ (2) The successor employer notifies the Division of the  
11 acquisition in writing within 90 days after the date of the  
12 acquisition;

13 ~~[(c)]~~ (3) The employer and successor employer submit a joint  
14 application to the Administrator requesting the transfer; and

15 ~~[(d)]~~ (4) The joint application is approved by the Administrator.

16 ➔ The joint application must be submitted within 1 year after the  
17 date of issuance by the Division of official notice of eligibility to  
18 transfer.

19 *(c) Except as otherwise provided in paragraph (a), a transfer*  
20 *of the experience record of the employers must not be completed if*  
21 *the Administrator determines that the acquisition was effected*  
22 *primarily to obtain a more favorable contribution rate.*

23 10. Whenever an employer has paid no wages in employment  
24 for 8 consecutive calendar quarters following the last calendar  
25 quarter in which he paid wages for employment, the Administrator  
26 shall terminate his experience rating account, and the account must  
27 not thereafter be used in any rate computation.

28 11. The Administrator may adopt reasonable accounting  
29 methods to account for those employers which are in a category for  
30 providing reimbursement in lieu of contributions.

31 **Sec. 16.** NRS 612.618 is hereby amended to read as follows:

32 612.618 1. If a check *or draft* is tendered on or before the  
33 due date in payment of contributions but is afterward dishonored by  
34 the financial institution on which it is drawn, the check *or draft* does  
35 not constitute timely payment unless the Administrator determines  
36 that dishonor occurred because of fault on the part of the financial  
37 institution.

38 2. The Administrator shall charge an additional fee in the  
39 amount established by the State Controller pursuant to NRS  
40 353C.115 for handling against a person who presents a check *or*  
41 *draft* afterward dishonored. *The fee may be waived only by the*  
42 *Administrator.* The fee must be deposited in the Unemployment  
43 Compensation Administration Fund.



**Sec. 17.** NRS 612.686 is hereby amended to read as follows:

612.686 1. If a person is notified of a delinquency pursuant to NRS 612.685, he shall neither transfer, pay over nor make any other disposition of money or property belonging to the delinquent employing unit, or any portion thereof, until the Administrator consents thereto in writing.

2. A person so notified shall, within ~~40~~ **11** days after receipt of the notice, advise the Administrator of all credits, debts or other personal property of the delinquent employing unit in his possession, under his control or owing by him, as the case may be.

3. The Administrator may, personally or by registered or certified mail, give the person so notified a demand to transmit. Upon receipt of the demand, that person shall transmit to the Division, within the time and in the manner stated in the demand, the lesser of:

(a) All the credits, debts or other personal property of the delinquent employing unit in his possession, under his control or owing by him; or

(b) The amount specified in the demand.

➤ Except as otherwise provided in subsection 4, no further notice is required.

4. If the property of the delinquent employing unit consists of a series of payments owed to it, the person who owes or controls the payments shall transmit them to the Division until otherwise notified by the Administrator. If the debt is not paid within 1 year after the demand to transmit was given, the Administrator shall give another demand to the person who owes or controls the payments, instructing him to continue to transmit the payments or informing him that his duty to transmit them has ceased.

5. A person notified of a delinquency who makes any transfer or other disposition of property required to be withheld or transmitted to the Division is liable for the amount of the delinquency to the extent of the value of the property or the amount of the debt so transferred or paid.

6. The Division shall determine as promptly as practicable whether sufficient liquid assets have been withheld or transmitted to satisfy its claim. As soon as the Division determines that the assets are sufficient, it shall consent in writing to a transfer or other disposition of assets in excess of the amount needed.

**Sec. 18.** NRS 612.730 is hereby amended to read as follows:

612.730 1. Any employing unit or any officer or agent of an employing unit or any other person who makes a false statement or representation knowing it to be false, or who knowingly fails to disclose a material fact, to prevent or reduce the payment of benefits to any ~~individual~~ **natural person** entitled thereto, ~~for to avoid~~



~~becoming or remaining subject hereto, or to avoid or reduce any contribution or other payment required from an employing unit under this chapter,]~~ or who willfully fails or refuses to make any such contributions or other payment or to furnish any reports required by this chapter, or to produce or permit the inspection or copying of records as required by this chapter, is guilty of a misdemeanor.

2. ~~[Whenever two or more persons shall conspire to accomplish any of the objects provided in this section, every such person is guilty of a gross misdemeanor.]~~ *Any employing unit, or any officer or agent of an employing unit or any other person who knowingly:*

*(a) Attempts to use a plan or scheme to avoid becoming or remaining subject to the provisions of this chapter or to reduce any contribution or other payment required pursuant to the provisions of this chapter; or*

*(b) Advises an employing unit to use a plan or scheme to avoid becoming or remaining subject to the provisions of this chapter or to reduce any contribution or other payment required pursuant to the provisions of this chapter,*

*↪ is guilty of a category C felony and shall be punished as provided in NRS 193.130.*

**Sec. 19.** NRS 612.752 is hereby repealed.

**Sec. 20.** 1. This section and sections 3, 4, 7 to 13, inclusive, 17 and 19 of this act become effective upon passage and approval.

2. Sections 5, 6 and 16 of this act become effective on July 1, 2005.

3. Sections 1, 2, 14, 15 and 18 of this act become effective on January 1, 2006.

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## TEXT OF REPEALED SECTION

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**612.752 Division authorized to participate in Job Training Partnership Act.** In order to continue to participate in programs under the Job Training Partnership Act (29 U.S.C. §§ 1501 et seq.), as that act exists on January 1, 1987, the Division is authorized to:

1. Administer training programs and pay training allowances as provided by the Job Training Partnership Act;





2. Execute on behalf of this State agreements or contracts with the appropriate federal agencies containing provisions necessary or desirable to enable this State to participate in such programs;
3. Expend all money made available for the purposes of such programs by this State, local subdivisions thereof or by the Federal Government;
4. Supervise the expenditure of that money and the operation of the programs by other public and private agencies in this State;
5. Make reports and certifications as required; and
6. Cooperate in any other manner with the Federal Government and its departments and agencies in the administration of such programs.

