SENATE BILL NO. 42–SENATOR WASHINGTON

FEBRUARY 8, 2005

Referred to Committee on Commerce and Labor

SUMMARY—Makes various changes concerning compensation paid to employee or outside salesperson which is based solely on commission. (BDR 53-92)

FISCAL NOTE: Effect on Local Government: Increases or Newly Provides for Term of Imprisonment in County or City Jail or Detention Facility.
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 employment; requiring a person who compensates an employee or outside salesperson based solely on commission to enter into a valid written agreement with the employee or salesperson specifying the amount of compensation; requiring such a person to pay at least the minimum wage to such an employee or outside salesperson in certain circumstances; providing penalties; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law requires the Labor Commissioner to establish the minimum wage that must be paid to certain workers and excludes outside salesmen who are compensated based on commission from the minimum wage requirement. (NRS 608.250) Existing law further makes each violation of a provision concerning the collection of wages and other benefits and each violation of a provision concerning payment of the minimum wage a misdemeanor and authorizes the Labor Commissioner to impose an administrative penalty of not more than $5,000 for each such violation. (NRS 608.195, 608.290)

This bill requires a person who compensates an employee or outside salesman based solely on commission to enter into a written agreement with the employee or salesman which specifies the manner in which the amount of commission to be paid will be determined. If such an agreement is not executed, this bill requires the Labor Commissioner to determine the amount to be paid as commission to such an employee or outside salesman and to collect and remit that amount to the employee or outside salesman. The Labor Commissioner may also impose an administrative

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penalty to pay for the costs of the investigation and prosecution of the matter. In addition, a violation of these provisions will result in the administrative fines and criminal penalties imposed for other violations concerning the collection of wages and other benefits.

This bill further requires a person who compensates an employee or outside salesman based solely on commission to pay at least the minimum wage for time spent by the employee or outside salesman at mandatory meetings and training. A violation of these provisions will result in the administrative fines and criminal penalties imposed for other violations concerning payment of the minimum wage.

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

Section 1. Chapter 608 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 and 3 of this act.

Sec. 2. ***1. A person who compensates an employee or outside salesperson based solely on commission shall enter into a written agreement with the employee or outside salesperson before the employee or outside salesperson commences work which specifies the manner in which the amount of commission to be paid to the employee or outside salesman will be determined.***

2. In addition to any other remedy or penalty provided in this chapter, if the Labor Commissioner determines, after providing an opportunity for a hearing, that a person has failed to comply with the provisions of subsection 1, the Labor Commissioner:

(a) Shall assess the person an amount determined by the Labor Commissioner reasonably to be owed by the person to the employee or outside salesperson as commission and shall remit any such assessment collected from the person to the employee or outside salesperson; and

(b) May, in addition to any other administrative penalty, impose an administrative penalty not to exceed the costs incurred by the Labor Commissioner to investigate and prosecute the matter.

Sec. 3. ***If a person who compensates an employee or outside salesperson based solely on commission requires the employee or outside salesperson to attend any meeting or training, the person shall pay to the employee or outside salesperson not less than the minimum wage established pursuant to NRS 608.250 for each hour or portion thereof that the employee or outside salesperson attends the meeting or training.***

Sec. 4. NRS 608.180 is hereby amended to read as follows:

608.180 The Labor Commissioner or his representative shall cause the provisions of NRS 608.005 to 608.195, inclusive, ***and section 2 of this act*** to be enforced, and upon notice from the Labor Commissioner or his representative:

1. The district attorney of any county in which a violation of those sections has occurred;

2. The Deputy Labor Commissioner, as provided in NRS 607.050;

3. The Attorney General, as provided in NRS 607.160 or 607.220; or

4. The special counsel, as provided in NRS 607.065,

➥ shall prosecute the action for enforcement according to law.

Sec. 5. NRS 608.195 is hereby amended to read as follows:

608.195 1. Except as otherwise provided in NRS 608.0165, any person who violates any provision of NRS 608.005 to 608.195, inclusive, ***and section 2 of this act,*** or any regulation adopted pursuant thereto, is guilty of a misdemeanor.

2. In addition to any other remedy or penalty, the Labor Commissioner may impose against the person an administrative penalty of not more than $5,000 for each such violation.

Sec. 6. NRS 608.250 is hereby amended to read as follows:

608.250 1. Except as otherwise provided in this section, the Labor Commissioner shall, in accordance with federal law, establish by regulation the minimum wage which may be paid to employees in private employment within the State. The Labor Commissioner shall prescribe increases in the minimum wage in accordance with those prescribed by federal law, unless he determines that those increases are contrary to the public interest.

2. The provisions of subsection 1 do not apply to:

(a) Casual babysitters.

(b) Domestic service employees who reside in the household where they work.

(c) ~~[Outside]~~ ***Except as otherwise provided in section 3 of this act, outside*** salespersons whose earnings are based on commissions.

(d) Employees engaged in an agricultural pursuit for an employer who did not use more than 500 man-days of agricultural labor in any calendar quarter of the preceding calendar year.

(e) Taxicab and limousine drivers.

(f) Severely handicapped persons whose disabilities have diminished their productive capacity in a specific job and who are specified in certificates issued by the Rehabilitation Division of the Department of Employment, Training and Rehabilitation.

3. It is unlawful for any person to employ, cause to be employed or permit to be employed, or to contract with, cause to be contracted with or permit to be contracted with, any person for a wage less than that established by the Labor Commissioner pursuant to the provisions of this section.

Sec. 7. Notwithstanding any verbal or written agreement entered into before October 1, 2005, a person who compensates an employee or outside salesperson based solely on commission shall comply with the provisions of section 2 of this act by not later than October 1, 2005.

Sec. 8. 1. This section and section 7 of this act become effective upon passage and approval.

2. Sections 1 to 6, inclusive, of this act become effective on October 1, 2005.

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