

ASSEMBLY BILL NO. 442—ASSEMBLYMEN PARKS, KOIVISTO,  
PIERCE, LESLIE, OHRENSCHALL, ANDERSON, BUCKLEY,  
CLABORN, GERHARDT, HOGAN, KIHUEN, KIRKPATRICK,  
MANENDO, MCCLAIN, SEGERBLOM AND SMITH

MARCH 19, 2007

JOINT SPONSORS: SENATORS HORSFORD, TITUS,  
WIENER AND WOODHOUSE

Referred to Committee on Government Affairs

SUMMARY—Revises provisions relating to unlawful  
discrimination. (BDR 18-1052)

FISCAL NOTE: Effect on Local Government: No.  
Effect on the State: No.

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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 unlawful discrimination; revising provisions regarding unlawful discrimination in employment or public accommodations to include sexual orientation; authorizing either party to a complaint regarding unlawful employment or public accommodation practices to choose to have the claims decided in court; authorizing the Nevada Equal Rights Commission to impose certain penalties on a person found to have engaged in an unlawful employment or public accommodation practice; and providing other matters properly relating thereto.

**Legislative Counsel's Digest:**

- 1 Existing law declares the policy of the State to foster the right of all persons to
- 2 reasonably seek and be granted services in places of public accommodation without
- 3 discrimination, distinction or restriction because of sexual orientation. (NRS
- 4 233.020) **Section 1** of this bill declares it also to be the policy of the State to foster
- 5 the right of all persons to reasonably seek, obtain and hold employment without
- 6 discrimination, distinction or restriction because of sexual orientation.
- 7 Existing law authorizes the Nevada Equal Rights Commission to order its
- 8 Administrator to investigate, with regard to public accommodation, tensions,
- 9 practices of discrimination and acts of prejudice against any person or group



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because of sexual orientation. (NRS 233.150) **Section 2** of this bill authorizes the Commission to order its Administrator to investigate, with regard to employment, tensions, practices of discrimination and acts of prejudice against any person or group because of sexual orientation.

Existing law provides for administrative actions by the Commission when complaints are filed regarding unlawful discrimination. (NRS 233.170) **Section 3** of this bill authorizes either party to a complaint regarding unlawful discrimination in employment or public accommodation to elect to have the complaint decided in a court of competent jurisdiction and provides for remedies that the court may impose. **Section 3** also authorizes the Commission to impose certain penalties against a person found to have committed an unlawful practice regarding employment or public accommodation.

Existing law declares that all persons are entitled to full and equal enjoyment of the goods, services, facilities, privileges, advantages and accommodations of any place of public accommodation, without discrimination or segregation on the ground of race, color, religion, national origin or disability. (NRS 651.070) **Section 5** of this bill adds sexual orientation as a class protected from discrimination in public accommodation.

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

**Section 1.** NRS 233.010 is hereby amended to read as follows:

233.010 1. It is hereby declared to be the public policy of the State of Nevada to protect the welfare, prosperity, health and peace of all the people of the State, and to foster the right of all persons reasonably to seek, obtain and hold ~~employment and~~ housing accommodations without discrimination, distinction or restriction because of race, religious creed, color, age, sex, disability, national origin or ancestry.

2. It is hereby declared to be the public policy of the State of Nevada to protect the welfare, prosperity, health and peace of all the people of the State, and to foster the right of all persons *reasonably to seek, obtain and hold employment and* reasonably to seek and be granted services in places of public accommodation without discrimination, distinction or restriction because of race, religious creed, color, age, sex, disability, sexual orientation, national origin or ancestry.

3. It is recognized that the people of this State should be afforded full and accurate information concerning actual and alleged practices of discrimination and acts of prejudice, and that such information may provide the basis for formulating statutory remedies of equal protection and opportunity for all citizens in this State.

**Sec. 2.** NRS 233.150 is hereby amended to read as follows:

233.150 The Commission may:

1. Order its Administrator to:



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(a) With regard to **employment and** public accommodation, investigate tensions, practices of discrimination and acts of prejudice against any person or group because of race, color, creed, sex, age, disability, sexual orientation, national origin or ancestry, and may conduct hearings with regard thereto.

(b) With regard to ~~employment and~~ housing, investigate tensions, practices of discrimination and acts of prejudice against any person or group because of race, color, creed, sex, age, disability, national origin or ancestry, and may conduct hearings with regard thereto.

2. Mediate between or reconcile the persons or groups involved in those tensions, practices and acts.

3. Issue subpoenas for the attendance of witnesses or for the production of documents or tangible evidence relevant to any investigations or hearings conducted by the Commission.

4. Delegate its power to hold hearings and issue subpoenas to any of its members or any hearing officer in its employ.

5. Adopt reasonable regulations necessary for the Commission to carry out the functions assigned to it by law.

**Sec. 3.** NRS 233.170 is hereby amended to read as follows:

233.170 1. When a complaint is filed whose allegations if true would support a finding of unlawful practice, the Commission shall determine whether to hold an informal meeting to attempt a settlement of the dispute in accordance with the regulations adopted pursuant to NRS 233.157. If the Commission determines to hold an informal meeting, the Administrator may, to prepare for the meeting, request from each party any information which is reasonably relevant to the complaint. No further action may be taken if the parties agree to a settlement.

2. If an agreement is not reached at the informal meeting, the Administrator shall determine whether to conduct an investigation into the alleged unlawful practice in accordance with the regulations adopted pursuant to NRS 233.157. After the investigation, if the Administrator determines that an unlawful practice has occurred, the Administrator shall attempt to mediate between or reconcile the parties. The party against whom a complaint was filed may agree to cease the unlawful practice. If an agreement is reached, no further action may be taken by the complainant or by the Commission.

3. If the attempts at mediation or conciliation fail ~~H~~ **in a case involving an unlawful housing practice**, the Commission may hold a public hearing on the matter. After the hearing, if the Commission determines that an unlawful practice has occurred, it may:

(a) Serve a copy of its findings of fact within 10 calendar days upon any person found to have engaged in the unlawful practice; and



(b) Order the person to ~~f~~:

~~(1) Cease~~ **cease** and desist from the unlawful practice.

~~[(2) In cases involving an unlawful employment practice, restore all benefits and rights to which the aggrieved person is entitled, including, but not limited to, rehiring, back pay for a period not to exceed 2 years after the date of the most recent unlawful practice, annual leave time, sick leave time or pay, other fringe benefits and seniority, with interest thereon from the date of the Commission's decision at a rate equal to the prime rate at the largest bank in Nevada, as ascertained by the Commissioner of Financial Institutions, on January 1 or July 1, as the case may be, immediately preceding the date of the Commission's decision, plus 2 percent. The rate of interest must be adjusted accordingly on each January 1 and July 1 thereafter until the judgment is satisfied.]~~

**4. If the attempts at mediation or conciliation fail in a case involving an unlawful employment or public accommodation practice:**

**(a) The complainant or the person against whom the complaint was filed may elect to have the claims included in the complaint decided in a court of competent jurisdiction. If the court determines that the person against whom the complaint was filed has committed an unlawful practice, the court may:**

**(1) Award to the complainant actual damages and, within the limitations prescribed by federal law, punitive damages.**

**(2) Award to the prevailing party costs and reasonable attorney's fees.**

**(3) Order such other relief as the court deems appropriate, including, without limitation:**

**(I) Ordering a permanent or temporary injunction;**

**(II) Issuing a temporary restraining order; or**

**(III) Enjoining the defendant from continuing the unlawful practice or taking other such affirmative action.**

**(b) If an election is not made pursuant to paragraph (a), the Commission shall hold a public hearing on the matter. After the hearing, if the Commission determines that an unlawful practice has occurred, it may:**

**(1) Serve a copy of its findings of fact within 10 days upon any person found to have engaged in the unlawful practice;**

**(2) Order the person to cease and desist from the unlawful practice;**

**(3) Award to the complainant actual damages; and**

**(4) Impose a civil penalty of not more than \$25,000 upon the person who committed the unlawful discriminatory practice.**

**5. The order of the Commission is a final decision in a contested case for the purpose of judicial review. If the person fails**



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1 to comply with the Commission's order, the Commission shall  
2 apply to the district court for an order compelling such compliance,  
3 but failure or delay on the part of the Commission does not  
4 prejudice the right of an aggrieved party to judicial review. The  
5 court shall issue the order unless it finds that the Commission's  
6 findings or order are not supported by substantial evidence or are  
7 otherwise arbitrary or capricious. If the court upholds the  
8 Commission's order and finds that the person has violated the order  
9 by failing to cease and desist from the unlawful practice or to make  
10 the payment ordered, the court shall award the aggrieved party  
11 actual damages for any economic loss and no more.

12 ~~15-1~~ 6. After the Commission has held a public hearing and  
13 rendered a decision, the complainant is barred from proceeding on  
14 the same facts and legal theory before any other administrative body  
15 or officer.

16 **Sec. 4.** NRS 651.050 is hereby amended to read as follows:  
17 651.050 As used in NRS 651.050 to 651.110, inclusive, unless  
18 the context otherwise requires:

19 1. "Disability" means, with respect to a person:

20 (a) A physical or mental impairment that substantially limits one  
21 or more of the major life activities of the person;

22 (b) A record of such an impairment; or

23 (c) Being regarded as having such an impairment.

24 2. "Place of public accommodation" means:

25 (a) Any inn, hotel, motel or other establishment which provides  
26 lodging to transient guests, except an establishment located within a  
27 building which contains not more than five rooms for rent or hire  
28 and which is actually occupied by the proprietor of the  
29 establishment as his residence;

30 (b) Any restaurant, bar, cafeteria, lunchroom, lunch counter,  
31 soda fountain, casino or any other facility where food or spirituous  
32 or malt liquors are sold, including any such facility located on the  
33 premises of any retail establishment;

34 (c) Any gasoline station;

35 (d) Any motion picture house, theater, concert hall, sports arena  
36 or other place of exhibition or entertainment;

37 (e) Any auditorium, convention center, lecture hall, stadium or  
38 other place of public gathering;

39 (f) Any bakery, grocery store, clothing store, hardware store,  
40 shopping center or other sales or rental establishment;

41 (g) Any laundromat, dry cleaner, bank, barber shop, beauty  
42 shop, travel service, shoe repair service, funeral parlor, office of an  
43 accountant or lawyer, pharmacy, insurance office, office of a  
44 provider of health care, hospital or other service establishment;



(h) Any terminal, depot or other station used for specified public transportation;

(i) Any museum, library, gallery or other place of public display or collection;

(j) Any park, zoo, amusement park or other place of recreation;

(k) Any nursery, private school or university or other place of education;

(l) Any day care center, senior citizen center, homeless shelter, food bank, adoption agency or other social service establishment;

(m) Any gymnasium, health spa, bowling alley, golf course or other place of exercise or recreation;

(n) Any other establishment or place to which the public is invited or which is intended for public use; and

(o) Any establishment physically containing or contained within any of the establishments described in paragraphs (a) to (n), inclusive, which holds itself out as serving patrons of the described establishment.

**3. “Sexual orientation” means having or being perceived as having an orientation for heterosexuality, homosexuality or bisexuality.**

**Sec. 5.** NRS 651.070 is hereby amended to read as follows:

651.070 All persons are entitled to the full and equal enjoyment of the goods, services, facilities, privileges, advantages and accommodations of any place of public accommodation, without discrimination or segregation on the ground of race, color, religion, national origin, ~~sex~~ disability ~~or~~ **or sexual orientation.**

**Sec. 6.** NRS 651.110 is hereby amended to read as follows:

651.110 Any person who believes he has been denied full and equal enjoyment of the goods, services, facilities, privileges, advantages and accommodations of any place of public accommodation because of discrimination or segregation based on race, color, religion, national origin, ~~sex~~ disability **or sexual orientation** may file a complaint to that effect with the Nevada Equal Rights Commission.

