

Amendment No. 430

Assembly Amendment to Assembly Bill No. 84 (BDR 53-546)

Proposed by: Assembly Committee on Commerce and Labor**Amends:** Summary: No Title: Yes Preamble: No Joint Sponsorship: No Digest: Yes

Adoption of this amendment will ADD a 2/3s majority vote requirement for final passage of A.B. 84 (§ 8.5).

ASSEMBLY ACTION				Initial and Date	SENATE ACTION				Initial and Date
Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____	Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____
Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____
Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) *green bold italic underlining* is new language proposed in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill that is proposed to be retained in this amendment; and (6) *green bold dashed underlining* is newly added transitory language.

DY/WLK



Date: 4/19/2009

A.B. No. 84—Revises provisions governing unemployment compensation.
(BDR 53-546)



ASSEMBLY BILL NO. 84—COMMITTEE ON COMMERCE AND LABOR

(ON BEHALF OF THE EMPLOYMENT SECURITY DIVISION)

PREFILED DECEMBER 15, 2008

Referred to Committee on Commerce and Labor

SUMMARY—Revises provisions governing unemployment compensation.
(BDR 53-546)

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 unemployment compensation; ~~establishing~~ **revising** provisions for the collection of benefits required to be repaid to the Employment Security Division of the Department of Employment, Training and Rehabilitation; establishing a penalty for fraudulently obtaining unemployment benefits under certain circumstances; revising provisions relating to the authorized use of money in the Employment Security Fund by the Administrator of the Division; providing penalties; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

~~[Sections 2-8 of this bill establish provisions for the repayment and collection of unemployment compensation benefits that were fraudulently obtained. Section 2 requires the Administrator of the Employment Security Division of the Department of Employment, Training and Rehabilitation to mail a notice to a person's employer to inform the employer of his duties to withhold the person's income under certain circumstances. Section 3 requires the Administrator to mail a notice to the person who is subject to the withholding of income for the repayment of benefits. Section 4 establishes an employer's duties to withhold income upon receipt of a notice to withhold income that is issued by the Administrator. Section 5 provides that a notice to withhold income which is sent to an employer is binding upon that employer and authorizes the employer to deduct \$2 from the amount paid to the employee each time a withholding is made as reimbursement for any costs associated with making the withholding. Section 6 provides that the Administrator may apply for and the court may issue an order directing an employer to appear and show cause why he should not be subject to a penalty if the employer refuses to make withholdings after receipt of a notice to withhold. Section 7 prohibits an employer from wrongfully refusing to make required withholdings, from knowingly misrepresenting the income of the employee whose income is subject to the withholding or from discharging, disciplining or refusing to hire an employee due to the requirement to withhold that employee's income, and provides penalties for such violations. Section 8 establishes, for an employer, immunity from any civil action for any conduct taken in compliance with a notice to withhold income.]~~

Section 8.5 of this bill authorizes the Administrator of the Employment Security Division of the Department of Employment, Training and Rehabilitation to assess against a person who is overpaid benefits certain administrative fees prescribed by an agency of the United States. Section 9 of this bill revises existing law by providing that certain fraudulent activity conducted by a person in order to obtain or increase any unemployment benefit or payment, including the filing of a claim while incarcerated without expressly disclosing that the person is incarcerated, constitutes unemployment insurance fraud. Section 9 also requires a person who commits unemployment insurance fraud to repay to the Administrator all of the benefits received by that person, in addition to any interest, penalties and ~~assessments~~ costs. Section 9 further provides that a person is disqualified from receiving unemployment compensation benefits for a specified period, but authorizes the Administrator to waive the period of disqualification for good cause shown or if the person adheres to a repayment schedule. Additionally, section 9 provides that a person who obtains benefits of \$250 or more while committing unemployment insurance fraud shall be punished in the same manner as if he committed theft. Section 9 also provides that the repayment of such benefits may not be done by the withholding of benefits otherwise due and payable to the person unless the period of disqualification is waived by the Administrator. Finally, section 9 authorizes the Administrator to impose a ~~fine~~ penalty equal to not more than 25 or 50 percent of the total amount of benefits improperly obtained by a person, ~~+, depending on the amount improperly obtained by the person.~~ (NRS 612.445)

Section 10 of this bill revises existing law by authorizing the Administrator to use money from the Employment Security Fund for the payment of costs of any program or the implementation of procedures for the proper payment of benefits and the collection of contributions and reimbursements. (NRS 612.615)

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

Section 1. ~~[Chapter 612 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 8, inclusive, of this act.] (Deleted by amendment.)~~

Sec. 2. ~~[1. The Administrator shall mail, by first class mail, a notice to withhold income to the employer of a person required to pay money to the Administrator upon:~~

~~(a) The filing of a certificate pursuant to NRS 612.630 which relates to the person; or~~

~~(b) Entry of a judgment of conviction of the person for a violation of any provision of this chapter.~~

~~2. If the employer does not begin to withhold income from the person after receiving the notice to withhold income that was mailed pursuant to subsection 1, the Administrator shall, by certified mail, return receipt requested, mail to the employer another notice to withhold income.~~

~~3. A notice to withhold income may be issued electronically and must:~~

~~(a) Contain the social security number of the person;~~

~~(b) Specify the total amount to be withheld from the income of the person, including any interest, penalties or assessments accrued pursuant to the provisions of this chapter;~~

~~(c) Describe the limitation for withholding income prescribed in NRS 31.295;~~

~~(d) Describe the prohibition against terminating the employment of a person because of withholding and the penalties for wrongfully refusing to withhold in accordance with the notice to withhold income; and~~

~~(c) Explain the duties of an employer upon the receipt of the notice to withhold income.] (Deleted by amendment.)~~

~~Sec. 3. [1. The Administrator shall notify the person who is subject to the withholding of income by first class mail to his last known address:~~

~~(a) That his income is being withheld;~~

~~(b) That a notice to withhold income applies to any current or subsequent employer;~~

~~(c) That a notice to withhold income of the person has been mailed to his employer;~~

~~(d) Of the information provided to his employer pursuant to section 2 of this act;~~

~~(e) That he may contest the withholding; and~~

~~(f) Of the grounds and procedures for contesting the withholding.~~

~~2. The provisions of this section are applicable only to a person against whom there is filed a certificate or entered a judgment of conviction as described in subsection 1 of section 2 of this act.] (Deleted by amendment.)~~

~~Sec. 4. [An employer who receives a notice to withhold income pursuant to section 2 of this act shall:~~

~~1. Withhold the amount stated in the notice from the income due to the person beginning with the first pay period that occurs within 14 days after the date the notice was mailed to the employer and continuing until:~~

~~(a) The Administrator notifies the employer to discontinue the withholding;~~

~~or~~
~~(b) The full amount required to be paid to the Administrator has been paid, as indicated by a written statement to the employer from the Administrator;~~

~~2. Deliver the money withheld to the Administrator within 7 days after the date of each payment of the regularly scheduled payroll of the employer; and~~

~~3. Notify the Administrator when the person subject to withholding terminates his employment and provide the last known address of the person and the name of any new employer of the person, if known.] (Deleted by amendment.)~~

~~Sec. 5. [1. A notice to withhold income sent pursuant to section 2 of this act is binding upon any employer of the person to whom it is mailed. To reimburse the employer for his costs in making the withholding, the employer may deduct \$3 from the amount paid to the person each time the employer makes a withholding.~~

~~2. Except as otherwise provided in subsection 3, if an employer receives notices to withhold income sent pursuant to section 2 of this act for more than one employee, the employer may consolidate the amounts of money that are payable to the Administrator and pay those amounts with one check, but the employer shall attach to each check a statement identifying by name and social security number each person for whom payment is made and the amount transmitted for that person.~~

~~3. If the provisions of NRS 353.1467 apply, the employer shall make payment to the Administrator by way of any method of electronic transfer of money allowed by the Administrator. If an employer makes such payment by way of electronic transfer of money, the employer shall transmit separately the name and appropriate identification number, if any, of each person for whom payment is made and the amount transmitted for that person.~~

~~4. An employer shall cooperate with and provide relevant information to the Administrator as necessary to enable the Administrator to enforce any obligation to pay money to the Administrator pursuant to this chapter. A disclosure made in~~

~~good faith pursuant to this subsection does not give rise to any action for damages resulting from the disclosure.~~

~~5. As used in this section, "electronic transfer of money" has the meaning ascribed to it in NRS 353.1467. (Deleted by amendment.)~~

~~Sec. 6. 1. If an employer wrongfully refuses to withhold income as required pursuant to sections 2 to 8, inclusive, of this act, after receiving a notice to withhold income that was sent by certified mail pursuant to subsection 2 of section 2 of this act, or knowingly misrepresents the income of an employee, the Administrator may apply for and the court may issue an order directing the employer to appear and show cause why he should not be subject to the penalties prescribed in subsection 2 of section 7 of this act.~~

~~2. At the hearing on the order to show cause, the court, upon a finding that the employer wrongfully refused to withhold income as required or knowingly misrepresented an employee's income:~~

~~(a) May order the employer to comply with the requirements of sections 2 to 8, inclusive, of this act;~~

~~(b) May order the employer to provide accurate information concerning the employee's income;~~

~~(c) May fine the employer pursuant to subsection 2 of section 7 of this act; and~~

~~(d) Shall require the employer to pay the amount the employer failed or refused to withhold from the employee's income. (Deleted by amendment.)~~

~~Sec. 7. 1. It is unlawful for an employer to use the withholding of income to collect an obligation to pay money to the Administrator as a basis for refusing to hire a potential employee, discharging an employee or taking disciplinary action against an employee. Any employer who violates this section shall hire or reinstate any such employee with no loss of pay or benefits, is liable for any amounts not withheld and shall be fined \$1,000. If an employee prevails in an action based on this section, the employer is liable, in an amount not less than \$2,500, for payment of the employee's costs and attorney's fees incurred in that action.~~

~~2. If an employer wrongfully refuses to withhold from the income of a person as required pursuant to sections 2 to 8, inclusive, of this act or knowingly misrepresents the income of the person, the employer shall pay the amount the employer refused to withhold to the Administrator and may be ordered to pay punitive damages to the Administrator in an amount not to exceed \$1,000 for each pay period the employer failed to withhold income as required or knowingly misrepresented the income of the person. (Deleted by amendment.)~~

~~Sec. 8. 1. An employer who complies with a notice to withhold income sent pursuant to section 2 of this act that is regular on its face may not be held liable in any civil action for any conduct taken in compliance with the notice.~~

~~2. Compliance by an employer with a notice to withhold income sent pursuant to section 2 of this act is a discharge of the employer's liability to the person as to that portion of the income affected.~~

~~3. If a court issues an order to stay a withholding of income, the Administrator may not be held liable in any civil action to the person who is the subject of the withholding of income for any money withheld before the stay becomes effective. (Deleted by amendment.)~~

Sec. 8.5. NRS 612.365 is hereby amended to read as follows:

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

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

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

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

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

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

5. To the extent allowed pursuant to federal law, the Administrator may assess any administrative fee prescribed by an applicable agency of the United States regarding the recovery of such overpayments.

6. Any person against whom liability is determined under this section may appeal therefrom within 11 days after the date the notice provided for in this section was mailed to, or served upon, the person. An appeal must be made and conducted in the manner provided in this chapter for the appeals from determinations of benefit status. The 11-day period provided for in this subsection may be extended for good cause shown.

Sec. 9. NRS 612.445 is hereby amended to read as follows:

612.445 ~~{When the Administrator finds that any}~~

1. A person ~~{has made}~~ shall not make a false statement or representation, knowing it to be false, or knowingly ~~{failed}~~ fail to disclose a material fact in order to obtain or increase any benefit or other payment under this chapter, *including, without limitation, by failing to properly report earnings or by filing a claim for benefits using the social security number, name or other personal identifying information of another person. A person who violates the provisions of this subsection commits unemployment insurance fraud.*

2. *When the Administrator finds that a person has committed unemployment insurance fraud pursuant to subsection 1,* the person shall repay to the Administrator for deposit in the Fund a sum equal to all of the benefits received by or paid to the person for each week with respect to which the false statement or representation was made or to which he failed to disclose a material fact ~~{The}~~ *in addition to any interest, penalties and ~~{assessments}~~ costs related to that sum.*

3. *Except as otherwise provided in this subsection and subsection 8,* the person is disqualified from receiving unemployment compensation benefits under this chapter ~~{for}~~:

(a) *For a period ~~{of}~~ beginning with the first week claimed in violation of subsection 1 and ending* not more than 52 consecutive weeks ~~{beginning with}~~ *after the week in which it is determined that ~~{an improper}~~ a claim was filed ~~{involving the false statement or representation or failure to disclose a material fact}~~ in violation of subsection 1; or*

(b) *Until the sum described in subsection 2, in addition to any interest, penalties or ~~{assessments}~~ costs related to that sum, is repaid to the Administrator,*

1 *whichever is longer.* The Administrator shall fix the period of disqualification
2 according to the circumstances in each case.

3 4. It is a violation of subsection 1 for a person to file a claim, or to cause or
4 allow a claim to be filed on his behalf, if:

5 (a) The person is incarcerated in the state prison or any county or city jail or
6 detention facility or other correctional facility in this State; and

7 (b) The claim does not expressly disclose his incarceration.

8 5. A person who obtains benefits of \$250 or more in violation of subsection
9 1 shall be punished in the same manner as theft pursuant to subsection 3 or 4 of
10 NRS 205.0835.

11 6. In addition to the repayment of benefits required pursuant to subsection
12 2, if the amount of benefits which must be repaid is greater than \$1,000, the
13 Administrator may impose a ~~fine~~ penalty equal to not more than :

14 (a) If the amount of such benefits is greater than \$1,000 but not greater than
15 \$2,500, 25 percent; or

16 (b) If the amount of such benefits is greater than \$2,500, 50 percent ;
17 of the total amount of benefits received by the person in violation of subsection
18 1 or any other provision of this chapter.

19 7. Except as otherwise provided in subsection 8, a person may not pay
20 benefits as required pursuant to subsection 2 by using benefits which would
21 otherwise be due and payable to the person if he was not disqualified.

22 8. The Administrator may waive the period of disqualification prescribed in
23 subsection 3 for good cause shown or if the person adheres to a repayment
24 schedule authorized by the Administrator that is designed to fully repay benefits
25 received from an improper claim, in addition to any related interest, penalties and
26 ~~assessments,~~ costs, within 18 months. If the Administrator waives the period of
27 disqualification pursuant to this subsection, the person may repay benefits and
28 any related interest, penalties and ~~assessments,~~ costs as required pursuant to
29 subsection 2 by using any benefits which are due and payable to the person.

30 9. The Administrator may recover any money required to be paid pursuant
31 to this section in accordance with the provisions of NRS 612.365 and may collect
32 interest on any such money in accordance with the provisions of NRS 612.620.

33 Sec. 10. NRS 612.615 is hereby amended to read as follows:

34 612.615 1. There is hereby created the Employment Security Fund as a
35 special revenue fund.

36 2. All interest and forfeits collected under NRS 612.618 to 612.675, inclusive,
37 ~~and sections 2 to 8, inclusive, of this act,~~ and 612.740 must be paid into the Fund.

38 3. All money which is deposited or paid into the Fund is hereby appropriated
39 and made available to the Administrator. The money may not be expended or made
40 available for expenditure in any manner which would permit its substitution for, or
41 a corresponding reduction in, federal payments which would, in the absence of this
42 money, be available to finance expenditures for the administration of the
43 employment security laws of the State of Nevada.

44 4. This section does not prevent this money from being used as a revolving
45 fund to cover expenditures, necessary and proper under the law, for which federal
46 payments have been duly requested but not yet received, subject to the repayment
47 to the Fund of such expenditures when received.

48 5. The money in this Fund must be used by the Administrator for the payment
49 of costs of ~~administration~~ :

50 (a) Administration which are found not to have been properly and validly
51 chargeable against federal grants received for or in the Unemployment
52 Compensation Administration Fund ~~H~~ ; or

1 ***(b) Any program or the implementation of procedures deemed necessary by***
2 ***the Administrator to ensure the proper payment of benefits and collection of***
3 ***contributions and reimbursements pursuant to this chapter.***

4 6. Any balances in this Fund do not lapse at any time, but are continuously
5 available to the Administrator for expenditure consistent with this chapter.

6 7. Money in this Fund must not be commingled with other state money, but
7 must be maintained in a separate account on the books of the depository.

8 **Sec. 11.** NRS 612.715 is hereby amended to read as follows:

9 612.715 ~~{Whoever}~~ ***Except as otherwise provided in subsection 5 of NRS***
10 ***612.445, whoever*** makes a false statement or representation knowing it to be false,
11 or knowingly fails to disclose a material fact, to obtain or increase any benefit or
12 other payment under this chapter, either for himself or for any other person, is
13 guilty of a misdemeanor.

14 **Sec. 12.** NRS 612.720 is hereby amended to read as follows:

15 612.720 ~~{Whenever}~~ ***Except as otherwise provided in subsection 5 of NRS***
16 ***612.445, whenever*** two or more persons ~~{shall}~~ conspire to obtain or increase any
17 benefit or other payment under this chapter by a false statement or representation
18 knowing it to be false, or by knowingly failing to disclose a material fact, or
19 whenever any person makes a series of false statements or representations knowing
20 them to be false, to obtain or increase benefit payments under this chapter over a
21 period of more than 1 week, every such person is guilty of a gross misdemeanor.

22 **Sec. 13.** NRS 612.725 is hereby amended to read as follows:

23 612.725 ~~{Any}~~ ***Except as otherwise provided in subsection 5 of NRS***
24 ***612.445, any*** person residing in this State who claims benefits under any agreement
25 existing between the Division and some other state or the Federal Government, who
26 willfully makes a false statement or representation or knowingly fails to disclose a
27 material fact to obtain or increase benefits under the provisions of the
28 unemployment law of any other state or the Federal Government is guilty of a
29 misdemeanor.

30 **Sec. 14.** This act becomes effective on July 1, 2009.