

## Amendment No. CA23

Conference Committee Amendment to (BDR 53-546)  
Assembly Bill No. 84 Second Reprint

**Proposed by:** Conference Committee

**Amends:** Summary: No Title: No Preamble: No Joint Sponsorship: No Digest: No

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

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: 5/31/2009

A.B. No. 84—Revises provisions governing 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 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 compensation; revising provisions related to compensation for overtime; 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:**

**Section 8.3** of this bill revises provisions related to an exception to certain requirements for compensation for overtime.

**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 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 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)

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

**Section 1.** (Deleted by amendment.)

**Sec. 2.** (Deleted by amendment.)

**Sec. 3.** (Deleted by amendment.)

**Sec. 4.** (Deleted by amendment.)

**Sec. 5.** (Deleted by amendment.)

**Sec. 6.** (Deleted by amendment.)

**Sec. 7.** (Deleted by amendment.)

**Sec. 8.** (Deleted by amendment.)

**Sec. 8.3.** NRS 608.018 is hereby amended to read as follows:

608.018 1. An employer shall pay 1 1/2 times an employee's regular wage rate whenever an employee who receives compensation for employment at a rate less than 1 1/2 times the minimum rate prescribed pursuant to NRS 608.250 works:

(a) More than 40 hours in any scheduled week of work; or

(b) More than 8 hours in any workday unless by mutual agreement the employee works a scheduled 10 hours per day for 4 calendar days within any scheduled week of work.

2. An employer shall pay 1 1/2 times an employee's regular wage rate whenever an employee who receives compensation for employment at a rate not less than 1 1/2 times the minimum rate prescribed pursuant to NRS 608.250 works more than 40 hours in any scheduled week of work.

3. The provisions of subsections 1 and 2 do not apply to:

(a) Employees who are not covered by the minimum wage provisions of NRS 608.250;

(b) Outside buyers;

(c) ~~Salesmen earning commissions~~ *Employees* in a retail *or service* business if their regular rate is more than 1 1/2 times the minimum wage, and more than ~~one-half~~ *half* their compensation *for a representative period* comes from commissions ~~on goods or services, with the representative period being, to the extent allowed pursuant to federal law, not less than one month;~~

(d) Employees who are employed in bona fide executive, administrative or professional capacities;

(e) Employees covered by collective bargaining agreements which provide otherwise for overtime;

(f) Drivers, drivers' helpers, loaders and mechanics for motor carriers subject to the Motor Carrier Act of 1935, as amended;

(g) Employees of a railroad;

(h) Employees of a carrier by air;

(i) Drivers or drivers' helpers making local deliveries and paid on a trip-rate basis or other delivery payment plan;

(j) Drivers of taxicabs or limousines;

(k) Agricultural employees;

(l) Employees of business enterprises having a gross sales volume of less than \$250,000 per year;

(m) Any salesman or mechanic primarily engaged in selling or servicing automobiles, trucks or farm equipment; and

(n) A mechanic or workman for any hours to which the provisions of subsection 3 or 4 of NRS 338.020 apply.

**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 costs related to that sum.*

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

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

9       (b) *Until the sum described in subsection 2, in addition to any interest,*  
10 *penalties or costs related to that sum, is repaid to the Administrator,*  
11 *↪ whichever is longer.* The Administrator shall fix the period of disqualification  
12 according to the circumstances in each case.

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

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

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

18       5. *A person who obtains benefits of \$250 or more in violation of subsection*  
19 *1 shall be punished in the same manner as theft pursuant to subsection 3 or 4 of*  
20 *NRS 205.0835.*

21       6. *In addition to the repayment of benefits required pursuant to subsection*  
22 *2, if the amount of benefits which must be repaid is greater than \$1,000, the*  
23 *Administrator may impose a penalty equal to not more than:*

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

26       (b) *If the amount of such benefits is greater than \$2,500, 50 percent,*  
27 *↪ of the total amount of benefits received by the person in violation of subsection*  
28 *1 or any other provision of this chapter.*

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

32       8. *The Administrator may waive the period of disqualification prescribed in*  
33 *subsection 3 for good cause shown or if the person adheres to a repayment*  
34 *schedule authorized by the Administrator that is designed to fully repay benefits*  
35 *received from an improper claim, in addition to any related interest, penalties and*  
36 *costs, within 18 months. If the Administrator waives the period of disqualification*  
37 *pursuant to this subsection, the person may repay benefits ~~{and any related~~*  
38 *~~{interest, penalties and costs}~~ as required pursuant to subsection 2 by using any*  
39 *benefits which are due and payable to the person ~~{,}~~, except that benefits which*  
40 *are due and payable to the person may not be used to repay any related interest,*  
41 *penalties and costs.*

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

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

46       612.615 1. There is hereby created the Employment Security Fund as a  
47 special revenue fund.

48       2. All interest and forfeits collected under NRS 612.618 to 612.675, inclusive,  
49 and 612.740 must be paid into the Fund.

50       3. All money which is deposited or paid into the Fund is hereby appropriated  
51 and made available to the Administrator. The money may not be expended or made  
52 available for expenditure in any manner which would permit its substitution for, or

1 a corresponding reduction in, federal payments which would, in the absence of this  
2 money, be available to finance expenditures for the administration of the  
3 employment security laws of the State of Nevada.

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

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

10 (a) *Administration* which are found not to have been properly and validly  
11 chargeable against federal grants received for or in the Unemployment  
12 Compensation Administration Fund ~~( )~~; or

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

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

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

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

21 612.715 ~~[Whoever]~~ *Except as otherwise provided in subsection 5 of NRS*  
22 *612.445, whoever* makes a false statement or representation knowing it to be false,  
23 or knowingly fails to disclose a material fact, to obtain or increase any benefit or  
24 other payment under this chapter, either for himself or for any other person, is  
25 guilty of a misdemeanor.

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

27 612.720 ~~[Whenever]~~ *Except as otherwise provided in subsection 5 of NRS*  
28 *612.445, whenever* two or more persons ~~[shall]~~ conspire to obtain or increase any  
29 benefit or other payment under this chapter by a false statement or representation  
30 knowing it to be false, or by knowingly failing to disclose a material fact, or  
31 whenever any person makes a series of false statements or representations knowing  
32 them to be false, to obtain or increase benefit payments under this chapter over a  
33 period of more than 1 week, every such person is guilty of a gross misdemeanor.

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

35 612.725 ~~[Any]~~ *Except as otherwise provided in subsection 5 of NRS*  
36 *612.445, any* person residing in this State who claims benefits under any agreement  
37 existing between the Division and some other state or the Federal Government, who  
38 willfully makes a false statement or representation or knowingly fails to disclose a  
39 material fact to obtain or increase benefits under the provisions of the  
40 unemployment law of any other state or the Federal Government is guilty of a  
41 misdemeanor.

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