

SENATE BILL NO. 189—COMMITTEE ON GOVERNMENT AFFAIRS

MARCH 10, 2009

Referred to Committee on Government Affairs

SUMMARY—Provides for certain causes of action against employers. (BDR 53-1126)

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

~

EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to employment; authorizing employees and certain labor-management committees to bring actions against employers for certain violations relating to wages and other benefits; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

1 **Section 1** of this bill authorizes employees who are affected by certain
2 violations of chapter 608 of NRS relating to wages and other benefits to bring
3 lawsuits against employers to recover certain damages.

4 **Section 4** of this bill allows certain committees organized jointly between
5 employers and employees pursuant to the federal Labor Management Cooperation
6 Act of 1978 to bring lawsuits against employers for violations of NRS 338.020,
7 relating to wages, to recover certain damages.

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

1 **Section 1.** Chapter 608 of NRS is hereby amended by adding
2 thereto a new section to read as follows:

3 ***1. Notwithstanding any other provision of this chapter or***
4 ***chapter 607 of NRS, and in addition to any other remedy or***
5 ***penalty provided in this chapter, an employee may bring an action***
6 ***in a court of competent jurisdiction against an employer for a***
7 ***violation of NRS 608.015 to 608.155, inclusive, 608.165 or***
8 ***608.170.***



* S B 1 8 9 *

1 2. *An employee bringing an action against an employer*
2 *pursuant to this section must serve copies of his pleadings upon*
3 *the Labor Commissioner.*

4 3. *If the employee prevails in establishing a violation of NRS*
5 *608.015 to 608.155, inclusive, 608.165 or 608.170, the court shall*
6 *award to the employee all appropriate back pay, injunctive relief,*
7 *reasonable attorney's fees and costs, in addition to any other*
8 *remedy provided in this chapter.*

9 Sec. 2. NRS 608.180 is hereby amended to read as follows:

10 608.180 The Labor Commissioner or his representative shall
11 cause the provisions of NRS 608.005 to 608.195, inclusive, *and*
12 *section 1 of this act* to be enforced, and upon notice from the Labor
13 Commissioner or his representative:

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

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

18 3. The Attorney General, as provided in NRS 607.160 or
19 607.220; or

20 4. The special counsel, as provided in NRS 607.065,
21 ➔ shall prosecute the action for enforcement according to law.

22 Sec. 3. NRS 608.195 is hereby amended to read as follows:

23 608.195 1. Except as otherwise provided in NRS 608.0165,
24 any person who violates any provision of NRS 608.005 to 608.195,
25 inclusive, *and section 1 of this act* or any regulation adopted
26 pursuant thereto, is guilty of a misdemeanor.

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

30 Sec. 4. Chapter 338 of NRS is hereby amended by adding
31 thereto a new section to read as follows:

32 1. *A labor-management committee established pursuant to*
33 *the federal Labor Management Cooperation Act of 1978, 29*
34 *U.S.C. § 175a, may bring an action in a court of competent*
35 *jurisdiction against an employer for a violation of NRS 338.020.*

36 2. *A committee bringing an action against an employer*
37 *pursuant to this section must serve copies of its pleadings upon the*
38 *Labor Commissioner.*

39 3. *If the committee prevails in establishing a violation of NRS*
40 *338.020, the court shall award to the committee all appropriate*
41 *back pay, injunctive relief and reasonable attorney's fees and*
42 *costs.*

43 4. *If the employer prevails and the court finds that the*
44 *committee's suit was not substantially justified, the court may*
45 *award reasonable attorney's fees and costs to the employer. For*



1 *the purposes of this subsection, an action is “substantially*
2 *justified” if it had a reasonable basis in law or fact at the time that*
3 *it was brought.*

4 **Sec. 5.** NRS 338.050 is hereby amended to read as follows:

5 338.050 For the purpose of NRS 338.010 to 338.090, inclusive,
6 *and section 4 of this act*, except as otherwise provided by specific
7 statute, every workman who performs work for a public work
8 covered by a contract therefor is subject to all of the provisions of
9 NRS 338.010 to 338.090, inclusive, *and section 4 of this act*
10 regardless of any contractual relationship alleged to exist between
11 such workman and his employer.

12 **Sec. 6.** NRS 338.080 is hereby amended to read as follows:

13 338.080 None of the provisions of NRS 338.020 to 338.090,
14 inclusive, *and section 4 of this act* apply to:

15 1. Any work, construction, alteration, repair or other
16 employment performed, undertaken or carried out, by or for any
17 railroad company or any person operating the same, whether such
18 work, construction, alteration or repair is incident to or in
19 conjunction with a contract to which a public body is a party, or
20 otherwise.

21 2. Apprentices recorded under the provisions of chapter 610 of
22 NRS.

23 3. Any contract for a public work whose cost is less than
24 \$100,000. A unit of the project must not be separated from the total
25 project, even if that unit is to be completed at a later time, in order to
26 lower the cost of the project below \$100,000.

27 **Sec. 7.** NRS 338.090 is hereby amended to read as follows:

28 338.090 1. Any person, including the officers, agents or
29 employees of a public body, who violates any provision of NRS
30 338.010 to 338.090, inclusive, *and section 4 of this act*, or any
31 regulation adopted pursuant thereto, is guilty of a misdemeanor.

32 2. The Labor Commissioner, in addition to any other remedy or
33 penalty provided in this chapter:

34 (a) Shall assess a person who, after an opportunity for a hearing,
35 is found to have failed to pay the prevailing wage required pursuant
36 to NRS 338.020 to 338.090, inclusive, *and section 4 of this act* an
37 amount equal to the difference between the prevailing wages
38 required to be paid and the wages that the contractor or
39 subcontractor actually paid; and

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

43 3. If the Labor Commissioner finds that a person has failed to
44 pay the prevailing wage required pursuant to NRS 338.020 to
45 338.090, inclusive, *and section 4 of this act*, the public body may,



- 1 in addition to any other remedy or penalty provided in this chapter,
- 2 require the person to pay the actual costs incurred by the public
- 3 body to investigate the matter.

