

Amendment No. 814

Senate Amendment to Senate Bill No. 207

(BDR 53-165)

Proposed by: Senate Committee on Finance**Amendment Box:** Replaces Amendment No. 769.**Amends:** Summary: Yes Title: Yes Preamble: No Joint Sponsorship: No Digest: Yes

ASSEMBLY ACTION			Initial and Date	SENATE ACTION			Initial and Date
Adopted	☐	Lost	☐ _____	Adopted	☐	Lost	☐ _____
Concurred In	☐	Not	☐ _____	Concurred In	☐	Not	☐ _____
Receded	☐	Not	☐ _____	Receded	☐	Not	☐ _____

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 underlining*** is newly added transitory language.

JRS/WLK



Date: 5/28/2011

S.B. No. 207—Authorizes the imposition of an administrative penalty against an employer who misclassifies an employee as an independent contractor. (BDR 53-165)



SENATE BILL NO. 207—COMMITTEE ON
COMMERCE, LABOR AND ENERGY(ON BEHALF OF THE LEGISLATIVE COMMISSION'S SUBCOMMITTEE TO STUDY
EMPLOYEE MISCLASSIFICATION)

MARCH 1, 2011

Referred to Committee on Commerce, Labor and Energy

SUMMARY—Authorizes the imposition of an administrative penalty against an employer ~~who misclassifies an employee as an independent contractor.~~ under certain circumstances. (BDR 53-165)

FISCAL NOTE: Effect on Local Government: No.
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; authorizing the imposition of an administrative penalty against an employer who misclassifies an employee as an independent contractor ~~or otherwise fails to properly classify a person as an employee of the employer under certain circumstances;~~ and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Under existing law, the Labor Commissioner is required to enforce the labor laws and regulations of the State of Nevada. In carrying out that requirement, the Labor Commissioner may take any appropriate action against a person who violates those laws or regulations. Before enforcing an administrative penalty against the person, the Labor Commissioner is required to provide the person with notice and an opportunity for a hearing. (NRS 607.160) ~~This~~ Section 1 of this bill confers upon the Labor Commissioner the authority to impose an administrative penalty against an employer who ~~regardless of the employer's intent,~~ misclassifies an employee as an independent contractor ~~or otherwise fails to properly classify a person as an employee of the employer.~~ Section 1 sets forth the required amount of any administrative penalty imposed by the Labor Commissioner against the employer and, if the violation is a third or subsequent offense, requires the Secretary of State to revoke or suspend the state business license of the employer for not more than 3 years as determined by the Labor Commissioner. ~~This bill~~ Section 1 also authorizes the Labor Commissioner to impose the administrative penalty against the employer if the employer fails to prove to the satisfaction of the Labor Commissioner that the employee is not misclassified as an independent contractor ~~or the employer did not otherwise fail to properly classify the person as an employee of the employer.~~

Under existing law, an employer is required to post a notice upon his or her premises identifying the employer's industrial insurer and setting forth certain other information concerning the employer. (NRS 616A.490) Section 2 of this bill requires the employer to include in the notice the definitions of the terms "employee" and "independent contractor."

Section 3 of this bill subjects a person to liability in a civil action brought by the Attorney General if the person advises an employer or an employee, officer or agent of an employer to misrepresent the classification of an employee of the employer. Section 3 also subjects the person to liability for an amount that is equal to three times the total amount of any reasonable expenses incurred by this State in enforcing the provisions of that section against the person.

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

Section 1. Chapter 613 of NRS is hereby amended by adding thereto a new section to read as follows:

1. In addition to any other remedy or penalty, the Labor Commissioner may impose an administrative penalty against an employer who ~~is regardless of the intent of the employer~~ misclassifies an employee of the employer as an independent contractor ~~or otherwise fails to properly classify a person as an employee of the employer~~. If imposed, the administrative penalty must be collected in the following amounts as determined by the Labor Commissioner:

(a) For a first offense ~~is not~~:

(1) At least \$250 but less than \$1,000 for each employee or person who is misclassified unintentionally or is otherwise not properly classified unintentionally.

(2) At least \$5,000 but less than \$15,000 for each employee or person who is misclassified ~~or~~ willfully or is otherwise not properly classified willfully.

(b) For a second offense, at least \$15,000 but less than \$25,000 for each employee or person misclassified ~~or~~ or otherwise not properly classified.

(c) For a third or subsequent offense, at least \$25,000 for each employee or person misclassified ~~or~~ or otherwise not properly classified.

2. In addition to imposing an administrative penalty against an employer pursuant to paragraph (c) of subsection 1, the Labor Commissioner may submit a notice to the Secretary of State requiring the revocation or suspension of the state business license, if any, issued to the employer pursuant to chapter 76 of NRS. The Labor Commissioner shall provide a copy of the notice to the employer. If a state business license is issued to the employer, the Secretary of State shall, as soon as practicable after receiving the notice, revoke or suspend the state business license for not more than 3 years as specified in the notice.

3. Before the Labor Commissioner may enforce an administrative penalty against an employer pursuant to this section, the Labor Commissioner must provide the employer with notice and an opportunity for a hearing as set forth in NRS 607.207. The Labor Commissioner may impose the administrative penalty against the employer if the employer, during any such hearing, fails to prove to the satisfaction of the Labor Commissioner that ~~that~~:

(a) The employee is not misclassified as an independent contractor ~~or~~; or

(b) The employer did not otherwise fail to properly classify the person as an employee of the employer,
as applicable.

4. As used in this section:

(a) "Employee" has the meaning ascribed to it in NRS 608.010.

(b) "Employer" has the meaning ascribed to it in NRS 608.011.

(c) ~~A person is an "independent"~~ "Independent contractor" ~~if:~~

~~(1) The person performs services for wages on behalf of an employer;~~

~~(2) The person has been and will continue to be free from control or direction by the employer over the performance of the services, both under a contract of service and in fact;~~

~~(3) The service is either outside the usual course of the employer's business or the service is performed outside of all the places of business of the employer for whom the service is performed; and~~

~~(4) The service is performed in the course of an independently established trade, occupation, profession or business in which the person is customarily engaged and which is of the same nature as that involved in the contract of service;~~ has the meaning ascribed to it in NRS 616A.255.

Sec. 2. NRS 616A.490 is hereby amended to read as follows:

616A.490 1. Every employer shall post a notice upon his or her premises in a conspicuous place identifying the employer's industrial insurer. The notice must include the insurer's name, business address and telephone number and the name, business address and telephone number of its nearest adjuster in this State. The employer shall at all times maintain the notice provided for the information of his or her employees.

2. In addition to the provisions of subsection 1, each notice posted pursuant to that subsection must prominently set forth the definition of "employee," as defined in NRS 616A.105, and the definition of "independent contractor," as defined in NRS 616A.255.

Sec. 3. Chapter 616D of NRS is hereby amended by adding thereto a new section to read as follows:

1. A person who, for money or other valuable consideration, knowingly advises an employer or any employee, officer or agent of an employer to misrepresent the classification or duties of an employee of the employer, including, without limitation, misrepresenting that the employee is an independent contractor, is liable in a civil action commenced by the Attorney General for:

(a) Not more than \$5,000 for the first occurrence;

(b) Not more than \$15,000 for the second occurrence; and

(c) Not more than \$25,000 for the third or any subsequent occurrence.

2. In addition to any amount imposed pursuant to subsection 1, in any civil action against a person specified in that subsection, the person is liable for an amount that is equal to three times the total amount of any reasonable expenses incurred by this State in enforcing the provisions of this section against the person.

3. Any money collected pursuant to this section must be used to pay the salaries and other expenses of the Fraud Control Unit for Industrial Insurance established pursuant to NRS 228.420. Any money remaining at the end of any fiscal year does not revert to the State General Fund.