

SENATE BILL NO. 148—COMMITTEE ON
COMMERCE, LABOR AND ENERGY

(ON BEHALF OF THE LEGISLATIVE COMMISSION’S SUBCOMMITTEE
TO STUDY EMPLOYEE MISCLASSIFICATION)

FEBRUARY 14, 2011

Referred to Committee on Commerce, Labor and Energy

SUMMARY—Creates a private right of action against employers
for employees who are misclassified as independent
contractors. (BDR 53-166)

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 labor; creating a private right of action for an
employee who has been improperly classified as an
independent contractor by an employer; and providing
other matters properly relating thereto.

Legislative Counsel’s Digest:

Under existing law, if the Administrator of the Division of Industrial Relations of the Department of Business and Industry determines that an employer knowingly misrepresented the classification or duties of an employee, the Administrator will charge the employer for the amount of the premiums that the employer would have paid to secure industrial insurance had the employer submitted the proper information. (NRS 616D.220) The Attorney General may also commence a civil action to collect any amount due, as well as certain other civil penalties. (NRS 616D.230)

This bill creates a private right of action for an employee who has been misclassified as an independent contractor. This remedy is in addition to the existing remedies and penalties under NRS 616D.220 and 616D.230. (NRS 616D.010) This bill allows the employee to bring the action against his or her employer only after filing a complaint with a state agency that has jurisdiction to address the misclassification, if any such agency exists. This bill also allows the employee to bring the action without exhausting any applicable administrative remedies.



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

Section 1. Chapter 616D of NRS is hereby amended by adding thereto a new section to read as follows:

1. An employer who improperly classifies an employee as an independent contractor is liable in a civil action commenced by the employee for:

(a) An amount equal to three times the total amount of actual damages, including, without limitation, lost wages or benefits; and

(b) Reasonable costs, including court costs and attorney's fees.

2. In a civil action brought pursuant to subsection 1, the employee may seek declaratory relief.

3. Except as otherwise provided in subsection 4, before an employee may bring an action pursuant to subsection 1, the employee must file a complaint regarding the alleged improper classification with the Administrator, the Fraud Control Unit for Industrial Insurance established pursuant to NRS 228.420 or any other state agency with jurisdiction to address the alleged improper classification. If the employee receives no response to the complaint within 120 days after filing the complaint or is unsatisfied with the response to the complaint, the employee may bring an action pursuant to subsection 1 against the employer.

4. If no state agency has jurisdiction to address the alleged improper classification, an employee may bring an action pursuant to subsection 1 against the employer without filing a complaint as required by subsection 3.

5. Notwithstanding any provision of law to the contrary, an employee may bring an action pursuant to subsection 1 without exhausting any available administrative remedies.

