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. (BDR 53-165)

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

~

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; 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 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. This bill 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 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.

* S B 2 0 7 *

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, regardless of the intent of the employer, misclassifies an employee of the employer as an independent contractor. If imposed, the administrative penalty must be collected in the following amounts as determined by the Labor Commissioner:

(a) For a first offense, at least $5,000 but less than $15,000 for each employee misclassified.

(b) For a second offense, at least $15,000 but less than $25,000 for each employee misclassified.

(c) For a third or subsequent offense, at least $25,000 for each employee misclassified.

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 the employee is not misclassified as an independent contractor.

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 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.

㉚