

Senate Bill No. 208–Committee on
Commerce, Labor and Energy

CHAPTER.....

AN ACT relating to employee misclassification; requiring certain state agencies to share information relating to suspected employee misclassification under certain circumstances; creating the Task Force on Employee Misclassification; providing its duties; making various other changes relating to employee misclassification; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Section 7 of this bill requires the offices of the Labor Commissioner, the Division of Industrial Relations of the Department of Business and Industry, the Employment Security Division of the Department of Employment, Training and Rehabilitation, the Department of Taxation and the Attorney General to share amongst their respective offices information relating to suspected employee misclassification that is received in the performance of their official duties under certain circumstances. **Section 4** of this bill defines “employee misclassification” as the practice by an employer of improperly classifying employees as independent contractors to avoid any legal obligation under state labor, employment and tax laws, including, without limitation, the laws governing minimum wage, overtime, unemployment insurance, workers’ compensation insurance, temporary disability insurance, wage payment and payroll taxes.

Section 8 of this bill creates and sets forth the membership of the Task Force on Employee Misclassification. **Section 9** of this bill sets forth the duties of the Task Force.

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

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

Section 1. Chapter 607 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 10, inclusive, of this act.

Sec. 2. *As used in sections 2 to 10, inclusive, of this act, unless the context otherwise requires, the words and terms defined in sections 3 to 6, inclusive, of this act have the meanings ascribed to them in those sections.*

Sec. 3. *“Employee” means a person who performs services for wages for an employer. The term does not include an independent contractor.*

Sec. 4. *“Employee misclassification” means the practice by an employer of improperly classifying employees as independent contractors to avoid any legal obligation under state labor,*



employment and tax laws, including, without limitation, the laws governing minimum wage, overtime, unemployment insurance, workers' compensation insurance, temporary disability insurance, wage payment and payroll taxes.

Sec. 5. "Employer" includes, without limitation:

- 1. The State of Nevada, any state agency, or any county, city, town, school district or other unit of local government;*
- 2. Any public or quasi-public corporation; and*
- 3. Any person, firm, corporation, partnership or association.*

Sec. 6. "Independent contractor" has the meaning ascribed to it in NRS 616A.255.

Sec. 7. The offices of the Labor Commissioner, Division of Industrial Relations of the Department of Business and Industry, Employment Security Division of the Department of Employment, Training and Rehabilitation, Department of Taxation and Attorney General:

1. Shall communicate between their respective offices information relating to suspected employee misclassification which is received in the performance of their official duties and which is not otherwise declared by law to be confidential.

2. May communicate between their respective offices information relating to employee misclassification which is received in the performance of their official duties and which is otherwise declared by law to be confidential, if the confidentiality of the information is otherwise maintained under the terms and conditions required by law.

Sec. 8. 1. The Task Force on Employee Misclassification, consisting of 10 members, is hereby created.

2. The following persons shall serve as ex officio members of the Task Force:

(a) The Labor Commissioner or the Labor Commissioner's designee.

(b) The Administrator of the Division of Industrial Relations of the Department of Business and Industry or the Administrator's designee.

(c) The Administrator of the Employment Security Division of the Department of Employment, Training and Rehabilitation or the Administrator's designee.

(d) The Executive Director of the Department of Taxation or the Executive Director's designee.

(e) The Attorney General or the Attorney General's designee.

3. The following persons shall serve as appointed members of the Task Force:



(a) One person who represents an employer located in this State that employs more than 500 full-time or part-time employees.

(b) One person who represents an employer located in this State that employs 500 or fewer full-time or part-time employees.

(c) One person who is an independent contractor in this State.

(d) One person who represents organized labor in this State.

(e) One person who represents the general public in this State.

4. The members of the Task Force described in subsection 3:

(a) Must be appointed by the Legislative Commission from recommendations submitted to the Legislative Commission by the Governor, the Majority Leader of the Senate and the Speaker of the Assembly.

(b) After the initial terms, serve a term of 2 years and until their respective successors are appointed. A member may be reappointed in the same manner as the original appointments.

5. Any vacancy occurring in the appointed membership of the Task Force must be filled in the same manner as the original appointment not later than 30 days after the vacancy occurs.

6. The Task Force shall meet at least twice each fiscal year and may meet at such additional times as deemed necessary by the Chair.

7. At the first meeting of each fiscal year, the Task Force shall elect from its members a Chair and a Vice Chair.

8. A majority of the members of the Task Force constitutes a quorum for the transaction of business, and a majority of those members present at any meeting is sufficient for any official action taken by the Task Force.

9. The Task Force shall comply with the provisions of chapter 241 of NRS, and all meetings of the Task Force must be conducted in accordance with that chapter.

10. Members of the Task Force serve without compensation.

11. The Legislative Counsel Bureau shall provide the personnel, facilities, equipment and supplies required by the Task Force to carry out its duties.

Sec. 9. The Task Force on Employee Misclassification shall:

1. Evaluate the policies and practices of the Labor Commissioner, Division of Industrial Relations of the Department of Business and Industry, Employment Security Division of the Department of Employment, Training and Rehabilitation, Department of Taxation and Attorney General relating to employee misclassification.



2. *Evaluate any existing fines, penalties or other disciplinary action relating to employee misclassification that are authorized to be imposed by a state agency.*

3. *Develop recommendations for policies, practices or proposed legislation to reduce the occurrence of employee misclassification.*

4. *On or before July 1, 2012, and on or before July 1 of each subsequent year submit a written report to the Director of the Legislative Counsel Bureau for submission to the Legislative Commission. The report must include, without limitation, a summary of the work of the Task Force and recommendations for legislation concerning employee misclassification.*

Sec. 10. 1. *The Task Force on Employee Misclassification may create a subcommittee to the Task Force for any purpose that is consistent with sections 2 to 10, inclusive, of this act.*

2. *The Task Force shall appoint the members of the subcommittee and designate one of the members of the subcommittee as chair of the subcommittee. The chair of the subcommittee must be a member of the Task Force.*

3. *The subcommittee shall meet at the times and places specified by a call of the chair of the subcommittee. A majority of the members of the subcommittee constitutes a quorum, and a quorum may exercise any power or authority conferred on the subcommittee.*

Sec. 11. NRS 612.265 is hereby amended to read as follows:

612.265 1. Except as otherwise provided in this section and NRS 239.0115, *and section 7 of this act*, information obtained from any employing unit or person pursuant to the administration of this chapter and any determination as to the benefit rights of any person is confidential and may not be disclosed or be open to public inspection in any manner which would reveal the person's or employing unit's identity.

2. Any claimant or a legal representative of a claimant is entitled to information from the records of the Division, to the extent necessary for the proper presentation of the claimant's claim in any proceeding pursuant to this chapter. A claimant or an employing unit is not entitled to information from the records of the Division for any other purpose.

3. Subject to such restrictions as the Administrator may by regulation prescribe, the information obtained by the Division may be made available to:

(a) Any agency of this or any other state or any federal agency charged with the administration or enforcement of laws relating to



unemployment compensation, public assistance, workers' compensation or labor and industrial relations, or the maintenance of a system of public employment offices;

(b) Any state or local agency for the enforcement of child support;

(c) The Internal Revenue Service of the Department of the Treasury;

(d) The Department of Taxation; and

(e) The State Contractors' Board in the performance of its duties to enforce the provisions of chapter 624 of NRS.

↪ Information obtained in connection with the administration of the **State** Employment Service may be made available to persons or agencies for purposes appropriate to the operation of a public employment service or a public assistance program.

4. Upon written request made by a public officer of a local government, the Administrator shall furnish from the records of the Division the name, address and place of employment of any person listed in the records of employment of the Division. The request must set forth the social security number of the person about whom the request is made and contain a statement signed by proper authority of the local government certifying that the request is made to allow the proper authority to enforce a law to recover a debt or obligation owed to the local government. Except as otherwise provided in NRS 239.0115, the information obtained by the local government is confidential and may not be used or disclosed for any purpose other than the collection of a debt or obligation owed to that local government. The Administrator may charge a reasonable fee for the cost of providing the requested information.

5. The Administrator may publish or otherwise provide information on the names of employers, their addresses, their type or class of business or industry, and the approximate number of employees employed by each such employer, if the information released will assist unemployed persons to obtain employment or will be generally useful in developing and diversifying the economic interests of this State. Upon request by a state agency which is able to demonstrate that its intended use of the information will benefit the residents of this State, the Administrator may, in addition to the information listed in this subsection, disclose the number of employees employed by each employer and the total wages paid by each employer. The Administrator may charge a fee to cover the actual costs of any administrative expenses relating to the disclosure of this information to a state agency. The Administrator may require the state agency to certify in writing that the agency will take all



actions necessary to maintain the confidentiality of the information and prevent its unauthorized disclosure.

6. Upon request therefor, the Administrator shall furnish to any agency of the United States charged with the administration of public works or assistance through public employment, and may furnish to any state agency similarly charged, the name, address, ordinary occupation and employment status of each recipient of benefits and the recipient's rights to further benefits pursuant to this chapter.

7. To further a current criminal investigation, the chief executive officer of any law enforcement agency of this State may submit a written request to the Administrator that the Administrator furnish, from the records of the Division, the name, address and place of employment of any person listed in the records of employment of the Division. The request must set forth the social security number of the person about whom the request is made and contain a statement signed by the chief executive officer certifying that the request is made to further a criminal investigation currently being conducted by the agency. Upon receipt of such a request, the Administrator shall furnish the information requested. The Administrator may charge a fee to cover the actual costs of any related administrative expenses.

8. In addition to the provisions of subsection 5, the Administrator shall provide lists containing the names and addresses of employers, and information regarding the wages paid by each employer to the Department of Taxation, upon request, for use in verifying returns for the taxes imposed pursuant to chapters 363A and 363B of NRS. The Administrator may charge a fee to cover the actual costs of any related administrative expenses.

9. A private carrier that provides industrial insurance in this State shall submit to the Administrator a list containing the name of each person who received benefits pursuant to chapters 616A to 616D, inclusive, or chapter 617 of NRS during the preceding month and request that the Administrator compare the information so provided with the records of the Division regarding persons claiming benefits pursuant to chapter 612 of NRS for the same period. The information submitted by the private carrier must be in a form determined by the Administrator and must contain the social security number of each such person. Upon receipt of the request, the Administrator shall make such a comparison and, if it appears from the information submitted that a person is simultaneously claiming benefits under chapter 612 of NRS and under chapters 616A to 616D, inclusive, or chapter 617 of NRS, the Administrator



shall notify the Attorney General or any other appropriate law enforcement agency. The Administrator shall charge a fee to cover the actual costs of any related administrative expenses.

10. The Administrator may request the Comptroller of the Currency of the United States to cause an examination of the correctness of any return or report of any national banking association rendered pursuant to the provisions of this chapter, and may in connection with the request transmit any such report or return to the Comptroller of the Currency of the United States as provided in section 3305(c) of the Internal Revenue Code of 1954.

11. If any employee or member of the Board of Review, the Administrator or any employee of the Administrator, in violation of the provisions of this section, discloses information obtained from any employing unit or person in the administration of this chapter, or if any person who has obtained a list of applicants for work, or of claimants or recipients of benefits pursuant to this chapter uses or permits the use of the list for any political purpose, he or she is guilty of a gross misdemeanor.

12. All letters, reports or communications of any kind, oral or written, from the employer or employee to each other or to the Division or any of its agents, representatives or employees are privileged and must not be the subject matter or basis for any lawsuit if the letter, report or communication is written, sent, delivered or prepared pursuant to the requirements of this chapter.

Sec. 12. NRS 616B.012 is hereby amended to read as follows:

616B.012 1. Except as otherwise provided in this section and NRS 239.0115, 616B.015, 616B.021 and 616C.205, **and section 7 of this act**, information obtained from any insurer, employer or employee is confidential and may not be disclosed or be open to public inspection in any manner which would reveal the person's identity.

2. Any claimant or legal representative of the claimant is entitled to information from the records of the insurer, to the extent necessary for the proper presentation of a claim in any proceeding under chapters 616A to 616D, inclusive, or chapter 617 of NRS.

3. The Division and Administrator are entitled to information from the records of the insurer which is necessary for the performance of their duties. The Administrator may, by regulation, prescribe the manner in which otherwise confidential information may be made available to:

(a) Any agency of this or any other state charged with the administration or enforcement of laws relating to industrial



insurance, unemployment compensation, public assistance or labor law and industrial relations;

(b) Any state or local agency for the enforcement of child support;

(c) The Internal Revenue Service of the Department of the Treasury;

(d) The Department of Taxation; and

(e) The State Contractors' Board in the performance of its duties to enforce the provisions of chapter 624 of NRS.

➔ Information obtained in connection with the administration of a program of industrial insurance may be made available to persons or agencies for purposes appropriate to the operation of a program of industrial insurance.

4. Upon written request made by a public officer of a local government, an insurer shall furnish from its records the name, address and place of employment of any person listed in its records. The request must set forth the social security number of the person about whom the request is made and contain a statement signed by proper authority of the local government certifying that the request is made to allow the proper authority to enforce a law to recover a debt or obligation owed to the local government. Except as otherwise provided in NRS 239.0115, the information obtained by the local government is confidential and may not be used or disclosed for any purpose other than the collection of a debt or obligation owed to the local government. The insurer may charge a reasonable fee for the cost of providing the requested information.

5. To further a current criminal investigation, the chief executive officer of any law enforcement agency of this State may submit to the Administrator a written request for the name, address and place of employment of any person listed in the records of an insurer. The request must set forth the social security number of the person about whom the request is made and contain a statement signed by the chief executive officer certifying that the request is made to further a criminal investigation currently being conducted by the agency. Upon receipt of a request, the Administrator shall instruct the insurer to furnish the information requested. Upon receipt of such an instruction, the insurer shall furnish the information requested. The insurer may charge a reasonable fee to cover any related administrative expenses.

6. Upon request by the Department of Taxation, the Administrator shall provide:

(a) Lists containing the names and addresses of employers; and



(b) Other information concerning employers collected and maintained by the Administrator or the Division to carry out the purposes of chapters 616A to 616D, inclusive, or chapter 617 of NRS,

↳ to the Department for its use in verifying returns for the taxes imposed pursuant to chapters 363A and 363B of NRS. The Administrator may charge a reasonable fee to cover any related administrative expenses.

7. Any person who, in violation of this section, discloses information obtained from files of claimants or policyholders or obtains a list of claimants or policyholders under chapters 616A to 616D, inclusive, or chapter 617 of NRS and uses or permits the use of the list for any political purposes, is guilty of a gross misdemeanor.

8. All letters, reports or communications of any kind, oral or written, from the insurer, or any of its agents, representatives or employees are privileged and must not be the subject matter or basis for any lawsuit if the letter, report or communication is written, sent, delivered or prepared pursuant to the requirements of chapters 616A to 616D, inclusive, or chapter 617 of NRS.

9. The provisions of this section do not prohibit the Administrator or the Division from disclosing any nonproprietary information relating to an uninsured employer or proof of industrial insurance.

Sec. 13. NRS 616B.015 is hereby amended to read as follows:

616B.015 1. Except as otherwise provided in subsection 2 and NRS 239.0115, *and section 7 of this act*, the records and files of the Division concerning self-insured employers and associations of self-insured public or private employers are confidential and may be revealed in whole or in part only in the course of the administration of the provisions of chapters 616A to 616D, inclusive, or chapter 617 of NRS relating to those employers or upon the lawful order of a court of competent jurisdiction.

2. The records and files specified in subsection 1 are not confidential in the following cases:

(a) Testimony by an officer or agent of the Division and the production of records and files on behalf of the Division in any action or proceeding conducted pursuant to the provisions of chapters 616A to 616D, inclusive, or chapter 617 of NRS if that testimony or the records and files, or the facts shown thereby, are involved in the action or proceeding.

(b) Delivery to a self-insured employer or an association of self-insured public or private employers of a copy of any document filed



by the employer with the Division pursuant to the provisions of chapters 616A to 616D, inclusive, or chapter 617 of NRS.

(c) Publication of statistics if classified so as to prevent:

(1) Identification of a particular employer or document; or
(2) Disclosure of the financial or business condition of a particular employer or insurer.

(d) Disclosure in confidence, without further distribution or disclosure to any other person, to:

(1) The Governor or an agent of the Governor in the exercise of the Governor's general supervisory powers;

(2) Any person authorized to audit the accounts of the Division in pursuance of an audit;

(3) The Attorney General or other legal representative of the State in connection with an action or proceeding conducted pursuant to the provisions of chapters 616A to 616D, inclusive, or chapter 617 of NRS;

(4) Any agency of this or any other state charged with the administration or enforcement of the laws relating to workers' compensation or unemployment compensation; or

(5) Any federal, state or local law enforcement agency.

(e) Disclosure in confidence by a person who receives information pursuant to paragraph (d) to a person in furtherance of the administration or enforcement of the laws relating to workers' compensation or unemployment compensation.

3. As used in this section:

(a) "Division" means the Division of Insurance of the Department of Business and Industry.

(b) "Records and files" means:

(1) All credit reports, references, investigative records, financial information and data pertaining to the net worth of a self-insured employer or association of self-insured public or private employers; and

(2) All information and data required by the Division to be furnished to it pursuant to chapters 616A to 616D, inclusive, or chapter 617 of NRS or which may be otherwise obtained relative to the finances, earnings, revenue, trade secrets or the financial condition of any self-insured employer or association of self-insured public or private employers.

Sec. 14. NRS 360.795 is hereby amended to read as follows:

360.795 1. Except as otherwise provided in this section and NRS 239.0115 and 360.250, **and section 7 of this act**, the records and files of the Department concerning the administration of NRS 360.760 to 360.796, inclusive, are confidential and privileged. The



Department, and any employee of the Department engaged in the administration of NRS 360.760 to 360.796, inclusive, or charged with the custody of any such records or files, shall not disclose any information obtained from those records or files. Neither the Department nor any employee of the Department may be required to produce any of the records, files and information for the inspection of any person or for use in any action or proceeding.

2. The records and files of the Department concerning the administration of NRS 360.760 to 360.796, inclusive, are not confidential and privileged in the following cases:

(a) Testimony by a member or employee of the Department and production of records, files and information on behalf of the Department or a person in any action or proceeding pursuant to the provisions of this chapter if that testimony or the records, files or information, or the facts shown thereby, are directly involved in the action or proceeding.

(b) Delivery to a person or his or her authorized representative of a copy of any document filed by the person pursuant to NRS 360.760 to 360.796, inclusive.

(c) Publication of statistics so classified as to prevent the identification of a particular business or document.

(d) Exchanges of information with the Internal Revenue Service in accordance with compacts made and provided for in such cases.

(e) Disclosure in confidence to the Governor or his or her agent in the exercise of the Governor's general supervisory powers, or to any person authorized to audit the accounts of the Department in pursuance of an audit, or to the Attorney General or other legal representative of the State in connection with an action or proceeding pursuant to this chapter, or to any agency of this or any other state charged with the administration or enforcement of laws relating to workers' compensation, unemployment compensation, public assistance, taxation, labor or gaming.

(f) Exchanges of information pursuant to subsection 3.

(g) Disclosure of information concerning whether or not a person conducting a business in this State has a state business license.

3. The Nevada Tax Commission may agree with any county fair and recreation board or the governing body of any county, city or town for the continuing exchange of information concerning taxpayers.

4. The Executive Director shall periodically, as he or she deems appropriate, but not less often than annually, transmit to the Administrator of the Division of Industrial Relations of the



Department of Business and Industry a list of the businesses of which the Executive Director has a record. The list must include the mailing address of the business as reported to the Department.

Sec. 15. NRS 363A.110 is hereby amended to read as follows:

363A.110 1. Except as otherwise provided in this section and NRS 239.0115 and 360.250, **and section 7 of this act**, the records and files of the Department concerning the administration of this chapter are confidential and privileged. The Department, and any employee engaged in the administration of this chapter or charged with the custody of any such records or files, shall not disclose any information obtained from the Department's records or files or from any examination, investigation or hearing authorized by the provisions of this chapter. Neither the Department nor any employee of the Department may be required to produce any of the records, files and information for the inspection of any person or for use in any action or proceeding.

2. The records and files of the Department concerning the administration of this chapter are not confidential and privileged in the following cases:

(a) Testimony by a member or employee of the Department and production of records, files and information on behalf of the Department or a taxpayer in any action or proceeding pursuant to the provisions of this chapter if that testimony or the records, files or information, or the facts shown thereby, are directly involved in the action or proceeding.

(b) Delivery to a taxpayer or his or her authorized representative of a copy of any return or other document filed by the taxpayer pursuant to this chapter.

(c) Publication of statistics so classified as to prevent the identification of a particular person or document.

(d) Exchanges of information with the Internal Revenue Service in accordance with compacts made and provided for in such cases.

(e) Disclosure in confidence to the Governor or his or her agent in the exercise of the Governor's general supervisory powers, or to any person authorized to audit the accounts of the Department in pursuance of an audit, or to the Attorney General or other legal representative of the State in connection with an action or proceeding pursuant to this chapter, or to any agency of this or any other state charged with the administration or enforcement of laws relating to taxation.

(f) Exchanges of information pursuant to subsection 3.



3. The Commission may agree with any county fair and recreation board or the governing body of any county, city or town for the continuing exchange of information concerning taxpayers.

Sec. 16. NRS 363B.100 is hereby amended to read as follows:

363B.100 1. Except as otherwise provided in this section and NRS 239.0115 and 360.250, **and section 7 of this act**, the records and files of the Department concerning the administration of this chapter are confidential and privileged. The Department, and any employee engaged in the administration of this chapter or charged with the custody of any such records or files, shall not disclose any information obtained from the Department's records or files or from any examination, investigation or hearing authorized by the provisions of this chapter. Neither the Department nor any employee of the Department may be required to produce any of the records, files and information for the inspection of any person or for use in any action or proceeding.

2. The records and files of the Department concerning the administration of this chapter are not confidential and privileged in the following cases:

(a) Testimony by a member or employee of the Department and production of records, files and information on behalf of the Department or a taxpayer in any action or proceeding pursuant to the provisions of this chapter if that testimony or the records, files or information, or the facts shown thereby, are directly involved in the action or proceeding.

(b) Delivery to a taxpayer or his or her authorized representative of a copy of any return or other document filed by the taxpayer pursuant to this chapter.

(c) Publication of statistics so classified as to prevent the identification of a particular person or document.

(d) Exchanges of information with the Internal Revenue Service in accordance with compacts made and provided for in such cases.

(e) Disclosure in confidence to the Governor or his or her agent in the exercise of the Governor's general supervisory powers, or to any person authorized to audit the accounts of the Department in pursuance of an audit, or to the Attorney General or other legal representative of the State in connection with an action or proceeding pursuant to this chapter, or to any agency of this or any other state charged with the administration or enforcement of laws relating to taxation.

(f) Exchanges of information pursuant to subsection 3.



3. The Commission may agree with any county fair and recreation board or the governing body of any county, city or town for the continuing exchange of information concerning taxpayers.

Sec. 17. 1. As soon as practicable after passage and approval of this act, the Governor, the Majority Leader of the Senate and the Speaker of the Assembly shall solicit applications and make recommendations to the Legislative Commission for the appointment of members to the Task Force on Employee Misclassification who are described in subsection 3 of section 8 of this act.

2. As soon as practicable after July 1, 2011, the Legislative Commission shall, after considering each recommendation received pursuant to subsection 1, appoint the members of the Task Force on Employee Misclassification described in subsection 3 of section 8 of this act.

3. The terms of the members of the Task Force on Employee Misclassification appointed pursuant to subsection 2 expire on June 30, 2013.

Sec. 18. 1. This section and section 17 of this act become effective upon passage and approval.

2. Sections 1 to 16, inclusive, of this act become effective on July 1, 2011.

