

SENATE BILL NO. 352—SENATORS DENIS AND KIHUEN

MARCH 21, 2011

JOINT SPONSORS: ASSEMBLYMEN CARRILLO, DIAZ; BENITEZ-  
THOMPSON, BROOKS, BUSTAMANTE ADAMS AND FLORES

Referred to Committee on Commerce, Labor and Energy

SUMMARY—Revises provisions relating to employment.  
(BDR 53-389)

FISCAL NOTE: Effect on Local Government: Increases or Newly  
Provides for Term of Imprisonment in County or City  
Jail or Detention Facility.  
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; prohibiting retaliation or discrimination by an employer against certain employees and other persons who exercise certain rights or report certain violations; providing a private right of action to an employee who is subjected to unlawful retaliation or discrimination; revising provisions governing awards in certain actions brought by an employee against an employer; revising provisions relating to certain employment policies, wages and benefits; revising provisions governing the period in which an employee may bring an action to recover wages; providing a penalty; and providing other matters properly relating thereto.

**Legislative Counsel's Digest:**

1 Under existing law, the Labor Commissioner is required to enforce all labor  
2 laws of this State. (NRS 607.160, 608.180) Existing law imposes certain  
3 requirements on employers regarding the payment of wages and the provision to  
4 employees of various notices concerning payday information and certain labor  
5 laws. (NRS 608.013, 608.016, 608.018, 608.080) **Section 3** of this bill prohibits an  
6 employer from retaliating or discriminating against an employee or other person  
7 who exercises certain rights, reports certain violations or cooperates in certain



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investigations by the Labor Commissioner. **Section 3** also provides that an employee who is subjected to retaliation or discrimination may bring an action against the employer. **Section 4** of this bill requires an employer to provide certain information regarding wages and benefits to newly hired employees. It is a misdemeanor to violate the provisions of existing law and **sections 3 and 4** governing the payment and collection of wages and other benefits. (NRS 608.195)

**Sections 2 and 6** of this bill exclude an independent contractor from the definition of "employee."

**Section 9** of this bill requires a court that awards certain money to an employee in an action to recover wages due from an employer to also award an additional amount for each day that the employee was unpaid or improperly paid.

Existing law requires an employer to retain certain records of wages, compensation, deductions and hours worked for each employee for 2 years and to provide such records to an employee upon a request by the employee. (NRS 608.115) **Section 8** of this bill requires an employer to provide such records to each employee at the end of each pay period and requires an employer to retain copies of such records for 3 years. **Section 8** also creates a rebuttable presumption that an employer who fails to retain such records for 3 years did not pay the required minimum wage to the employee for whom such records were not retained.

Existing law provides that an employee may bring a civil action to recover wages due under the minimum wage law but must file such an action within 2 years after the alleged underpayment. (NRS 608.260) **Section 12** of this bill extends the time limit for the filing of such an action to 3 years.

**Section 13** of this bill provides that the provisions of this bill apply only to actions alleged to have occurred on or after October 1, 2011.

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

**Section 1.** Chapter 608 of NRS is hereby amended by adding thereto the provisions set forth as sections 2, 3 and 4 of this act.

**Sec. 2. "Independent contractor" means a person who:**

*1. Provides services free from direction and control over the means and manner of*

*providing the services, other than the right of the person for whom services are provided to specify the desired result;*

*2. Furnishes the tools and equipment necessary to perform the services;*

*3. Performs the services as part of a business that is considered inseparable from the person for the purposes of the imposition or payment of taxes, the calculation of profits and losses and the imposition of liability;*

*4. Exercises complete control over the management and operation of the business; and*

*5. Exercises the right and opportunity on a continuing basis to perform the services of the business for one or more other persons at his or her sole choice and discretion.*

**Sec. 3. 1. An employer or any agent thereof shall not retaliate or discriminate unfairly against an employee or a person acting on behalf of an employee who in good faith:**



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- 1     (a) *Exercises any right provided by this chapter;*
- 2     (b) *Provides assistance to another person for the exercise of*
- 3 *any right of that person provided by this chapter;*
- 4     (c) *Reports to the Labor Commissioner any violation of this*
- 5 *chapter; or*
- 6     (d) *Cooperates or otherwise participates in an investigation or*
- 7 *proceeding conducted by the Labor Commissioner in relation to a*
- 8 *violation or alleged violation of this chapter.*
- 9     2. *A person who believes he or she has been retaliated or*
- 10 *discriminated against in violation of this section may:*
- 11     (a) *Submit a notice of the violation to the Labor*
- 12 *Commissioner; and*
- 13     (b) *Bring an action in a court of competent jurisdiction.*
- 14     3. *If a court determines that a violation of this section has*
- 15 *occurred, the court may:*
- 16     (a) *Award such damages as it determines to have resulted from*
- 17 *the violation, including, without limitation:*
- 18         (1) *Compensatory damages;*
- 19         (2) *Reimbursement of any wages, employment benefits or*
- 20 *other compensation denied to or lost by the employee as a result of*
- 21 *the violation;*
- 22         (3) *Attorney's fees and costs, including, without limitation,*
- 23 *fees for expert witnesses; and*
- 24         (4) *Punitive damages, if the facts warrant; and*
- 25     (b) *Grant any equitable relief it considers appropriate,*
- 26 *including, without limitation, reinstatement of the employee and*
- 27 *any temporary, preliminary or permanent injunctive relief.*
- 28     4. *If an employer or any agent thereof retaliates or*
- 29 *discriminates against an employee within 90 days after the*
- 30 *employee takes any action described in subsection 1, there is a*
- 31 *rebuttable presumption that the retaliation or discrimination*
- 32 *constitutes a violation of this section.*
- 33     5. *An action under this section must be brought not later than*
- 34 *2 years after the date of the last event constituting the alleged*
- 35 *violation for which the action is brought.*
- 36     6. *As used in this section:*
- 37     (a) *"Good faith" means honesty in fact in the exercise of the*
- 38 *rights of the employee or another in the reporting of a violation or*
- 39 *in the cooperation with the investigation concerned.*
- 40     (b) *"Retaliate or discriminate":*
- 41         (1) *Includes, without limitation, any of the following*
- 42 *actions if taken solely because the employee took an action*
- 43 *described in subsection 1:*
- 44             (I) *Frequent or undesirable changes in the location*
- 45 *where the employee works;*



- (II) *Frequent or undesirable transfers or reassignments;*
- (III) *The issuance of letters of reprimand, letters of admonition or evaluations of poor performance;*
- (IV) *A demotion;*
- (V) *A reduction in pay;*
- (VI) *The denial of a promotion;*
- (VII) *A suspension;*
- (VIII) *A dismissal;*
- (IX) *A transfer; or*
- (X) *Frequent changes in working hours or workdays.*

(2) *Does not include an action described in subparagraphs (I) to (X), inclusive, of subparagraph (1) if the action is taken in the normal course of employment or as a form of discipline.*

**Sec. 4. 1.** *An employer shall, at the time of hiring, notify each employee in writing of the dates of regular paydays and the place of payment, and the wages or compensation to be paid to the employee.*

**2.** *An employer shall deliver to each employee within 7 days after hiring the employee a written statement which includes all applicable employment agreements and employer policies, including, without limitation, those relating to wages, compensation, vacation pay, sick leave, reimbursement for expenses, retirement benefits and severance pay. The employer shall provide an additional copy of the statement to any employee upon a written request by the employee and shall post a notice of the availability of such information in at least two conspicuous places where such notice can be seen by the employees of the employer.*

**Sec. 5.** NRS 608.007 is hereby amended to read as follows:

608.007 As used in this chapter, unless the context otherwise requires, the words and terms defined in NRS 608.010 to 608.0126, inclusive, *and section 2 of this act* have the meanings ascribed to them in those sections.

**Sec. 6.** NRS 608.010 is hereby amended to read as follows:

608.010 "Employee" includes both male and female persons in the service of an employer under any appointment or contract of hire or apprenticeship, express or implied, oral or written, whether lawfully or unlawfully employed. *The term does not include an independent contractor.*

**Sec. 7.** NRS 608.080 is hereby amended to read as follows:

608.080 1. Every employer shall establish and maintain regular paydays as provided in this chapter and shall post and maintain posted notices, printed in plain type or written in plain script, in at least two conspicuous places where such notices can be



1 seen by the employees, setting forth the regular paydays as  
2 prescribed in this chapter and the place of payment, which must be  
3 within the Justice Court precinct in which such services were  
4 performed.

5 2. After an employer establishes regular paydays and the place  
6 of payment, the employer shall not change a regular payday or the  
7 place of payment unless, not fewer than 7 days *or the length of one*  
8 *pay period, whichever is longer*, before the change is made, the  
9 employer provides the employees affected by the change with  
10 written notice in a manner that is calculated to provide actual notice  
11 of the change to each such employee.

12 3. If an employee is absent at the time and place of the  
13 payment of wages or compensation, due and payable as prescribed  
14 in this chapter, provided he or she does not secrete or absent himself  
15 or herself to avoid such payment, the employee must be paid the  
16 same within 5 days after making written demand therefor.

17 **Sec. 8.** NRS 608.115 is hereby amended to read as follows:

18 608.115 1. Every employer shall establish and maintain  
19 records of wages for the benefit of his or her employees, showing  
20 for each pay period the following information for each employee:

21 (a) Gross wage or salary other than compensation in the form of:

22 (1) Services; or

23 (2) Food, housing or clothing.

24 (b) Deductions.

25 (c) Net cash wage or salary.

26 (d) Total hours employed in the pay period by noting the  
27 number of hours per day.

28 (e) Date of payment.

29 2. The information required by this section must be furnished  
30 to each employee *on the last day of each pay period and* within 10  
31 days after ~~the~~ *an* employee submits a request ~~for~~ *for such*  
32 *information.*

33 3. Records of wages must be maintained for a ~~2-year~~ *3-year*  
34 period following the entry of information in the record. *If an*  
35 *employer fails to maintain such records, there is a rebuttable*  
36 *presumption that the employer did not pay the required minimum*  
37 *wage to the employee for whom such records were not maintained.*

38 **Sec. 9.** NRS 608.140 is hereby amended to read as follows:

39 608.140 1. Whenever a mechanic, artisan, miner, laborer,  
40 servant or employee shall have cause to bring suit for wages earned  
41 and due according to the terms of his or her employment, and shall  
42 establish by decision of the court or verdict of the jury that the  
43 amount for which he or she has brought suit is justly due, and that a  
44 demand has been made, in writing, at least 5 days before suit was  
45 brought, for a sum not to exceed the amount so found due, the court



1 before which the case shall be tried shall allow to the plaintiff a  
2 reasonable attorney fee, in addition to the amount found due for  
3 wages and penalties, to be taxed as costs of suit.

4 *2. In addition to any sum allowed by subsection 1, the court*  
5 *shall allow to the plaintiff an amount equal to 5 percent of the*  
6 *amount found due pursuant to subsection 1 for wages for each*  
7 *workday for which the court finds that the plaintiff was improperly*  
8 *or not paid. The amount awarded pursuant to this subsection must*  
9 *not exceed two times the amount found due pursuant to subsection*  
10 *1 for wages.*

11 **Sec. 10.** NRS 608.180 is hereby amended to read as follows:

12 608.180 The Labor Commissioner or the representative of the  
13 Labor Commissioner shall cause the provisions of NRS 608.005 to  
14 608.195, inclusive, *and sections 2, 3 and 4 of this act* to be  
15 enforced, and upon notice from the Labor Commissioner or the  
16 representative:

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

19 2. The Deputy Labor Commissioner, as provided in  
20 NRS 607.050;

21 3. The Attorney General, as provided in NRS 607.160 or  
22 607.220; or

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

25 **Sec. 11.** NRS 608.195 is hereby amended to read as follows:

26 608.195 1. Except as otherwise provided in NRS 608.0165,  
27 any person who violates any provision of NRS 608.005 to 608.195,  
28 inclusive, *and sections 2, 3 and 4 of this act*, or any regulation  
29 adopted pursuant thereto, is guilty of a misdemeanor.

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

33 **Sec. 12.** NRS 608.260 is hereby amended to read as follows:

34 608.260 If any employer pays any employee a lesser amount  
35 than the minimum wage prescribed by regulation of the Labor  
36 Commissioner pursuant to the provisions of NRS 608.250, the  
37 employee may, at any time within ~~2~~ 3 years, bring a civil action to  
38 recover the difference between the amount paid to the employee and  
39 the amount of the minimum wage. A contract between the employer  
40 and the employee or any acceptance of a lesser wage by the  
41 employee is not a bar to the action.

42 **Sec. 13.** The provisions of this act apply only to actions  
43 alleged to have occurred on or after October 1, 2011.

