

ASSEMBLY BILL NO. 181—ASSEMBLYMEN BOBZIEN, KIRKPATRICK, EISEN, ELLIOT ANDERSON, FRIERSON; AIZLEY, BENITEZ-THOMPSON, CARLTON, COHEN, DALY, DONDERO LOOP, HEALEY, OHRENSCHALL, PIERCE, SPIEGEL AND SWANK

MARCH 1, 2013

JOINT SPONSORS: SENATORS DENIS, ATKINSON, JONES AND SMITH

Referred to Committee on Commerce and Labor

SUMMARY—Makes various changes to provisions governing employment practices. (BDR 53-48)

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 employers from conditioning employment on a consumer credit report or other credit information; providing certain exceptions; prohibiting employers from conditioning employment on access to an employee's social media account; providing civil remedies and administrative penalties; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law establishes various unlawful employment practices. (Chapter 613 of NRS)

Section 1.6 of this bill prohibits an employer from conditioning the employment of an employee or prospective employee on his or her consumer credit report or other credit information. **Section 1.6** also prohibits an employer from taking certain employment actions based on the refusal of an employee or prospective employee to submit a credit report or other credit information or on the results of such a report or information. **Section 1.6** further prohibits an employer from taking certain employment actions where an employee or prospective employee files a complaint, testifies in any legal proceeding or exercises his or her rights with respect to any violation committed by the employer. **Section 1.7** of this bill provides certain exceptions to the preceding prohibitions, including, without



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limitation, an exception for circumstances in which the information contained in the consumer credit report or other credit information is reasonably related to the position of employment. **Section 1.8** of this bill establishes the civil remedies available to a person affected by a violation committed by an employer, including employment of a prospective employee, reinstatement or promotion of an employee, payment of lost wages and benefits and the award of reasonable costs and attorney's fees. **Section 1.9** of this bill authorizes the Labor Commissioner to impose an administrative penalty against an employer for each violation and to bring a civil action against the employer.

Section 2 of this bill prohibits an employer from conditioning the employment of an employee or prospective employee on his or her disclosure of the user name, password or any other information that provides access to the employee's or prospective employee's personal social media account. **Section 2** also prohibits an employer from taking certain employment actions based on the refusal of an employee or prospective employee to disclose such information. **Section 2** further provides, however, that it is not unlawful for an employer to require an employee to disclose his or her user name, password or any other information to an account or a service, other than a personal social media account, for the purpose of accessing the employer's own internal computer or information system.

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 the provisions set forth as sections 1.1 to 2, inclusive, of this act.

Sec. 1.1. *As used in sections 1.1 to 1.9, inclusive, of this act, unless the context otherwise requires, the words and terms defined in sections 1.2 to 1.5, inclusive, of this act have the meanings ascribed to them in those sections.*

Sec. 1.2. *"Consumer credit report" means any written, oral or other communication of information by a consumer reporting agency bearing on the credit worthiness, credit standing or credit capacity of a person.*

Sec. 1.3. *"Consumer reporting agency" has the meaning ascribed to it in NRS 686A.640.*

Sec. 1.4. *"Credit information" means any information that is related to credit and derived from a consumer credit report or found on a consumer credit report. The term does not include information that is not related to credit, regardless of whether it is contained in a consumer credit report.*

Sec. 1.5. *"Employer" has the meaning ascribed to it in subsection 1 of NRS 613.440.*

Sec. 1.6. *Except as otherwise provided in section 1.7 of this act, it is unlawful for any employer in this State to:*

1. Directly or indirectly, require, request, suggest or cause any employee or prospective employee to submit a consumer credit report or other credit information as a condition of employment;



2. Use, accept, refer to or inquire concerning a consumer credit report or other credit information;

3. Discharge, discipline, discriminate against in any manner or deny employment or promotion to, or threaten to take any such action against any employee or prospective employee:

(a) Who refuses, declines or fails to submit a consumer credit report or other credit information; or

(b) On the basis of the results of a consumer credit report or other credit information; or

4. Discharge, discipline, discriminate against in any manner or deny employment or promotion to, or threaten to take any such action against, any employee or prospective employee who has:

(a) Filed any complaint or instituted or caused to be instituted any legal proceeding pursuant to sections 1.1 to 1.9, inclusive, of this act;

(b) Testified or may testify in any legal proceeding instituted pursuant to sections 1.1 to 1.9, inclusive, of this act; or

(c) Exercised his or her rights, or has exercised on behalf of another person the rights afforded to him or her pursuant to sections 1.1 to 1.9, inclusive, of this act.

Sec. 1.7. An employer may request or consider a consumer credit report or other credit information for the purpose of evaluating an employee or prospective employee for employment, promotion, reassignment or retention as an employee if:

1. The employer is required or authorized, pursuant to state or federal law, to use a consumer credit report or other credit information for that purpose;

2. The employer reasonably believes that the employee or prospective employee has engaged in specific activity which may constitute a violation of state or federal law; or

3. The information contained in the consumer credit report or other credit information is reasonably related to the position for which the employee or prospective employee is being evaluated for employment, promotion, reassignment or retention as an employee. The information in the consumer credit report or other credit information shall be deemed reasonably related to such an evaluation if the duties of the position involve:

(a) The care, custody and handling of, or responsibility for, money, financial accounts, corporate credit or debit cards, or other assets;

(b) Access to trade secrets or other proprietary or confidential information;

(c) Managerial or supervisory responsibility;

(d) The direct exercise of law enforcement authority as an employee of a state or local law enforcement agency;



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(e) *The care, custody and handling of, or responsibility for, the personal information of another person;*

(f) *Access to the personal financial information of another person;*

(g) *Employment with a financial institution that is chartered under state or federal law, including a subsidiary or affiliate of such a financial institution; or*

(h) *Employment with a licensed gaming establishment, as defined in NRS 463.0169.*

Sec. 1.8. *1. An employer who violates the provisions of sections 1.1 to 1.9, inclusive, of this act is liable to the employee or prospective employee affected by the violation. The employer is liable for any legal or equitable relief as may be appropriate, including employment of a prospective employee, reinstatement or promotion of an employee and the payment of lost wages and benefits.*

2. An action to recover the liability pursuant to subsection 1 may be maintained against the employer by an employee or prospective employee:

(a) For or on behalf of the employee or prospective employee; and

(b) On behalf of other employees or prospective employees similarly situated.

↪ An action must not be commenced pursuant to this section more than 3 years after the date of the alleged violation.

3. In any action brought pursuant to this section, the court, in its discretion, may allow the prevailing party reasonable costs, including attorney's fees.

Sec. 1.9. *1. If any person violates sections 1.1 to 1.9, inclusive, of this act, the Labor Commissioner may impose against the person an administrative penalty of not more than \$9,000 for each such violation.*

2. In determining the amount of any administrative penalty to be imposed against the person, the Labor Commissioner shall consider the previous record of the person in terms of compliance with sections 1.1 to 1.9, inclusive, of this act and the severity of the violation. Any administrative penalty imposed against the person is in addition to any other remedy or penalty provided pursuant to this act.

3. The Labor Commissioner may bring a civil action pursuant to this section to restrain violations of sections 1.1 to 1.9, inclusive, of this act. A court of competent jurisdiction may issue, without bond, a temporary or permanent restraining order or injunction to require compliance with sections 1.1 to 1.9, inclusive, of this act, including any legal or equitable relief



1 *incident thereto as may be appropriate, such as employment of a*
2 *prospective employee, reinstatement or promotion of an employee,*
3 *and the payment of lost wages and benefits.*

4 **Sec. 2. 1. It is unlawful for any employer in this State to:**

5 *(a) Directly or indirectly, require, request, suggest or cause*
6 *any employee or prospective employee to disclose the user name,*
7 *password or any other information that provides access to his or*
8 *her personal social media account.*

9 *(b) Discharge, discipline, discriminate against in any manner*
10 *or deny employment or promotion to, or threaten to take any such*
11 *action against any employee or prospective employee who refuses,*
12 *declines or fails to disclose the user name, password or any other*
13 *information that provides access to his or her personal social*
14 *media account.*

15 **2. It is not unlawful for an employer in this State to require**
16 *an employee to disclose the user name, password or any other*
17 *information to an account or a service, other than a personal*
18 *social media account, for the purpose of accessing the employer's*
19 *own internal computer or information system.*

20 **3. Nothing in this section shall be construed to prevent an**
21 *employer from complying with any state or federal law or*
22 *regulation or with any rule of a self-regulatory organization, as*
23 *defined in NRS 90.300.*

24 **4. As used in this section, "social media account" means any**
25 *electronic service or account or electronic content, including,*
26 *without limitation, videos, photographs, blogs, video blogs,*
27 *podcasts, instant and text messages, electronic mail programs or*
28 *services, online services or Internet website profiles.*

29 **Sec. 3. (Deleted by amendment.)**

30 **Sec. 4. (Deleted by amendment.)**

31 **Sec. 5. (Deleted by amendment.)**

