

SENATE BILL NO. 397—SENATORS SPEARMAN, SEGERBLOM, FORD,
PARKS; CANCELA, CANNIZZARO, DENIS, MANENDO, RATTI
AND WOODHOUSE

MARCH 20, 2017

JOINT SPONSORS: ASSEMBLYMEN DIAZ; ARAUJO,
SWANK AND THOMPSON

Referred to Committee on Government Affairs

SUMMARY—Revises provisions relating to employment.
(BDR 18-14)

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; requiring penalties and fines imposed by the Nevada Equal Rights Commission for certain unlawful discriminatory practices to be deposited in the State General Fund; making it an unlawful employment practice for an employer, employment agency or labor organization to discriminate against a person for inquiring about, discussing or disclosing information about wages in certain circumstances; revising provisions relating to unlawful employment practices; revising provisions governing the filing of complaints of employment discrimination with the Nevada Equal Rights Commission; revising the relief that the Commission may order if it determines that an unlawful employment practice has occurred; revising provisions relating to the time in which an employee may seek relief in district court for a claim of unlawful employment practices; and providing other matters properly relating thereto.



Legislative Counsel's Digest:

Existing law prohibits an employer, employment agency, labor organization or joint labor-management committee from discriminating against any person with respect to employment or membership, as applicable, on the basis of race, color, religion, sex, sexual orientation, gender identity or expression, age, disability or national origin. (NRS 613.330) Existing law also requires the Nevada Equal Rights Commission to accept certain complaints alleging unlawful discriminatory practices and, if the Commission determines that an unlawful practice has occurred, order: (1) the person engaging in the practice to cease and desist; and (2) for a case involving an unlawful employment practice, the restoration of all benefits and rights to which the aggrieved person is entitled. (NRS 233.157, 233.160, 233.170)

Section 1.5 of this bill revises provisions governing the filing of complaints alleging a practice of unlawful discrimination in compensation to require that the complaint be filed within 300 days after any date on which: (1) a decision or practice resulting in discriminatory compensation is adopted; (2) a person becomes subject to such a decision or practice; or (3) a person is affected by an application of such a decision or practice. **Section 1.5** also requires the Commission to notify each party to a complaint of the period of time that a person may apply to a district court for relief. **Section 2** of this bill revises the powers of the Commission to order remedies for unlawful employment practices. **Section 1.5** authorizes the Commission to: (1) award back pay for a period beginning 2 years before the date of the filing of a complaint regarding an unlawful employment practice and ending on the date the Commission issues an order regarding the complaint; (2) award costs and reasonable attorney's fees in cases involving an unlawful employment practice; (3) order payment of compensatory damages or, if the employer acted with malice or reckless indifference, punitive damages in cases involving an unlawful employment practice relating to discrimination on the basis of sex; and (4) order a civil penalty, in increasing amounts, for an unlawful employment practice that it determines is willful based on the number of such practices the person has committed in the previous 5 years. **Section 1** of this bill requires that any penalty or fine imposed by the Commission for certain unlawful discriminatory practices be deposited in the State General Fund and authorizes the Commission to present a claim for recommendation to the Interim Finance Committee if money is required to pay certain costs.

Section 12 of this bill requires the Commission, if it does not conclude that an unfair employment practice has occurred, to issue a letter to the person who filed the complaint concerning an unfair employment practice. This letter must notify the person of his or her right to apply to the district court for an order relating to the alleged unfair employment practice. **Section 13** of this bill provides that a person may apply to a district court for relief pursuant to **section 12** up to 180 days after the date of issuance of the letter described in **section 12**, in addition to the existing authority to apply to a district court for relief up to 180 days after the date of the alleged act.

This bill also enacts several provisions contained in the federal Paycheck Fairness Act, which was most recently introduced in the United States Senate on March 25, 2015, but has not been enacted to date. (S. 862 (114th)) Specifically, **section 3** of this bill prohibits an employer, employment agency or labor organization from discriminating against any person with respect to employment or membership, as applicable, for inquiring about, discussing or disclosing information about wages unless the person has access to information about the wages of other persons as part of his or her essential job functions and discloses the information to a person who does not have access to that information. **Section 7** of this bill provides that it is an unlawful employment practice to use a qualification which is based upon or derived from a difference on the basis of sex or a qualification that an employer, employment agency, labor organization or joint



55 labor-management committee has refused to change after being presented by an
56 affected person with an alternative practice that would serve the same purpose in a
57 manner that is less discriminatory on the basis of sex.

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

1 **Section 1.** Chapter 233 of NRS is hereby amended by adding
2 thereto a new section to read as follows:

3 ***1. All penalties and fines imposed by the Commission***
4 ***pursuant to NRS 233.170 and 233.210 must be deposited with the***
5 ***State Treasurer for credit to the State General Fund.***

6 ***2. If the money collected from the imposition of any penalty***
7 ***and fine is deposited in the State General Fund pursuant to***
8 ***subsection 1, the Commission may present a claim to the State***
9 ***Board of Examiners for recommendation to the Interim Finance***
10 ***Committee if the money is required to pay attorney's fees or the***
11 ***costs of an investigation, or both.***

12 **Sec. 1.5.** NRS 233.160 is hereby amended to read as follows:

13 233.160 1. A complaint which alleges unlawful
14 discriminatory practices in:

15 (a) Housing must be filed with the Commission not later than 1
16 year after the date of the occurrence of the alleged practice or the
17 date on which the practice terminated.

18 (b) Employment or public accommodations must be filed with
19 the Commission not later than 300 days after the date of the
20 occurrence of the alleged practice.

21 ➤ A complaint is timely if it is filed with an appropriate federal
22 agency within that period. A complainant shall not file a complaint
23 with the Commission if any other state or federal administrative
24 body or officer which has comparable jurisdiction to adjudicate
25 complaints of discriminatory practices has made a decision upon a
26 complaint based upon the same facts and legal theory.

27 2. The complainant shall specify in the complaint the alleged
28 unlawful practice and sign it under oath.

29 3. The Commission shall send to the party against whom an
30 unlawful discriminatory practice is alleged:

31 (a) A copy of the complaint;

32 (b) An explanation of the rights which are available to that
33 party; and

34 (c) A copy of the Commission's procedures.

35 ***4. The Commission shall notify each party to the complaint of***
36 ***the limitation on the period of time that a person may apply to the***
37 ***district court for relief pursuant to NRS 613.430.***



* S B 3 9 7 R 1 *

1 5. *For the purposes of paragraph (b) of subsection 1, an*
2 *unlawful discriminatory practice in employment which relates to*
3 *compensation occurs on each date on which:*

4 (a) *A decision or other practice resulting in discriminatory*
5 *compensation is adopted;*

6 (b) *A person becomes subject to a decision or other practice*
7 *resulting in discriminatory compensation; or*

8 (c) *A person is affected by an application of a decision or other*
9 *practice resulting in discriminatory compensation, including,*
10 *without limitation, each payment of wages, benefits or other*
11 *compensation that is affected by the decision or practice.*

12 **Sec. 2.** NRS 233.170 is hereby amended to read as follows:

13 233.170 1. When a complaint is filed whose allegations if
14 true would support a finding of unlawful practice, the Commission
15 shall determine whether to hold an informal meeting to attempt a
16 settlement of the dispute in accordance with the regulations adopted
17 pursuant to NRS 233.157. If the Commission determines to hold an
18 informal meeting, the Administrator may, to prepare for the
19 meeting, request from each party any information which is
20 reasonably relevant to the complaint. No further action may be taken
21 if the parties agree to a settlement.

22 2. If an agreement is not reached at the informal meeting, the
23 Administrator shall determine whether to conduct an investigation
24 into the alleged unlawful practice in accordance with the regulations
25 adopted pursuant to NRS 233.157. After the investigation, if the
26 Administrator determines that an unlawful practice has occurred,
27 the Administrator shall attempt to mediate between or reconcile the
28 parties. The party against whom a complaint was filed may agree to
29 cease the unlawful practice. If an agreement is reached, no further
30 action may be taken by the complainant or by the Commission.

31 3. If the attempts at mediation or conciliation fail, the
32 Commission may hold a public hearing on the matter. After the
33 hearing, if the Commission determines that an unlawful practice has
34 occurred, it may:

35 (a) Serve a copy of its findings of fact within 10 calendar days
36 upon any person found to have engaged in the unlawful practice;
37 and

38 (b) Order the person to:

39 (1) Cease and desist from the unlawful practice.

40 (2) In cases involving an unlawful employment practice,
41 restore all benefits and rights to which the aggrieved person is
42 entitled, including, but not limited to, rehiring, back pay for a period
43 ~~not to exceed 2 years after the date of the most recent unlawful~~
44 ~~practice,~~ *described in subsection 4,* annual leave time, sick leave
45 time or pay, other fringe benefits and seniority, with interest thereon



* S B 3 9 7 R 1 *

1 from the date of the Commission's decision at a rate equal to the
2 prime rate at the largest bank in Nevada, as ascertained by the
3 Commissioner of Financial Institutions, on January 1 or July 1, as
4 the case may be, immediately preceding the date of the
5 Commission's decision, plus 2 percent. The rate of interest must be
6 adjusted accordingly on each January 1 and July 1 thereafter until
7 the judgment is satisfied.

8 *(3) In cases involving an unlawful employment practice,*
9 *pay the costs and reasonable attorney's fees incurred by the*
10 *aggrieved person to pursue the claim.*

11 *(4) In cases involving an unlawful employment practice*
12 *relating to discrimination on the basis of sex, pay an amount*
13 *determined to be appropriate by the Commission as compensatory*
14 *damages or, if the Commission determines that the employer acted*
15 *with malice or reckless indifference, punitive damages.*

16 *(5) In cases involving an unlawful employment practice*
17 *that the Commission determines was willful, pay a civil penalty of:*

18 *(I) For the first unlawful employment practice that the*
19 *person has engaged in during the immediately preceding 5 years*
20 *which the Commission determines was willful, not more than*
21 *\$10,000.*

22 *(II) For the second unlawful employment practice that*
23 *the person has engaged in during the immediately preceding 5*
24 *years which the Commission determines was willful, not more*
25 *than \$15,000.*

26 *(III) For the third and any subsequent unlawful*
27 *employment practice that the person has engaged in during the*
28 *immediately preceding 5 years which the Commission determines*
29 *was willful, not more than \$25,000.*

30 *4. For the purposes of subparagraph (2) of paragraph (b) of*
31 *subsection 3, the period for back pay must not exceed a period*
32 *beginning 2 years before the date on which the complaint was*
33 *filed and ending on the date the Commission issues an order*
34 *pursuant to paragraph (b) of subsection 3 addressing all unlawful*
35 *practices which occur during that period and which are similar or*
36 *related to an unlawful practice in the complaint.*

37 *5. The order of the Commission is a final decision in a*
38 *contested case for the purpose of judicial review. If the person fails*
39 *to comply with the Commission's order, the Commission shall*
40 *apply to the district court for an order compelling such compliance,*
41 *but failure or delay on the part of the Commission does not*
42 *prejudice the right of an aggrieved party to judicial review. The*
43 *court shall issue the order unless it finds that the Commission's*
44 *findings or order are not supported by substantial evidence or are*
45 *otherwise arbitrary or capricious. If the court upholds the*



Commission's order and finds that the person has violated the order by failing to cease and desist from the unlawful practice or to make the payment ordered, the court shall award the aggrieved party actual damages for any economic loss and no more.

~~15-1~~ 6. After the Commission has held a public hearing and rendered a decision, the complainant is barred from proceeding on the same facts and legal theory before any other administrative body or officer.

Sec. 3. Chapter 613 of NRS is hereby amended by adding thereto a new section to read as follows:

1. Except as otherwise provided in subsection 2, it is an unlawful employment practice for an employer to discriminate against any of his or her employees or applicants for employment, for an employment agency to discriminate against any person, or for a labor organization to discriminate against any member thereof or an applicant for membership, because the employee, applicant, person or member, as applicable, has inquired about, discussed or disclosed his or her wages or the wages of another employee, applicant, person or member.

2. The provisions of subsection 1 do not apply to an employee, applicant, person or member who has access to information about the wages of other employees, applicants, persons or members as part of his or her essential job functions and discloses that information to a person who does not have access to that information unless the disclosure is in response to a charge, complaint or investigation for a violation of NRS 613.330.

Sec. 4. NRS 613.310 is hereby amended to read as follows:

613.310 As used in NRS 613.310 to 613.435, inclusive, *and section 3 of this act*, unless the context otherwise requires:

1. "Disability" means, with respect to a person:

(a) A physical or mental impairment that substantially limits one or more of the major life activities of the person, including, without limitation, the human immunodeficiency virus;

(b) A record of such an impairment; or

(c) Being regarded as having such an impairment.

2. "Employer" means any person who has 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year, but does not include:

(a) The United States or any corporation wholly owned by the United States.

(b) Any Indian tribe.

(c) Any private membership club exempt from taxation pursuant to 26 U.S.C. § 501(c).



3. "Employment agency" means any person regularly undertaking with or without compensation to procure employees for an employer or to procure for employees opportunities to work for an employer, but does not include any agency of the United States.

4. "Gender identity or expression" means a gender-related identity, appearance, expression or behavior of a person, regardless of the person's assigned sex at birth.

5. "Labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment or other conditions of employment.

6. "Person" includes the State of Nevada and any of its political subdivisions.

7. "Sexual orientation" means having or being perceived as having an orientation for heterosexuality, homosexuality or bisexuality.

Sec. 5. NRS 613.320 is hereby amended to read as follows:

613.320 1. The provisions of NRS 613.310 to 613.435, inclusive, *and section 3 of this act* do not apply to:

(a) Any employer with respect to employment outside this state.

(b) Any religious corporation, association or society with respect to the employment of individuals of a particular religion to perform work connected with the carrying on of its religious activities.

2. The provisions of NRS 613.310 to 613.435, inclusive, *and section 3 of this act* concerning unlawful employment practices related to sexual orientation and gender identity or expression do not apply to an organization that is exempt from taxation pursuant to 26 U.S.C. § 501(c)(3).

Sec. 6. NRS 613.340 is hereby amended to read as follows:

613.340 1. It is an unlawful employment practice for an employer to discriminate against any of his or her employees or applicants for employment, for an employment agency to discriminate against any person, or for a labor organization to discriminate against any member thereof or applicant for membership, because the employee, applicant, person or member, as applicable, has opposed any practice made an unlawful employment practice by NRS 613.310 to 613.435, inclusive, *and section 3 of this act*, or because he or she has made a charge, testified, assisted or participated in any manner in an investigation, proceeding or hearing under NRS 613.310 to 613.435, inclusive *†, and section 3 of this act.*



* S B 3 9 7 R 1 *

2. It is an unlawful employment practice for an employer, labor organization or employment agency to print or publish or cause to be printed or published any notice or advertisement relating to employment by such an employer or membership in or any classification or referral for employment by such a labor organization, or relating to any classification or referral for employment by such an employment agency, indicating any preference, limitation, specification or discrimination, based on race, color, religion, sex, sexual orientation, gender identity or expression, age, disability or national origin, except that such a notice or advertisement may indicate a preference, limitation, specification or discrimination based on religion, sex, sexual orientation, gender identity or expression, age, physical, mental or visual condition or national origin when religion, sex, sexual orientation, gender identity or expression, age, physical, mental or visual condition or national origin is a bona fide occupational qualification for employment.

Sec. 7. NRS 613.350 is hereby amended to read as follows:

613.350 1. It is not an unlawful employment practice for an employer to hire and employ employees, for an employment agency to classify or refer for employment any person, for a labor organization to classify its membership or to classify or refer for employment any person, or for an employer, labor organization or joint labor-management committee controlling apprenticeship or other training or retraining programs to admit or employ any person in any such program, on the basis of his or her religion, sex, sexual orientation, gender identity or expression, age, disability or national origin in those instances where religion, sex, sexual orientation, gender identity or expression, age, physical, mental or visual condition or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise.

2. It is not an unlawful employment practice for an employer to fail or refuse to hire and employ employees, for an employment agency to fail to classify or refer any person for employment, for a labor organization to fail to classify its membership or to fail to classify or refer any person for employment, or for an employer, labor organization or joint labor-management committee controlling apprenticeship or other training or retraining programs to fail to admit or employ any person in any such program, on the basis of a disability in those instances where physical, mental or visual condition is a bona fide and relevant occupational qualification necessary to the normal operation of that particular business or enterprise, if it is shown that the particular disability would prevent proper performance of the work for which the person with a



* S B 3 9 7 R 1 *

1 disability would otherwise have been hired, classified, referred or
2 prepared under a training or retraining program.

3 3. It is not an unlawful employment practice for an employer to
4 fail or refuse to hire or to discharge a person, for an employment
5 agency to fail to classify or refer any person for employment, for a
6 labor organization to fail to classify its membership or to fail to
7 classify or refer any person for employment, or for an employer,
8 labor organization or joint labor-management committee controlling
9 apprenticeship or other training or retraining programs to fail to
10 admit or employ any person in any such program, on the basis of his
11 or her age if the person is less than 40 years of age.

12 4. It is not an unlawful employment practice for a school,
13 college, university or other educational institution or institution of
14 learning to hire and employ employees of a particular religion if the
15 school or institution is, in whole or in substantial part, owned,
16 supported, controlled or managed by a particular religion or by a
17 particular religious corporation, association or society, or if the
18 curriculum of the school or institution is directed toward the
19 propagation of a particular religion.

20 5. It is not an unlawful employment practice for an employer to
21 observe the terms of any bona fide plan for employees' benefits,
22 such as a retirement, pension or insurance plan, which is not a
23 subterfuge to evade the provisions of NRS 613.310 to 613.435,
24 inclusive, *and section 3 of this act* as they relate to discrimination
25 against a person because of age, except that no such plan excuses
26 the failure to hire any person who is at least 40 years of age.

27 6. It is not an unlawful employment practice for an employer to
28 require employees to adhere to reasonable workplace appearance,
29 grooming and dress standards so long as such requirements are not
30 precluded by law, except that an employer shall allow an employee
31 to appear, groom and dress consistent with the employee's gender
32 identity or expression.

33 7. *For the purpose of subsection 1, the term "bona fide*
34 *occupational qualification reasonably necessary to the normal*
35 *operation of that particular business or enterprise" does not*
36 *include:*

37 (a) *A qualification which is based upon or derived from a*
38 *difference on the basis of sex; or*

39 (b) *A qualification which the employer, employment agency,*
40 *labor organization or joint labor-management committee has*
41 *refused to change after an affected person has presented an*
42 *alternative practice that would serve the same purpose without*
43 *producing the same amount of differential treatment on the basis*
44 *of sex.*



* S B 3 9 7 R 1 *

Sec. 8. NRS 613.380 is hereby amended to read as follows:

613.380 Notwithstanding any other provision of NRS 613.310 to 613.435, inclusive, *and section 3 of this act*, it is not an unlawful employment practice for an employer to apply different standards of compensation, or different terms, conditions or privileges of employment pursuant to a bona fide seniority or merit system, or a system which measures earnings by quantity or quality of production or to employees who work in different locations, if those differences are not the result of an intention to discriminate because of race, color, religion, sex, sexual orientation, gender identity or expression, age, disability or national origin, nor is it an unlawful employment practice for an employer to give and to act upon the results of any professionally developed ability test, if the test, its administration or action upon the results is not designed, intended or used to discriminate because of race, color, religion, sex, sexual orientation, gender identity or expression, age, disability or national origin.

Sec. 9. NRS 613.390 is hereby amended to read as follows:

613.390 Nothing contained in NRS 613.310 to 613.435, inclusive, *and section 3 of this act* applies to any business or enterprise on or near an Indian reservation with respect to any publicly announced employment practice of such business or enterprise under which a preferential treatment is given to any individual because the individual is an Indian living on or near a reservation.

Sec. 10. NRS 613.400 is hereby amended to read as follows:

613.400 Nothing contained in NRS 613.310 to 613.435, inclusive, *and section 3 of this act* requires any employer, employment agency, labor organization or joint labor-management committee subject to NRS 613.310 to 613.435, inclusive, *and section 3 of this act* to grant preferential treatment to any person or to any group because of the race, color, religion, sex, sexual orientation, gender identity or expression, age, disability or national origin of the individual or group on account of an imbalance which exists with respect to the total number or percentage of persons of any race, color, religion, sex, sexual orientation, gender identity or expression, age, disability or national origin employed by any employer, referred or classified for employment by any employment agency or labor organization, admitted to membership or classified by any labor organization, or admitted to, or employed in, any apprenticeship or other training program, in comparison with the total number or percentage of persons of that race, color, religion, sex, sexual orientation, gender identity or expression, age, disability or national origin in any community, section or other area, or in the available workforce in any community, section or other area.



* S B 3 9 7 R 1 *

1 **Sec. 11.** NRS 613.405 is hereby amended to read as follows:

2 613.405 Any person injured by an unlawful employment
3 practice within the scope of NRS 613.310 to 613.435, inclusive, *and*
4 *section 3 of this act* may file a complaint to that effect with the
5 Nevada Equal Rights Commission if the complaint is based on
6 discrimination because of race, color, sex, sexual orientation, gender
7 identity or expression, age, disability, religion or national origin.

8 **Sec. 12.** NRS 613.420 is hereby amended to read as follows:

9 613.420 If the Nevada Equal Rights Commission does not
10 conclude that an unfair employment practice within the scope of
11 NRS 613.310 to 613.435, inclusive, *and section 3 of this act* has
12 occurred ~~to any~~:

13 1. Any person alleging such a practice may apply to the district
14 court for an order granting or restoring to that person the rights to
15 which the person is entitled under those sections ~~to~~; *and*

16 2. *The Commission shall issue a letter to the person who filed*
17 *the complaint pursuant to NRS 613.405 notifying the person of his*
18 *or her rights pursuant to subsection 1.*

19 **Sec. 13.** NRS 613.430 is hereby amended to read as follows:

20 613.430 No action authorized by NRS 613.420 may be brought
21 more than 180 days after the date of the act complained of ~~to~~ *or*
22 *more than 180 days after the date of the issuance of the letter*
23 *described in subsection 2 of NRS 613.420, whichever is later.*
24 When a complaint is filed with the Nevada Equal Rights
25 Commission the limitation provided by this section is tolled as to
26 any action authorized by NRS 613.420 during the pendency of the
27 complaint before the Commission.

28 **Sec. 14.** This act becomes effective:

29 1. Upon passage and approval for the purpose of adopting
30 regulations and performing any other preparatory administrative
31 tasks that are necessary to carry out the provisions of this act; and

32 2. On January 1, 2018, for all other purposes.

