

Amendment No. 825

Senate Amendment to Assembly Bill No. 397 First Reprint	(BDR 18-1038)
<b>Proposed by:</b> Senate Committee on Government Affairs	
<b>Amends:</b> Summary: Yes Title: Yes Preamble: No Joint Sponsorship: No Digest: Yes	

ASSEMBLY ACTION				Initial and Date	SENATE ACTION				Initial and Date
Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____	Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____
Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____
Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) variations of green bold underlining is language proposed to be added in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill proposed to be retained in this amendment.

AMM/AAK



Date: 5/20/2019

A.B. No. 397—Revises provisions governing misconduct by certain public officials. (BDR 18-1038)





ASSEMBLY BILL No. 397—ASSEMBLYMEN  
BENITEZ-THOMPSON AND FRIERSON

MARCH 21, 2019

Referred to Committee on Government Affairs

SUMMARY—Revises provisions governing misconduct by certain public ~~officials.~~ officers. (BDR 18-1038)FISCAL NOTE: Effect on Local Government: No.  
Effect on the State: No.

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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 misconduct by certain public ~~officials.~~ officers; authorizing the Nevada Equal Rights Commission to recommend ~~impeachment or~~ removal of certain public ~~officials.~~ officers under certain circumstances; ~~providing that an accusation of certain unlawful employment practices by the Commission is legally sufficient for removal in certain circumstances;~~ and providing other matters properly relating thereto.

**Legislative Counsel's Digest:**

Under existing law, the Governor and other state and certain judicial officers may be impeached for misdemeanor or malfeasance in office. (Nev. Const. Art. 7, § 2) The Assembly of the Nevada Legislature has the sole power to impeach, and all impeachments are tried by the Senate. (Nev. Const. Art. 7, § 1) Existing law requires that provision for the removal of local elected officers and certain other officers be made by law. (Nev. Const. Art. 7, § 4) Existing law authorizes the removal of certain public officers for ~~willful or corrupt misconduct~~ malpractice or malfeasance in office. (NRS ~~283.300~~) 283.440) Existing law establishes the Nevada Equal Rights Commission. (NRS 233.010-233.210) The Commission is authorized to investigate and conduct hearings regarding any unlawful employment practice by an employer. (NRS 233.150) Under existing law, an unlawful employment practice includes discrimination by an employer against a person because of his or her race, color, religion, sex, sexual orientation, gender identity or expression, age, disability or national origin. An unlawful employment practice based on sex includes a prohibition on engaging in acts that constitute sexual harassment. (NRS 613.330; *Switzer v. Rivera*, 174 F. Supp. 2d 1097 (D. Nev. 2001)) If the Administrator of the Commission determines that an unlawful employment practice has occurred, the Administrator is required to attempt to mediate between or reconcile the parties. If such attempts fail, the Commission is authorized to hold a public hearing on the matter and take certain actions if the Commission finds an unlawful employment practice has occurred. (NRS 233.170)

**Section 1** of this bill ~~authorizes~~ requires the Commission to ~~submit~~ accept a complaint that alleges a local elected officer has engaged in an unlawful employment practice regarding discrimination and take appropriate action. Section 1 also requires the Commission to present a ~~recommendation of impeachment~~ complaint to the ~~Assembly of the Nevada Legislature only~~ district court if the Commission determines in a public hearing that ~~an~~ a local elected ~~official~~ officer has committed an unlawful

employment practice regarding discrimination in employment and that the discriminatory practice is ~~[significantly]~~ severe ~~[and]~~ or pervasive such that ~~[impeachment]~~ removal from office is appropriate. ~~[Section 1 similarly authorizes the Commission to present an accusation of an unlawful employment practice in employment regarding discrimination against a district, county, township or municipal officer to the grand jury of a county only if the discriminatory practice is significantly severe and pervasive such that removal is appropriate.]~~ Section 1 requires that any ~~[damages]~~ fine or penalty assessed against an elected ~~[official or district, county, township or municipal]~~ officer be paid in his or her personal capacity. ~~[Section 2 of this bill provides that an accusation of an unlawful employment practice regarding discrimination made against a district, county, township or municipal officer made by the Commission pursuant to section 1 is legally sufficient for removal in certain circumstances.]~~ Section 2.5 of this bill defines “malfeasance in office” to include, without limitation, engaging in an unlawful employment practice of discrimination or willfully failing to comply with any other sanction imposed by the Commission.

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

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

1. The Commission shall accept a complaint that alleges that a local elected officer has engaged in an unlawful employment practice of discrimination pursuant to Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e et seq., or NRS 613.330 and take appropriate action.

2. The Commission ~~[may submit]~~ shall present a ~~[recommendation of impeachment]~~ complaint to the ~~[Assembly only]~~ district court pursuant to NRS 283.440 if the Commission determines after a hearing held pursuant to subsection 3 of NRS 233.170 that ~~[an]~~ a local elected ~~[official]~~ officer has engaged in an unlawful employment practice of discrimination pursuant to Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e et seq., or NRS 613.330 and that the discriminatory practice that forms the basis of such a ~~[recommendation]~~ complaint is ~~[significantly]~~ severe ~~[and]~~ or pervasive such that ~~[impeachment]~~ removal from office is an appropriate remedy. In addition to any monetary penalties, the Commission may impose upon the local elected officer any other reasonable sanction, including, without limitation, a requirement to complete a course or training related to the unlawful employment practice of discrimination.

~~2. The Commission may present an accusation to the grand jury of a county pursuant to NRS 283.300 only if the Commission determines after a hearing held pursuant to subsection 3 of NRS 233.170 that a district, county, township or municipal officer has engaged in an unlawful employment practice of discrimination pursuant to Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e et seq., and that the discriminatory practice that forms the basis of such an accusation is significantly severe and pervasive such that removal from office is an appropriate remedy.]~~

3. Any ~~[damages assessed against an]~~ fine or penalty required to be paid by a local elected ~~[official or a district, county, township or municipal]~~ officer ~~[pursuant to this chapter]~~ because such officer was determined to have engaged in an unlawful employment practice of discrimination pursuant to subsection 2 must be assessed against such ~~[official or]~~ officer in his or her personal capacity, and may not be paid with public money or contributions received pursuant to chapter 294A of NRS. Except for a fine or a penalty, no damages may be assessed against the local elected officer in his or her personal capacity.

4. ~~As used in this section~~

~~(a) "District, county, township or municipal officer" does not include:~~  
~~(1) A justice or judge of the court system; and~~  
~~(2) A State Legislator removable from office only through expulsion by the State Legislator's own House pursuant to Section 6 of Article 4 of the Nevada Constitution.~~

~~(b) "Elected official";~~ "local elected officer" means a person who ~~was elected to an office which is subject to impeachment} [pursuant to Section 2 of Article 7 of the Nevada Constitution.]~~ holds a local government office to which the person was elected.

Sec. 2. ~~[NRS 283.350 is hereby amended to read as follows:]~~

~~283.350 1. If the defendant objects to the legal sufficiency of the accusation, the objection shall be in writing. The objection need not be in any specific form. It is sufficient if it presents intelligibly the grounds of the objection.~~

~~2. An accusation of an unlawful employment practice of discrimination pursuant to Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e et seq., made by the Nevada Equal Rights Commission pursuant to section 1 of this act is legally sufficient if a court determines that the discriminatory practice that forms the basis of such an accusation is significantly severe and pervasive such that removal of the defendant is an appropriate remedy.] (Deleted by amendment.)~~

Sec. 2.5. NRS 283.440 is hereby amended to read as follows:

283.440 1. Any person who is now holding or who shall hereafter hold any office in this State and who refuses or neglects to perform any official act in the manner and form prescribed by law, or who is guilty of any malpractice or malfeasance in office, may be removed therefrom as hereinafter prescribed in this section, except that this section does not apply to:

(a) A justice or judge of the court system;

(b) A state officer removable from office only through impeachment pursuant to Article 7 of the Nevada Constitution; or

(c) A State Legislator removable from office only through expulsion by the State Legislator's own House pursuant to Section 6 of Article 4 of the Nevada Constitution.

2. Whenever a complaint in writing, duly verified by the oath of any complainant, is presented to the district court alleging that any officer within the jurisdiction of the court:

(a) Has been guilty of charging and collecting any illegal fees for services rendered or to be rendered in the officer's office;

(b) Has refused or neglected to perform the official duties pertaining to the officer's office as prescribed by law; or

(c) Has been guilty of any malpractice or malfeasance in office,

the court shall cite the party charged to appear before it on a certain day, not more than 10 days or less than 5 days from the day when the complaint was presented. On that day, or some subsequent day not more than 20 days from that on which the complaint was presented, the court, in a summary manner, shall proceed to hear the complaint and evidence offered by the party complained of. If, on the hearing, it appears that the charge or charges of the complaint are sustained, the court shall enter a decree that the party complained of shall be deprived of the party's office.

3. The clerk of the court in which the proceedings are had, shall, within 3 days thereafter, transmit to the Governor or the board of county commissioners of the proper county, as the case may be, a copy of any decree or judgment declaring any officer deprived of any office under this section. The Governor or the board of

1 county commissioners, as the case may be, shall appoint some person to fill the  
2 office until a successor shall be elected or appointed and qualified. The person so  
3 appointed shall give such bond as security as is prescribed by law and pertaining to  
4 the office.

5 4. If the judgment of the district court is against the officer complained of and  
6 an appeal is taken from the judgment so rendered, the officer so appealing shall not  
7 hold the office during the pendency of the appeal, but the office shall be filled as in  
8 case of a vacancy.

9 5. As used in this section, "malfeasance in office" includes, without  
10 limitation:

11 (a) Engaging in an unlawful employment practice of discrimination  
12 pursuant to Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e et seq.,  
13 or NRS 613.330 that is severe or pervasive such that removal from office is an  
14 appropriate remedy.

15 (b) Willfully failing to comply with any other sanction imposed upon a local  
16 elected officer pursuant to section 1 of this act.

17 **Sec. 3.** This act becomes effective on July 1, 2019.