

Amendment No. 860

Assembly Amendment to Senate Bill No. 166 First Reprint	(BDR 18-5)
Proposed by: Assembly Committee on Government Affairs	
Amendment Box: Replaces Amendment No. 831.	
Amends: Summary: No Title: No 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.



SENATE BILL NO. 166—SENATORS SPEARMAN, CANNIZZARO, OHRENSCHALL, PARKS;
CANCELA, DENIS, DONDERO LOOP, D. HARRIS, SCHEIBLE AND
WOODHOUSE

FEBRUARY 18, 2019

Referred to Committee on Government Affairs

SUMMARY—Revises provisions relating to employment. (BDR 18-5)

FISCAL NOTE: Effect on Local Government: No.
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; requiring certain penalties and fines imposed by the Nevada Equal Rights Commission for certain unlawful discriminatory practices to be deposited in the State General Fund; revising provisions governing the filing of complaints of employment discrimination with the Nevada Equal Rights Commission; revising provisions relating to unlawful employment practices; 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 a person 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 origination. (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)

Existing federal law provides that an unlawful employment practice with respect to discrimination in compensation occurs when: (1) a discriminatory compensation decision or other practice is adopted; (2) an individual becomes subject to a discriminatory compensation decision or other practice, or (3) an individual is affected by application of a discriminatory compensation decision or other practice. (42 U.S.C. § 2000e-5(e)(3)(A)). Section 2 of this bill generally 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,] the date on which the unlawful discrimination occurs pursuant to federal law, as it currently exists. If federal law is amended to provide greater protections for employees, section 2 requires such a complaint to be filed within 300 days after the date on which the unlawful discrimination occurs pursuant to federal law, as amended.~~ Section 2 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 3 of this bill revises the powers of the Commission to order remedies for unlawful employment practices. Section 3 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) order payment of ~~[compensatory]~~ lost wages or other economic damages in cases involving an unlawful employment practice relating to discrimination on the basis of sex; and (3) under certain circumstances, 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 and for willful interference with the performance of duties by the Commission 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 8 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 and any potential punitive damages owed to the person. Section 9 of this bill provides that a person may apply to a district court for relief pursuant to section 8 up to ~~[180]~~ 90 days after the date of issuance of the letter described in section 8.

Existing law prohibits an employer, employment organization or labor organization from discriminating against certain persons because the persons have inquired about, discussed or voluntarily disclosed his or her wages or the wages of another such person. (NRS 613.330) Section ~~[5 of this bill expands the list of persons who are protected from certain unlawful employment practices to include applicants for employment, and section]~~ 7 of this bill expressly includes references to the provisions providing such protections for the purpose of specifying who may file a complaint.

~~[Section 6 of this bill provides that it is an unlawful employment practice to use an occupational qualification which: (1) is based upon or derived from a difference on the basis of sex; or (2) the employer, employment agency, labor organization or joint labor-management committee has refused to change after being presented by an affected person with an alternative practice that would serve the same purpose in a 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:

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

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

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

1 **Sec. 2.** NRS 233.160 is hereby amended to read as follows:

2 233.160 1. A complaint which alleges unlawful discriminatory practices in:

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

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

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

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

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

17 (a) A copy of the complaint;

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

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

20 4. *The Commission shall notify each party to the complaint of the limitation*
21 *on the period of time ~~that~~ during which a person may apply to the district court*
22 *for relief pursuant to NRS 613.430.*

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

26 (a) *Except as otherwise provided in paragraph (b), the date ~~on which:~~*

27 ~~(a) A decision or other practice resulting in discriminatory compensation is~~
28 ~~adopted;~~

29 ~~(b) A person becomes subject to a decision or other practice resulting in~~
30 ~~discriminatory compensation; or~~

31 ~~(c) A person is affected by an application of a decision or other practice~~
32 ~~resulting in discriminatory compensation, including, without limitation, each~~
33 ~~payment of wages, benefits or other compensation that is affected by the decision~~
34 ~~or practice.] prescribed by 42 U.S.C. § 2000e-5(e)(3)(A), as it existed on January~~
35 ~~1, 2019.~~

36 (b) *If 42 U.S.C. § 2000e-5(e)(3)(A) is amended and the Commissioner*
37 *determines by regulation that the section, as amended, provides greater protection*
38 *for employees than the section as it existed on January 1, 2019, the date*
39 *prescribed by 42 U.S.C. § 2000e-5(e)(3)(A), as amended.*

40 **Sec. 3.** NRS 233.170 is hereby amended to read as follows:

41 233.170 1. When a complaint is filed whose allegations if true would
42 support a finding of unlawful practice, the Commission shall determine whether to
43 hold an informal meeting to attempt a settlement of the dispute in accordance with
44 the regulations adopted pursuant to NRS 233.157. If the Commission determines to
45 hold an informal meeting, the Administrator may, to prepare for the meeting,
46 request from each party any information which is reasonably relevant to the
47 complaint. No further action may be taken if the parties agree to a settlement.

48 2. If an agreement is not reached at the informal meeting, the Administrator
49 shall determine whether to conduct an investigation into the alleged unlawful
50 practice in accordance with the regulations adopted pursuant to NRS 233.157. After
51 the investigation, if the Administrator determines that an unlawful practice has
52 occurred, the Administrator shall attempt to mediate between or reconcile the
53 parties. The party against whom a complaint was filed may agree to cease the

1 unlawful practice. If an agreement is reached, no further action may be taken by the
2 complainant or by the Commission.

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

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

8 (b) Order the person to:

9 (1) Cease and desist from the unlawful practice. *The order must include,*
10 *without limitation, the corrective action the person must take.*

11 (2) In cases involving an unlawful employment practice, restore all
12 benefits and rights to which the aggrieved person is entitled, including, but not
13 limited to, rehiring, back pay for a period ~~[not to exceed 2 years after the date of the~~
14 ~~most recent unlawful practice.]~~ *described in subsection 4,* annual leave time, sick
15 leave time or pay, other fringe benefits and seniority, with interest thereon from the
16 date of the Commission's decision at a rate equal to the prime rate at the largest
17 bank in Nevada, as ascertained by the Commissioner of Financial Institutions, on
18 January 1 or July 1, as the case may be, immediately preceding the date of the
19 Commission's decision, plus 2 percent. The rate of interest must be adjusted
20 accordingly on each January 1 and July 1 thereafter until the judgment is satisfied.

21 (3) *In cases involving an unlawful employment practice relating to*
22 *discrimination on the basis of sex, pay an amount determined to be appropriate*
23 *by the Commission* ~~[as compensatory damages which, upon submission of proof~~
24 ~~by the aggrieved party, may include, without limitation, compensation]~~ *for lost*
25 *wages that would have been earned in the absence of discrimination or other*
26 *economic damages resulting from the discrimination, including, without*
27 *limitation, lost payment* *for overtime, shift differential, cost of living adjustments,*
28 *merit increases or promotions, or other fringe benefits.*

29 (4) *In cases involving an unlawful employment practice committed by an*
30 *employer with* ~~[30]~~ *50 or more employees that the Commission determines was*
31 *willful, pay a civil penalty of:*

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

35 (II) *For the second unlawful employment practice that the person*
36 *has engaged in during the immediately preceding 5 years which the Commission*
37 *determines was willful, not more than \$10,000.*

38 (III) *For the third and any subsequent unlawful employment practice*
39 *that the person has engaged in during the immediately preceding 5 years which*
40 *the Commission determines was willful, not more than \$15,000.*

41 4. *For the purposes of subparagraph (2) of paragraph (b) of subsection 3,*
42 *the period for back pay must not exceed a period beginning 2 years before the*
43 *date on which the complaint was filed and ending on the date the Commission*
44 *issues an order pursuant to paragraph (b) of subsection 3.* ~~[addressing all~~
45 ~~unlawful practices which occur during that period and which are similar or~~
46 ~~related to an unlawful practice in the complaint.]~~

47 5. *Before imposing a civil penalty pursuant to subparagraph (4) of*
48 *paragraph (b) of subsection 3, the Commission must allow the person found to*
49 *have willfully engaged in an unlawful employment practice 30 days to take*
50 *corrective action from the date of service of the order pursuant to paragraph (a)*
51 *of subsection 3. If the person takes such corrective action, the Commission shall*
52 *not impose the civil penalty.*

~~6. [The Commission shall adopt regulations setting forth the manner in which the Commission will determine whether an unlawful employment practice was willful.]~~

~~7.]~~ The order of the Commission is a final decision in a contested case for the purpose of judicial review. If the person fails to comply with the Commission's order, the Commission shall apply to the district court for an order compelling such compliance, but failure or delay on the part of the Commission does not prejudice the right of an aggrieved party to judicial review. The court shall issue the order unless it finds that the Commission's findings or order are not supported by substantial evidence or are 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.

~~[5-8.]~~ 7. 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.

8. For the purposes of this section, an unlawful employment practice shall be deemed to be willful if a person engages in the practice with knowledge that it is unlawful or with reckless indifference to whether it is lawful or unlawful.

Sec. 4. (Deleted by amendment.)

Sec. 5. ~~[NRS 613.330 is hereby amended to read as follows:]~~

~~613.330 1. Except as otherwise provided in NRS 613.350, it is an unlawful employment practice for an employer:~~

~~(a) To fail or refuse to hire or to discharge any person, or otherwise to discriminate against any person with respect to the person's compensation, terms, conditions or privileges of employment, because of his or her race, color, religion, sex, sexual orientation, gender identity or expression, age, disability or national origin;~~

~~(b) To limit, segregate or classify an employee in a way which would deprive or tend to deprive the employee of employment opportunities or otherwise adversely affect his or her status as an employee, because of his or her race, color, religion, sex, sexual orientation, gender identity or expression, age, disability or national origin; or~~

~~(c) Except as otherwise provided in subsection 7, to discriminate against any employee or applicant for employment because the employee or applicant has inquired about, discussed or voluntarily disclosed his or her wages or the wages of another employee.~~

~~2. It is an unlawful employment practice for an employment agency:~~

~~(a) To fail or refuse to refer for employment, or otherwise to discriminate against, any person because of the race, color, religion, sex, sexual orientation, gender identity or expression, age, disability or national origin of that person;~~

~~(b) To classify or refer for employment any person on the basis of the race, color, religion, sex, sexual orientation, gender identity or expression, age, disability or national origin of that person; or~~

~~(c) Except as otherwise provided in subsection 7, to discriminate against any person because the person has inquired about, discussed or voluntarily disclosed his or her wages or the wages of another person.~~

~~3. It is an unlawful employment practice for a labor organization:~~

~~(a) To exclude or to expel from its membership, or otherwise to discriminate against, any person because of his or her race, color, religion, sex, sexual orientation, gender identity or expression, age, disability or national origin;~~

~~1. (b) To limit, segregate or classify its membership, or to classify or fail or refuse to refer for employment any person, in any way which would deprive or tend to deprive the person of employment opportunities, or would limit the person's employment opportunities or otherwise adversely affect the person's status as an employee or as an applicant for employment, because of his or her race, color, religion, sex, sexual orientation, gender identity or expression, age, disability or national origin;~~

~~2. (c) Except as otherwise provided in subsection 7, to discriminate or take any other action prohibited by this section against any member thereof or any applicant for membership because the member or applicant has inquired about, discussed or voluntarily disclosed his or her wages or the wages of another member or applicant;~~

~~3. (d) To cause or attempt to cause an employer to discriminate against any person in violation of this section;~~

~~4. It is an unlawful employment practice for any employer, labor organization or joint labor management committee controlling apprenticeship or other training or retraining, including, without limitation, on the job training programs, to discriminate against any person because of his or her race, color, religion, sex, sexual orientation, gender identity or expression, age, disability or national origin in admission to, or employment in, any program established to provide apprenticeship or other training;~~

~~5. Except as otherwise provided in subsection 6, it is an unlawful employment practice for any employer, employment agency, labor organization or joint labor management committee to discriminate against a person with a disability by interfering, directly or indirectly, with the use of an aid or appliance, including, without limitation, a service animal, by such a person;~~

~~6. It is an unlawful employment practice for an employer, directly or indirectly, to refuse to permit an employee with a disability to keep the employee's service animal with him or her at all times in his or her place of employment, except that an employer may refuse to permit an employee to keep a service animal that is a miniature horse with him or her if the employer determines that it is not reasonable to comply, using the assessment factors set forth in 28 C.F.R. § 36.302;~~

~~7. The provisions of paragraph (c) of subsection 1, paragraph (c) of subsection 2 and paragraph (c) of subsection 3, as applicable, do not apply to any person who has access to information about the wages of other persons 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 ordered by the Labor Commissioner or a court of competent jurisdiction;~~

~~8. It is an unlawful employment practice for an appointing authority governed by the provisions of chapter 284 of NRS, the Administrator of the Division of Human Resource Management of the Department of Administration or the governing body of a county, incorporated city or unincorporated town to consider the criminal history of an applicant for employment without following the procedure required in NRS 245.046, 268.402, 269.0802, 284.281 or 284.282, as applicable;~~

~~9. As used in this section, "service animal" has the meaning ascribed to it in NRS 426.097.] (Deleted by amendment.)~~

Sec. 6. [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 disability would otherwise have been hired, classified, referred or prepared under a training or retraining program.~~

~~3. It is not an unlawful employment practice for an employer to fail or refuse to hire or to discharge a person, 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 his or her age if the person is less than 40 years of age.~~

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

~~5. It is not an unlawful employment practice for an employer to observe the terms of any bona fide plan for employees' benefits, such as a retirement, pension or insurance plan, which is not a subterfuge to evade the provisions of NRS 613.310 to 613.4383, inclusive, as they relate to discrimination against a person because of age, except that no such plan excuses the failure to hire any person who is at least 40 years of age.~~

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

~~7. For the purpose of subsection 1, "bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise" does not include a qualification which:~~

- ~~(a) is based upon or derived from a difference on the basis of sex; or~~
- ~~(b) The employer, employment agency, labor organization or joint labor management committee has refused to change after an affected person has presented an alternative practice that would serve the same purpose without producing the same amount of differential treatment on the basis of sex.~~

(Deleted by amendment.)

1 **Sec. 7.** NRS 613.405 is hereby amended to read as follows:

2 613.405 1. Except as otherwise provided in subsection 2, any person injured
3 by an unlawful employment practice within the scope of NRS 613.310 to 613.4383,
4 inclusive, may file a complaint to that effect with the Nevada Equal Rights
5 Commission if the complaint is based on discrimination because of race, color, sex,
6 sexual orientation, gender identity or expression, age, disability, religion or national
7 origin.

8 2. Any person injured by an unlawful employment practice within the scope
9 of *paragraph (c) of subsection 1, paragraph (c) of subsection 2, paragraph (c) of*
10 *subsection 3, subsection 7 or* subsection 8 of NRS 613.330 may file a complaint to
11 that effect with the Nevada Equal Rights Commission regardless of whether the
12 complaint is based on discrimination because of race, color, sex, sexual orientation,
13 gender identity or expression, age, disability, religion or national origin.

14 3. Any person injured by an unlawful employment practice within the scope
15 of NRS 613.4353 to 613.4383, inclusive, may file a complaint to that effect with
16 the Nevada Equal Rights Commission if the complaint is based on an employer's
17 failure to comply with the provisions of NRS 613.4353 to 613.4383, inclusive.

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

19 613.420 If the Nevada Equal Rights Commission does not conclude that an
20 unfair employment practice within the scope of NRS 613.310 to 613.4383,
21 inclusive, has occurred ~~(-any-)~~ :

22 1. Any person alleging such a practice may apply to the district court for an
23 order granting or restoring to that person the rights to which the person is entitled
24 under those sections ~~(-)~~ ; and

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

28 **Sec. 9.** NRS 613.430 is hereby amended to read as follows:

29 613.430 No action authorized by NRS 613.420 may be brought more than
30 180 days after the date of the act complained of ~~(-)~~ *or more than ~~(180)~~ 90 days*
31 *after the date of the issuance of the letter described in subsection 2 of NRS*
32 *613.420, whichever is later.* When a complaint is filed with the Nevada Equal
33 Rights Commission the limitation provided by this section is tolled as to any action
34 authorized by NRS 613.420 during the pendency of the complaint before the
35 Commission.

36 **Sec. 10.** This act becomes effective:

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

40 2. On January 1, 2020, for all other purposes.