

Amendment No. 537

Senate Amendment to Senate Bill No. 177	(BDR 53-723)
Proposed by: Senate Committee on Commerce and Labor	
Amendment Box: Replaces Amendment No. 226.	
Amends: Summary: No 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.

BJF



Date: 4/19/2019

S.B. No. 177—Revises provisions relating to employment practices. (BDR 53-723)



SENATE BILL NO. 177—SENATORS CANCELA, SPEARMAN, PARKS; ATKINSON, BROOKS, CANNIZZARO, DENIS, DONDERO LOOP, HARRIS, OHRENSCHALL, RATTI, SCHEIBLE AND WOODHOUSE

FEBRUARY 18, 2019

Referred to Committee on Commerce and Labor

SUMMARY—Revises provisions relating to employment practices. (BDR 53-723)

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 the Nevada Equal Rights Commission to notify certain persons that the Commission shall, upon request, provide a right-to-sue notice; requiring the Commission to issue a right-to-sue notice in certain circumstances; revising the statute of limitations for bringing a civil action in district court for an unlawful employment practice; authorizing a court to award certain relief to an employee injured by certain unlawful employment practices under certain circumstances; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law provides that a person may file a complaint which alleges unlawful discriminatory practices in employment with the Nevada Equal Rights Commission not later than 300 days after the date of the occurrence of the alleged unlawful discriminatory practice in employment. (NRS 233.160) **Section 9** of this bill requires the Commission to notify in writing the person who filed the complaint that the person may request the Commission to issue a right-to-sue notice. **Section 2** of this bill requires the Commission to issue, upon request, a right-to-sue notice if at least 180 days have passed after the complaint was filed. In addition, section 7 of this bill requires the Commission to issue a right-to-sue notice if, after a complaint is filed with the Commission, the Commission does not conclude that an unfair employment practice has occurred. The right-to-sue notice must inform the person that the person may bring a civil action in district court not later than 90 days after the date of receipt of the right-to-sue notice against the person named in the complaint.

Under existing law, if, after a complaint alleging an unfair employment practice is filed with the Commission, the Commission does not conclude that an unfair employment practice has occurred, the person alleging such a practice has occurred is authorized to bring a civil action in the district court for an order granting or restoring to that person the rights to which the person is entitled. (NRS 613.420) Existing law prohibits a person from bringing such a civil action unless it is brought not more than 180 days after the act constituting the unfair employment practice occurred and provides that the 180-day period is tolled during the pendency of the complaint before the Commission. (NRS 613.430) Sections 7 and 8 of this bill [make conforming changes.] prohibit a person from bringing a civil action in district court unless the civil action is

brought not later than 180 days after the act constituting the unfair employment practice occurred, including, the period for which this 180-day period is tolled during the pendency of the complaint before the Commission, or not later than 90 days after a right-to-sue notice is received, whichever is later.

Title VII of the Civil Rights Act of 1964 sets forth various employment practices that are unlawful if such practices are based on an individual's: (1) race; (2) color; (3) religion; (4) sex; or (5) national origin. (42 U.S.C. §§ 2000e-2, 2000e-3) Title VII of the Civil Rights Act of 1964 provides various forms of legal and equitable relief to individuals against whom such unlawful employment practices were committed. (42 U.S.C. § 2000e-5) Existing Nevada law provides that a person who has suffered an injury as a result of certain unlawful employment practices may file a complaint with the Nevada Equal Rights Commission if the complaint is based on discrimination because of: (1) race; (2) color; (3) sex; (4) sexual orientation; (5) gender identity or expression; (6) age; (7) disability; (8) religion; or (9) national origin. (NRS 613.405) Existing Nevada law also provides that if the Commission does not conclude that an unfair employment practice has occurred, any person alleging such a practice may bring an action in district court. (NRS 613.420)

Section 3 of this bill provides that if a court finds that an employee has been injured as the result of certain unlawful employment practices, the court ~~shall~~ may award to the employee the same legal or equitable relief that may be awarded to a person pursuant to Title VII of the Civil Rights Act of 1964 ~~even~~ if the employee is ~~not~~ protected by Title VII of the Civil Rights Act of 1964. or certain provisions of existing law. Sections 4-6 of this bill make conforming changes.

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 2 and 3 of this act.

Sec. 2. *If a person files a complaint pursuant to paragraph (b) of subsection 1 of NRS 233.160 which alleges an unlawful discriminatory practice in employment, the Commission shall issue, upon request from the person, a right-to-sue notice if at least 180 days have passed after the complaint was filed pursuant to NRS 233.160. The right-to-sue notice must indicate that the person may not later than 90 days after the date of receipt of the right-to-sue notice, bring a civil action in district court against the person named in the complaint.*

Sec. 3. *If a court finds that an employee has been injured by an unlawful employment practice within the scope of this section and NRS 613.310 to 613.4383, inclusive, and section 2 of this act, the court ~~shall~~ may award the employee the same legal or equitable relief that may be awarded to a person pursuant to Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e et seq., ~~even~~ if the employee is ~~not~~ protected by Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e et seq., or NRS 613.330.*

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

613.310 As used in NRS 613.310 to 613.4383, inclusive, and sections 2 and 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 613.4383, inclusive, *and sections 2 and 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 613.4383, inclusive, *and sections 2 and 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 613.390 is hereby amended to read as follows:

613.390 Nothing contained in NRS 613.310 to 613.4383, inclusive, *and sections 2 and 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. 7. NRS 613.420 is hereby amended to read as follows:

613.420 1. If the Nevada Equal Rights Commission does not conclude that an unfair employment practice within the scope of NRS 613.310 to 613.4383, inclusive, *and sections 2 and 3 of this act* has occurred, ~~any or if~~ *the Commission shall issue a right-to-sue notice. The right-to-sue notice must indicate that the person may, not later than 90 days after the date of receipt of the right-to-sue notice, bring a civil action in district court against the person named in the complaint.*

2. *If the Nevada Equal Rights Commission has issued a right-to-sue notice pursuant to this section or section 2 of this act, the person alleging such a practice has occurred may ~~apply to~~ bring a civil action in the district court not later than 90 days after the date of receipt of the right-to-sue notice for any appropriate relief, including, without limitation, an order granting or restoring to that person the rights to which the person is entitled under those sections.*

1 **Sec. 8.** NRS 613.430 is hereby amended to read as follows:

2 613.430 No action authorized by NRS 613.420 may be brought more than
3 180 days after the date of the act complained of ~~or more than 180 days~~
4 ~~after the date of the issuance~~ *receipt of the right-to-sue notice pursuant to*
5 *section 2 of this act, whichever is later.* When a complaint is filed with the Nevada
6 Equal Rights Commission, the limitation provided by this section is tolled as to
7 any action authorized by NRS 613.420 during the pendency of the complaint before
8 the Commission.

9 **Sec. 9.** NRS 233.160 is hereby amended to read as follows:

10 233.160 1. A complaint which alleges unlawful discriminatory practices in:

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

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

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

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

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

25 (a) A copy of the complaint;

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

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

28 4. *If a person files a complaint pursuant to paragraph (b) of subsection 1*
29 *which alleges an unlawful discriminatory practice in employment, the*
30 *Commission shall, as soon as practicable after receiving the complaint, notify in*
31 *writing the person who filed the complaint that the person may request the*
32 *Commission to issue a right-to-sue notice pursuant to section 2 of this act.*