

Amendment No. 1054

Senate Amendment to Senate Bill No. 493 First Reprint	(BDR 53-1087)
Proposed by: Senate Committee on Finance	
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.

AMM/AAK



Date: 5/31/2019

S.B. No. 493—Revises provisions relating to misclassification of employees.  
(BDR 53-1087)





SENATE BILL NO. 493—SENATORS DONDERO LOOP, SPEARMAN, PARKS; BROOKS, DENIS, D. HARRIS, OHRENSCHALL, WASHINGTON AND WOODHOUSE

MARCH 29, 2019

Referred to Committee on Commerce and Labor

SUMMARY—Revises provisions relating to misclassification of employees. (BDR 53-1087)

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 employee misclassification; requiring certain state agencies to share information relating to suspected employee misclassification under certain circumstances; creating the Task Force on Employee Misclassification; providing its duties; making various other changes relating to employee misclassification; providing an administrative penalty; and providing other matters properly relating thereto.

#### Legislative Counsel's Digest:

**Section 7** of this bill requires the offices of the Labor Commissioner, the Division of Industrial Relations of the Department of Business and Industry, the Employment Security Division of the Department of Employment, Training and Rehabilitation, the Department of Taxation and the Attorney General to share amongst their respective offices information relating to suspected employee misclassification that is received in the performance of their official duties under certain circumstances. **Section 2** of this bill defines “employee misclassification” as the practice by an employer of improperly classifying employees as independent contractors to avoid any legal obligation under state labor, employment and tax laws, including, without limitation, the laws governing minimum wage, overtime, unemployment insurance, workers’ compensation insurance, temporary disability insurance, wage payment and payroll taxes.

**Section 8** of this bill creates and sets forth the membership of the Task Force on Employee Misclassification. **Section 9** of this bill sets forth the duties of the Task Force.

~~Existing law defines “independent contractor.” (NRS 616A.255) Section 11.5 of this bill expands that definition.~~ Existing law ~~also~~ provides that a person is conclusively presumed to be an independent contractor in certain circumstances. (NRS 608.0155) **Section 10.5** of this bill clarifies that such an independent contractor must hold a state or local business license to operate in this State. **Section 10.5 also provides that a natural person who is a contractor or subcontractor or who provides certain labor for a contractor or subcontractor and who meets certain requirements is presumed to be an independent contractor.** Existing law requires an employer to post a notice upon his or her premises that contains certain information. (NRS 616A.490) **Section 11.7** of this bill requires such a notice to include the relevant definitions of “employee” and “independent contractor.” **Section 10.3** of this bill authorizes the Labor Commissioner to impose various administrative penalties against an employer who misclassifies a person as an independent contractor or otherwise fails to properly classify an employee. **Section 10.4** of this bill authorizes a person to file a

complaint with ~~[certain administrative agencies]~~ the Labor Commissioner to seek an administrative penalty.

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

**Section 1.** Chapter 607 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 10, inclusive, of this act.

**Sec. 2.** *As used in sections 2 to 10, inclusive, of this act, unless the context otherwise requires, ~~[the words and terms defined in sections 3 to 6, inclusive, of this act have the meanings ascribed to them in those sections.]~~ “employee misclassification” means the practice by an employer of improperly classifying employees as independent contractors to avoid any legal obligation under state labor, employment and tax laws, including, without limitation, the laws governing minimum wage, overtime, unemployment insurance, workers’ compensation insurance, temporary disability insurance, wage payment and payroll taxes.*

**Sec. 3.** ~~“Employee” means a person who performs services for wages for an employer. The term does not include an independent contractor.~~ (Deleted by amendment.)

**Sec. 4.** ~~“Employee misclassification” means the practice by an employer of improperly classifying employees as independent contractors to avoid any legal obligation under state labor, employment and tax laws, including, without limitation, the laws governing minimum wage, overtime, unemployment insurance, workers’ compensation insurance, temporary disability insurance, wage payment and payroll taxes.~~ (Deleted by amendment.)

**Sec. 5.** ~~“Employer” includes, without limitation:~~  
~~1. The State of Nevada, any state agency, or any county, city, town, school district or other unit of local government;~~  
~~2. Any public or quasi-public corporation; and~~  
~~3. Any person, firm, corporation, partnership or association.~~ (Deleted by amendment.)

**Sec. 6.** ~~“Independent contractor” has the meaning ascribed to it in NRS 616A.255.~~ (Deleted by amendment.)

**Sec. 7.** The offices of the Labor Commissioner, Division of Industrial Relations of the Department of Business and Industry, Employment Security Division of the Department of Employment, Training and Rehabilitation, Department of Taxation and Attorney General:

1. Shall communicate between their respective offices information relating to suspected employee misclassification which is received in the performance of their official duties and which is not otherwise declared by law to be confidential.

2. May communicate between their respective offices information relating to employee misclassification which is received in the performance of their official duties and which is otherwise declared by law to be confidential, if the confidentiality of the information is otherwise maintained under the terms and conditions required by law.

**Sec. 8.** 1. The Task Force on Employee Misclassification ~~[, consisting of 10 members,]~~ is hereby created.

2. ~~The following persons shall serve as ex officio members of the Task Force:~~  
~~(a) The Labor Commissioner or the Labor Commissioner’s designee.~~

~~(b) The Administrator of the Division of Industrial Relations of the Department of Business and Industry or the Administrator's designee.~~

~~(c) The Administrator of the Employment Security Division of the Department of Employment, Training and Rehabilitation or the Administrator's designee.~~

~~(d) The Executive Director of the Department of Taxation or the Executive Director's designee.~~

~~(e) The Attorney General or the Attorney General's designee.~~

~~3. The following persons shall serve as appointed members of the Task Force:~~ Governor shall appoint to serve on the Task Force:

(a) One person who represents an employer located in this State that employs more than 500 full-time or part-time employees.

(b) One person who represents an employer located in this State that employs 500 or fewer full-time or part-time employees.

(c) One person who is an independent contractor in this State.

(d) ~~One person~~ Two persons who ~~represents~~ represent organized labor in this State.

(e) One person who represents ~~the general public~~ a trade or business association in this State.

(f) One person who represents a governmental agency that administers laws governing employee misclassification.

3. The Governor may appoint up to two additional members to serve on the Task Force as the Governor deems appropriate.

~~4. The members of the Task Force described in subsection 3+~~

~~(a) Must be appointed by the Legislative Commission from recommendations submitted to the Legislative Commission by the Governor, the Majority Leader of the Senate and the Speaker of the Assembly.~~

~~(b)~~ After the initial terms, the members of the Task Force serve a term of 2 years and until their respective successors are appointed. A member may be reappointed in the same manner as the original appointments.

5. Any vacancy occurring in the ~~appointed~~ membership of the Task Force must be filled in the same manner as the original appointment not later than 30 days after the vacancy occurs.

6. The Task Force shall meet at least twice each fiscal year and may meet at such additional times as deemed necessary by the Chair.

7. At the first meeting of each fiscal year, the Task Force shall elect from its members a Chair and a Vice Chair.

8. A majority of the members of the Task Force constitutes a quorum for the transaction of business, and a majority of those members present at any meeting is sufficient for any official action taken by the Task Force.

9. The Task Force shall comply with the provisions of chapter 241 of NRS, and all meetings of the Task Force must be conducted in accordance with that chapter.

10. Members of the Task Force serve without compensation.

11. The Labor Commissioner shall provide the personnel, facilities, equipment and supplies required by the Task Force to carry out its duties.

**Sec. 9. The Task Force on Employee Misclassification shall:**

1. Evaluate the policies and practices of the Labor Commissioner, Division of Industrial Relations of the Department of Business and Industry, Employment Security Division of the Department of Employment, Training and Rehabilitation, Department of Taxation and Attorney General relating to employee misclassification.

2. Evaluate any existing fines, penalties or other disciplinary action relating to employee misclassification that are authorized to be imposed by a state agency.

3. Develop recommendations for policies, practices or proposed legislation to reduce the occurrence of employee misclassification.

4. On or before July 1, 2020, and on or before July 1 of each subsequent year, submit a written report to the Director of the Legislative Counsel Bureau for submission to the Legislative Commission. The report must include, without limitation, a summary of the work of the Task Force and recommendations for legislation concerning employee misclassification.

**Sec. 10.** 1. The Task Force on Employee Misclassification may create a subcommittee to the Task Force for any purpose that is consistent with sections 2 to 10, inclusive, of this act.

2. The Task Force shall appoint the members of the subcommittee and designate one of the members of the subcommittee as chair of the subcommittee. The chair of the subcommittee must be a member of the Task Force.

3. The subcommittee shall meet at the times and places specified by a call of the chair of the subcommittee. A majority of the members of the subcommittee constitutes a quorum, and a quorum may exercise any power or authority conferred on the subcommittee.

**Sec. 10.1.** Chapter 608 of NRS is hereby amended by adding thereto the provisions set forth as sections 10.3 and 10.4 of this act.

**Sec. 10.3.** 1. An employer shall not:

(a) Through means of coercion, misrepresentation or fraud, require a person to be classified as an independent contractor or form any business entity in order to classify the person as an independent contractor; or

(b) Willfully misclassify or otherwise willfully fail to properly classify a person as an independent contractor.

2. In addition to any other remedy or penalty provided by law, the Labor Commissioner may impose an administrative penalty against an employer who misclassifies a person as an independent contractor or otherwise fails to properly classify a person as an employee of the employer. An administrative penalty imposed pursuant to this section must be:

(a) For a first offense committed by an employer who unintentionally misclassifies or otherwise fails to properly classify a person as an employee of the employer, a warning issued to the employer by the Labor Commissioner.

(b) For a first offense committed by an employer who willfully misclassifies or otherwise willfully fails to properly classify a person as an employee of the employer, a fine of \$2,500 for the first incident of willfully misclassifying or willfully failing to properly classify one or more persons as an employee of the employer imposed by the Labor Commissioner.

(c) For a second or subsequent offense, a fine of \$5,000 for each employee who was willfully misclassified imposed by the Labor Commissioner.

3. Before the Labor Commissioner may enforce an administrative penalty against an employer for misclassifying or otherwise failing to properly classify an employee of the employer pursuant to this section, the Labor Commissioner must provide the employer with notice and an opportunity for a hearing as set forth in NRS 607.207. The Labor Commissioner may impose an administrative penalty as set forth in subsection 2 if the Labor Commissioner finds that:

(a) The employer misclassified a person as an independent contractor; or

(b) The employer otherwise failed to properly classify a person as an employee of the employer.

**Sec. 10.4.** 1. An employer who is found after a hearing conducted in accordance with subsection 3 to have misclassified a person as an independent

contractor is liable to such person for lost wages, benefits or other economic damages to make the person whole.

2. A person may file a complaint alleging the misclassification of the person as an independent contractor with the Labor Commissioner. The Labor Commissioner shall make a determination on the allegations of the complaint within 120 days after receipt of the complaint. If the Labor Commissioner finds that an employer misclassified an employee as an independent contractor, the Labor Commissioner may impose the penalties set forth in subsection 1.

3. A hearing conducted pursuant to this section must be held in accordance with chapter 233B of NRS.

4. Each party to a hearing conducted pursuant to this section may petition for judicial review of the decision of the Labor Commissioner in the manner provided by chapter 233B of NRS.

**Sec. 10.5.** NRS 608.0155 is hereby amended to read as follows:

608.0155 1. ~~For~~ Except as otherwise provided in subsection 2, for the purposes of this chapter, a person is conclusively presumed to be an independent contractor if:

(a) Unless the person is a foreign national who is legally present in the United States, the person possesses or has applied for an employer identification number or social security number or has filed an income tax return for a business or earnings from self-employment with the Internal Revenue Service in the previous year;

(b) The person is required by the contract with the principal to hold any necessary state business license or local business license and to maintain any necessary occupational license, insurance or bonding ~~in~~ in order to operate in this State; and

(c) The person satisfies three or more of the following criteria:

(1) Notwithstanding the exercise of any control necessary to comply with any statutory, regulatory or contractual obligations, the person has control and discretion over the means and manner of the performance of any work and the result of the work, rather than the means or manner by which the work is performed, is the primary element bargained for by the principal in the contract.

(2) Except for an agreement with the principal relating to the completion schedule, range of work hours or, if the work contracted for is entertainment, the time such entertainment is to be presented, the person has control over the time the work is performed.

(3) The person is not required to work exclusively for one principal unless:

(I) A law, regulation or ordinance prohibits the person from providing services to more than one principal; or

(II) The person has entered into a written contract to provide services to only one principal for a limited period.

(4) The person is free to hire employees to assist with the work.

(5) The person contributes a substantial investment of capital in the business of the person, including, without limitation, the:

(I) Purchase or lease of ordinary tools, material and equipment regardless of source;

(II) Obtaining of a license or other permission from the principal to access any work space of the principal to perform the work for which the person was engaged; and

(III) Lease of any work space from the principal required to perform the work for which the person was engaged.

➤ The determination of whether an investment of capital is substantial for the purpose of this subparagraph must be made on the basis of the amount of income

the person receives, the equipment commonly used and the expenses commonly incurred in the trade or profession in which the person engages.

2. A natural person is conclusively presumed to be an independent contractor if the person is a contractor or subcontractor licensed pursuant to chapter 624 of NRS or is directly compensated by a contractor or subcontractor licensed pursuant to chapter 624 of NRS for providing labor for which a license pursuant to chapter 624 of NRS is required to perform and;

(a) The person has been and will continue to be free from control or direction over the performance of the services, both under his or her contract of service and in fact;

(b) The service is either outside the usual course of the business for which the service is performed or that the service is performed outside of all the places of business of the enterprises for which the service is performed; and

(c) The service is performed in the course of an independently established trade, occupation, profession or business in which the person is customarily engaged, of the same nature as that involved in the contract of service.

3. The fact that a person is not conclusively presumed to be an independent contractor for failure to satisfy three or more of the criteria set forth in paragraph (c) of subsection 1 does not automatically create a presumption that the person is an employee.

~~(2)~~ 4. As used in this section, ~~foreign~~ :

(a) "Foreign national" has the meaning ascribed to it in NRS 294A.325.

(b) "Providing labor" does not include the delivery of supplies.

**Sec. 11.** NRS 612.265 is hereby amended to read as follows:

612.265 1. Except as otherwise provided in this section and NRS 239.0115 and 612.642, and section 7 of this act, information obtained from any employing unit or person pursuant to the administration of this chapter and any determination as to the benefit rights of any person is confidential and may not be disclosed or be open to public inspection in any manner which would reveal the person's or employing unit's identity.

2. Any claimant or a legal representative of a claimant is entitled to information from the records of the Division, to the extent necessary for the proper presentation of the claimant's claim in any proceeding pursuant to this chapter. A claimant or an employing unit is not entitled to information from the records of the Division for any other purpose.

3. The Administrator may, in accordance with a cooperative agreement among all participants in the statewide longitudinal data system developed pursuant to NRS 400.037 and administered pursuant to NRS 223.820, make the information obtained by the Division available to:

(a) The Board of Regents of the University of Nevada for the purpose of complying with the provisions of subsection 4 of NRS 396.531; and

(b) The Director of the Department of Employment, Training and Rehabilitation for the purpose of complying with the provisions of paragraph (d) of subsection 1 of NRS 232.920.

4. Subject to such restrictions as the Administrator may by regulation prescribe, the information obtained by the Division may be made available to:

(a) Any agency of this or any other state or any federal agency charged with the administration or enforcement of laws relating to unemployment compensation, public assistance, workers' compensation or labor and industrial relations, or the maintenance of a system of public employment offices;

(b) Any state or local agency for the enforcement of child support;

(c) The Internal Revenue Service of the Department of the Treasury;

(d) The Department of Taxation;



1 (e) The State Contractors' Board in the performance of its duties to enforce the  
2 provisions of chapter 624 of NRS; and

3 (f) The Secretary of State to operate the state business portal established  
4 pursuant to chapter 75A of NRS for the purposes of verifying that data submitted  
5 via the portal has satisfied the necessary requirements established by the Division,  
6 and as necessary to maintain the technical integrity and functionality of the state  
7 business portal established pursuant to chapter 75A of NRS.

8 ➤ Information obtained in connection with the administration of the Division may  
9 be made available to persons or agencies for purposes appropriate to the operation  
10 of a public employment service or a public assistance program.

11 5. Upon written request made by the State Controller or a public officer of a  
12 local government, the Administrator shall furnish from the records of the Division  
13 the name, address and place of employment of any person listed in the records of  
14 employment of the Division. The request may be made electronically and must set  
15 forth the social security number of the person about whom the request is made and  
16 contain a statement signed by the proper authority of the State Controller or local  
17 government certifying that the request is made to allow the proper authority to  
18 enforce a law to recover a debt or obligation assigned to the State Controller for  
19 collection or owed to the local government, as applicable. Except as otherwise  
20 provided in NRS 239.0115, the information obtained by the State Controller or  
21 local government is confidential and may not be used or disclosed for any purpose  
22 other than the collection of a debt or obligation assigned to the State Controller for  
23 collection or owed to that local government. The Administrator may charge a  
24 reasonable fee for the cost of providing the requested information.

25 6. The Administrator may publish or otherwise provide information on the  
26 names of employers, their addresses, their type or class of business or industry, and  
27 the approximate number of employees employed by each such employer, if the  
28 information released will assist unemployed persons to obtain employment or will  
29 be generally useful in developing and diversifying the economic interests of this  
30 State. Upon request by a state agency which is able to demonstrate that its intended  
31 use of the information will benefit the residents of this State, the Administrator  
32 may, in addition to the information listed in this subsection, disclose the number of  
33 employees employed by each employer and the total wages paid by each employer.  
34 The Administrator may charge a fee to cover the actual costs of any administrative  
35 expenses relating to the disclosure of this information to a state agency. The  
36 Administrator may require the state agency to certify in writing that the agency will  
37 take all actions necessary to maintain the confidentiality of the information and  
38 prevent its unauthorized disclosure.

39 7. Upon request therefor, the Administrator shall furnish to any agency of the  
40 United States charged with the administration of public works or assistance through  
41 public employment, and may furnish to any state agency similarly charged, the  
42 name, address, ordinary occupation and employment status of each recipient of  
43 benefits and the recipient's rights to further benefits pursuant to this chapter.

44 8. To further a current criminal investigation, the chief executive officer of  
45 any law enforcement agency of this State may submit a written request to the  
46 Administrator that the Administrator furnish, from the records of the Division, the  
47 name, address and place of employment of any person listed in the records of  
48 employment of the Division. The request must set forth the social security number  
49 of the person about whom the request is made and contain a statement signed by the  
50 chief executive officer certifying that the request is made to further a criminal  
51 investigation currently being conducted by the agency. Upon receipt of such a  
52 request, the Administrator shall furnish the information requested. The

1 Administrator may charge a fee to cover the actual costs of any related  
2 administrative expenses.

3 9. In addition to the provisions of subsection 6, the Administrator shall  
4 provide lists containing the names and addresses of employers, and information  
5 regarding the wages paid by each employer to the Department of Taxation, upon  
6 request, for use in verifying returns for the taxes imposed pursuant to chapters  
7 363A, 363B and 363C of NRS. The Administrator may charge a fee to cover the  
8 actual costs of any related administrative expenses.

9 10. Upon the request of any district judge or jury commissioner of the judicial  
10 district in which the county is located, the Administrator shall, in accordance with  
11 other agreements entered into with other district courts and in compliance with 20  
12 C.F.R. Part 603, and any other applicable federal laws and regulations governing  
13 the Division, furnish the name, address and date of birth of persons who receive  
14 benefits in any county, for use in the selection of trial jurors pursuant to NRS 6.045.  
15 The court or jury commissioner who requests the list of such persons shall  
16 reimburse the Division for the reasonable cost of providing the requested  
17 information.

18 11. The Division of Industrial Relations of the Department of Business and  
19 Industry shall periodically submit to the Administrator, from information in the  
20 index of claims established pursuant to NRS 616B.018, a list containing the name  
21 of each person who received benefits pursuant to chapters 616A to 616D, inclusive,  
22 or chapter 617 of NRS. Upon receipt of that information, the Administrator shall  
23 compare the information so provided with the records of the Employment Security  
24 Division regarding persons claiming benefits pursuant to this chapter for the same  
25 period. The information submitted by the Division of Industrial Relations must be  
26 in a form determined by the Administrator and must contain the social security  
27 number of each such person. If it appears from the information submitted that a  
28 person is simultaneously claiming benefits under this chapter and under chapters  
29 616A to 616D, inclusive, or chapter 617 of NRS, the Administrator shall notify the  
30 Attorney General or any other appropriate law enforcement agency.

31 12. The Administrator may request the Comptroller of the Currency of the  
32 United States to cause an examination of the correctness of any return or report of  
33 any national banking association rendered pursuant to the provisions of this chapter,  
34 and may in connection with the request transmit any such report or return to the  
35 Comptroller of the Currency of the United States as provided in section 3305(c) of  
36 the Internal Revenue Code of 1954.

37 13. The Administrator, any employee or other person acting on behalf of the  
38 Administrator, or any employee or other person acting on behalf of an agency or  
39 entity allowed to access information obtained from any employing unit or person in  
40 the administration of this chapter, or any person who has obtained a list of  
41 applicants for work, or of claimants or recipients of benefits pursuant to this  
42 chapter, is guilty of a gross misdemeanor if he or she:

43 (a) Uses or permits the use of the list for any political purpose;

44 (b) Uses or permits the use of the list for any purpose other than one authorized  
45 by the Administrator or by law; or

46 (c) Fails to protect and prevent the unauthorized use or dissemination of  
47 information derived from the list.

48 14. All letters, reports or communications of any kind, oral or written, from  
49 the employer or employee to each other or to the Division or any of its agents,  
50 representatives or employees are privileged and must not be the subject matter or  
51 basis for any lawsuit if the letter, report or communication is written, sent, delivered  
52 or prepared pursuant to the requirements of this chapter.

1       **Sec. 11.3.** ~~[Chapter 613 of NRS is hereby amended by adding thereto a new~~  
2 ~~section to read as follows:~~

3       ~~1. In addition to any other remedy or penalty provided by law, the Labor~~  
4 ~~Commissioner may impose an administrative penalty against an employer who~~  
5 ~~misclassifies a person as an independent contractor or otherwise fails to properly~~  
6 ~~classify a person as an employee of the employer. An administrative penalty~~  
7 ~~imposed pursuant to this section must be:~~

8       ~~(a) For a first offense committed by an employer who unintentionally~~  
9 ~~misclassified or otherwise failed to properly classify a person as an employee of~~  
10 ~~the employer, a warning issued to the employer by the Labor Commissioner;~~

11       ~~(b) For a first offense committed by an employer who willfully misclassified~~  
12 ~~or otherwise failed to properly classify a person as an employee of the employer, a~~  
13 ~~fine of not more than \$5,000 for each employee who was misclassified imposed by~~  
14 ~~the Labor Commissioner;~~

15       ~~(c) For a second offense:~~

16       ~~(1) A fine of \$5,000 for each employee who was misclassified imposed by~~  
17 ~~the Labor Commissioner; and~~

18       ~~(2) The suspension of the state business license of the employer for not~~  
19 ~~more than 1 year;~~

20       ~~(d) For a third offense, the revocation of the state business license of the~~  
21 ~~employer. An employer whose state business license was revoked pursuant to this~~  
22 ~~paragraph shall not apply to the Secretary of State for a state business license for~~  
23 ~~a period of 3 years, beginning on the date of the revocation of the employer's~~  
24 ~~state business license.~~

25       ~~2. If the state business license of an employer is suspended or revoked~~  
26 ~~pursuant to subsection 1, the Labor Commissioner shall submit a notice of the~~  
27 ~~suspension or revocation to the Secretary of State. The Labor Commissioner shall~~  
28 ~~provide a copy of such notice to the employer.~~

29       ~~3. Before the Labor Commissioner may enforce an administrative penalty~~  
30 ~~against an employer for misclassifying or otherwise failing to properly classify an~~  
31 ~~employee of the employer pursuant to this section, the Labor Commissioner must~~  
32 ~~provide the employer with notice and an opportunity for a hearing as set forth in~~  
33 ~~NRS 607.207. The Labor Commissioner may impose an administrative penalty as~~  
34 ~~set forth in subsection 1 if the Labor Commissioner finds that:~~

35       ~~(a) The employer misclassified a person as an independent contractor; or~~

36       ~~(b) The employer otherwise failed to properly classify a person as an~~  
37 ~~employee of the employer.~~

38       ~~4. As used in this section:~~

39       ~~(a) "Employee" has the meaning ascribed to it in NRS 608.010.~~

40       ~~(b) "Employer" has the meaning ascribed to it in NRS 608.011.~~

41       ~~(c) "Independent contractor" has the meaning ascribed to it in NRS~~  
42 ~~616A.255.] (Deleted by amendment.)~~

43       **Sec. 11.5.** ~~[NRS 616A.255 is hereby amended to read as follows:~~

44       ~~616A.255 "Independent contractor" means any person who renders service~~  
45 ~~for a specified recompense [for a specified result, under the control of the person's~~  
46 ~~principal as to the result of the person's work only and not as to the means by~~  
47 ~~which such result is accomplished.] and who:~~

48       ~~1. Has been and will continue to be free from control or direction exercised~~  
49 ~~by a person with whom he or she entered into a contract of service or a person for~~  
50 ~~whom he or she performs a service;~~

51       ~~2. Performs a service that is outside of the scope of the usual course of~~  
52 ~~business of the business for which the service is performed; and~~

53       ~~3. Satisfies at least one of the following conditions:~~

~~1 (a) Performs a service in the course of a trade, occupation, profession or  
2 business that is established independently from the person with whom he or she  
3 contracts to perform or performs a service and which is of the same nature as  
4 that involved in the contract of service of performance of a service;~~

~~5 (b) Meets the requirements set forth in paragraph (a) of subsection 1 of NRS  
6 608.0155; or~~

~~7 (c) Meets the requirements set forth in paragraph (b) of subsection 1 of NRS  
8 608.0155.~~ **(Deleted by amendment.)**

9 **Sec. 11.7.** NRS 616A.490 is hereby amended to read as follows:

10 616A.490 **1.** Every employer shall post a notice upon his or her premises in  
11 a conspicuous place identifying the employer's industrial insurer. The notice must  
12 ~~[include] :~~

13 **(a) Include** the insurer's name, business address and telephone number and the  
14 name, business address and telephone number of its nearest adjuster in this State.  
15 The employer shall at all times maintain the notice provided for the information of  
16 his or her employees.

17 **(b) Prominently set forth any applicable definitions of "employee" and**  
18 **"independent contractor," as those terms are defined in chapters 616A to 616D,**  
19 **inclusive, of NRS.**

20 **Sec. 12.** NRS 616B.012 is hereby amended to read as follows:

21 616B.012 **1.** Except as otherwise provided in this section and NRS  
22 239.0115, 616B.015, 616B.021 and 616C.205, **and section 7 of this act,**  
23 information obtained from any insurer, employer or employee is confidential and  
24 may not be disclosed or be open to public inspection in any manner which would  
25 reveal the person's identity.

26 **2.** Any claimant or legal representative of the claimant is entitled to  
27 information from the records of the insurer, to the extent necessary for the proper  
28 presentation of a claim in any proceeding under chapters 616A to 616D, inclusive,  
29 or chapter 617 of NRS.

30 **3.** The Division and Administrator are entitled to information from the  
31 records of the insurer which is necessary for the performance of their duties. The  
32 Administrator may, by regulation, prescribe the manner in which otherwise  
33 confidential information may be made available to:

34 **(a)** Any agency of this or any other state charged with the administration or  
35 enforcement of laws relating to industrial insurance, unemployment compensation,  
36 public assistance or labor law and industrial relations;

37 **(b)** Any state or local agency for the enforcement of child support;

38 **(c)** The Internal Revenue Service of the Department of the Treasury;

39 **(d)** The Department of Taxation; and

40 **(e)** The State Contractors' Board in the performance of its duties to enforce the  
41 provisions of chapter 624 of NRS.

42 **↳** Information obtained in connection with the administration of a program of  
43 industrial insurance may be made available to persons or agencies for purposes  
44 appropriate to the operation of a program of industrial insurance.

45 **4.** Upon written request made by a public officer of a local government, an  
46 insurer shall furnish from its records the name, address and place of employment of  
47 any person listed in its records. The request must set forth the social security  
48 number of the person about whom the request is made and contain a statement  
49 signed by proper authority of the local government certifying that the request is  
50 made to allow the proper authority to enforce a law to recover a debt or obligation  
51 owed to the local government. Except as otherwise provided in NRS 239.0115, the  
52 information obtained by the local government is confidential and may not be used  
53 or disclosed for any purpose other than the collection of a debt or obligation owed

1 to the local government. The insurer may charge a reasonable fee for the cost of  
2 providing the requested information.

3 5. To further a current criminal investigation, the chief executive officer of  
4 any law enforcement agency of this State may submit to the Administrator a written  
5 request for the name, address and place of employment of any person listed in the  
6 records of an insurer. The request must set forth the social security number of the  
7 person about whom the request is made and contain a statement signed by the chief  
8 executive officer certifying that the request is made to further a criminal  
9 investigation currently being conducted by the agency. Upon receipt of a request,  
10 the Administrator shall instruct the insurer to furnish the information requested.  
11 Upon receipt of such an instruction, the insurer shall furnish the information  
12 requested. The insurer may charge a reasonable fee to cover any related  
13 administrative expenses.

14 6. Upon request by the Department of Taxation, the Administrator shall  
15 provide:

16 (a) Lists containing the names and addresses of employers; and

17 (b) Other information concerning employers collected and maintained by the  
18 Administrator or the Division to carry out the purposes of chapters 616A to 616D,  
19 inclusive, or chapter 617 of NRS,

20 ➤ to the Department for its use in verifying returns for the taxes imposed pursuant  
21 to chapters 363A, 363B and 363C of NRS. The Administrator may charge a  
22 reasonable fee to cover any related administrative expenses.

23 7. Any person who, in violation of this section, discloses information  
24 obtained from files of claimants or policyholders or obtains a list of claimants or  
25 policyholders under chapters 616A to 616D, inclusive, or chapter 617 of NRS and  
26 uses or permits the use of the list for any political purposes, is guilty of a gross  
27 misdemeanor.

28 8. All letters, reports or communications of any kind, oral or written, from the  
29 insurer, or any of its agents, representatives or employees are privileged and must  
30 not be the subject matter or basis for any lawsuit if the letter, report or  
31 communication is written, sent, delivered or prepared pursuant to the requirements  
32 of chapters 616A to 616D, inclusive, or chapter 617 of NRS.

33 9. The provisions of this section do not prohibit the Administrator or the  
34 Division from disclosing any nonproprietary information relating to an uninsured  
35 employer or proof of industrial insurance.

36 **Sec. 13.** NRS 616B.015 is hereby amended to read as follows:

37 616B.015 1. Except as otherwise provided in subsection 2 and NRS  
38 239.0115, *and section 7 of this act*, the records and files of the Division concerning  
39 self-insured employers and associations of self-insured public or private employers  
40 are confidential and may be revealed in whole or in part only in the course of the  
41 administration of the provisions of chapters 616A to 616D, inclusive, or chapter  
42 617 of NRS relating to those employers or upon the lawful order of a court of  
43 competent jurisdiction.

44 2. The records and files specified in subsection 1 are not confidential in the  
45 following cases:

46 (a) Testimony by an officer or agent of the Division and the production of  
47 records and files on behalf of the Division in any action or proceeding conducted  
48 pursuant to the provisions of chapters 616A to 616D, inclusive, or chapter 617 of  
49 NRS if that testimony or the records and files, or the facts shown thereby, are  
50 involved in the action or proceeding.

51 (b) Delivery to a self-insured employer or an association of self-insured public  
52 or private employers of a copy of any document filed by the employer with the

1 Division pursuant to the provisions of chapters 616A to 616D, inclusive, or chapter  
2 617 of NRS.

3 (c) Publication of statistics if classified so as to prevent:

4 (1) Identification of a particular employer or document; or

5 (2) Disclosure of the financial or business condition of a particular  
6 employer or insurer.

7 (d) Disclosure in confidence, without further distribution or disclosure to any  
8 other person, to:

9 (1) The Governor or an agent of the Governor in the exercise of the  
10 Governor's general supervisory powers;

11 (2) Any person authorized to audit the accounts of the Division in  
12 pursuance of an audit;

13 (3) The Attorney General or other legal representative of the State in  
14 connection with an action or proceeding conducted pursuant to the provisions of  
15 chapters 616A to 616D, inclusive, or chapter 617 of NRS;

16 (4) Any agency of this or any other state charged with the administration or  
17 enforcement of the laws relating to workers' compensation or unemployment  
18 compensation; or

19 (5) Any federal, state or local law enforcement agency.

20 (e) Disclosure in confidence by a person who receives information pursuant to  
21 paragraph (d) to a person in furtherance of the administration or enforcement of the  
22 laws relating to workers' compensation or unemployment compensation.

23 3. As used in this section:

24 (a) "Division" means the Division of Insurance of the Department of Business  
25 and Industry.

26 (b) "Records and files" means:

27 (1) All credit reports, references, investigative records, financial  
28 information and data pertaining to the net worth of a self-insured employer or  
29 association of self-insured public or private employers; and

30 (2) All information and data required by the Division to be furnished to it  
31 pursuant to chapters 616A to 616D, inclusive, or chapter 617 of NRS or which may  
32 be otherwise obtained relative to the finances, earnings, revenue, trade secrets or  
33 the financial condition of any self-insured employer or association of self-insured  
34 public or private employers.

35 **Sec. 13.5.** ~~[Chapter 616D of NRS is hereby amended by adding thereto a new~~  
36 ~~section to read as follows:~~

37 ~~— 1. An employer who is found after a hearing conducted in accordance with~~  
38 ~~subsection 3 to have misclassified a person as an independent contractor is liable~~  
39 ~~to such person for:~~

40 ~~— (a) Treble damages, including, without limitation, lost wages or benefits;~~

41 ~~— (b) Reasonable attorney's fees; and~~

42 ~~— (c) Costs.~~

43 ~~— 2. A person may file a complaint alleging the misclassification of the person~~  
44 ~~as an independent contractor with the Administrator, the Fraud Control Unit for~~  
45 ~~Industrial Insurance or any other appropriate state agency. The Administrator,~~  
46 ~~the Fraud Control Unit for Industrial Insurance or any other state agency that~~  
47 ~~receives a complaint pursuant to this section shall make a determination on the~~  
48 ~~allegations of the complaint within 120 days after receipt of the complaint. If the~~  
49 ~~Administrator, the Fraud Control Unit for Industrial Insurance or any other state~~  
50 ~~agency that receives a complaint pursuant to this section finds that an employer~~  
51 ~~misclassified an employee as an independent contractor, the Administrator, the~~  
52 ~~Fraud Control Unit for Industrial Insurance or other state agency, as applicable,~~  
53 ~~may impose the penalties set forth in subsection 1.~~

~~3. A hearing conducted pursuant to this section must be held in accordance with chapter 233B of NRS.~~

~~4. Each party may petition for judicial review of the decision of the Administrator, the Fraud Control Unit for Industrial Insurance or any other state agency that holds a hearing on a complaint submitted pursuant to subsection 2 in the manner provided by chapter 233B of NRS.~~

~~5. As used in this section, "Fraud Control Unit for Industrial Insurance" means the Fraud Control Unit for Industrial Insurance established pursuant to NRS 228.420.] (Deleted by amendment.)~~

**Sec. 14.** ~~1. [As soon as practicable after passage and approval of this act, the Governor, the Majority Leader of the Senate and the Speaker of the Assembly shall solicit applications and make recommendations to the Legislative Commission for the appointment of members to the Task Force on Employee Misclassification who are described in subsection 3 of section 8 of this act.~~

~~2.] As soon as practicable after July 1, 2019, the [Legislative Commission] Governor shall [after considering each recommendation received pursuant to subsection 1,] appoint the members of the Task Force on Employee Misclassification described in [subsection] subsections 2 and 3 of section 8 of this act.~~

~~[3.] 2.~~ The terms of the members of the Task Force on Employee Misclassification appointed pursuant to subsection ~~[2.] 1~~ expire on June 30, 2021.

**Sec. 15.** The provisions of subsection 1 of NRS 218D.380 do not apply to any provision of this act which adds or revises a requirement to submit a report to the Legislature.

**Sec. 16.** 1. This section and sections 14 and 15 of this act become effective upon passage and approval.

2. Sections 1 to ~~[13.5.] 13,~~ inclusive, of this act become effective on July 1, 2019.