

SENATE BILL NO. 166—SENATORS SPEARMAN, CANNIZZARO,
OHRENSCHALL, PARKS; CANCELA, DENIS, DONDERO LOOP,
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; requiring civil penalties imposed by the Nevada Equal Rights Commission for certain unlawful employment practices to be deposited in the Nevada Equal Rights Commission Gift Fund and used for certain purposes; 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:

- 1 Existing law prohibits an employer, employment agency, labor organization or
- 2 joint labor-management committee from discriminating against any person with
- 3 respect to employment or membership, as applicable, on the basis of race, color,
- 4 religion, sex, sexual orientation, gender identity or expression, age, disability or
- 5 national origination. (NRS 613.330) Existing law also requires the Nevada Equal
- 6 Rights Commission to accept certain complaints alleging unlawful discriminatory



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practices and, if the Commission determines that an unlawful practice has occurred, order: (1) the person engaging in the practice to cease and desist; and (2) for a case involving an unlawful employment practice, the restoration of all benefits and rights to which the aggrieved person is entitled. (NRS 233.157, 233.160, 233.170)

Section 2 of this bill revises provisions governing the filing of complaints alleging a practice of unlawful discrimination in compensation to require that the complaint be filed within 300 days after any date on which: (1) a decision or practice resulting in discriminatory compensation is adopted; (2) a person becomes subject to such a decision or practice; or (3) a person is affected by an application of such a decision or practice. **Section 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. **Sections 3 and 4** of this bill revise 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) award costs and reasonable attorney's fees in cases involving an unlawful employment practice; (3) order payment of compensatory damages in cases involving an unlawful employment practice relating to discrimination on the basis of sex; and (4) 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, with limited exception, 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 1** requires that any civil penalty imposed by the Commission for certain willful unlawful employment practices be deposited in the Nevada Equal Rights Commission Gift Fund and used to prevent unlawful employment practices through enforcement, outreach and training.

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 days after the date of issuance of the letter described in **section 8**.

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. Except as otherwise provided in subsection 3, 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.

3. A civil penalty imposed by the Commission pursuant to subparagraph (5) of paragraph (b) of subsection 3 of NRS 233.170 must be deposited in the Nevada Equal Rights Commission Gift Fund created by NRS 233.155. The money described in this subsection must be accounted for separately in the Fund and used only for the purpose of preventing unlawful employment practices in this State through enforcement of this chapter, outreach and training.

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

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

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

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

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

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

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

(a) A copy of the complaint;

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



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

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

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

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

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

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

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

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

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

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

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

(b) Order the person to:



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

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

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

(4) *In cases involving an unlawful employment practice relating to discrimination on the basis of sex, pay an amount determined to be appropriate by the Commission as compensatory damages which, upon submission of proof by the aggrieved party, may include, without limitation, compensation that would have been earned in the absence of discrimination for overtime, shift differential, commissions, tips, cost of living adjustments, merit increases or promotions, or for other fringe benefits, including, without limitation, vacation pay, pension or retirement benefits, stock options or bonus plans, contributions to a savings plan, profit sharing or benefits for medical or life insurance.*

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

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

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

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



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

5. *Before imposing a civil penalty pursuant to subparagraph (5) of paragraph (b) of subsection 3, the Commission must allow the person found to have willfully engaged in an unlawful employment practice 30 days to take corrective action from the date of service of the order pursuant to paragraph (a) of subsection 3. If the person takes such corrective action, the Commission shall 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]~~ :

(a) *Shall* award the aggrieved party actual damages for any economic loss ; and ~~[no more]~~.

~~—5.—~~ (b) *May, if the court determines that the employer's act or failure to act was the result of malice or reckless indifference, impose an amount determined by the court as punitive damages.*

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

Sec. 4. NRS 233.210 is hereby amended to read as follows:
233.210 Any person who willfully resists, prevents, impedes or interferes with the Commission, its members, the Administrator or agents in the performance of duties pursuant to this chapter shall be fined not more than \$500. *In such an action, the Commission may recover any reasonable costs or expenses incurred by the*



Commission, its members, the Administrator or agents in the performance of duties pursuant to this chapter.

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;

(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



1 as an applicant for employment, because of his or her race, color,
2 religion, sex, sexual orientation, gender identity or expression, age,
3 disability or national origin;

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

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

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

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

26 6. It is an unlawful employment practice for an employer,
27 directly or indirectly, to refuse to permit an employee with a
28 disability to keep the employee's service animal with him or her at
29 all times in his or her place of employment, except that an employer
30 may refuse to permit an employee to keep a service animal that is a
31 miniature horse with him or her if the employer determines that it is
32 not reasonable to comply, using the assessment factors set forth in
33 28 C.F.R. § 36.302.

34 7. The provisions of paragraph (c) of subsection 1, paragraph
35 (c) of subsection 2 and paragraph (c) of subsection 3, as applicable,
36 do not apply to any person who has access to information about the
37 wages of other persons as part of his or her essential job functions
38 and discloses that information to a person who does not have access
39 to that information unless the disclosure is ordered by the Labor
40 Commissioner or a court of competent jurisdiction.

41 8. It is an unlawful employment practice for an appointing
42 authority governed by the provisions of chapter 284 of NRS, the
43 Administrator of the Division of Human Resource Management of
44 the Department of Administration or the governing body of a
45 county, incorporated city or unincorporated town to consider the



1 criminal history of an applicant for employment without following
2 the procedure required in NRS 245.046, 268.402, 269.0802,
3 284.281 or 284.283, as applicable.

4 9. As used in this section, "service animal" has the meaning
5 ascribed to it in NRS 426.097.

6 **Sec. 6.** NRS 613.350 is hereby amended to read as follows:

7 613.350 1. It is not an unlawful employment practice for an
8 employer to hire and employ employees, for an employment agency
9 to classify or refer for employment any person, for a labor
10 organization to classify its membership or to classify or refer for
11 employment any person, or for an employer, labor organization or
12 joint labor-management committee controlling apprenticeship or
13 other training or retraining programs to admit or employ any person
14 in any such program, on the basis of his or her religion, sex, sexual
15 orientation, gender identity or expression, age, disability or national
16 origin in those instances where religion, sex, sexual orientation,
17 gender identity or expression, age, physical, mental or visual
18 condition or national origin is a bona fide occupational qualification
19 reasonably necessary to the normal operation of that particular
20 business or enterprise.

21 2. It is not an unlawful employment practice for an employer to
22 fail or refuse to hire and employ employees, for an employment
23 agency to fail to classify or refer any person for employment, for a
24 labor organization to fail to classify its membership or to fail to
25 classify or refer any person for employment, or for an employer,
26 labor organization or joint labor-management committee controlling
27 apprenticeship or other training or retraining programs to fail to
28 admit or employ any person in any such program, on the basis of a
29 disability in those instances where physical, mental or visual
30 condition is a bona fide and relevant occupational qualification
31 necessary to the normal operation of that particular business or
32 enterprise, if it is shown that the particular disability would prevent
33 proper performance of the work for which the person with a
34 disability would otherwise have been hired, classified, referred or
35 prepared under a training or retraining program.

36 3. It is not an unlawful employment practice for an employer to
37 fail or refuse to hire or to discharge a person, for an employment
38 agency to fail to classify or refer any person for employment, for a
39 labor organization to fail to classify its membership or to fail to
40 classify or refer any person for employment, or for an employer,
41 labor organization or joint labor-management committee controlling
42 apprenticeship or other training or retraining programs to fail to
43 admit or employ any person in any such program, on the basis of his
44 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.

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

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

2. Any person injured by an unlawful employment practice within the scope of *paragraph (c) of subsection 1, paragraph (c) of subsection 2, paragraph (c) of subsection 3, subsection 7 or subsection 8* of NRS 613.330 may file a complaint to that effect with the Nevada Equal Rights Commission regardless of whether



1 the complaint is based on discrimination because of race, color, sex,
2 sexual orientation, gender identity or expression, age, disability,
3 religion or national origin.

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

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

10 613.420 If the Nevada Equal Rights Commission does not
11 conclude that an unfair employment practice within the scope of
12 NRS 613.310 to 613.4383, inclusive, has occurred ~~[-, any]~~ :

13 *1. Any person alleging such a practice may apply to the district*
14 *court for an order granting or restoring to that person the rights to*
15 *which the person is entitled under those sections ~~[-]~~ and, if the court*
16 *determines that the employer's act or failure to act was the result*
17 *of malice or reckless indifference, imposing an amount*
18 *determined to be appropriate by the court as punitive damages;*
19 *and*

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

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

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

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

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

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

