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SECOND REPRINT

S.B. 166

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:

- 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
7 practices and, if the Commission determines that an unlawful practice has occurred,
8 order: (1) the person engaging in the practice to cease and desist; and (2) for a case
9 involving an unlawful employment practice, the restoration of all benefits and
10 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 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 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 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 7** of this bill expressly includes references to the provisions providing such protections for the purpose of specifying who may file a complaint.



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.

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 during which 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:



1 (a) *Except as otherwise provided in paragraph (b), the date*
2 *prescribed by 42 U.S.C. § 2000e-5(e)(3)(A), as it existed on*
3 *January 1, 2019.*

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

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

10 233.170 1. When a complaint is filed whose allegations if
11 true would support a finding of unlawful practice, the Commission
12 shall determine whether to hold an informal meeting to attempt a
13 settlement of the dispute in accordance with the regulations adopted
14 pursuant to NRS 233.157. If the Commission determines to hold an
15 informal meeting, the Administrator may, to prepare for the
16 meeting, request from each party any information which is
17 reasonably relevant to the complaint. No further action may be taken
18 if the parties agree to a settlement.

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

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

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

36 (b) Order the person to:

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

40 (2) In cases involving an unlawful employment practice,
41 restore all benefits and rights to which the aggrieved person is
42 entitled, including, but not limited to, rehiring, back pay for a period
43 ~~[not to exceed 2 years after the date of the most recent unlawful~~
44 ~~practice.]~~ *described in subsection 4,* annual leave time, sick leave
45 time or pay, other fringe benefits and seniority, with interest thereon



1 from the date of the Commission's decision at a rate equal to the
2 prime rate at the largest bank in Nevada, as ascertained by the
3 Commissioner of Financial Institutions, on January 1 or July 1, as
4 the case may be, immediately preceding the date of the
5 Commission's decision, plus 2 percent. The rate of interest must be
6 adjusted accordingly on each January 1 and July 1 thereafter until
7 the judgment is satisfied.

8 *(3) In cases involving an unlawful employment practice*
9 *relating to discrimination on the basis of sex, pay an amount*
10 *determined to be appropriate by the Commission for lost wages*
11 *that would have been earned in the absence of discrimination or*
12 *other economic damages resulting from the discrimination,*
13 *including, without limitation, lost payment for overtime, shift*
14 *differential, cost of living adjustments, merit increases or*
15 *promotions, or other fringe benefits.*

16 *(4) In cases involving an unlawful employment practice*
17 *committed by an employer with 50 or more employees that the*
18 *Commission determines was willful, pay a civil penalty of:*

19 *(I) For the first unlawful employment practice that the*
20 *person has engaged in during the immediately preceding 5 years*
21 *which the Commission determines was willful, not more than*
22 *\$5,000.*

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

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

31 *4. For the purposes of subparagraph (2) of paragraph (b) of*
32 *subsection 3, the period for back pay must not exceed a period*
33 *beginning 2 years before the date on which the complaint was*
34 *filed and ending on the date the Commission issues an order*
35 *pursuant to paragraph (b) of subsection 3.*

36 *5. Before imposing a civil penalty pursuant to subparagraph*
37 *(4) of paragraph (b) of subsection 3, the Commission must allow*
38 *the person found to have willfully engaged in an unlawful*
39 *employment practice 30 days to take corrective action from the*
40 *date of service of the order pursuant to paragraph (a) of*
41 *subsection 3. If the person takes such corrective action, the*
42 *Commission shall not impose the civil penalty.*

43 *6. The order of the Commission is a final decision in a*
44 *contested case for the purpose of judicial review. If the person fails*
45 *to comply with the Commission's order, the Commission shall*



1 apply to the district court for an order compelling such compliance,
2 but failure or delay on the part of the Commission does not
3 prejudice the right of an aggrieved party to judicial review. The
4 court shall issue the order unless it finds that the Commission's
5 findings or order are not supported by substantial evidence or are
6 otherwise arbitrary or capricious. If the court upholds the
7 Commission's order and finds that the person has violated the order
8 by failing to cease and desist from the unlawful practice or to make
9 the payment ordered, the court shall award the aggrieved party
10 actual damages for any economic loss and no more.

11 ~~§ 7.~~ 7. After the Commission has held a public hearing and
12 rendered a decision, the complainant is barred from proceeding on
13 the same facts and legal theory before any other administrative body
14 or officer.

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

19 **Sec. 4.** (Deleted by amendment.)

20 **Sec. 5.** (Deleted by amendment.)

21 **Sec. 6.** (Deleted by amendment.)

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

23 613.405 1. Except as otherwise provided in subsection 2, any
24 person injured by an unlawful employment practice within the scope
25 of NRS 613.310 to 613.4383, inclusive, may file a complaint to that
26 effect with the Nevada Equal Rights Commission if the complaint is
27 based on discrimination because of race, color, sex, sexual
28 orientation, gender identity or expression, age, disability, religion or
29 national origin.

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

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



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

613.420 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, has occurred ~~[-any]~~:

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

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

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

613.430 No action authorized by NRS 613.420 may be brought more than 180 days after the date of the act complained of ~~[-]~~ *or more than 90 days after the date of the issuance of the letter described in subsection 2 of NRS 613.420, whichever is later.*

When a complaint is filed with the Nevada Equal Rights Commission the limitation provided by this section is tolled as to any action authorized by NRS 613.420 during the pendency of the complaint before the Commission.

Sec. 10. This act becomes effective:

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

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

