

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—Creates the Task Force on Employee
Misclassification. (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; 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 4** 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.



* S B 4 9 3 *

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.*

Sec. 3. *"Employee" means a person who performs services for wages for an employer. The term does not include an independent contractor.*

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.*

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.

Sec. 6. *"Independent contractor" has the meaning ascribed to it in NRS 616A.255.*

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:

(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 who represents organized labor in this State.

(e) One person who represents the general public in this State.

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, 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.



1 *10. Members of the Task Force serve without compensation.*

2 *11. The Legislative Counsel Bureau shall provide the*
3 *personnel, facilities, equipment and supplies required by the Task*
4 *Force to carry out its duties.*

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

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

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

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

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

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

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

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

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

37 612.265 1. Except as otherwise provided in this section and
38 NRS 239.0115 and 612.642, *and section 7 of this act*, information
39 obtained from any employing unit or person pursuant to the
40 administration of this chapter and any determination as to the
41 benefit rights of any person is confidential and may not be disclosed
42 or be open to public inspection in any manner which would reveal
43 the person's or employing unit's identity.

44 2. Any claimant or a legal representative of a claimant is
45 entitled to information from the records of the Division, to the



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

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

10 (a) The Board of Regents of the University of Nevada for the
11 purpose of complying with the provisions of subsection 4 of NRS
12 396.531; and

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

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

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

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

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

28 (d) The Department of Taxation;

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

31 (f) The Secretary of State to operate the state business portal
32 established pursuant to chapter 75A of NRS for the purposes of
33 verifying that data submitted via the portal has satisfied the
34 necessary requirements established by the Division, and as
35 necessary to maintain the technical integrity and functionality of the
36 state business portal established pursuant to chapter 75A of NRS.

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

41 5. Upon written request made by the State Controller or a
42 public officer of a local government, the Administrator shall furnish
43 from the records of the Division the name, address and place of
44 employment of any person listed in the records of employment of
45 the Division. The request may be made electronically and must set



1 forth the social security number of the person about whom the
2 request is made and contain a statement signed by the proper
3 authority of the State Controller or local government certifying that
4 the request is made to allow the proper authority to enforce a law to
5 recover a debt or obligation assigned to the State Controller for
6 collection or owed to the local government, as applicable. Except as
7 otherwise provided in NRS 239.0115, the information obtained by
8 the State Controller or local government is confidential and may not
9 be used or disclosed for any purpose other than the collection of a
10 debt or obligation assigned to the State Controller for collection or
11 owed to that local government. The Administrator may charge a
12 reasonable fee for the cost of providing the requested information.

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

30 7. Upon request therefor, the Administrator shall furnish to any
31 agency of the United States charged with the administration of
32 public works or assistance through public employment, and may
33 furnish to any state agency similarly charged, the name, address,
34 ordinary occupation and employment status of each recipient of
35 benefits and the recipient's rights to further benefits pursuant to this
36 chapter.

37 8. To further a current criminal investigation, the chief
38 executive officer of any law enforcement agency of this State may
39 submit a written request to the Administrator that the Administrator
40 furnish, from the records of the Division, the name, address and
41 place of employment of any person listed in the records of
42 employment of the Division. The request must set forth the social
43 security number of the person about whom the request is made and
44 contain a statement signed by the chief executive officer certifying
45 that the request is made to further a criminal investigation currently



1 being conducted by the agency. Upon receipt of such a request, the
2 Administrator shall furnish the information requested. The
3 Administrator may charge a fee to cover the actual costs of any
4 related administrative expenses.

5 9. In addition to the provisions of subsection 6, the
6 Administrator shall provide lists containing the names and addresses
7 of employers, and information regarding the wages paid by each
8 employer to the Department of Taxation, upon request, for use in
9 verifying returns for the taxes imposed pursuant to chapters 363A,
10 363B and 363C of NRS. The Administrator may charge a fee to
11 cover the actual costs of any related administrative expenses.

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

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

39 12. The Administrator may request the Comptroller of the
40 Currency of the United States to cause an examination of the
41 correctness of any return or report of any national banking
42 association rendered pursuant to the provisions of this chapter, and
43 may in connection with the request transmit any such report or
44 return to the Comptroller of the Currency of the United States as
45 provided in section 3305(c) of the Internal Revenue Code of 1954.



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

- (a) Uses or permits the use of the list for any political purpose;
- (b) Uses or permits the use of the list for any purpose other than one authorized by the Administrator or by law; or
- (c) Fails to protect and prevent the unauthorized use or dissemination of information derived from the list.

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

Sec. 12. NRS 616B.012 is hereby amended to read as follows:
616B.012 1. Except as otherwise provided in this section and NRS 239.0115, 616B.015, 616B.021 and 616C.205, *and section 7 of this act*, information obtained from any insurer, employer or employee is confidential and may not be disclosed or be open to public inspection in any manner which would reveal the person's identity.

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

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

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

- (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; and

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



1 ➤ Information obtained in connection with the administration of a
2 program of industrial insurance may be made available to persons or
3 agencies for purposes appropriate to the operation of a program of
4 industrial insurance.

5 4. Upon written request made by a public officer of a local
6 government, an insurer shall furnish from its records the name,
7 address and place of employment of any person listed in its records.
8 The request must set forth the social security number of the person
9 about whom the request is made and contain a statement signed by
10 proper authority of the local government certifying that the request
11 is made to allow the proper authority to enforce a law to recover a
12 debt or obligation owed to the local government. Except as
13 otherwise provided in NRS 239.0115, the information obtained by
14 the local government is confidential and may not be used or
15 disclosed for any purpose other than the collection of a debt or
16 obligation owed to the local government. The insurer may charge a
17 reasonable fee for the cost of providing the requested information.

18 5. To further a current criminal investigation, the chief
19 executive officer of any law enforcement agency of this State may
20 submit to the Administrator a written request for the name, address
21 and place of employment of any person listed in the records of an
22 insurer. The request must set forth the social security number of the
23 person about whom the request is made and contain a statement
24 signed by the chief executive officer certifying that the request is
25 made to further a criminal investigation currently being conducted
26 by the agency. Upon receipt of a request, the Administrator shall
27 instruct the insurer to furnish the information requested. Upon
28 receipt of such an instruction, the insurer shall furnish the
29 information requested. The insurer may charge a reasonable fee to
30 cover any related administrative expenses.

31 6. Upon request by the Department of Taxation, the
32 Administrator shall provide:

- 33 (a) Lists containing the names and addresses of employers; and
34 (b) Other information concerning employers collected and
35 maintained by the Administrator or the Division to carry out the
36 purposes of chapters 616A to 616D, inclusive, or chapter 617 of
37 NRS,

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

42 7. Any person who, in violation of this section, discloses
43 information obtained from files of claimants or policyholders or
44 obtains a list of claimants or policyholders under chapters 616A to
45 616D, inclusive, or chapter 617 of NRS and uses or permits the use



1 of the list for any political purposes, is guilty of a gross
2 misdemeanor.

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

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

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

14 616B.015 1. Except as otherwise provided in subsection 2
15 and NRS 239.0115, *and section 7 of this act*, the records and files
16 of the Division concerning self-insured employers and associations
17 of self-insured public or private employers are confidential and may
18 be revealed in whole or in part only in the course of the
19 administration of the provisions of chapters 616A to 616D,
20 inclusive, or chapter 617 of NRS relating to those employers or
21 upon the lawful order of a court of competent jurisdiction.

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

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

30 (b) Delivery to a self-insured employer or an association of self-
31 insured public or private employers of a copy of any document filed
32 by the employer with the Division pursuant to the provisions of
33 chapters 616A to 616D, inclusive, or chapter 617 of NRS.

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

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

36 (2) Disclosure of the financial or business condition of a
37 particular employer or insurer.

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

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

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

44 (3) The Attorney General or other legal representative of the
45 State in connection with an action or proceeding conducted pursuant



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

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

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

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

11 3. As used in this section:

12 (a) "Division" means the Division of Insurance of the
13 Department of Business and Industry.

14 (b) "Records and files" means:

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

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

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

32 2. As soon as practicable after July 1, 2019, the Legislative
33 Commission shall, after considering each recommendation received
34 pursuant to subsection 1, appoint the members of the Task Force on
35 Employee Misclassification described in subsection 3 of section 8 of
36 this act.

37 3. The terms of the members of the Task Force on Employee
38 Misclassification appointed pursuant to subsection 2 expire on
39 June 30, 2021.

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

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



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

