

Amendment No. 800

Senate Amendment to Senate Bill No. 386	(BDR 53-1010)
<b>Proposed by:</b> Senate Committee on Commerce and Labor	
<b>Amendment Box:</b> Replaces Amendment No. 779.	
<b>Amends:</b> Summary: No Title: Yes Preamble: No Joint Sponsorship: No Digest: Yes	

Adoption of this amendment will ADD an unfunded mandate not requested by the affected local government to S.B. 386 (§ 28.5).

ASSEMBLY ACTION			Initial and Date	SENATE ACTION			Initial and Date
Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/> _____		Adopted	<input type="checkbox"/>	Lost <input type="checkbox"/> _____
Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/> _____		Concurred In	<input type="checkbox"/>	Not <input type="checkbox"/> _____
Receded	<input type="checkbox"/>	Not	<input type="checkbox"/> _____		Receded	<input type="checkbox"/>	Not <input type="checkbox"/> _____

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) variations of **green bold underlining** is language proposed to be added in this amendment; (3) ~~red-strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill proposed to be retained in this amendment.

BJF



Date: 5/26/2021

S.B. No. 386—Revises provisions relating to certain businesses. (BDR 53-1010)





## SENATE BILL NO. 386—COMMITTEE ON COMMERCE AND LABOR

MARCH 26, 2021

Referred to Committee on Commerce and Labor

SUMMARY—Revises provisions relating to certain businesses. (BDR 53-1010)

FISCAL NOTE: Effect on Local Government: No.  
Effect on the State: No.

**CONTAINS UNFUNDED MANDATE (§ 28.5)**  
**(NOT REQUESTED BY AFFECTED LOCAL GOVERNMENT)**

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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 practices; requiring certain employers to provide certain employees with written notices containing certain information in the event of a layoff; requiring an employer to retain certain information relating to a laid-off employee; requiring an employer to offer certain job positions to a laid-off employee under certain circumstances; prohibiting an employer from taking certain adverse actions against certain persons; authorizing civil actions and actions by the Labor Commissioner to enforce certain provisions; providing for the severability of certain provisions by a court under certain circumstances; revising certain requirements for regulations relating to public accommodation facilities and SARS-CoV-2, which must be adopted by the Director of the Department of Health and Human Services; and providing other matters properly relating thereto.

**Legislative Counsel's Digest:**

On January 31, 2020, the United States Secretary of Health and Human Services declared a public health emergency based on the threat caused by the novel coronavirus. Subsequently, the President of the United States and the World Health Organization issued a proclamation and announcement, respectively, regarding the COVID-19 threat. On March 12, 2020, the Governor of Nevada issued the Declaration of Emergency for COVID-19. Since the date of the Declaration of Emergency by the Governor, the Governor has issued numerous COVID-19 declaration of emergency directives, setting forth closures, safety precautions and capacity limitations for public accommodations, other businesses and governmental facilities. As a result of the pandemic, casino, hospitality, stadium and travel-related employers have discharged, laid off and furloughed workers.

Under existing law, and in the absence of collective bargaining agreements providing applicable protections, workers who were discharged, laid off or furloughed due to the pandemic are not required to be recalled to their previous positions of employment. This bill requires certain employers that discharged, laid off or furloughed employees to offer job positions to those employees under certain conditions.

Section 3 of this bill sets forth the Legislature's intent that certain employees have an opportunity to return to their jobs when circumstances permit.

Section 4 of this bill provides that the provisions of this bill constitute minimum labor standards and do not : (1) preempt or prevent standards which provide employees with greater protections or benefits ~~it~~ ; or (2) supersede an employee's right to recall pursuant to a collective bargaining agreement.

Sections 5-19 of this bill define certain terms applicable to the provisions of this bill.

Section 20 of this bill requires an employer, in the event of a layoff, to provide an employee who is to be laid off with a written notice containing certain information regarding the layoff and the employee's right to reemployment.

Section 21 of this bill requires an employer to retain certain information for 2 years if an employee is laid off.

Section 22 of this bill: (1) requires an employer to offer a laid-off employee certain job positions; (2) sets forth an order of preference for job offers if multiple eligible employees were laid off; (3) requires the employer to afford a laid-off employee not less than ~~10 days~~ 24 hours within which to accept or decline an offer; ~~and~~ (4) requires an employer to provide a laid-off employee with notice of the reasons for declining to recall the laid-off employee under certain circumstances ~~it~~ ; and (5) sets forth certain circumstances under which an employer is not required to extend additional offers of employment to a laid-off employee.

Section 23 of this bill prohibits an employer from taking certain adverse actions against certain persons for taking certain actions in relation to the provisions of this bill.

Section 24 of this bill: (1) authorizes the enforcement of the provisions of this bill by an aggrieved employee through the Labor Commissioner or in a civil action ; ~~brought by certain persons;~~ (2) establishes certain requirements which must be met before an aggrieved employee may file a complaint with the Labor Commissioner or file a civil action; (3) sets forth certain standards for establishing and rebutting certain presumptions concerning violations of the provisions of this bill in such an action; and ~~(3)~~ (4) authorizes the ~~imposition~~ granting of [an injunction against violations and the issuance of orders of other appropriate affirmative action and] certain awards to a prevailing plaintiff ~~it~~ and the imposition of certain penalties for violations of the provisions of this bill.

Section 25 of this bill: (1) imposes the requirements and duties of the provisions of this bill upon certain employers that conduct certain transactions, reorganizations or relocations of operations; and (2) extends the rights afforded by this bill to laid-off employees of such employers.

Section 26 of this bill makes the provisions of this bill applicable to all employees ~~it~~ other than laid-off employees who are parties to a valid severance agreement, regardless of whether the employees are represented for purposes of collective bargaining or are covered by a collective bargaining agreement.

Section 27 of this bill prohibits the provisions of this bill from being construed to invalidate or limit certain other rights, remedies or procedures available to an employee.

Section 28 of this bill provides for the severability of provisions of this bill by a court under certain circumstances.

Existing law requires the Director of the Department of Health and Human Services to adopt regulations requiring a public accommodation facility to establish standards for cleaning that are designed to reduce the transmission of SARS-CoV-2. (NRS 447.335) Section 28.1 of this bill revises those standards.

Existing law requires the Director to adopt regulations requiring each public accommodation facility to establish protocols to: (1) limit the transmission of SARS-CoV-2; and (2) train staff concerning the prevention and mitigation of SARS-CoV-2 transmission. (NRS 447.340) Section 28.2 of this bill eliminates the requirement to adopt certain protocols relating to social distancing.

Existing law requires the Director to adopt regulations requiring each public accommodation facility to establish, implement and maintain a written SARS-CoV-2 response plan that provides testing and time off for employees who have been exposed to SARS-CoV-2, are experiencing the symptoms of COVID-19 or have been diagnosed with COVID-19. (NRS 447.345) Section 28.3 of this bill: (1) eliminates from such response plans certain requirements relating to testing and screening for exposure to SARS-CoV-2; (2) revises provisions governing the circumstances under which an employee who is

required to take time off due to COVID-19 must be paid for that time off; and (3) eliminates provisions which authorize an employer who operates a public accommodation facility to submit a request to the Director to increase or decrease the amount of days off required by these provisions.

Existing law authorizes the Secretary of State to suspend the business license of a person until the person complies, in good faith, with controlling health standards. Under existing law, these provisions expire by limitation on the later of July 1, 2023, or the date on which the Governor terminates the emergency described in the Declaration of Emergency for COVID-19 issued on March 12, 2020. (NRS 76.172) Section 28.4 of this bill eliminates the date of expiration so that the provisions do not expire.

Section 28.5 of this bill: (1) authorizes the Director to amend regulations, if necessary and within 5 business days after the effective date of this bill, to conform to the provisions of sections 28.1, 28.2 and 28.3 of this bill; (2) requires a district board of health of a health district to adopt regulations that are substantively identical to the regulations adopted by the Director within 10 days after the Director adopts such regulations; and (3) provides that any provisions of regulations adopted by the Director or a district board of health of a health district that are in conflict with the provisions of sections 28.1, 28.2 and 28.3 of this bill are unenforceable as of the effective date of this act.

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

**Section 1.** Chapter 613 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 28, inclusive, of this act.

**Sec. 2.** *Sections 2 to 28, inclusive, of this act may be cited as the Nevada Hospitality and Travel Workers Right to Return Act.*

**Sec. 3.** *The Legislature hereby finds that:*

*1. COVID-19, also known as the "Coronavirus Disease," is a respiratory disease which has spread across the globe, with many thousands of cases in Nevada.*

*2. On January 31, 2020, the United States Secretary of Health and Human Services declared a public health emergency based on the threat caused by the novel coronavirus, and, thereafter, the President of the United States issued the Proclamation Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak, beginning March 1, 2020.*

*3. The World Health Organization announced on March 11, 2020, that it had characterized COVID-19 as a pandemic.*

*4. On March 12, 2020, the Governor of Nevada issued the Declaration of Emergency for COVID-19, declaring the existence of an emergency in the State.*

*5. On March 13, 2020, the President declared a nationwide emergency pursuant to section 501 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §§ 5121 et seq.*

*6. Since the Governor's Declaration of Emergency for COVID-19 on March 12, 2020, the Governor has issued numerous COVID-19 declaration of emergency directives, setting forth closures, safety precautions and capacity limitations for public accommodations, other businesses and governmental facilities and removing such restrictions as appropriate.*

*7. Jobs in the leisure and hospitality sectors are central to this State's economy and to the well-being of this State as a whole. According to the Budget Division of the Office of Finance, leisure and hospitality jobs constituted a significant portion of total employment in this State during 2019.*

8. Since the declaration of a national public health emergency on January 31, 2020, the COVID-19 pandemic has caused casino, hospitality, stadium and travel-related employers to discharge, lay off and furlough workers on a massive scale. As of December 2020, according to the Bureau of Labor Statistics of the United States Department of Labor, Nevada experienced a significant annual decrease in leisure and hospitality employment, the largest decline of any sector in Nevada.

9. Many thousands of casino, hospitality, stadium and travel-related workers have been separated from their jobs already during the pandemic ~~and many thousands more are expected to face separation in the coming months.~~

~~10. Federal, state and local programs and efforts by many of this State's nonprofit organizations have provided a modicum of support to casino, hospitality, stadium and travel-related workers in the short term. However, what these workers need most is the promise of a return to their previous jobs as the pandemic recedes and business returns.~~

~~11.~~ 10. It is in the public interest and beneficial to the public welfare to ensure that the State's casino, hospitality, stadium and travel-related employers honor their former employees' right to return to their former positions because doing so will speed the transition back to a functioning labor market and will lessen the damage to the State's economy. Recalling workers instead of searching for new employees could minimize the time necessary to match employees with jobs and reduce the unemployment rate more quickly.

~~12.~~ 11. It is in the public interest and beneficial to the public welfare to provide laid-off employees in the casino, hospitality, stadium and travel-related sectors with the economic security of knowing that they will have an opportunity to return to their jobs when business returns. In a typical recession, workers who are permanently laid off, without recall, often cycle through short-term jobs before finding a stable job, and many drop out of the labor market altogether. In addition, workers who believe that they are likely to be called back to a steady job are more likely to continue spending money. Ensuring a path to rehiring can relieve workers' anxiety, which can bolster morale and increase consumer spending, thereby supporting economic recovery.

Sec. 4. 1. The purpose of sections 2 to 28, inclusive, of this act is to ensure minimum labor standards.

2. The provisions of sections 2 to 28, inclusive, of this act do not ~~preempt~~ (a) Preempt or prevent the establishment of employment standards which are more protective of, or more beneficial for, employees, including, without limitation, higher wages or the expansion of coverage by ~~ordinance, resolution, contract or~~ any other action of this State ~~for any political subdivision within this State~~; or

(b) Supersede an employee's right to recall contained in a collective bargaining agreement, which right shall govern in the event of a conflict with an employee's rights set forth in sections 2 to 28, inclusive, of this act.

Sec. 5. As used in sections 2 to 28, inclusive, of this act, unless the context otherwise requires, the words and terms defined in sections 6 to 19, inclusive, of this act have the meanings ascribed to them in those sections.

Sec. 6. "Airport" has the meaning ascribed to it in NRS 496.020.

Sec. 7. 1. "Airport hospitality operation" means a business that provides food and beverage, retail or other consumer goods or services to the public at an airport.

2. The term does not include an air carrier which has been issued an air carrier operating certificate by the Federal Aviation Administration.

1        **Sec. 8. 1. “Airport service provider” means a business entity that**  
2 **performs, under contract with a passenger air carrier:**

3        (a) **Functions for the catering of food and beverage; or**  
4        (b) **Functions on the property of the airport that are directly related to the air**  
5 **transportation of persons, property or mail, including, without limitation:**

- 6            (1) **The loading and unloading of property on aircraft;**  
7            (2) **Assistance to passengers pursuant to 14 C.F.R. Part 382;**  
8            (3) **Security;**  
9            (4) **Airport ticketing and check-in;**  
10           (5) **Ground-handling of aircraft; and**  
11           (6) **Aircraft cleaning, sanitization and waste removal.**

12        2. **The term does not include an air carrier which has been issued an air**  
13 **carrier operating certificate by the Federal Aviation Administration.**

14        **Sec. 9. “Business entity” means a natural person, corporation, partnership,**  
15 **limited partnership, limited-liability partnership, limited-liability company,**  
16 **business trust, estate, trust, association, joint venture, agency, instrumentality or**  
17 **any other legal or commercial entity, whether domestic or foreign.**

18        **Sec. 10. 1. ~~“Casino”~~ Except as otherwise provided in subsection 3,**  
19 **“casino” has the meaning ascribed to the term “licensed gaming establishment”**  
20 **in NRS 463.0169.**

21        2. **The term includes any contracted, leased or sublet premises that are**  
22 **connected to or operated in conjunction with the purpose of the casino,**  
23 **including, without limitation, facilities for the preparation of food, concessions,**  
24 **retail stores, restaurants, bars and structured parking facilities.**

25        **3. The term does not include:**

26            (a) **A restricted operation; or**  
27            (b) **A licensed gaming establishment, as defined in NRS 463.0169, which**  
28 **operates solely pursuant to a restricted license.**

29        **Sec. 11. “Covered enterprise” means an airport hospitality operation, an**  
30 **airport service provider, a casino, an event center or a hotel that is located in a**  
31 **county whose population is 100,000 or more.**

32        **Sec. 12. ~~“Employee”~~**  
33 **1. Except as otherwise provided in subsection 2, “employee” has the**  
34 **meaning ascribed to it in NRS 608.010.**

35        **2. The term does not include:**

36            (a) **Any employee who is:**  
37                (1) **Employed in a managerial or executive capacity; and**  
38                (2) **Exempt from the Fair Labor Standards Act of 1938, 29 U.S.C. §§ 201**  
39 **et seq., pursuant to 29 U.S.C. § 213(a)(1); or**  
40            (b) **Any person who is engaged as a theatrical or stage performer, including,**  
41 **without limitation, at an exhibition.**

42        **Sec. 13. “Employer” means any business entity ~~[, including an officer or~~**  
43 **~~executive of a corporation, who]~~ which directly or indirectly through an agent or**  
44 **any other business entity, including through the services of a temporary**  
45 **employment service, staffing agency or similar entity, owns or operates a covered**  
46 **enterprise within this State and employs or exercises control over the wages,**  
47 **hours or working conditions of an employee.**

48        **Sec. 14. 1. “Event center” means a publicly or privately owned structure**  
49 **of more than 50,000 square feet or containing more than 5,000 seats that is used**  
50 **for the purposes of public performances, sporting events, business meetings or**  
51 **similar events and includes, without limitation, a concert hall, stadium, sports**  
52 **arena, race track, coliseum or convention center.**

2. The term includes any contracted, leased or sublet premises that are connected to or operated in conjunction with the purpose of the event center, including, without limitation, facilities for the preparation of food, concessions, retail stores, restaurants, bars and structured parking facilities.

Sec. 15. 1. "Hotel" means ~~the~~ :

(a) A resort hotel ~~and any~~ ; or

(b) Any other residential building that:

~~the~~ (1) Is designated or used for lodging and other related services for the public, including, without limitation, the preparation and service of food and beverages, trade shows and conventions; and

~~the~~ (2) Contains not less than 200 guest rooms or suites of rooms. For the purposes of this paragraph, adjoining rooms do not constitute a suite of rooms.

2. The term also includes any contracted, leased or sublet premises that:

(a) Is connected to or operated in conjunction with the purpose of the resort hotel or residential building; or

(b) Provides services at the resort hotel or residential building.

Sec. 16. "Laid-off employee" means an employee:

1. Who was employed by an employer for not less than 6 months during the 12 months immediately preceding March 12, 2020; and

2. Whose most recent separation from active service for that employer:

(a) Occurred after March 12, 2020; and

(b) Was due to a governmental order, lack of business, reduction in force or another economic, nondisciplinary reason.

Sec. 17. "Length of service" means the total of all periods of time during which an employee has been in active service, including periods of time during which the employee was on leave or on vacation.

Sec. 18. "Resort hotel" ~~has the meaning ascribed to it~~ means:

1. A resort hotel, as defined in NRS 463.01865 ~~the~~;

2. An establishment described in section 19 of chapter 452, Statutes of Nevada 1997; or

3. A resort hotel described in section 20 of chapter 452, Statutes of Nevada 1997.

Sec. 18.5. "Restricted license" and "restricted operation" have the meaning ascribed to those terms in NRS 463.0189.

Sec. 19. "Structured parking facility" means a parking deck, parking garage, parking structure or paved or unpaved parking lot.

Sec. 20. 1. In the event of a layoff, an employer shall provide an employee who is to be laid off with written notice of the layoff, either in person or mailed to the last known address of the employee and, if the employer possesses such contact information, by telephone, text message ~~and~~ or electronic mail.

2. The employer shall provide the notice required by this section at the time of the layoff or, if the layoff took place before the effective date of this act, not later than 20 days after the effective date of this act.

3. The employer shall provide the notice required by this section to each affected employee in ~~the~~ Spanish, English and any other language that is understood spoken by ~~that employee~~ not less than 10 percent of the employer's workforce.

4. The notice required by this section must include:

(a) A notice of the layoff and the effective date of the layoff.

(b) A summary of the right to reemployment pursuant to sections 2 to 28, inclusive, of this act or clear instructions on the means by which the employee may access the information regarding that right.



(c) Contact information for the person who the employer has designated to receive, on behalf of the employer, an aggrieved employee's written notice of an alleged violation pursuant to paragraph (a) of subsection 2 of section 24 of this act.

**Sec. 21. 1.** An employer shall retain the following records for not less than 2 years after an employee is laid off:

(a) The full legal name of the employee;

(b) The job classification of the employee at the time of the separation from employment;

(c) The date of hire of the employee;

(d) The last known address of the employee;

(e) The last known electronic mail address of the employee;

(f) The last known telephone number of the employee; ~~and~~

(g) A copy of the written notice regarding the layoff that was provided to the employee ~~it~~; and

(h) Records of each offer made by the employer to the employee pursuant to subsection 1 of section 22 of this act, including, without limitation, the date and time of each offer.

2. For the purposes of this section, 2 years is measured from the date of the written notice provided by the employer to the laid-off employee pursuant to section 20 of this act.

**Sec. 22. 1.** An employer shall offer a laid-off employee in writing, by ~~registered~~ mail to the last known address of the employee and, if the employer possesses such contact information, by telephone, text message ~~and~~ or electronic mail, each job position:

(a) Which becomes available after the effective date of this act; and

(b) For which the laid-off employee is qualified. A laid-off employee is qualified for a job position pursuant to this paragraph if the laid-off employee:

(1) Held the same ~~for a similar~~ position at the covered enterprise at the time of the laid-off employee's most recent separation from active service with the employer; or

(2) ~~Is or can be qualified for the position with the same training that would be provided to a new employee hired for that position.~~ Held a similar position within the same job classification at the covered enterprise at the time of the laid-off employee's most recent separation from active service with the employer.

2. An employer shall offer job positions to laid-off employees in an order of preference corresponding to subparagraphs (1) and (2) of paragraph (b) of subsection 1. If more than one laid-off employee is entitled to preference for a position, the employer must first offer the position to the laid-off employee with the greatest length of service for the covered enterprise.

3. An employer may extend simultaneous conditional offers of employment to laid-off employees with a final offer of employment conditioned on application of the order of preference set forth in subparagraphs (1) and (2) of paragraph (b) of subsection 1.

4. An employer who offers a laid-off employee a job position pursuant to this section shall afford the employee not less than ~~(10 days)~~ 24 hours after the ~~date~~ time of the employee's receipt of the offer to accept or decline the offer. A laid-off employee who is offered a job position pursuant to this section must be available to return to work within 5 calendar days after accepting the offer. If a laid-off employee who is offered a job position pursuant to this section:

(a) Does not accept or decline the offer within 24 hours; or

(b) Is not available to return to work within 5 calendar days after accepting the offer.

↳ the employer may recall the next available employee with the greatest length of service for the covered enterprise.

5. An employer who declines to recall a laid-off employee because the employee lacks qualifications and hires a person other than the laid-off employee shall, not later than 30 days after making that decision, provide the laid-off employee with a written notice of the decision identifying all the reasons for the decision.

6. An employer is not required to extend additional offers of employment to a laid-off employee pursuant to this section if any of the following applies:

(a) The employee states in writing that:

(1) The employee does not wish to be considered for future open positions with the employer; or

(2) The employee does not wish to be considered for future open positions with the employer which have regularly scheduled hours of work that are different from those which the employee worked immediately before his or her last separation from active service with the employer.

(b) The employer extends three bona fide offers of employment to the employee, with not less than 3 weeks between each offer, and the employee declines all three offers. For purposes of this paragraph, "bona fide offer" means an offer of employment in the same or a similar job classification and with a comparable number of regularly scheduled hours of work as the employee worked immediately before his or her last separation from active service with the employer.

(c) The employer attempts to make three offers of employment to the employee using the methods described in subsection 1 and:

(1) Each offer made by mail is returned as undeliverable;

(2) If the employer has the electronic mail address of the employee, any offer made by electronic mail is returned as undeliverable; and

(3) If the employer has contact information provided by the employee for telephone calls or text messages, the number provided for such calls or messages is no longer in service.

Sec. 23. An employer shall not terminate, reduce in compensation, refuse to employ or otherwise take any adverse action against:

1. Any person for:

(a) Seeking to enforce by any lawful means his or her rights pursuant to sections 2 to 28, inclusive, of this act;

(b) Participating in proceedings pursuant to sections 2 to 28, inclusive, of this act; or

(c) Opposing any practice proscribed by sections 2 to 28, inclusive, of this act

~~for or~~  
(d) Otherwise asserting rights pursuant to sections 2 to 28, inclusive, of this act.]

2. An employee who mistakenly, but in good faith, alleges noncompliance with sections 2 to 28, inclusive, of this act.

Sec. 24. 1. The provisions of sections 2 to 28, inclusive, of this act may be enforced by an aggrieved employee through the Labor Commissioner or in a civil action in any court of competent jurisdiction. ~~[brought by one or more employees for and on behalf of himself, herself or themselves and other employees similarly situated, or the employees may designate an agent or representative to maintain an action for and on behalf of all employees similarly situated.]~~

2. An aggrieved employee may file a complaint with the Labor Commissioner or file a civil action in any court of competent jurisdiction alleging a violation of the provisions of sections 2 to 28, inclusive, of this act only after the following requirements are met:

(a) The employee provides the employer with written notice, including, without limitation, by electronic mail, of the alleged violation and any facts known by the employee to support the allegation of the violation; and

(b) The employer is afforded 15 days after the date of receipt of the written notice to cure any alleged violation.

3. There is a rebuttable presumption that an employer's action is taken in violation of section ~~23~~ 23 of this act if it is established that:

(a) A laid-off employee exercised rights pursuant to the provisions of sections 2 to 28, inclusive, of this act or alleged in good faith that the employer was not complying with the provisions of sections 2 to 28, inclusive, of this act;

(b) The employer thereafter ~~refused to employ,~~ terminated, demoted or otherwise took adverse action against the employee; and

(c) The employer took the action described in paragraph (b) against the employee not later than 60 days after the employee exercised rights or made an allegation described in paragraph (a).

~~3.4~~ 4. An employer may rebut a presumption created pursuant to subsection ~~3.3~~ 3 by proving that the true and entire reason for the action taken pursuant to paragraph (b) of subsection ~~2.4~~ 3 was a legitimate business reason. The plaintiff in the action may rebut the legitimate business reason asserted by the employer by showing that the reason was, in fact, a pretext.

~~4. If the court finds that the employer has violated a provision of sections 2 to 28, inclusive, of this act, the court may enjoin the employer from engaging in the violation and order such affirmative action as may be appropriate, including, without limitation, reinstatement or hiring of employees, with or without back pay and fringe benefits, or any other equitable relief as the court deems appropriate.~~

~~5. Interim earnings or amounts earnable with reasonable diligence by the person or persons discriminated against shall operate to reduce the back pay otherwise allowable. Before interim earnings are deducted from lost wages, there must be deducted from the interim earnings any reasonable amounts expended by the employee in searching for, obtaining or relocating to new employment.~~

~~6. If the plaintiff in an action which is brought pursuant to this section prevails in the action, the court shall award reasonable attorney's fees, expert witness fees and costs as part of the cost recoverable.~~

~~7. In addition to the costs awarded pursuant to subsection 6, the court may issue an order for an award of:~~

~~(a) Compensatory and punitive damages if the court finds that the employer engaged in the violation with malice or with reckless indifference to the requirements of the provisions of sections 2 to 28, inclusive, of this act; and~~

~~(b) Treble damages payable to an employee who was terminated in violation of section 23.~~

5. An employee or employees who establish a violation of sections 2 to 28, inclusive, of this act may be awarded any or all of the following, as appropriate:

(a) Rights of hiring and reinstatement.

(b) Future and back pay for each day during which the violation continues, which shall be calculated at a rate of compensation not less than the greatest of any of the following rates:

(1) The average regular rate of pay received by the laid-off employee during the last 3 years of that employee's employment in the same job classification.

(2) The most recent regular rate of pay received by the laid-off employee while employed by the employer.

(3) The regular rate of pay received by an employee occupying the job position in place of the laid-off employee who should have been employed in that position.

(4) The value of the benefits which the laid-off employee would have received under the benefit plan provided by the employer.

6. Any employer, agent of the employer or other person who violates or causes to be violated any provision of sections 2 to 28, inclusive, of this act shall be subject to:

(a) A civil penalty of \$100 for each employee whose rights under the provisions of sections 2 to 28, inclusive, of this act are violated; and

(b) The imposition of an additional sum payable to each employee as compensatory and liquidated damages in the amount of \$500 for each day the rights provided to that employee pursuant to sections 2 to 28, inclusive, of this act are violated. Such damages shall be continuing until such time as the violation is cured.

7. The Labor Commissioner or the court may also award attorney's fees to a prevailing plaintiff in an action filed pursuant to this section.

8. No criminal penalties may be imposed for a violation of sections 2 to 28, inclusive, of this act.

**Sec. 25. 1. An employer that, on or after January 31, 2020:**

**(a) Purchases or otherwise acquires the ownership of another employer which owns or operates a covered enterprise; and**

**(b) Conducts the same or similar operations as those which were conducted by the employer that owned or operated the covered enterprise before the date of the purchase or acquisition,**

**↳ is subject to the provisions of sections 2 to 28, inclusive, of this act as if the purchasing or acquiring employer was the employer that owned or operated the covered enterprise before the date of the purchase or acquisition and owes to a laid-off employee the rights afforded by sections 2 to 28, inclusive, of this act.**

**2. An employer that, on or after January 31, 2020:**

**(a) Purchases or otherwise acquires all or substantially all of the assets of an employer that owned or operated a covered enterprise; and**

**(b) With those assets, conducts the same or similar operations as those which were conducted by the employer that conducted operations with those assets before the date of the purchase or acquisition,**

**↳ is subject to the provisions of sections 2 to 28, inclusive, of this act as if the employer which purchased or acquired the assets was the employer that conducted operations with those assets before the date of the purchase or acquisition and owes to a laid-off employee the rights afforded by sections 2 to 28, inclusive, of this act.**

**3. An employer which:**

**(a) Owns or operates a covered enterprise; and**

**(b) On or after January 31, 2020, changes the employer's form of organization but continues to own or operate the covered enterprise,**

**↳ remains subject to the provisions of sections 2 to 28, inclusive, of this act and owes to a laid-off employee the rights afforded by sections 2 to 28, inclusive, of this act.**

**4. An employer which moves operations from a location at which a laid-off employee was employed before January 31, 2020, to a different location within this State remains subject to the provisions of sections 2 to 28, inclusive, of this**

act and owes to the laid-off employee the rights afforded by sections 2 to 28, inclusive, of this act.

Sec. 26. ~~The~~

1. Except as otherwise provided in subsection 2, the provisions of sections 2 to 28, inclusive, of this act apply to all employees, as defined in section 12 of this act, regardless of whether the employees are represented for purposes of collective bargaining or are covered by a collective bargaining agreement.

2. The provisions of sections 2 to 28, inclusive, of this act do not apply to a laid-off employee who is a party to a valid severance agreement.

Sec. 27. *The provisions of sections 2 to 28, inclusive, of this act shall not be construed to:*

1. *Invalidate or limit the rights, remedies and procedures of any contract or agreement that provides greater or equal protection for employees than are afforded by the provisions of sections 2 to 28, inclusive, of this act, notwithstanding the provisions of section 26 of this act.*

2. *Limit a discharged employee's right to bring a cause of action for wrongful termination under common law.*

Sec. 28. 1. *If any section, sentence, clause or phrase of sections 2 to 28, inclusive, of this act is for any reason held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of sections 2 to 28, inclusive, of this act, which shall remain in full force and effect.*

2. *The Legislature hereby declares that it would have adopted the provisions of sections 2 to 28, inclusive, of this act and each and every section, sentence, clause and phrase thereof not declared invalid or unconstitutional, without regard to whether any portion of sections 2 to 28, inclusive, of this act were subsequently declared invalid or unconstitutional.*

3. *The courts are hereby authorized to reform the provisions of sections 2 to 28, inclusive, of this act in order to preserve the maximum permissible effect of each section therein.*

Sec. 28.1. NRS 447.335 is hereby amended to read as follows:

447.335 1. The Director shall adopt regulations requiring a public accommodation facility to establish standards for cleaning that are designed to reduce the transmission of SARS-CoV-2. Those standards must require only the following and with no greater frequency than provided in this section:

(a) ~~The use of cleaning products that are qualified by the United States Environmental Protection Agency for use against SARS CoV 2 for the cleaning required by paragraphs (b) to (p), inclusive.~~

~~(b) Desks, tabletops, minibars that have been used after the most recent cleaning,~~ interior and exterior handles of doors, faucets, toilets, ~~nonporous headboards of beds,~~ light switches, remote controls, telephones, keyboards ~~and touch screens,~~ and ~~bed linens, towels, bed scarves and other decorative items on beds~~ in guest rooms to be cleaned every day that the room is in use unless the guest using the room declines in-room housekeeping.

~~(c)~~ (b) The following high-contact areas and items in locations used by the public and employees to be cleaned ~~regularly throughout the day~~ daily while in use:

(1) Fixtures with which guests and employees may be expected to have regular physical contact;

(2) Doors and door handles at exterior entrances;

(3) Door handles at interior entrances regularly accessed by guests and employees;

(4) Regularly used computer keyboards, touch screens, credit card readers, printers, telephones, light switches, ice machines, vending machines and other frequently used instruments and equipment; and

(5) Countertops and desks in entrance areas and other high-usage areas. ~~[(c)]~~ (c) Glass surfaces, desks, tabletops, door handles and light switches in public areas to be cleaned ~~[regularly throughout the day]~~ daily while in use.

~~[(d)]~~ (d) Counters, desks, touch screens, keyboards, credit card readers and desktops in front desk areas to be cleaned ~~[regularly throughout the day]~~ daily while in use.

~~[(e)]~~ (e) Key cards and other types of keys for accessing rooms to be cleaned before those key cards or other keys are issued to another guest or removed from circulation for at least 24 hours after a guest checks out.

~~[(f)]~~ (f) Elevator buttons and rails in guest and service elevators to be cleaned ~~[regularly throughout the day]~~ daily if the elevator is in use.

~~[(g)]~~ (g) Sinks, faucets, walls, toilets, toilet paper dispensers and door handles in employee and public restrooms to be cleaned regularly throughout the day while in use.

~~[(h)]~~ (h) Work surfaces, tables, utensils, counters, touch screens and keyboards in areas used for food preparation to be cleaned regularly throughout the day.

~~[(i)]~~ (i) Tables, desks, tabletops, door handles and light switches in shared offices, employee locker rooms and employee cafeterias to be cleaned ~~[regularly throughout the day]~~ daily while in use.

~~[(j)]~~ (j) Exercise equipment, weights, tables, countertops, chairs, lockers and benches in fitness centers to be cleaned ~~[regularly throughout the day]~~ daily while in use.

~~[(k)]~~ (k) Tabletops in meeting rooms to be cleaned while in use.

~~[(l)]~~ (l) Tables, bartops, menus and check presentation holders in bar and dining facilities to be cleaned ~~[after use by a guest]~~.

~~[(m)]~~ (m) daily.

~~[(n)]~~ (n) Touch screens and keyboards in bar and dining facilities to be cleaned ~~[regularly while in use]~~.

~~[(o)]~~ (o) daily.

~~[(p)]~~ (p) Soiled laundry to be cleaned as necessary.

~~[(q)]~~ (q) Laundry carts and hampers to be cleaned ~~[regularly throughout the day]~~ daily while in use.

2. A public accommodation facility shall not advise or incentivize guests to decline daily in-room housekeeping.

3. An employer operating a public accommodation facility shall conspicuously post at each employee entrance and on each bulletin board where the facility regularly posts official communications with employees:

(a) A one-page summary of the standards adopted pursuant to subsection 1; and

(b) A list of key contact persons at public health agencies.

4. An employer operating a public accommodation facility shall make available to employees or their bargaining representative a physical or electronic copy of the standards adopted pursuant to subsection 1 upon request at no cost.

**Sec. 28.2. NRS 447.340 is hereby amended to read as follows:**

447.340 The Director shall adopt regulations requiring each public accommodation facility to establish protocols to:

1. Limit the transmission of SARS-CoV-2. Such protocols, must include only the following:

(a) ~~[Methods to encourage, to the extent reasonably possible,~~



~~— (1) Employees to remain at least 6 feet apart from other employees and guests during their work and while on break.~~

~~— (2) Guests to remain at least 6 feet apart from employees and other guests.~~

~~— (b) A requirement that employee breaks must be structured to allow social distancing to the maximum extent recommended by the Centers for Disease Control and Prevention of the United States Department of Health and Human Services.~~

~~— (c) A requirement that workstations must be separated by physical barriers or structured to allow social distancing where practicable to the maximum extent recommended by the Centers for Disease Control and Prevention of the United States Department of Health and Human Services.~~

~~— (d)~~ Requirements concerning the frequency of hand cleaning for employees.

~~— (e)~~ (b) A requirement that each employee be provided with access to a sink with soap and water for hand washing or hand sanitizer containing at least 60 percent alcohol within reasonable proximity to the work area of the employee.

~~— (f)~~ (c) Policies providing for the availability of hand sanitizer containing at least 60 percent alcohol near locations where employee meetings are held, breakrooms and cafeterias for employees, front desks, bell desks, lobbies, entrances to food and beverage service and preparation areas, principal entrances to the facility and, in a resort hotel, on the casino floor, if:

(1) Those areas are not near hand washing facilities with soap and water; and

(2) A supply of hand sanitizer containing at least 60 percent alcohol is generally available.

~~— (g)~~ (d) Policies for the distribution, at no cost to the employee, of masks and, where appropriate, gloves, based on public health concerns.

2. Train staff concerning the prevention and mitigation of SARS-CoV-2 transmission in the manner prescribed by the Director.

**Sec. 28.3. NRS 447.345 is hereby amended to read as follows:**

447.345 1. The Director shall adopt regulations requiring each public accommodation facility to establish, implement and maintain a written SARS-CoV-2 response plan designed to monitor and respond to instances and potential instances of SARS-CoV-2 infection among employees and guests. The plan must include only the following:

(a) The designation of a person or persons responsible for overseeing and carrying out on-site enforcement of the plan. The regulations must not require such a person or persons to be on-site at all times.

~~— (b) [A requirement that each new employee and each employee returning to work for the first time after March 13, 2020, must undergo testing for SARS-CoV-2, if such testing is available.]~~

~~— (c) The designation of an area of the public accommodation facility where employees will check in every day to receive contact free temperature measurement and review questions to screen for exposure to SARS-CoV-2.~~

~~— (d)~~ Requirements that:

(1) The public accommodation facility must notify each employee who is known to have had close contact with a guest or employee who has been diagnosed with COVID-19 not later than 24 hours or as soon as practicable after the employer learns of the diagnosis. ~~— [; and]~~

(2) Each such employee must undergo testing for SARS-CoV-2 and, in addition to any other leave to which the employee is entitled, be given:

(l) Not more than 3 days of ~~[paid]~~ time off to await testing and testing results; and

(II) Additional ~~paid~~ time off if the public accommodation facility receives documentation of a delay in testing or receiving testing results that exceeds 3 days.

~~(c)~~ (3) For each such employee who is fully vaccinated for COVID-19 or who has a verified underlying medical condition that prevents the employee from receiving a vaccination for COVID-19, the time off required pursuant to subparagraph (2) must be paid time off.

~~(c)~~ A requirement that each employee who otherwise has a reasonable belief or has been advised that he or she has been in close contact with a person who has tested positive for SARS-CoV-2 must undergo testing for SARS-CoV-2.

~~(d)~~ (d) Requirements that each employee who notifies his or her employer that he or she is experiencing symptoms of COVID-19:

(1) Must undergo testing for SARS-CoV-2; and

(2) Must not return to work while awaiting the results of that testing.

~~(e)~~ (e) Requirements that each employee described in paragraph ~~(c) or (d)~~ (c) and notifies his or her employer that he or she is experiencing symptoms of COVID-19 or who is described in paragraph (d) must, in addition to any other leave to which the employee is entitled, be given for the first occurrence on which the employee gives the employer such notification:

(1) Not more than 3 days of ~~paid~~ time off to await testing and testing results. ~~(f) and~~

(2) Additional ~~paid~~ time off if the public accommodation facility receives documentation of a delay in testing or receiving testing results that exceeds 3 days.

~~(h)~~ (3) For each such employee who is fully vaccinated for COVID-19 or who has a verified underlying medical condition that prevents the employee from receiving a vaccination for COVID-19, the time off required pursuant to subparagraphs (1) and (2) must be paid time off.

~~(f)~~ A requirement that ~~except as otherwise provided in subsection 3,~~ each employee who tests positive for SARS-CoV-2 or is otherwise diagnosed with COVID-19 and is working or has been recalled to work at the time of the result or diagnosis must be allowed to take at least 14 days off. ~~(f)~~ For each such employee who is fully vaccinated for COVID-19 or who has a verified underlying medical condition that prevents the employee from receiving a vaccination for COVID-19, at least 10 of ~~which~~ the 14 days described in this paragraph must be paid time off.

~~(g)~~ (g) A requirement that testing for SARS-CoV-2 required by this section must be:

(1) Provided at no cost to the employee; and

(2) Performed on-site or at a testing facility selected by the public accommodation facility.

~~(j)~~ (h) A requirement that an employee that is required to be tested pursuant to this section authorize the provision of or provide the testing results to the public accommodation facility.

~~(k)~~ (i) A requirement that any guest who reports testing positive for SARS-CoV-2 or being diagnosed with COVID-19 must be requested to leave the public accommodation facility if practicable and seek medical attention.

~~(l)~~ (j) A requirement that information pertaining to employees and guests who test positive for SARS-CoV-2 or who are diagnosed with or report symptoms of COVID-19 must be kept confidential, unless the employee or guest agrees otherwise and except as required to be disclosed to public health officials and for purposes of contact tracing or cleaning.

2. The regulations adopted pursuant to this section must define the term “close contact” to have the meaning most recently ascribed to it by the Centers for



Disease Control and Prevention of the United States Department of Health and Human Services for the purpose of determining when a person has been in close contact with another person who has tested positive for SARS-CoV-2.

~~3. [An employer who operates a public accommodation facility may submit a request to the Director to increase or decrease the amount of days off required by paragraph (h) of subsection 1. The Director may grant such a request if it is consistent with the recommendations of the Centers for Disease Control and Prevention of the United States Department of Health and Human Services concerning time off for employees who test positive for SARS-CoV-2 or are otherwise diagnosed with COVID-19.~~

~~4.]~~ For the purposes of this section, paid time off must be calculated at the base rate of pay for the employee. Paid time off taken pursuant to this section:

(a) Must not be deducted from paid time off provided to the employee pursuant to NRS 608.0197 or a policy or contract of the public accommodation facility.

(b) May be deducted from paid sick leave provided pursuant to section 5102(a)(1)-(3) of the Families First Coronavirus Response Act, P.L. 116-127.

~~[5.]~~ 4. The health authority may require a public accommodation facility that is not under the jurisdiction of the Nevada Gaming Control Board to submit a written SARS-CoV-2 response plan to the health authority. Except as otherwise provided in this section and notwithstanding any other law, a written SARS-CoV-2 response plan submitted to the health authority is confidential. The health authority may disclose all or a part of such a plan upon:

(a) The request of an authorized agent of the Federal Government, a foreign government or a state or local governmental entity in this State or any of the several states, territories, possessions and dependencies of the United States, the District of Columbia or Puerto Rico.

(b) The order of a court of competent jurisdiction.

(c) Specific authorization of the chief administrative officer of the health district or, in a location that is not part of a health district, the Chief Medical Officer.

~~[6.]~~ 5. The Nevada Gaming Control Board may require a public accommodation facility that is under the jurisdiction of the Board to submit a written SARS-CoV-2 response plan to the Board, either alone or as part of an emergency response plan adopted pursuant to NRS 463.790.

~~[7.]~~ 6. The provisions of this section must not be construed to preclude an employee who is exposed to or tests positive for SARS-CoV-2 or is diagnosed with COVID-19 from choosing to perform his or her duties remotely instead of taking time off if the job duties of the employee are conducive to remote work.

7. As used in this section:

(a) "Fully vaccinated for COVID-19" has the meaning most recently ascribed to it by the Centers for Disease Control and Prevention of the United States Department of Health and Human Services.

(b) "Verified underlying medical condition that prevents the employee from receiving a vaccination for COVID-19" means a condition of an employee for whom the SARS-CoV-2 vaccine is not recommended because of a medical exemption that is documented by a note provided by a licensed physician and provided to the employer.

**Sec. 28.4.** Section 39 of chapter 8, Statutes of Nevada 2020, 32nd Special Session, at page 114, is hereby amended to read as follows:

Sec. 39. ~~[1.]~~ This act becomes effective upon passage and approval.

~~[2. Section 30 of this act expires by limitation on the later of:~~

~~(a) The date on which the Governor terminates the emergency described in the Declaration of Emergency for COVID-19 issued on March 12, 2020; or~~

~~(b) July 1, 2023.]~~

Sec. 28.5. 1. The Director of the Department of Health and Human Services may, if necessary and not later than 5 business days after the date on which this act becomes effective, amend regulations adopted pursuant to the provisions of NRS 447.335, 447.340 and 447.345, as amended by sections 28.1, 28.2 and 28.3, respectively, of this act to conform to those provisions.

2. Notwithstanding the 15-day requirement set forth in NRS 447.355, a district board of health of a health district shall, pursuant to NRS 447.355, adopt regulations that are substantively identical to the regulations adopted by the Director of the Department of Health and Human Services pursuant to subsection 1 within 10 days after the adoption of the regulations by the Director pursuant to subsection 1.

3. Any provision of the regulations adopted by the Director or a district board of health of a health district that are in conflict with the provisions of NRS 447.335, 447.340 or 447.345, as amended by sections 28.1, 28.2 and 28.3, respectively, of this act are unenforceable as of the effective date of this act.

Sec. 28.6. The provisions of NRS 354.599 do not apply to any additional expenses of a local government that are related to the provisions of this act.

Sec. 28.7. Notwithstanding the provisions of NRS 218D.430 and 218D.435, a committee, other than the Assembly Standing Committee on Ways and Means and the Senate Standing Committee on Finance, may vote on this act before the expiration of the period prescribed for the return of a fiscal note in NRS 218D.475. This section applies retroactively from and after March 22, 2021.

Sec. 29. 1. This section and sections 28.1 to 28.7, inclusive, of this act~~becomes~~ become effective upon ~~[passage]~~ the later of:

(a) Passage and approval ~~[, and expires]~~ ; or

(b) June 1, 2021.

2. Sections 1 to 28, inclusive, of this act become effective on July 1, 2021, and expire by limitation on the later of:

~~1.]~~ (a) The date on which the Governor terminates the emergency described in the Declaration of Emergency for COVID-19 issued on March 12, 2020; or

~~[ 2. July 1, 2023.]~~

(b) August 31, 2022.