

Senate Bill No. 24—Committee on
Commerce, Labor and Energy

CHAPTER.....

AN ACT relating to unemployment compensation; authorizing certain members of the Nevada Army National Guard and Nevada Air National Guard to receive unemployment benefits under certain circumstances; authorizing the Administrator of the Employment Security Division of the Department of Employment, Training and Rehabilitation to make certain information available to the Board of Regents of the University of Nevada and the Director of the Department; revising the manner in which certain claims of recipients of benefits for workers' compensation are compared against claims for unemployment benefits to determine whether any simultaneous claiming of benefits has occurred; revising the manner in which a person who has received certain benefits or money may elect a base period; revising the period within which the Administrator may recover certain overpayments; expanding the circumstances under which a person may commit unemployment insurance fraud; providing a penalty; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law excludes certain types of employment, including service as a member of the Nevada National Guard or Nevada Air National Guard, from the definition of "employment" for the purposes of qualifying for unemployment benefits. (NRS 612.115) **Section 1** of this bill amends this definition to include members of the Nevada Army National Guard and Nevada Air National Guard who have been ordered to active duty under certain circumstances.

Existing law calls for the development and oversight of a statewide longitudinal data system to track the effectiveness of this State's K-12 and postsecondary public education in meeting this State's workforce needs. (NRS 400.040) As part of this system, the Board of Regents of the University of Nevada is required to submit a written report biennially to the Legislature, which must include information on various subjects including, without limitation, employment statistics of graduates of the Nevada System of Higher Education who have obtained employment within their fields of study and average starting salaries. (NRS 396.531) This information must be based on employment and wage information provided by the Department of Employment, Training and Rehabilitation. Furthermore, the Director of the Department is required to furnish that information to the Board of Regents. (NRS 232.920) Existing law, however, makes employment information collected by the Employment Security Division of the Department confidential and prohibits the release of that information except for limited specified purposes, including the enforcement of child support obligations or tax obligations, the collection of government debts, the determination of eligibility for public assistance and the furtherance of a criminal investigation. (NRS 612.265)



Section 1.5 of this bill allows the Administrator of the Division, by cooperative agreement, to make the required employment and wage information available to the Board of Regents and the Director of the Department in order to facilitate the required reporting of statistics to the Legislature.

Existing law requires private carriers that provide industrial insurance to provide the names of recipients of workers' compensation to the Administrator of the Employment Security Division of the Department to be compared against the list of recipients of unemployment benefits, to determine whether of those recipients are simultaneously claiming benefits for workers' compensation and unemployment benefits. Existing law also authorizes the Administrator to charge a fee for comparing the information. (NRS 612.265)

Section 1.5 makes providing such names the responsibility of the Division of Industrial Relations of the Department of Business and Industry. **Section 1.5** also removes the authority of the Administrator to charge a fee for comparing the information.

Existing law provides that the amount of a person's unemployment benefit is based on the person's wages during a base period preceding the unemployment. (NRS 612.340) If a person who has received certain types of compensation relating to a disability or rehabilitative services is subsequently applying for unemployment benefits, existing law provides that the person may elect a base period preceding the disability, so long as such an election is made within 3 years after the initial period of disability began. (NRS 612.344) **Section 2** of this bill amends this requirement so that the election of a base period may be made within 3 years after any period of disability begins.

Existing law authorizes the Administrator of the Division to recover any overpayment of benefits at any time up to 5 years after notice of the overpayment. (NRS 612.365) **Section 3** of this bill extends this period to 10 years in cases involving fraud, misrepresentation or willful nondisclosure.

Existing law prohibits a person from knowingly making a false statement or representation or knowingly failing to disclose a material fact in order to obtain or increase any benefit or other payment under chapter 612 of NRS governing unemployment compensation. A person who violates such a prohibition commits unemployment insurance fraud and is subject to disqualification and repayment of any benefits received by the person. If the person receives benefits in the amount of \$650 or more the person is also subject to prosecution for a felony. (NRS 612.445) **Section 4** of this bill expands the circumstances under which a person may commit unemployment insurance fraud by providing that the person commits such fraud if the person: (1) files a claim for or receives benefits; and (2) fails to disclose, at the time he or she files the claim or receives the benefits, any compensation for certain work-related disabilities or of any money for rehabilitative services received by the person or for which a claim has been submitted.

EXPLANATION - Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

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

Section 1. NRS 612.115 is hereby amended to read as follows:
612.115 1. "Employment" includes service performed in the employ of this State, or of any political subdivision thereof, or of any instrumentality of this State or its political subdivisions which is



owned by this State or one or more of its political subdivisions alone or in conjunction with one or more other states or political subdivisions thereof, which is excluded from the definition of "employment" by the provisions of 26 U.S.C. § 3306(c)(7), except service:

(a) As an elected official;

(b) As a member of a legislative body, or a member of the judiciary, of the State or a political subdivision;

(c) As a member of the Nevada *Army* National Guard or Nevada Air National Guard ~~§~~, *unless the member:*

(1) Was ordered to full-time, active duty for at least 90 consecutive days;

(2) Is paid under title 32 of the United States Code;

(3) Is released from military service under an eligible reason for separation pursuant to the Unemployment Compensation for Ex-servicemembers, or 20 C.F.R. §§ 614.1 et seq.; and

(4) Is otherwise entitled to receive benefits;

(d) In employment serving on a temporary basis in case of fire, storm, snow, earthquake, flood or similar emergency;

(e) In a position which, pursuant to state law, is designated as a major nontenured policymaking or advisory position, or a policymaking or advisory position the performance of the duties of which ordinarily does not require more than 8 hours per week; or

(f) By an inmate of a custodial or penal institution.

2. Every department of this State, and every political subdivision thereof, and each of the instrumentalities of this State and its political subdivisions, shall become an employer as provided in this chapter.

3. "Employment" does not include service performed:

(a) In a facility conducted for the purpose of carrying out a program of rehabilitation for persons whose earning capacity is impaired by age or physical or mental deficiency or injury, or providing remunerative work for persons who, because of their impaired physical or mental capacity, cannot be readily absorbed in the competitive labor market by a person receiving such rehabilitation or remunerative work; or

(b) As part of an unemployment work-relief or work-training program assisted or financed in whole or in part by any federal agency or an agency of a state or political subdivision thereof, by a person receiving such work relief or work training.



Sec. 1.5. NRS 612.265 is hereby amended to read as follows:

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

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

3. *The Administrator may, in accordance with a cooperative agreement among all participants in the statewide longitudinal data system developed pursuant to NRS 400.040, make the information obtained by the Division available to:*

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

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

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

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

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

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

(d) The Department of Taxation; and

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

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



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

~~[5.]~~ 6. The Administrator may publish or otherwise provide information on the names of employers, their addresses, their type or class of business or industry, and the approximate number of employees employed by each such employer, if the information released will assist unemployed persons to obtain employment or will be generally useful in developing and diversifying the economic interests of this State. Upon request by a state agency which is able to demonstrate that its intended use of the information will benefit the residents of this State, the Administrator may, in addition to the information listed in this subsection, disclose the number of employees employed by each employer and the total wages paid by each employer. The Administrator may charge a fee to cover the actual costs of any administrative expenses relating to the disclosure of this information to a state agency. The Administrator may require the state agency to certify in writing that the agency will take all actions necessary to maintain the confidentiality of the information and prevent its unauthorized disclosure.

~~[6.]~~ 7. Upon request therefor, the Administrator shall furnish to any agency of the United States charged with the administration of public works or assistance through public employment, and may furnish to any state agency similarly charged, the name, address, ordinary occupation and employment status of each recipient of benefits and the recipient's rights to further benefits pursuant to this chapter.

~~[7.]~~ 8. To further a current criminal investigation, the chief executive officer of any law enforcement agency of this State may submit a written request to the Administrator that the Administrator furnish, from the records of the Division, the name, address and place of employment of any person listed in the records of



employment of the Division. The request must set forth the social security number of the person about whom the request is made and contain a statement signed by the chief executive officer certifying that the request is made to further a criminal investigation currently being conducted by the agency. Upon receipt of such a request, the Administrator shall furnish the information requested. The Administrator may charge a fee to cover the actual costs of any related administrative expenses.

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

~~{9.}~~ **10.** ~~{A private carrier that provides industrial insurance in this State}~~ *The Division of Industrial Relations of the Department of Business and Industry* shall *periodically* submit to the Administrator, *from information in the index of claims established pursuant to NRS 616B.018*, a list containing the name of each person who received benefits pursuant to chapters 616A to 616D, inclusive, or chapter 617 of NRS. ~~{during the preceding month and request that}~~ *Upon receipt of that information*, the Administrator shall compare the information so provided with the records of the *Employment Security* Division regarding persons claiming benefits pursuant to this chapter for the same period. The information submitted by the ~~{private carrier}~~ *Division of Industrial Relations* must be in a form determined by the Administrator and must contain the social security number of each such person. ~~{Upon receipt of the request, the Administrator shall make such a comparison and, if}~~ *If* it appears from the information submitted that a person is simultaneously claiming benefits under this chapter and under chapters 616A to 616D, inclusive, or chapter 617 of NRS, the Administrator shall notify the Attorney General or any other appropriate law enforcement agency. ~~{The Administrator shall charge a fee to cover the actual costs of any related administrative expenses.}~~

~~—10.}~~ **11.** The Administrator may request the Comptroller of the Currency of the United States to cause an examination of the correctness of any return or report of any national banking association rendered pursuant to the provisions of this chapter, and may in connection with the request transmit any such report or



return to the Comptroller of the Currency of the United States as provided in section 3305(c) of the Internal Revenue Code of 1954.

~~§11.1~~ **12.** If any employee or member of the Board of Review, the Administrator or any employee of the Administrator, in violation of the provisions of this section, discloses information obtained from any employing unit or person in the administration of this chapter, or if any person who has obtained a list of applicants for work, or of claimants or recipients of benefits pursuant to this chapter uses or permits the use of the list for any political purpose, he or she is guilty of a gross misdemeanor.

~~§12.1~~ **13.** 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. 2. NRS 612.344 is hereby amended to read as follows:

612.344 1. A person who has received:

(a) Benefits for a temporary total disability or a temporary partial disability pursuant to chapters 616A to 616D, inclusive, or 617 of NRS;

(b) Money for rehabilitative services pursuant to chapters 616A to 616D, inclusive, or 617 of NRS; or

(c) Compensation pursuant to any similar federal law,
↳ may elect a base period consisting of the first 4 of the last 5 completed calendar quarters immediately preceding the first day of the calendar week in which the disability began.

2. An elected base period may be established only if the person files a claim for benefits within 3 years after ~~the initial~~ **any** period of disability begins and not later than the fourth calendar week of unemployment after:

(a) The end of the period of temporary total disability or temporary partial disability; or

(b) The date the person ceases to receive money for rehabilitative services,

↳ whichever occurs later. If one calendar quarter of the described base period has been used in a previous determination of the person's entitlement to benefits, the elected base period must be the first 4 completed calendar quarters immediately preceding the first day of the calendar week in which the disability began.

3. A person who has elected a base period pursuant to this section and who had previously established a benefit year may establish a new benefit year consisting of the 52 consecutive weeks



beginning with the first day of the first week with respect to which a valid claim is filed after the period of disability ends or payments for rehabilitative services cease, whichever occurs later. The previously established benefit year terminates upon the beginning of the new benefit year.

Sec. 3. NRS 612.365 is hereby amended to read as follows:

612.365 1. Any person who is overpaid any amount as benefits under this chapter is liable for the amount overpaid unless:

(a) The overpayment was not due to fraud, misrepresentation or willful nondisclosure on the part of the recipient; and

(b) The overpayment was received without fault on the part of the recipient, and its recovery would be against equity and good conscience, as determined by the Administrator.

2. The amount of the overpayment must be assessed to the liable person, and the person must be notified of the basis of the assessment. The notice must specify the amount for which the person is liable. In the absence of fraud, misrepresentation or willful nondisclosure, notice of the assessment must be mailed or personally served not later than 1 year after the close of the benefit year in which the overpayment was made.

3. ~~[A]~~ *Except as otherwise provided in subsection 4, at* any time within 5 years after the notice of overpayment, the Administrator may recover the amount of the overpayment by using the same methods of collection provided in NRS 612.625 to 612.645, inclusive, 612.685 and 612.686 for the collection of past due contributions or by deducting the amount of the overpayment from any benefits payable to the liable person under this chapter.

4. If the overpayment is due to fraud, misrepresentation or willful nondisclosure, the Administrator may, *within 10 years after the notice of overpayment,* recover any amounts due in accordance with the provisions of NRS 612.7102 to 612.7116, inclusive.

~~[4]~~ 5. The Administrator may waive recovery or adjustment of all or part of the amount of any such overpayment which the Administrator finds to be uncollectible or the recovery or adjustment of which the Administrator finds to be administratively impracticable.

~~[5]~~ 6. To the extent allowed pursuant to federal law, the Administrator may assess any administrative fee prescribed by an applicable agency of the United States regarding the recovery of such overpayments.

~~[6]~~ 7. Any person against whom liability is determined under this section may appeal therefrom within 11 days after the date the notice provided for in this section was mailed to, or served upon, the



person. An appeal must be made and conducted in the manner provided in this chapter for the appeals from determinations of benefit status. The 11-day period provided for in this subsection may be extended for good cause shown.

Sec. 4. NRS 612.445 is hereby amended to read as follows:

612.445 1. A person shall not make a false statement or representation, knowing it to be false, or knowingly fail to disclose a material fact in order to obtain or increase any benefit or other payment under this chapter, including, without limitation, by ~~failing~~ :

(a) *Failing* to properly report earnings ~~for by filing~~ ;

(b) *Filing* a claim for benefits using the social security number, name or other personal identifying information of another person ~~;~~ ; or

(c) *Filing a claim for or receiving benefits and failing to disclose, at the time he or she files the claim or receives the benefits, any compensation for a temporary total disability or a temporary partial disability or money for rehabilitative services pursuant to chapters 616A to 616D, inclusive, or 617 of NRS received by the person or for which a claim has been submitted pursuant to those chapters.*

↳ A person who violates the provisions of this subsection commits unemployment insurance fraud.

2. When the Administrator finds that a person has committed unemployment insurance fraud pursuant to subsection 1, the person shall repay to the Administrator for deposit in the Fund a sum equal to all of the benefits received by or paid to the person for each week with respect to which the false statement or representation was made or to which the person failed to disclose a material fact in addition to any interest, penalties and costs related to that sum. Except as otherwise provided in subsection 3 of NRS 612.480, the Administrator may make an initial determination finding that a person has committed unemployment insurance fraud pursuant to subsection 1 at any time within 4 years after the first day of the benefit year in which the person committed the unemployment insurance fraud.

3. Except as otherwise provided in this subsection and subsection 8, the person is disqualified from receiving unemployment compensation benefits under this chapter:

(a) For a period beginning with the week in which the Administrator issues a finding that the person has committed unemployment insurance fraud pursuant to subsection 1 and ending



not more than 52 consecutive weeks after the week in which it is determined that a claim was filed in violation of subsection 1; or

(b) Until the sum described in subsection 2, in addition to any interest, penalties or costs related to that sum, is repaid to the Administrator,

↳ whichever is longer. The Administrator shall fix the period of disqualification according to the circumstances in each case.

4. It is a violation of subsection 1 for a person to file a claim, or to cause or allow a claim to be filed on his or her behalf, if:

(a) The person is incarcerated in the state prison or any county or city jail or detention facility or other correctional facility in this State; and

(b) The claim does not expressly disclose his or her incarceration.

5. A person who obtains benefits of \$650 or more in violation of subsection 1 shall be punished in the same manner as theft pursuant to subsection 3 or 4 of NRS 205.0835.

6. In addition to the repayment of benefits required pursuant to subsection 2, the Administrator:

(a) Shall impose a penalty equal to 15 percent of the total amount of benefits received by the person in violation of subsection 1. Money recovered by the Administrator pursuant to this paragraph must be deposited in the Unemployment Trust Fund in accordance with the provisions of NRS 612.590.

(b) May impose a penalty equal to not more than:

(1) If the amount of such benefits is greater than \$25 but not greater than \$1,000, 5 percent;

(2) If the amount of such benefits is greater than \$1,000 but not greater than \$2,500, 10 percent; or

(3) If the amount of such benefits is greater than \$2,500, 35 percent,

↳ of the total amount of benefits received by the person in violation of subsection 1 or any other provision of this chapter. Money recovered by the Administrator pursuant to this paragraph must be deposited in the Employment Security Fund in accordance with the provisions of NRS 612.615.

7. Except as otherwise provided in subsection 8, a person may not pay benefits as required pursuant to subsection 2 by using benefits which would otherwise be due and payable to the person if he or she was not disqualified.

8. The Administrator may waive the period of disqualification prescribed in subsection 3 for good cause shown or if the person adheres to a repayment schedule authorized by the Administrator



that is designed to fully repay benefits received from an improper claim, in addition to any related interest, penalties and costs, within 18 months. If the Administrator waives the period of disqualification pursuant to this subsection, the person may repay benefits as required pursuant to subsection 2 by using any benefits which are due and payable to the person, except that benefits which are due and payable to the person may not be used to repay any related interest, penalties and costs.

9. The Administrator may recover any money required to be paid pursuant to this section in accordance with the provisions of NRS 612.365 and may collect interest on any such money in accordance with the provisions of NRS 612.620.

