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FIRST REPRINT

S.B. 24

SENATE BILL NO. 24—COMMITTEE ON
COMMERCE, LABOR AND ENERGY

(ON BEHALF OF THE EMPLOYMENT SECURITY DIVISION)

PREFILED DECEMBER 20, 2014

Referred to Committee on Commerce, Labor and Energy

SUMMARY—Revises provisions governing unemployment
compensation. (BDR 53-383)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 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.



* S B 2 4 R 1 *

Legislative Counsel's Digest:

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

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

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

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

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

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

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

52 Existing law prohibits a person from knowingly making a false statement or
53 representation or knowingly failing to disclose a material fact in order to obtain or
54 increase any benefit or other payment under chapter 612 of NRS governing



55 unemployment compensation. A person who violates such a prohibition commits
56 unemployment insurance fraud and is subject to disqualification and repayment of
57 any benefits received by the person. If the person receives benefits in the amount of
58 \$650 or more the person is also subject to prosecution for a felony. (NRS 612.445)
59 **Section 4** of this bill expands the circumstances under which a person may commit
60 unemployment insurance fraud by providing that the person commits such fraud if
61 the person: (1) files a claim for or receives benefits; and (2) fails to disclose, at the
62 time he or she files the claim or receives the benefits, any compensation for certain
63 work-related disabilities or of any money for rehabilitative services received by the
64 person or for which a claim has been submitted.

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

1 **Section 1.** NRS 612.115 is hereby amended to read as follows:
2 612.115 1. “Employment” includes service performed in the
3 employ of this State, or of any political subdivision thereof, or of
4 any instrumentality of this State or its political subdivisions which is
5 owned by this State or one or more of its political subdivisions alone
6 or in conjunction with one or more other states or political
7 subdivisions thereof, which is excluded from the definition of
8 “employment” by the provisions of 26 U.S.C. § 3306(c)(7), except
9 service:
10 (a) As an elected official;
11 (b) As a member of a legislative body, or a member of the
12 judiciary, of the State or a political subdivision;
13 (c) As a member of the Nevada *Army* National Guard or Nevada
14 Air National Guard ~~§~~, *unless the member:*
15 (1) *Was ordered to full-time, active duty for at least 90*
16 *consecutive days;*
17 (2) *Is paid under title 32 of the United States Code;*
18 (3) *Is released from military service under an eligible*
19 *reason for separation pursuant to the Unemployment*
20 *Compensation for Ex-servicemembers, or 20 C.F.R. §§ 614.1 et*
21 *seq.; and*
22 (4) *Is otherwise entitled to receive benefits;*
23 (d) In employment serving on a temporary basis in case of fire,
24 storm, snow, earthquake, flood or similar emergency;
25 (e) In a position which, pursuant to state law, is designated as a
26 major nontenured policymaking or advisory position, or a
27 policymaking or advisory position the performance of the duties of
28 which ordinarily does not require more than 8 hours per week; or
29 (f) By an inmate of a custodial or penal institution.
30 2. Every department of this State, and every political
31 subdivision thereof, and each of the instrumentalities of this State



1 and its political subdivisions, shall become an employer as provided
2 in this chapter.

3 3. "Employment" does not include service performed:

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

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

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

16 612.265 1. Except as otherwise provided in this section and
17 NRS 239.0115 and 612.642, information obtained from any
18 employing unit or person pursuant to the administration of this
19 chapter and any determination as to the benefit rights of any person
20 is confidential and may not be disclosed or be open to public
21 inspection in any manner which would reveal the person's or
22 employing unit's identity.

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

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

33 (a) *The Board of Regents of the University of Nevada for the
34 purpose of complying with the provisions of subsection 4 of NRS
35 396.531; and*

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

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

42 (a) Any agency of this or any other state or any federal agency
43 charged with the administration or enforcement of laws relating to
44 unemployment compensation, public assistance, workers'



1 compensation or labor and industrial relations, or the maintenance
2 of a system of public employment offices;

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

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

7 (d) The Department of Taxation; and

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

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

14 ~~4.~~ 5. Upon written request made by a public officer of a local
15 government, the Administrator shall furnish from the records of the
16 Division the name, address and place of employment of any person
17 listed in the records of employment of the Division. The request
18 must set forth the social security number of the person about whom
19 the request is made and contain a statement signed by the proper
20 authority of the local government certifying that the request is made
21 to allow the proper authority to enforce a law to recover a debt or
22 obligation owed to the local government. Except as otherwise
23 provided in NRS 239.0115, the information obtained by the local
24 government is confidential and may not be used or disclosed for any
25 purpose other than the collection of a debt or obligation owed to that
26 local government. The Administrator may charge a reasonable fee
27 for the cost of providing the requested information.

28 ~~5.~~ 6. The Administrator may publish or otherwise provide
29 information on the names of employers, their addresses, their type
30 or class of business or industry, and the approximate number of
31 employees employed by each such employer, if the information
32 released will assist unemployed persons to obtain employment or
33 will be generally useful in developing and diversifying the economic
34 interests of this State. Upon request by a state agency which is able
35 to demonstrate that its intended use of the information will benefit
36 the residents of this State, the Administrator may, in addition to the
37 information listed in this subsection, disclose the number of
38 employees employed by each employer and the total wages paid by
39 each employer. The Administrator may charge a fee to cover the
40 actual costs of any administrative expenses relating to the disclosure
41 of this information to a state agency. The Administrator may require
42 the state agency to certify in writing that the agency will take all
43 actions necessary to maintain the confidentiality of the information
44 and prevent its unauthorized disclosure.



1 ~~[6.]~~ 7. Upon request therefor, the Administrator shall furnish to
2 any agency of the United States charged with the administration of
3 public works or assistance through public employment, and may
4 furnish to any state agency similarly charged, the name, address,
5 ordinary occupation and employment status of each recipient of
6 benefits and the recipient's rights to further benefits pursuant to this
7 chapter.

8 ~~[7.]~~ 8. To further a current criminal investigation, the chief
9 executive officer of any law enforcement agency of this State may
10 submit a written request to the Administrator that the Administrator
11 furnish, from the records of the Division, the name, address and
12 place of employment of any person listed in the records of
13 employment of the Division. The request must set forth the social
14 security number of the person about whom the request is made and
15 contain a statement signed by the chief executive officer certifying
16 that the request is made to further a criminal investigation currently
17 being conducted by the agency. Upon receipt of such a request, the
18 Administrator shall furnish the information requested. The
19 Administrator may charge a fee to cover the actual costs of any
20 related administrative expenses.

21 ~~[8.]~~ 9. In addition to the provisions of subsection ~~[5.]~~ 6, the
22 Administrator shall provide lists containing the names and addresses
23 of employers, and information regarding the wages paid by each
24 employer to the Department of Taxation, upon request, for use in
25 verifying returns for the taxes imposed pursuant to chapters 363A
26 and 363B of NRS. The Administrator may charge a fee to cover the
27 actual costs of any related administrative expenses.

28 ~~[9.]~~ 10. ~~[A private carrier that provides industrial insurance in~~
29 ~~this State]~~ *The Division of Industrial Relations of the Department*
30 *of Business and Industry shall periodically submit to the*
31 *Administrator, from information in the index of claims established*
32 *pursuant to NRS 616B.018, a list containing the name of each*
33 *person who received benefits pursuant to chapters 616A to 616D,*
34 *inclusive, or chapter 617 of NRS. ~~[during the preceding month and~~*
35 ~~request that]~~ *Upon receipt of that information,* the Administrator
36 *shall* compare the information so provided with the records of the
37 *Employment Security* Division regarding persons claiming benefits
38 pursuant to this chapter for the same period. The information
39 submitted by the ~~[private carrier]~~ *Division of Industrial Relations*
40 must be in a form determined by the Administrator and must contain
41 the social security number of each such person. ~~[Upon receipt of the~~
42 ~~request, the Administrator shall make such a comparison and, if]~~ *If*
43 it appears from the information submitted that a person is
44 simultaneously claiming benefits under this chapter and under
45 chapters 616A to 616D, inclusive, or chapter 617 of NRS, the



1 Administrator shall notify the Attorney General or any other
2 appropriate law enforcement agency. ~~[The Administrator shall~~
3 ~~charge a fee to cover the actual costs of any related administrative~~
4 ~~expenses.~~

5 ~~—10.] 11.~~ The Administrator may request the Comptroller of the
6 Currency of the United States to cause an examination of the
7 correctness of any return or report of any national banking
8 association rendered pursuant to the provisions of this chapter, and
9 may in connection with the request transmit any such report or
10 return to the Comptroller of the Currency of the United States as
11 provided in section 3305(c) of the Internal Revenue Code of 1954.

12 ~~[11.] 12.~~ If any employee or member of the Board of Review,
13 the Administrator or any employee of the Administrator, in violation
14 of the provisions of this section, discloses information obtained
15 from any employing unit or person in the administration of this
16 chapter, or if any person who has obtained a list of applicants for
17 work, or of claimants or recipients of benefits pursuant to this
18 chapter uses or permits the use of the list for any political purpose,
19 he or she is guilty of a gross misdemeanor.

20 ~~[12.] 13.~~ All letters, reports or communications of any kind,
21 oral or written, from the employer or employee to each other or to
22 the Division or any of its agents, representatives or employees are
23 privileged and must not be the subject matter or basis for any
24 lawsuit if the letter, report or communication is written, sent,
25 delivered or prepared pursuant to the requirements of this chapter.

26 **Sec. 2.** NRS 612.344 is hereby amended to read as follows:

27 612.344 1. A person who has received:

28 (a) Benefits for a temporary total disability or a temporary
29 partial disability pursuant to chapters 616A to 616D, inclusive, or
30 617 of NRS;

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

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

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

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

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



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

6 3. A person who has elected a base period pursuant to this
7 section and who had previously established a benefit year may
8 establish a new benefit year consisting of the 52 consecutive weeks
9 beginning with the first day of the first week with respect to which a
10 valid claim is filed after the period of disability ends or payments
11 for rehabilitative services cease, whichever occurs later. The
12 previously established benefit year terminates upon the beginning of
13 the new benefit year.

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

15 612.365 1. Any person who is overpaid any amount as
16 benefits under this chapter is liable for the amount overpaid unless:

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

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

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

29 3. ~~[A]~~ *Except as otherwise provided in subsection 4, at* any
30 time within 5 years after the notice of overpayment, the
31 Administrator may recover the amount of the overpayment by using
32 the same methods of collection provided in NRS 612.625 to
33 612.645, inclusive, 612.685 and 612.686 for the collection of past
34 due contributions or by deducting the amount of the overpayment
35 from any benefits payable to the liable person under this chapter.

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

40 ~~[4]~~ 5. The Administrator may waive recovery or adjustment
41 of all or part of the amount of any such overpayment which the
42 Administrator finds to be uncollectible or the recovery or adjustment
43 of which the Administrator finds to be administratively
44 impracticable.



1 ~~5.1~~ 6. To the extent allowed pursuant to federal law, the
2 Administrator may assess any administrative fee prescribed by an
3 applicable agency of the United States regarding the recovery of
4 such overpayments.

5 ~~6.1~~ 7. Any person against whom liability is determined under
6 this section may appeal therefrom within 11 days after the date the
7 notice provided for in this section was mailed to, or served upon, the
8 person. An appeal must be made and conducted in the manner
9 provided in this chapter for the appeals from determinations of
10 benefit status. The 11-day period provided for in this subsection
11 may be extended for good cause shown.

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

13 612.445 1. A person shall not make a false statement or
14 representation, knowing it to be false, or knowingly fail to disclose a
15 material fact in order to obtain or increase any benefit or other
16 payment under this chapter, including, without limitation, by
17 ~~[[failing]]~~ :

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

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

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

29 ➔ A person who violates the provisions of this subsection commits
30 unemployment insurance fraud.

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



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

4 (a) For a period beginning with the week in which the
5 Administrator issues a finding that the person has committed
6 unemployment insurance fraud pursuant to subsection 1 and ending
7 not more than 52 consecutive weeks after the week in which it is
8 determined that a claim was filed in violation of subsection 1; or

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

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

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

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

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

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

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

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

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

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

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

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

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

43 7. Except as otherwise provided in subsection 8, a person may
44 not pay benefits as required pursuant to subsection 2 by using



1 benefits which would otherwise be due and payable to the person if
2 he or she was not disqualified.

3 8. The Administrator may waive the period of disqualification
4 prescribed in subsection 3 for good cause shown or if the person
5 adheres to a repayment schedule authorized by the Administrator
6 that is designed to fully repay benefits received from an improper
7 claim, in addition to any related interest, penalties and costs, within
8 18 months. If the Administrator waives the period of
9 disqualification pursuant to this subsection, the person may repay
10 benefits as required pursuant to subsection 2 by using any benefits
11 which are due and payable to the person, except that benefits which
12 are due and payable to the person may not be used to repay any
13 related interest, penalties and costs.

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

