

ASSEMBLY BILL NO. 178—ASSEMBLYMEN JAUREGUI,
ARAUJO, MCCURDY II AND BROOKS

PREFILED FEBRUARY 13, 2017

Referred to Committee on Government Affairs

SUMMARY—Revises provisions concerning employment
discrimination. (BDR 18-831)

FISCAL NOTE: Effect on Local Government: May have Fiscal Impact.
Effect on the State: Yes.

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

AN ACT relating to employment; enlarging the time within which a person may seek relief from the Nevada Equal Rights Commission or a district court for an unlawful employment practice; revising the remedies that the Commission or a district court may grant upon finding that an employer has engaged in an unlawful employment practice; requiring an employer to maintain certain records; making it an unlawful employment practice for an employer, employment agency or labor organization to discriminate against a person for inquiring about, discussing or disclosing information about wages in certain circumstances; requiring certain defenses to a claim of employment discrimination to be demonstrated affirmatively; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

1 Existing law creates the Nevada Equal Rights Commission to accept and
2 investigate complaints alleging certain discriminatory practices. (NRS 233.030,
3 233.157) A person injured by an unlawful employment practice based on
4 discrimination because of race, color, sex, sexual orientation, gender identity or
5 expression, age, disability, religion or national origin is authorized to file a
6 complaint with the Commission. (NRS 613.405) If the Commission does not
7 conclude that an unfair employment practice has occurred, the complainant is
8 authorized to apply to a district court for relief. (NRS 613.420) **Sections 1 and 18**
9 of this bill increase to 2 years after the date of the unlawful employment practice
10 the time for filing such a complaint with the Commission and bringing an action in
11 district court. **Sections 2 and 17** of this bill authorize the Commission or a district



12 court to award to a person aggrieved by an unlawful employment practice: (1)
13 increased damages; (2) costs and attorney's fees; and (3) punitive damages.
14 **Sections 2 and 17** also require a person who is awarded damages by the
15 Commission or a district court as relief for an unlawful employment practice and
16 who is also awarded damages from a suit under federal law based on the same facts
17 and legal theory to return to the employer an amount of money equal to the lesser
18 of the two awards.

19 Existing law requires every private employer to maintain records of wages for a
20 2-year period following the entry of information in the record. (NRS 608.115)
21 **Section 3** of this bill requires an employer to: (1) also maintain a record of the other
22 terms, conditions and privileges of employment of each employee; and (2)
23 increases the time that such records must be maintained to 5 years. **Section 5** of this
24 bill enacts a similar provision that applies to all employers, including governmental
25 entities. **Sections 2 and 17** authorize the Commission or the district court to award
26 punitive damages against an employer who violates the requirements of **section 5**.

27 Existing law defines the term "employer" for the purposes of certain provisions
28 guaranteeing equal opportunities for employment to mean any person, including a
29 state or local governmental entity, who has 15 or more employees for each working
30 day in each of 20 or more calendar weeks. (NRS 613.310) **Section 7** of this bill
31 amends this definition to include any employer, regardless of the number of persons
32 he or she employs. **Sections 9 and 10** of this bill provide that a prohibition on
33 discrimination for lawful use of a product outside the premises of an employer and
34 a requirement to grant leave to pregnant employees continue to apply only to
35 employers who have 15 or more employees for each working day in each of 20 or
36 more calendar weeks.

37 **Section 6** of this bill prohibits an employer, employment agency or labor
38 organization from discriminating against a person because the person has inquired
39 about, discussed or disclosed his or her wages or the wages of another person.

40 Existing law generally makes it an unlawful employment practice for an
41 employer to discriminate on the basis of race, color, religion, sex, sexual
42 orientation, gender identity or expression, age, disability or national origin. (NRS
43 613.330) Existing law authorizes an employer to apply different standards of
44 compensation, or different terms, conditions or privileges of employment pursuant
45 to a bona fide seniority or merit system, or a system which measures earnings by
46 the quantity or quality of production or to employees who work in different
47 locations, if those differences are not the result of an intention to discriminate.
48 (NRS 613.380) **Section 13** of this bill removes the authority of an employer to
49 apply different standards of compensation to employees who work in different
50 locations if the result is discriminatory on a prohibited basis. **Section 13** also
51 provides that in a hearing before the Commission or a civil action in which an
52 employer claims that differences in compensation or other terms, conditions or
53 privileges of employment are due to a bona fide seniority or merit system or a
54 system which measures earnings by quantity or quality of production, the employer
55 must affirmatively demonstrate that: (1) the differences in compensation are solely
56 the result of such a system; and (2) the system was relied upon reasonably and
57 without discriminatory intent.

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

1 **Section 1.** NRS 233.160 is hereby amended to read as follows:
2 233.160 1. A complaint which alleges unlawful
3 discriminatory practices in:



1 (a) Housing must be filed with the Commission not later than 1
2 year after the date of the occurrence of the alleged practice or the
3 date on which the practice terminated.

4 (b) ~~Employment or public~~ **Public** accommodations must be
5 filed with the Commission not later than 300 days after the date of
6 the occurrence of the alleged practice.

7 (c) *Employment must be filed with the Commission not later*
8 *than 2 years after the date of the occurrence of the alleged*
9 *practice.*

10 ↪ ~~That~~ *Unless federal law requires that a complaint be filed with*
11 *the federal agency within a shorter period, a* complaint is timely if
12 it is filed with an appropriate federal agency within ~~that~~ *the* period
13 ~~that~~ *prescribed by this subsection.* A complainant shall not file a
14 complaint with the Commission if any other state or federal
15 administrative body or officer which has comparable jurisdiction to
16 adjudicate complaints of discriminatory practices has made a
17 decision upon a complaint based upon the same facts and legal
18 theory.

19 2. The complainant shall specify in the complaint the alleged
20 unlawful practice and sign it under oath.

21 3. The Commission shall send to the party against whom an
22 unlawful discriminatory practice is alleged:

23 (a) A copy of the complaint;

24 (b) An explanation of the rights which are available to that
25 party; and

26 (c) A copy of the Commission's procedures.

27 **Sec. 2.** NRS 233.170 is hereby amended to read as follows:

28 233.170 1. When a complaint is filed whose allegations if
29 true would support a finding of unlawful practice, the Commission
30 shall determine whether to hold an informal meeting to attempt a
31 settlement of the dispute in accordance with the regulations adopted
32 pursuant to NRS 233.157. If the Commission determines to hold an
33 informal meeting, the Administrator may, to prepare for the
34 meeting, request from each party any information which is
35 reasonably relevant to the complaint. No further action may be taken
36 if the parties agree to a settlement.

37 2. If an agreement is not reached at the informal meeting, the
38 Administrator shall determine whether to conduct an investigation
39 into the alleged unlawful practice in accordance with the regulations
40 adopted pursuant to NRS 233.157. After the investigation, if the
41 Administrator determines that an unlawful practice has occurred,
42 the Administrator shall attempt to mediate between or reconcile the
43 parties. The party against whom a complaint was filed may agree to
44 cease the unlawful practice. If an agreement is reached, no further
45 action may be taken by the complainant or by the Commission.



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

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

8 (b) Order the *employer or other* person *found to have engaged*
9 *in the unlawful practice* to:

10 (1) Cease and desist from the unlawful practice.

11 (2) In cases involving an unlawful employment practice ~~†~~
12 ~~restore†~~ :

13 (I) *Restore* all benefits and rights to which the aggrieved
14 person is entitled, including, but not limited to, rehiring, back pay ,
15 ~~†for a period not to exceed 2 years after the date of the most recent~~
16 ~~unlawful practice.†~~ annual leave time, sick leave time or pay, other
17 fringe benefits and seniority, with interest thereon from the date of
18 the Commission's decision at a rate equal to the prime rate at the
19 largest bank in Nevada, as ascertained by the Commissioner of
20 Financial Institutions, on January 1 or July 1, as the case may be,
21 immediately preceding the date of the Commission's decision, plus
22 2 percent. The rate of interest must be adjusted accordingly on each
23 January 1 and July 1 thereafter until the judgment is satisfied.

24 (II) *Pay the costs and reasonable attorney's fees*
25 *incurred by the aggrieved person to pursue the complaint.*

26 (III) *Pay, in addition to the amount awarded pursuant to*
27 *sub-subparagraphs (I) and (II), punitive damages in an amount*
28 *not greater than the amount awarded pursuant to sub-*
29 *subparagraph (I). The Commission shall consider the willfulness*
30 *of the conduct of the employer in determining whether to award*
31 *punitive damages and the amount of such damages.*

32 (c) *If the Commission determines that an employer has also*
33 *violated section 5 of this act, order the employer to pay punitive*
34 *damages in the amount of \$5,000 for each missing document.*

35 4. The order of the Commission is a final decision in a
36 contested case for the purpose of judicial review. If the *employer or*
37 *other* person fails to comply with the Commission's order, the
38 Commission shall apply to the district court for an order compelling
39 such compliance, but failure or delay on the part of the Commission
40 does not prejudice the right of an aggrieved party to judicial review.
41 The court shall issue the order unless it finds that the Commission's
42 findings or order are not supported by substantial evidence or are
43 otherwise arbitrary or capricious. If the court upholds the
44 Commission's order and finds that the *employer or other* person has
45 violated the order by failing to cease and desist from the unlawful



1 practice or to make the payment ordered, the court shall award the
2 aggrieved party actual damages for any economic loss and no more.

3 5. After the Commission has held a public hearing and
4 rendered a decision, the complainant is barred from proceeding on
5 the same facts and legal theory before any other administrative body
6 or officer.

7 *6. If a complainant is awarded damages under the provisions
8 of subparagraph (2) of paragraph (b) of subsection 3 and is also
9 awarded damages in an action filed under federal law based on
10 the same facts and legal theory, the complainant shall return to
11 the employer an amount of money equal to the lesser of the two
12 awards.*

13 *7. As used in this section, "employer" has the meaning
14 ascribed to it in NRS 613.310.*

15 **Sec. 3.** NRS 608.115 is hereby amended to read as follows:

16 608.115 1. Every employer shall establish and maintain
17 records of ~~+~~wages+ *compensation and other terms, conditions and
18 privileges of employment* for the benefit of his or her employees,
19 showing for each pay period the following information for each
20 employee:

21 (a) Gross wage or salary other than compensation in the form of:

- 22 (1) Services; or
23 (2) Food, housing or clothing.

24 (b) Deductions.

25 (c) Net cash wage or salary.

26 (d) Total hours employed in the pay period by noting the
27 number of hours per day.

28 (e) Date of payment.

29 *(f) Job classification.*

30 *(g) Other terms and conditions of employment.*

31 2. The information required by this section must be furnished
32 to each employee within 10 days after the employee submits a
33 request.

34 3. Records of ~~+~~wages+ *compensation and other terms and
35 conditions of employment* must be maintained for a ~~+~~2-year+ *5-year*
36 period following the entry of information in the record.

37 **Sec. 4.** Chapter 613 of NRS is hereby amended by adding
38 thereto the provisions set forth as sections 5 and 6 of this act.

39 **Sec. 5. 1.** *Every employer shall establish and maintain
40 records of compensation and other terms, conditions and
41 privileges of employment for the benefit of his or her employees,
42 showing for each pay period the following information for each
43 employee:*

44 *(a) Gross wage or salary, other than compensation in the form
45 of:*



- 1 (1) *Services; or*
- 2 (2) *Food, housing or clothing.*
- 3 (b) *Deductions.*
- 4 (c) *Net cash wage or salary.*
- 5 (d) *Total hours employed in the pay period by noting the*
- 6 *number of hours per day.*
- 7 (e) *Date of payment.*
- 8 (f) *Job classification.*
- 9 (g) *Other terms and conditions of employment.*
- 10 2. *The information required by this section must be furnished*
- 11 *to each employee within 10 days after the employee submits a*
- 12 *request.*
- 13 3. *Records of compensation and other terms and conditions*
- 14 *of employment must be maintained for a 5-year period following*
- 15 *the entry of information in the record.*
- 16 4. *A violation of any requirement of this section is an*
- 17 *unlawful employment practice.*

18 **Sec. 6. 1.** *Except as otherwise provided in subsection 2, it is*

19 *an unlawful employment practice for an employer to discriminate*

20 *against any employee or applicant for employment, for an*

21 *employment agency to discriminate against any person, or for a*

22 *labor organization to discriminate against any member thereof or*

23 *applicant for membership because the employee, applicant, person*

24 *or member, as applicable, has inquired about, discussed or*

25 *disclosed his or her wages or the wages of another employee,*

26 *applicant, person or member.*

27 2. *The provisions of subsection 1 do not apply to an*

28 *employee, applicant, person or member who has access to*

29 *information about the wages of other employees, applicants,*

30 *persons or members as part of his or her essential job functions*

31 *and discloses that information to a person who does not have*

32 *access to that information unless the disclosure is in response to a*

33 *charge, complaint or an investigation for a violation of*

34 *NRS 613.330.*

35 **Sec. 7.** NRS 613.310 is hereby amended to read as follows:

36 613.310 As used in NRS 613.310 to 613.435, inclusive, *and*

37 *sections 5 and 6 of this act*, unless the context otherwise requires:

- 38 1. "Disability" means, with respect to a person:
- 39 (a) A physical or mental impairment that substantially limits one
- 40 or more of the major life activities of the person, including, without
- 41 limitation, the human immunodeficiency virus;
- 42 (b) A record of such an impairment; or
- 43 (c) Being regarded as having such an impairment.

44 2. "Employer" means any person who has ~~15 or more~~

45 ~~employees for each working day in each of 20 or more calendar~~



1 ~~weeks in the current or preceding calendar year, but~~ *custody or*
2 *control over any person under any appointment or contract of hire*
3 *or apprenticeship, express or implied, oral or written, whether*
4 *lawfully or unlawfully employed. The term* does not include:

5 (a) The United States or any corporation wholly owned by the
6 United States.

7 (b) Any Indian tribe.

8 (c) Any private membership club exempt from taxation pursuant
9 to 26 U.S.C. § 501(c).

10 3. "Employment agency" means any person regularly
11 undertaking with or without compensation to procure employees for
12 an employer or to procure for employees opportunities to work for
13 an employer, but does not include any agency of the United States.

14 4. "Gender identity or expression" means a gender-related
15 identity, appearance, expression or behavior of a person, regardless
16 of the person's assigned sex at birth.

17 5. "Labor organization" means any organization of any kind, or
18 any agency or employee representation committee or plan, in which
19 employees participate and which exists for the purpose, in whole or
20 in part, of dealing with employers concerning grievances, labor
21 disputes, wages, rates of pay, hours of employment or other
22 conditions of employment.

23 6. "Person" includes the State of Nevada and any of its
24 political subdivisions.

25 7. "Sexual orientation" means having or being perceived as
26 having an orientation for heterosexuality, homosexuality or
27 bisexuality.

28 **Sec. 8.** NRS 613.320 is hereby amended to read as follows:

29 613.320 1. The provisions of NRS 613.310 to 613.435,
30 inclusive, *and sections 5 and 6 of this act* do not apply to:

31 (a) Any employer with respect to employment outside this state.

32 (b) Any religious corporation, association or society with
33 respect to the employment of individuals of a particular religion to
34 perform work connected with the carrying on of its religious
35 activities.

36 2. The provisions of NRS 613.310 to 613.435, inclusive, *and*
37 *sections 5 and 6 of this act* concerning unlawful employment
38 practices related to sexual orientation and gender identity or
39 expression do not apply to an organization that is exempt from
40 taxation pursuant to 26 U.S.C. § 501(c)(3).

41 **Sec. 9.** NRS 613.333 is hereby amended to read as follows:

42 613.333 1. It is an unlawful employment practice for an
43 employer to:

44 (a) Fail or refuse to hire a prospective employee; or



1 (b) Discharge or otherwise discriminate against any employee
2 concerning the employee's compensation, terms, conditions or
3 privileges of employment,
4 ↪ because the employee engages in the lawful use in this state of
5 any product outside the premises of the employer during the
6 employee's nonworking hours, if that use does not adversely affect
7 the employee's ability to perform his or her job or the safety of other
8 employees.

9 2. An employee who is discharged or otherwise discriminated
10 against in violation of subsection 1 or a prospective employee who
11 is denied employment because of a violation of subsection 1 may
12 bring a civil action against the employer who violates the provisions
13 of subsection 1 and obtain:

14 (a) Any wages and benefits lost as a result of the violation;

15 (b) An order of reinstatement without loss of position, seniority
16 or benefits;

17 (c) An order directing the employer to offer employment to the
18 prospective employee; and

19 (d) Damages equal to the amount of the lost wages and benefits.

20 3. The court shall award reasonable costs, including court costs
21 and attorney's fees to the prevailing party in an action brought
22 pursuant to this section.

23 4. The remedy provided for in this section is the exclusive
24 remedy for an action brought pursuant to this section.

25 **5. *As used in this section, "employer" means any person who***
26 ***has 15 or more employees for each working day in each of 20 or***
27 ***more calendar weeks in the current or preceding calendar year,***
28 ***but does not include:***

29 ***(a) The United States or any corporation wholly owned by the***
30 ***United States.***

31 ***(b) Any Indian tribe.***

32 ***(c) Any private membership club exempt from taxation***
33 ***pursuant to 26 U.S.C. § 501(c).***

34 **Sec. 10.** NRS 613.335 is hereby amended to read as follows:

35 613.335 **1.** If an employer grants leave with pay, leave
36 without pay, or leave without loss of seniority to his or her
37 employees for sickness or disability because of a medical condition,
38 it is an unlawful employment practice to fail or refuse to extend the
39 same benefits to any female employee who is pregnant. The female
40 employee who is pregnant must be allowed to use the leave before
41 and after childbirth, miscarriage or other natural resolution of her
42 pregnancy, if the leave is granted, accrued or allowed to accumulate
43 as a part of her employment benefits.

44 **2. *As used in this section, "employer" means any person who***
45 ***has 15 or more employees for each working day in each of 20 or***



1 *more calendar weeks in the current or preceding calendar year,*
2 *but does not include:*

3 *(a) The United States or any corporation wholly owned by the*
4 *United States.*

5 *(b) Any Indian tribe.*

6 *(c) Any private membership club exempt from taxation*
7 *pursuant to 26 U.S.C. § 501(c).*

8 **Sec. 11.** NRS 613.340 is hereby amended to read as follows:

9 613.340 1. It is an unlawful employment practice for an
10 employer to discriminate against any of his or her employees or
11 applicants for employment, for an employment agency to
12 discriminate against any person, or for a labor organization to
13 discriminate against any member thereof or applicant for
14 membership, because the employee, applicant, person or member, as
15 applicable, has opposed any practice made an unlawful employment
16 practice by NRS 613.310 to 613.435, inclusive, *and sections 5 and*
17 *6 of this act*, or because he or she has made a charge, testified,
18 assisted or participated in any manner in an investigation,
19 proceeding or hearing under NRS 613.310 to 613.435, inclusive **H**,
20 *and sections 5 and 6 of this act.*

21 2. It is an unlawful employment practice for an employer, labor
22 organization or employment agency to print or publish or cause to
23 be printed or published any notice or advertisement relating to
24 employment by such an employer or membership in or any
25 classification or referral for employment by such a labor
26 organization, or relating to any classification or referral for
27 employment by such an employment agency, indicating any
28 preference, limitation, specification or discrimination, based on race,
29 color, religion, sex, sexual orientation, gender identity or expression,
30 age, disability or national origin, except that such a notice or
31 advertisement may indicate a preference, limitation, specification or
32 discrimination based on religion, sex, sexual orientation, gender
33 identity or expression, age, physical, mental or visual condition or
34 national origin when religion, sex, sexual orientation, gender
35 identity or expression, age, physical, mental or visual condition or
36 national origin is a bona fide occupational qualification for
37 employment.

38 **Sec. 12.** NRS 613.350 is hereby amended to read as follows:

39 613.350 1. It is not an unlawful employment practice for an
40 employer to hire and employ employees, for an employment agency
41 to classify or refer for employment any person, for a labor
42 organization to classify its membership or to classify or refer for
43 employment any person, or for an employer, labor organization or
44 joint labor-management committee controlling apprenticeship or
45 other training or retraining programs to admit or employ any person



1 in any such program, on the basis of his or her religion, sex, sexual
2 orientation, gender identity or expression, age, disability or national
3 origin in those instances where religion, sex, sexual orientation,
4 gender identity or expression, age, physical, mental or visual
5 condition or national origin is a bona fide occupational qualification
6 reasonably necessary to the normal operation of that particular
7 business or enterprise.

8 2. It is not an unlawful employment practice for an employer to
9 fail or refuse to hire and employ employees, for an employment
10 agency to fail to classify or refer any person for employment, for a
11 labor organization to fail to classify its membership or to fail to
12 classify or refer any person for employment, or for an employer,
13 labor organization or joint labor-management committee controlling
14 apprenticeship or other training or retraining programs to fail to
15 admit or employ any person in any such program, on the basis of a
16 disability in those instances where physical, mental or visual
17 condition is a bona fide and relevant occupational qualification
18 necessary to the normal operation of that particular business or
19 enterprise, if it is shown that the particular disability would prevent
20 proper performance of the work for which the person with a
21 disability would otherwise have been hired, classified, referred or
22 prepared under a training or retraining program.

23 3. It is not an unlawful employment practice for an employer to
24 fail or refuse to hire or to discharge a person, for an employment
25 agency to fail to classify or refer any person for employment, for a
26 labor organization to fail to classify its membership or to fail to
27 classify or refer any person for employment, or for an employer,
28 labor organization or joint labor-management committee controlling
29 apprenticeship or other training or retraining programs to fail to
30 admit or employ any person in any such program, on the basis of his
31 or her age if the person is less than 40 years of age.

32 4. It is not an unlawful employment practice for a school,
33 college, university or other educational institution or institution of
34 learning to hire and employ employees of a particular religion if the
35 school or institution is, in whole or in substantial part, owned,
36 supported, controlled or managed by a particular religion or by a
37 particular religious corporation, association or society, or if the
38 curriculum of the school or institution is directed toward the
39 propagation of a particular religion.

40 5. It is not an unlawful employment practice for an employer to
41 observe the terms of any bona fide plan for employees' benefits,
42 such as a retirement, pension or insurance plan, which is not a
43 subterfuge to evade the provisions of NRS 613.310 to 613.435,
44 inclusive, *and sections 5 and 6 of this act* as they relate to
45 discrimination against a person because of age, except that no such



1 plan excuses the failure to hire any person who is at least 40 years of
2 age.

3 6. It is not an unlawful employment practice for an employer to
4 require employees to adhere to reasonable workplace appearance,
5 grooming and dress standards so long as such requirements are not
6 precluded by law, except that an employer shall allow an employee
7 to appear, groom and dress consistent with the employee's gender
8 identity or expression.

9 **Sec. 13.** NRS 613.380 is hereby amended to read as follows:

10 613.380 **1.** Notwithstanding any other provision of NRS
11 613.310 to 613.435, inclusive, *and sections 5 and 6 of this act*, it is
12 not an unlawful employment practice for an employer to ~~apply~~ :

13 *(a) Apply* different standards of compensation, or different
14 terms, conditions or privileges of employment pursuant to a bona
15 fide seniority or merit system, or a system which measures earnings
16 by quantity or quality of production , ~~for to employees who work in~~
17 ~~different locations.~~ if those differences are not the result of an
18 intention to discriminate because of race, color, religion, sex, sexual
19 orientation, gender identity or expression, age, disability or national
20 origin ~~;~~ ~~nor is it an unlawful employment practice for an employer~~
21 ~~to give~~ ; *or*

22 *(b) Give* and to act upon the results of any professionally
23 developed ability test, if the test, its administration or action upon
24 the results is not designed, intended or used to discriminate because
25 of race, color, religion, sex, sexual orientation, gender identity or
26 expression, age, disability or national origin.

27 **2.** *In a hearing before the Commission pursuant to NRS*
28 *233.170 or in an action filed in the district court pursuant to NRS*
29 *613.420 in which an employer claims that a difference in*
30 *compensation or other terms, conditions or privileges of*
31 *employment is due to any factor or combination of factors listed in*
32 *paragraph (a) of subsection 1, the Commission or district court, as*
33 *applicable, must find that an unlawful employment practice has*
34 *occurred unless the employer affirmatively shows by a*
35 *preponderance of the evidence that:*

36 *(a) The difference in compensation is due entirely to a factor*
37 *or a combination of factors listed in subsection 1; and*

38 *(b) The factor or factors listed in subsection 1 were relied upon*
39 *by the employer reasonably and without any intent to discriminate*
40 *because of race, color, religion, sex, sexual orientation, gender*
41 *identity or expression, age, disability or national origin.*

42 **Sec. 14.** NRS 613.390 is hereby amended to read as follows:

43 613.390 Nothing contained in NRS 613.310 to 613.435,
44 inclusive, *and sections 5 and 6 of this act* applies to any business or
45 enterprise on or near an Indian reservation with respect to any



1 publicly announced employment practice of such business or
2 enterprise under which a preferential treatment is given to any
3 individual because the individual is an Indian living on or near a
4 reservation.

5 **Sec. 15.** NRS 613.400 is hereby amended to read as follows:

6 613.400 Nothing contained in NRS 613.310 to 613.435,
7 inclusive, *and sections 5 and 6 of this act* requires any employer,
8 employment agency, labor organization or joint labor-management
9 committee subject to NRS 613.310 to 613.435, inclusive, *and*
10 *sections 5 and 6 of this act* to grant preferential treatment to any
11 person or to any group because of the race, color, religion, sex,
12 sexual orientation, gender identity or expression, age, disability or
13 national origin of the individual or group on account of an
14 imbalance which exists with respect to the total number or
15 percentage of persons of any race, color, religion, sex, sexual
16 orientation, gender identity or expression, age, disability or national
17 origin employed by any employer, referred or classified for
18 employment by any employment agency or labor organization,
19 admitted to membership or classified by any labor organization, or
20 admitted to, or employed in, any apprenticeship or other training
21 program, in comparison with the total number or percentage of
22 persons of that race, color, religion, sex, sexual orientation, gender
23 identity or expression, age, disability or national origin in any
24 community, section or other area, or in the available workforce in
25 any community, section or other area.

26 **Sec. 16.** NRS 613.405 is hereby amended to read as follows:

27 613.405 Any person injured by an unlawful employment
28 practice within the scope of NRS 613.310 to 613.435, inclusive, *and*
29 *sections 5 and 6 of this act* may file a complaint to that effect with
30 the Nevada Equal Rights Commission if the complaint is based on
31 discrimination because of race, color, sex, sexual orientation, gender
32 identity or expression, age, disability, religion or national origin.

33 **Sec. 17.** NRS 613.420 is hereby amended to read as follows:

34 613.420 *1.* If the Nevada Equal Rights Commission does not
35 conclude that an ~~unfair~~ *unlawful* employment practice within the
36 scope of NRS 613.310 to 613.435, inclusive, *and sections 5 and 6*
37 *of this act* has occurred, any person alleging such a practice may
38 apply to the district court for an order ~~granting or restoring to that~~
39 ~~person the rights to which the person is entitled under those~~
40 ~~sections.~~ :

41 *(a) Restoring all benefits and rights to which the aggrieved*
42 *person is entitled, including, but not limited to, rehiring, back pay,*
43 *annual leave time, sick leave time or pay, other fringe benefits and*
44 *seniority, with interest thereon from the date of the court's*
45 *decision at a rate equal to the prime rate at the largest bank in*



1 *Nevada, as ascertained by the Commissioner of Financial*
2 *Institutions, on January 1 or July 1, as the case may be,*
3 *immediately preceding the date of the court's decision, plus 2*
4 *percent. The rate of interest must be adjusted accordingly on each*
5 *January 1 and July 1 thereafter until the judgment is satisfied.*

6 (b) *Requiring the employer to pay:*

7 (1) *The costs and reasonable attorney's fees incurred by the*
8 *aggrieved person to pursue the claim.*

9 (2) *Punitive damages in an amount not greater than the*
10 *amount awarded pursuant to paragraph (a). The court shall*
11 *consider the willfulness of the conduct of the employer in*
12 *determining whether to award punitive damages and the amount*
13 *of such damages.*

14 (3) *If the employer has also violated section 5 of this act,*
15 *punitive damages in the amount of \$5,000 for each missing*
16 *document.*

17 2. *If a complainant is awarded damages under the provisions*
18 *of subsection 1 and is also awarded damages in an action filed*
19 *under federal law based on the same facts and legal theory, the*
20 *complainant shall return to the employer an amount of money*
21 *equal to the lesser of the two awards.*

22 **Sec. 18.** NRS 613.430 is hereby amended to read as follows:

23 613.430 ~~Not~~ *An* action authorized by NRS 613.420 may be
24 brought *not* more than ~~180 days~~ *2 years* after the date of the act
25 complained of. When a complaint is filed with the Nevada Equal
26 Rights Commission the limitation provided by this section is tolled
27 as to any action authorized by NRS 613.420 during the pendency of
28 the complaint before the Commission.

29 **Sec. 19.** This act becomes effective on July 1, 2017.

