

SENATE BILL NO. 52—COMMITTEE ON
COMMERCE, LABOR AND ENERGY

(ON BEHALF OF THE EMPLOYMENT SECURITY
DIVISION OF THE DEPARTMENT OF
EMPLOYMENT, TRAINING AND REHABILITATION)

PREFILED NOVEMBER 16, 2016

Referred to Committee on Commerce, Labor and Energy

SUMMARY—Revises provisions relating to unemployment
compensation. (BDR 53-226)

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 unemployment compensation; revising the base period for determining entitlement to unemployment benefits; revising provisions governing the collection of certain debts by the Administrator of the Employment Security Division of the Department of Employment, Training and Rehabilitation; revising provisions relating to charges to employers' accounts; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

1 The American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5,
2 provided incentive funds to Nevada's account in the Unemployment Trust Fund of
3 the United States Treasury if Nevada law was expanded to provide claims based on
4 an alternative base period. (Dep't of Labor, Empl't and Train. Admin. Sys.,
5 Unempl't Ins. Prog. Letter No. 14-09 (2009)) Federal regulators now authorize
6 states to modify or repeal the alternative base period provisions from state statutes
7 without having to return any incentive funds. (Dep't of Labor, Empl't and Train.
8 Admin. Sys., Unempl't Ins. Prog. Letter No. 14-09, Change 1) **Section 1** of this bill
9 eliminates the alternative base period provision in existing law in accordance with
10 the federal guidance that authorizes such action.

11 Existing Nevada law authorizes the Administrator of the Employment Security
12 Division of the Department of Employment, Training and Rehabilitation to collect
13 overpayments of unemployment benefits, with time periods for collection of 5
14 years for nonfraudulent overpayments and 10 years for fraudulent overpayments.



15 (NRS 612.365) **Section 2** requires the Administrator, under certain circumstances,
16 to report to the State Controller fraudulent overpayments of benefits for purposes
17 of: (1) offsetting the debt against payments owed by other state entities to the
18 person who is liable for the overpayment; and (2) preventing the renewal of the
19 professional or occupational license of such a person. For the same purposes,
20 **section 6** of this bill requires the Administrator, under certain circumstances, to
21 notify the State Controller of any employer against whom a judgment was obtained
22 for failure to pay unemployment contributions. **Section 7** of this bill requires the
23 State Controller to provide a holder of a professional or occupational license,
24 permit, certificate or registration who owes a debt reported by the Administrator
25 and the applicable licensing agency with certain information regarding the debt and
26 prohibits the licensing agency from renewing the license until the debt is satisfied, a
27 payment plan is executed or the debt is demonstrated to be invalid. Existing law
28 provides the same notification procedures and prohibition on the renewal of
29 professional and occupational licenses, permits, certificates and registration for
30 debts that are assigned to the State Controller for collection. (NRS 353C.1965)

31 Existing law contains procedures for charging to an employer's account the
32 benefits paid to a former employee. (NRS 612.551) **Section 5** of this bill clarifies
33 that these procedures apply to employers who make reimbursement payments in
34 lieu of contributions as well as employers who make contributions.

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

1 **Section 1.** NRS 612.025 is hereby amended to read as follows:
2 612.025 1. Except as otherwise provided in this section and
3 in NRS 612.344, "base period" means the first 4 of the last 5
4 completed calendar quarters immediately preceding the first day of a
5 person's benefit year, except that if one calendar quarter of the base
6 period so established has been used in a previous determination of
7 the person's entitlement to benefits the base period is the first 4
8 completed calendar quarters immediately preceding the first day of
9 the person's benefit year.

10 2. ~~If a person is not entitled to benefits using the base period~~
11 ~~as defined in subsection 1 but would be entitled to benefits if the~~
12 ~~base period were the last 4 completed calendar quarters immediately~~
13 ~~preceding the first day of the person's benefit year, "base period"~~
14 ~~means the last 4 completed calendar quarters immediately preceding~~
15 ~~the first day of the person's benefit year.~~

16 ~~3.~~ In the case of a combined wage claim pursuant to the
17 reciprocal arrangements provided in NRS 612.295, the base period
18 is that applicable under the unemployment compensation law of the
19 paying state.

20 **Sec. 1.5.** NRS 612.265 is hereby amended to read as follows:
21 612.265 1. Except as otherwise provided in this section and
22 NRS 239.0115 and 612.642, information obtained from any
23 employing unit or person pursuant to the administration of this
24 chapter and any determination as to the benefit rights of any person



1 is confidential and may not be disclosed or be open to public
2 inspection in any manner which would reveal the person's or
3 employing unit's identity.

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

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

14 (a) The Board of Regents of the University of Nevada for the
15 purpose of complying with the provisions of subsection 4 of NRS
16 396.531; and

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

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

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

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

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

32 (d) The Department of Taxation;

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

35 *(f) The State Controller for the purpose of complying with the*
36 *provisions of NRS 353C.190 or 353C.1965; and*

37 ~~(g)~~ (g) The Secretary of State to operate the state business
38 portal established pursuant to chapter 75A of NRS for the purposes
39 of verifying that data submitted via the portal has satisfied the
40 necessary requirements established by the Division, and as
41 necessary to maintain the technical integrity and functionality of the
42 state business portal established pursuant to chapter 75A of NRS.

43 Information obtained in connection with the administration of the
44 Division may be made available to persons or agencies for purposes



1 appropriate to the operation of a public employment service or a
2 public assistance program.

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

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

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

44 8. To further a current criminal investigation, the chief
45 executive officer of any law enforcement agency of this State may



1 submit a written request to the Administrator that the Administrator
2 furnish, from the records of the Division, the name, address and
3 place of employment of any person listed in the records of
4 employment of the Division. The request must set forth the social
5 security number of the person about whom the request is made and
6 contain a statement signed by the chief executive officer certifying
7 that the request is made to further a criminal investigation currently
8 being conducted by the agency. Upon receipt of such a request, the
9 Administrator shall furnish the information requested. The
10 Administrator may charge a fee to cover the actual costs of any
11 related administrative expenses.

12 9. In addition to the provisions of subsection 6, the
13 Administrator shall provide lists containing the names and addresses
14 of employers, and information regarding the wages paid by each
15 employer to the Department of Taxation, upon request, for use in
16 verifying returns for the taxes imposed pursuant to chapters 363A,
17 363B and 363C of NRS. The Administrator may charge a fee to
18 cover the actual costs of any related administrative expenses.

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

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

42 12. If any employee or member of the Board of Review, the
43 Administrator or any employee of the Administrator, in violation of
44 the provisions of this section, discloses information obtained from
45 any employing unit or person in the administration of this chapter,



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1 or if any person who has obtained a list of applicants for work, or of
2 claimants or recipients of benefits pursuant to this chapter uses or
3 permits the use of the list for any political purpose, he or she is
4 guilty of a gross misdemeanor.

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

11 **Sec. 2.** NRS 612.365 is hereby amended to read as follows:

12 612.365 1. Any person who is overpaid any amount as
13 benefits under this chapter is liable for the amount overpaid unless:

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

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

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

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

33 4. If the overpayment is due to fraud, misrepresentation or
34 willful nondisclosure, the Administrator may, within 10 years after
35 the notice of overpayment, recover any amounts due in accordance
36 with the provisions of NRS 612.7102 to 612.7116, inclusive. *If the*
37 *Administrator determines that the overpayment has been fully*
38 *adjudicated pursuant to this chapter and in compliance with*
39 *applicable federal laws, that all rights to appeal the notice of*
40 *overpayment have been exhausted and that repayments are not*
41 *being received as required by NRS 612.445, the Administrator*
42 *shall report such a debt to the State Controller for the purpose of:*

43 (a) *Offsetting the debt against payments of money due the*
44 *liable person by other state entities pursuant to NRS 353C.190;*
45 *and*



1 ***(b) Preventing the renewal of a license of the liable person***
2 ***pursuant to NRS 353C.1965.***

3 ***↳ The Administrator shall notify the State Controller when any***
4 ***debts reported pursuant to this subsection have been satisfied.***

5 5. The Administrator may waive recovery or adjustment of all
6 or part of the amount of any such overpayment which the
7 Administrator finds to be uncollectible or the recovery or adjustment
8 of which the Administrator finds to be administratively
9 impracticable.

10 6. To the extent allowed pursuant to federal law, the
11 Administrator may assess any administrative fee prescribed by an
12 applicable agency of the United States regarding the recovery of
13 such overpayments.

14 7. Any person against whom liability is determined under this
15 section may appeal therefrom within 11 days after the date the
16 notice provided for in this section was mailed to, or served upon, the
17 person. An appeal must be made and conducted in the manner
18 provided in this chapter for the appeals from determinations of
19 benefit status. The 11-day period provided for in this subsection
20 may be extended for good cause shown.

21 **Sec. 3.** (Deleted by amendment.)

22 **Sec. 4.** (Deleted by amendment.)

23 **Sec. 5.** NRS 612.551 is hereby amended to read as follows:

24 612.551 1. Except as otherwise provided in subsections 2, 3
25 and 7, if the Division determines that a claimant has earned 75
26 percent or more of his or her wages during his or her base period
27 from one employer, it shall notify the employer of its determination
28 and advise him or her that he or she has a right to protest the
29 charging of benefits to his or her account pursuant to subsection 4 of
30 NRS 612.550 ***† or liability for reimbursement payments, as***
31 ***applicable.***

32 2. Benefits paid pursuant to an elected base period in
33 accordance with NRS 612.344 must not be charged against the
34 record for experience rating of the employer ***† or required to be***
35 ***reimbursed, as applicable.***

36 3. Except as otherwise provided in subsection 7, if a claimant
37 leaves his or her last or next to last employer to take other
38 employment and leaves or is discharged by the latter employer,
39 benefits paid to the claimant must not be charged against the record
40 for experience rating of ***or required to be reimbursed by*** the former
41 employer ***†, as applicable.***

42 4. If the employer provides evidence within 10 working days
43 after the notice required by subsection 1 was mailed which satisfies
44 the Administrator that the claimant:



1 (a) Left his or her employment voluntarily without good cause
2 or was discharged for misconduct connected with the employment;
3 or

4 (b) Was the spouse of an active member of the Armed Forces of
5 the United States and left his or her employment because the spouse
6 was transferred to a different location,
7 **↳** the Administrator shall order that the benefits not be charged
8 against the record for experience rating of the employer **H or**
9 **required to be reimbursed, as applicable.**

10 5. The employer may appeal from the ruling of the
11 Administrator relating to the cause of the termination of the
12 employment of the claimant in the same manner as appeals may be
13 taken from determinations relating to claims for benefits.

14 6. A determination made pursuant to this section does not
15 constitute a basis for disqualifying a claimant to receive benefits.

16 7. If an employer who is given notice of a claim for benefits
17 pursuant to subsection 1 fails to submit timely to the Division all
18 known relevant facts which may affect the claimant's rights to
19 benefits as required by NRS 612.475 **the** :

20 **(a) The** employer's record for experience rating **, if the**
21 **employer pays contributions pursuant to NRS 612.535,** is not
22 entitled to be relieved of the amount of any benefits paid to the
23 claimant as a result of such failure that were charged against the
24 employer's record pursuant to NRS 612.550 **or 612.553**; and

25 **(b) The employer, if the employer has elected pursuant to NRS**
26 **612.553 to make reimbursement payments in lieu of contributions,**
27 **is not entitled to be relieved of any obligation to make**
28 **reimbursement payments for the amount of any benefits paid as a**
29 **result of such failure.**

30 **Sec. 6.** NRS 612.642 is hereby amended to read as follows:

31 612.642 **the** **If the Administrator determines that the debt**
32 **has been fully adjudicated pursuant to this chapter and in**
33 **compliance with applicable federal laws, that all rights to appeal**
34 **the debt have been exhausted and repayments are not being**
35 **received as required by this chapter, the Administrator shall notify**
36 **the** :

37 **1. The State Contractors' Board of any licensed contractor**
38 **against whom a judgment is obtained for failure to pay contributions**
39 **to the Unemployment Compensation Fund pursuant to this chapter.**

40 **2. The State Controller of any employer against whom a**
41 **judgment is obtained for failure to pay contributions to the**
42 **Unemployment Compensation Fund pursuant to this chapter until**
43 **the full amount of the debt and all interest and penalties thereon**
44 **has been satisfied for the purpose of:**



1 (a) *Offsetting the debt against payments of money due the*
2 *employer by other state entities pursuant to NRS 353C.190; and*

3 (b) *Preventing the renewal of a license of the employer*
4 *pursuant to NRS 353C.1965.*

5 *↳ The Administrator shall report to the State Controller when any*
6 *judgment of which the State Controller has been notified pursuant*
7 *to this subsection has been satisfied.*

8 **Sec. 7.** NRS 353C.1965 is hereby amended to read as follows:

9 353C.1965 1. The State Controller shall establish and
10 maintain a list of persons who owe a debt to an agency that has been
11 assigned to the State Controller for collection pursuant to NRS
12 353C.195 ~~or a debt that has been reported to the State~~
13 ~~Controller pursuant to NRS 612.365 or 612.642.~~

14 2. A licensing agency shall provide to the State Controller:

15 (a) The name, address and social security number or employer
16 identification number, as applicable, of each licensee; and

17 (b) The business identification number of the licensee, if the
18 licensee has a state business registration.

19 3. A licensing agency shall provide the information described
20 in subsection 2:

21 (a) On or before February 1 of each year for licensees who
22 renewed licenses from July 1 through December 31 of the previous
23 calendar year; or

24 (b) On or before August 1 of each year for licensees who
25 renewed licenses from January 1 through June 30 of the current
26 calendar year.

27 4. If the State Controller determines that the name of any
28 licensee appears on the list established by the State Controller
29 pursuant to subsection 1, the State Controller shall send a written
30 notice to the licensee, which includes, without limitation:

31 (a) The amount of the debt;

32 (b) A request for payment of the debt;

33 (c) Notification that the licensee may enter into an agreement
34 *for the payment of the debt* with the State Controller pursuant to
35 NRS 353C.130 ~~{for the payment of the debt;}~~ *or with the*
36 *Administrator of the Employment Security Division of the*
37 *Department of Employment, Training and Rehabilitation for*
38 *the payment of the debt reported to the State Controller pursuant*
39 *to NRS 612.365 or 612.642;*

40 (d) Notification that the licensee must respond to the notice
41 within 30 days after the date on which the notice was sent;

42 (e) Notification that the licensee may request a hearing to
43 determine the validity of the debt not later than 30 days after the
44 date on which the notice was sent; and



1 (f) Notification that the licensing agency is prohibited from
2 renewing the license of the licensee unless the licensee ~~pays~~ :

3 (1) ~~Pays~~ the debt ~~enters~~ ;

4 (2) ~~Enters~~ into an agreement for the payment of the debt
5 pursuant to NRS 353C.130 or ~~demonstrates to the State Controller~~
6 *with the Administrator of the Employment Security Division of the*
7 *Department of Employment, Training and Rehabilitation for the*
8 *payment of the debt reported to the State Controller pursuant to*
9 *NRS 612.365 or 612.642; or*

10 (3) ~~Demonstrates~~ that the debt is not valid.

11 5. The State Controller shall notify the licensing agency if the
12 licensee does not pay the debt that has been assigned to the State
13 Controller for collection, enter into an agreement for the payment of
14 the debt pursuant to NRS 353C.130 or demonstrate that the debt is
15 not valid. A licensing agency shall not renew the license of the
16 licensee who is the subject of the notification until the State
17 Controller notifies the licensing agency that the licensee has:

18 (a) Satisfied the debt;

19 (b) Entered into an agreement for the payment of the debt
20 pursuant to NRS 353C.130; or

21 (c) Demonstrated that the debt is not valid.

22 6. *The State Controller shall notify the licensing agency if the*
23 *licensee does not pay the debt that has been reported to the State*
24 *Controller pursuant to NRS 612.365 or 612.642. In addition to any*
25 *other grounds for the denial of the renewal of a license, a*
26 *licensing agency shall not renew the license of the licensee who is*
27 *the subject of the notification until the State Controller notifies the*
28 *licensing agency that the licensee has:*

29 (a) *Satisfied the debt; or*

30 (b) *Entered into an agreement for the payment of the debt with*
31 *the Administrator of the Employment Security Division of the*
32 *Department of Employment, Training and Rehabilitation.*

33 7. Information shared between the State Controller and a
34 licensing agency to carry out the provisions of this section is not a
35 public record.

36 ~~7.1~~ 8. A licensing agency may not be held liable in any civil
37 action for any action taken by the licensing agency in good faith to
38 comply with the provisions of this section.

39 ~~8.1~~ 9. The State Controller shall verify with the Secretary of
40 State the information related to the state business registration of
41 each licensee.

42 ~~9.1~~ 10. The State Controller shall adopt such regulations as
43 the State Controller determines necessary or advisable to carry out
44 the provisions of this section.

45 ~~10.1~~ 11. As used in this section:



- 1 (a) "License" means any license, certification, registration,
2 permit or other authorization that grants a person the authority to
3 engage in a profession or occupation in this State.
4 (b) "Licensee" means a person to whom a license has been
5 issued.
6 (c) "Licensing agency" means any agency, board or commission
7 that regulates an occupation or profession except for the Department
8 of Motor Vehicles, the Division of Insurance of the Department of
9 Business and Industry, the Commissioner of Insurance or any local
10 government.
11 **Sec. 8.** This act becomes effective on July 1, 2017.

