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RANDOLPH J. TOWNSEND
SENATOR
Washoe No. 4

COPY

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Chairman
Commerce and Labor
Member
Government Affairs
Taxation

State of Nevada
Senate

Seventy-second Session

March 10, 2003

LEGISLATIVE BUILDING:
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03 MAR 13 PM 12:33

William J. Raggio
Senate Majority Leader

Members of the Senate Committee on Finance

Dear Bill:

On March 7, 2003, the Senate Committee on Commerce and Labor passed Senate Bill 22, a measure introduced by Senator Joseph M. Neal, Jr. Senate Bill 22 defines "employer" to mean a person with five or more employees, instead of the current fifteen employees. The effect is to make more employers subject to the Equal Opportunities for Employment provisions of *Nevada Revised Statutes* Chapter 613. Generally, these provisions prohibit discrimination on the basis of race, sex, sexual orientation, age, or disability as well as refusing to grant leave to pregnant workers.

My colleagues and I feel strongly that protection of employees from the insidious effects of discrimination should not depend on the size of the employer. Indeed, many states have no exemption from discrimination laws at all. We view S.B. 22 as an important step toward extending the rights and freedoms all citizens should enjoy to an even greater number of Nevadans.

During our discussion of the bill, representatives of the Nevada Equal Rights Commission (NERC) presented a fiscal note. Frankly, our Committee was skeptical of its accuracy. However, given the current budget crisis, we wanted the benefit of your Committee's expertise on financial issues. Therefore, we voted to pass S.B. 22 and re-refer it to the Senate Committee on Finance. A copy of the NERC fiscal note is attached for your review.

Assuming your Committee determines there is indeed a fiscal impact the NERC cannot absorb with its current resources, our committee has a proposed solution. As you know, Senate Commerce and Labor has jurisdiction over some 32 occupational and professional boards and commissions. Virtually all of those bodies have a provision in their governing chapters that authorizes them to recover investigative and legal fees if a licensee violates the

chapter and is disciplined by the board. During the discussion on S. B. 22 we confirmed that NERC does not have such authority. Our committee believes NERC should have the same ability to recover the costs of investigation and prosecution when discipline is imposed on an employer that has discriminated against an employee in violation of Chapter 613. Such a mechanism places the cost of correcting the wrong doing on the violator and not on the public at large. We believe this is an appropriate enhancement to Nevada's public policy against unlawful discrimination.

We recognize NERC might not in practice be able to collect the entire cost of its investigation and prosecution in every case. For example, some employers might simply go out of business rather than pay the applicable fines and fees. However, when spread across all the cases where NERC successfully vindicates the rights of employees, recovery of its costs should not only offset any fiscal impact from S.B. 22 but actually reduce NERC's dependence on General Fund resources.

We have attached a copy of representative language authorizing recovery of investigative costs and attorney's fees from Chapter 624 addressing contractors. If your Committee agrees that inclusion of similar language in Chapter 613 is appropriate, we would be agreeable to the proposal of an amendment in your committee or the adoption of a friendly amendment on the floor.

Thank you for your time and consideration in sharing the workload by reviewing S.B. 22. We respectfully urge your Committee to join us in passing this important legislation. Please let me know if there is any additional action you want our Committee to take or if you need more information.

Respectfully,

Randolph

Randolph J. Townsend
Chairman, Senate Committee on Commerce and Labor

cc: Senator Neal
Members of Senate Commerce and Labor
Lynda Parven, Administrator, NERC

DISCIPLINARY ACTION

General Provisions

NRS 624.300 Disciplinary actions against licensee; recovery of costs of proceeding; deposit of fines in construction education account.

1. Except as otherwise provided in subsection 3, the board may:

(a) Suspend or revoke licenses already issued;

(b) Refuse renewals of licenses;

(c) Impose limits on the field, scope and monetary limit of the license;

(d) Impose an administrative fine of not more than $10,000;

(e) Order a licensee to repay to the account established pursuant to NRS 624.470, any amount paid out of the account pursuant to NRS 624.510 as a result of an act or omission of that licensee;

(f) Order the licensee to take action to correct a condition resulting from an act which constitutes a cause for disciplinary action, at the licensee's cost, that may consist of requiring the licensee to:

(1) Perform the corrective work himself;

(2) Hire and pay another licensee to perform the corrective work; or

(3) Pay to the owner of the construction project a specified sum to correct the condition; or

(g) Reprimand or take other less severe disciplinary action, including, without limitation, increasing the amount of the surety bond or cash deposit of the licensee,

if the licensee commits any act which constitutes a cause for disciplinary action.

2. If the board suspends or revokes the license of a contractor for failure to establish financial responsibility, the board may, in addition to any other conditions for reinstating or renewing the license, require that each contract undertaken by the licensee for a period to be designated by the board, not to exceed 12 months, be separately covered by a bond or bonds approved by the board and conditioned upon the performance of and the payment of labor and materials required by the contract.

3. If a licensee violates the provisions of NRS 624.3014 or subsection 3 of NRS 624.3015, the board may impose an administrative fine of not more than $20,000.

4. If a licensee commits a fraudulent act which is a cause for disciplinary action under NRS 624.3016, the correction of any condition resulting from the act does not preclude the board from taking disciplinary action.

5. If the board finds that a licensee has engaged in repeated acts that would be cause for disciplinary action, the correction of any resulting conditions does not preclude the board from taking disciplinary action pursuant to this section.

6. The expiration of a license by operation of law or by order or decision of the board or a court, or the voluntary surrender of a license by a licensee, does not deprive the board of jurisdiction to proceed with any investigation of, or action or disciplinary proceeding against, the licensee or to render a decision suspending or revoking the license.

Suggested language

(Emphasis added)

7. ***If discipline is imposed pursuant to this section, including any discipline imposed pursuant to a stipulated settlement, the costs of the proceeding, including investigative costs and attorney's fees, may be recovered by the board.***

8. All fines collected pursuant to this section must be deposited with the state treasurer for credit to the construction education account created pursuant to NRS 624.580.

[4:Art. IV:186:1941; A 1955, 378]—(NRS A 1963, 696; 1967, 1043, 1594; 1969, 939; 1979, 320; 1993, 884; 1995, 234, 2544, 2545; 1997, 2690; 1999, 1447, 1971, 2962, 2967; 2001, 2414)

Senate Bill 22 (BDR 53-132; Senator Neal; 02/07; work session 02/14; NACT)

AN ACT relating to employment; reducing the minimum number of employees that an employer must have to be subject to the provisions prohibiting unlawful employment practices; and providing other matters properly relating thereto.

The bill defines "employer" to mean a person with five or more employees, instead of the current fifteen employees. The effect would be to make more employers subject to the Equal Opportunities for Employment provisions of Chapter 613. Generally, these provisions prohibit discrimination on the basis of race, sex, sexual orientation, age, or disability as well as prohibiting discrimination against employees who use lawful products outside of work (e.g., tobacco) or refusing to grant leave to pregnant workers.

During the work session on February 14, 2003, Lynda Parven, Administrator of the Nevada Equal Rights Commission, testified the bill would have a fiscal impact on her agency. The Chair asked Ms. Parven to prepare a fiscal note based on the bill as written as well as a note indicating the impact if disability cases were left at the fifteen employee level. The fiscal note is included behind this document.

The Chair also requested staff to research whether any states use a different employee threshold for disability cases than for other unlawful employment practices. A memorandum dated February 24, 2003, containing that research is included behind Ms. Parven's fiscal note and is printed on blue paper.

Jon Sasser, Washoe Legal Services, provided some written follow-up testimony from Professor Robert Correales. That document is included behind Ms. Parven's fiscal note and is printed on pink paper.

KENNY C. GUINN
Governor

STATE OF NEVADA

MYLA C. FLORENCE
Director

DEPARTMENT OF EMPLOYMENT, TRAINING AND REHABILITATION
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February 27, 2003

MEMORANDUM

TO: Senator Randolph Townsend
Chairman, Senate Commerce and Labor

John P. Comeaux, Director
Department of Administration

FROM: Martin Ramirez, Chief Financial Officer
Department of Employment, Training and Rehabilitation

SUBJECT: **Revision** Fiscal Impact of SB22

It has come to our attention that our supporting document on the fiscal impact of SB22 had a slight calculation error. The 1,000.00 for Public Education, to inform the employers of their responsibility should SB22 become law, was duplicated in the last line of our memorandum. It should read "Total fiscal impact of SB22 for the 2003-2005 biennium would be **$444,579** with ADA or $371,643 without ADA." Enclosed is the revised attachment.

If you have any questions, please feel free to contact my office at (775) 684-3977.

mr/lb

Enclosure

cc: Linda Chandler Law, Office of the Governor
Myla C. Florence, Director
Lynda Parven, Administrator, NERC

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STATE OF NEVADA
DEPARTMENT OF EMPLOYMENT, TRAINING, AND REHABILITATION
NEVADA EQUAL RIGHTS COMMISSION
S.B. 22 FISCAL IMPACT

1.5 New Investigator Positions - Grade 32 WITH NEVADA

	SFY04	SFY05
Salary	70,530	74,057
Furniture (Professional setup)	5,376	0
Computer (Including software)	3,800	0
Non-State Owned Rent	5,220	5,220
Misc. Operating costs	5,268	5,268
Travel	200	200
Training	220	220
Advertising (Public Education)	1,000	1,000
Deputy Attorney General	117,000	117,000
Department Cost Allocation	16,500	16,500
Total	**225,114**	**219,465**

1.0 New Investigator Positions - Grade 32 WITHOUT NEVADA

	SFY04	SFY05
Salary	47,020	49,371
Furniture (Professional setup)	2,688	0
Computer (Including software)	1,900	0
Non-State Owned Rent	2,610	2,610
Misc. Operating costs	3,512	3,512
Travel	100	100
Training	110	110
Advertising (Public Education)	1,000	1,000
Deputy Attorney General	117,000	117,000
Department Cost Allocation	11,000	11,000
Total	**186,940**	**184,703**

Since the Federal Equal Employment Opportunity Commission will not participate in discrimination cases involving employers with less than 15 employees, the source of funding for S.B. 22 would require a General Fund Appropriation.

The current 8,281 employers with 15 or more employees have a total of 916,573 employees. Based on the Nevada Equal Rights Commission's (NERC) current workload (approximately 1,860 cases), .20 percent of the employees file a claim. S.B. 22 introduces 11,039 additional employers with 90,164 employees to NERC's possible workload. Based on the percentage (.20%) for employers with 15 or more employees, this would result in approximately 180 additional cases (.0020 X 90,164). Disability cases make up approximately 14% of the current caseload (265 of 1860 cases); therefore, without including disability as a basis, the number of cases would increase by

approximately 155 cases. The average number of case resolutions per investigator is 11 per month or 132 per year.

In addition, as there would be neither federal remedy nor right-to-sue option for these additional complainants, they would have no other option than a NERC public hearing. Based on an estimate of 24 probable cause cases per year (13% X 180), NERC would need to hold at least 12 public hearings per year, resulting in the need for one additional full-time Deputy Attorney General at a cost of $117,000 per year.

Total fiscal impact of SB22 for the 2003-2005 biennium would be $444,579 with ADA or $371,643 without ADA.

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BRENDA J. ERDOES, *Legislative Counsel* (775) 684-6830

MEMORANDUM

DATE: February 24, 2003

TO: Chairman Randolph J. Townsend and Members of Senate Commerce and Labor

FROM: Scott Young, Principal Research Analyst
Research Division

SUBJECT: **Different Employee Thresholds for Unlawful Employment Practices**

Senate Bill 22 was heard in the Senate Committee on Commerce and Labor on February 7, 2003. The bill lowers the minimum number of employees a business must have before it becomes subject to the prohibitions against certain unlawful employment practices from fifteen to five employees. A question arose regarding whether any state had different minimum numbers of employees for unlawful practices involving employees with disabilities.

States with a Higher Minimum Number for Disability

Kentucky has a higher minimum number of employees for purposes of unlawful employment practices based on disability. *Kentucky Revised Statutes* 344.030(2) provides in relevant part:

> For the purposes of KRS 344.030 to 344.110:
>
> (2) "Employer" means a person who has eight (8) or more employees within the state in each of twenty (20) or more calendar weeks in the current or preceding calendar year and an agent of such a person, except for purposes of determining discrimination based on disability, employer means a person engaged in an industry affecting commerce who has fifteen (15) or more employees for each working day in each of twenty (20) or more calendar weeks in the current or preceding calendar year, and any agent of that person, except that, for two (2) years following July 14, 1992, an employer means a person engaged in an industry affecting commerce who has twenty-five (25) or more employees for each working day in each of twenty (20) or more calendar weeks in the current or preceding year, and any agent of that person. For the purposes of determining discrimination based on disability, employer shall not include:

(a) The United States, a corporation wholly owned by the government of the United States, or an Indian tribe; or
(b) A bona fide private membership club (other than a labor organization) that is exempt from taxation under Section 501(c) of the Internal Revenue Service Code of 1986.

Georgia also has a different threshold for application of unlawful employment practices based on disability. Pursuant to *Code of Georgia* 34-5-2(4), an employer is defined as someone with ten or more employees for purposes of sex discrimination in employment. However, under *Code of Georgia* 34-6A-2(2), an employer is defined as someone with 15 or more employees for purposes of disability discrimination.

States with a Lower Minimum Number for Disability

Illinois law establishes a minimum number of 15 employees for unlawful employment practices in general but lowers the threshold to one employee for purposes of disability. *Illinois Complied Statutes* 775-5/2-101(B) provides in relevant part:

(B) Employer.
(1) "Employer" includes:
(a) Any person employing 15 or more employees within Illinois during 20 or more calendar weeks within the calendar year of or preceding the alleged violation;
(b) Any person employing one or more employees when a complainant alleges civil rights violation due to unlawful discrimination based upon his or her physical or mental handicap unrelated to ability or sexual harassment;

CONCLUDING REMARKS

Attached to this memorandum for your review is a chart prepared by the National Conference of State Legislatures entitled "Job Discrimination Employer Size Exemptions State Statute Chart" compiled in November 2001. Please let me know if you want further research on this topic.

SY/k:W32195
Enc.

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NATIONAL CONFERENCE OF STATE LEGISLATURES
EMPLOYMENT AND INSURANCE PROGRAM

Job Discrimination Employer Size Exemptions
State Statute Chart

State	Citation	Job Discrimination Exemption by Employer Size
Alabama	§25-1-20 Age discrimination only	Fewer than 20 employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year
Alaska	§18.80.300 (4)	No exemption
Arizona	41 §1461(2)	Fewer than 15 employees for each working day in each of 32 or more calendar weeks in the current or preceding calendar year
Arkansas	§16-123-102(5)	Fewer than 9 employees for each working day in each of 32 or more calendar weeks in the current or preceding calendar year
California	Gov. Code §12926(d)	Fewer than 5 employees
Colorado	§24-34-401	No exemption
Connecticut	§46a-51(10)	Fewer than 3 employees
Delaware	§19-710(2)	Fewer than 4 employees
District of Columbia	§1-2542	No exemption
Florida	§760.02 (7)	Fewer than 15 employees for each working day in each of 32 or more calendar weeks in the current or preceding calendar year
Georgia	§34-5-2(4) Public employees only except disability	Fewer than 15 or more employees within the state for each working day in each of 20 or more calendar weeks in the current or preceding calendar year
Hawaii	§378-1	No exemption
Idaho	§67-5902	Fewer than 5 employees for each working day in each of 32 or more calendar weeks in the current or preceding calendar year
Illinois	§775-5/2-101(B)(1)	Fewer than 15 employees within Illinois during 20 or more weeks within the calendar year of or preceding the alleged violation; none for physical or mental disability
Indiana	§22-9-1-3 §22-9-2-1	Fewer than 6 employees, except for age-no exemption
Iowa	§216.6.6	Fewer than 4 regular employees
Kansas	§44-1002, 1100	Fewer than 4 employees
Kentucky	§§344.030(2)	Fewer than 8 employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year; fewer than 15 employees for discrimination regarding disability
Louisiana	§23-302	Fewer than 20 employees within the state for each working day in each of 20 or more calendar weeks in the current or preceding calendar year
Maine	§5-4553	No exemption
Maryland	§49B-15(b)	Fewer than 15 employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year
Massachusetts	§151B-1(5)	Fewer than 6 employees
Michigan	§37.2201(a)	No exemption
Minnesota	§363.01(17)	No exemption
Mississippi	No provision	
Missouri	§213-010(7) §213.070	Fewer than 6 employees within the state, except for age-applies to state public employers only with no exemption
Montana	§49-2-101	No exemption
Nebraska	§48-1102(2)	Fewer than 15 employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year

Nevada	§613.310(1)	Fewer than 15 employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year
New Hampshire	354-A:2(vii)	Fewer than 6 employees
New Jersey	§10:5-5	No exemption
New Mexico	§28-1-2	Fewer than 4 employees
New York	Exec Law §292(5)	Fewer than 4 employees
North Carolina	§143-422.2	Fewer than 15 employees
North Dakota	§14-02.4-02(6)	No exemption
Ohio	§4112.01	Fewer than 4 employees
Oklahoma	§25-1301	Fewer than 15 employees for each working day in each of 32 or more calendar weeks in the current or preceding calendar year
Oregon	§659.010	No exemption
Pennsylvania	§43-954	Fewer than 4 employees
Puerto Rico	§29.151	No exemption
Rhode Island	§28-5-6	Fewer than 4 employees
South Carolina	§1-13-30	Fewer than 15 employees for each working day in each of 32 or more calendar weeks in the current or preceding calendar year
South Dakota	§20-13-1 No provision for age discrimination	No exemption
Tennessee	§4-21-102	Fewer than 8 employees
Texas	Commission on Human Rights Act	Fewer than 15 employees for each working day in each of 32 or more calendar weeks in the current or preceding calendar year
Utah	§34A-5-102	Fewer than 15 employees for each working day in each of 32 or more calendar weeks in the current or preceding calendar year
Vermont	§21-495d	No exemption
Virginia	§2.1-725.B Repealed §51.5-3 Disability only	No exemption
Washington	§49.60.040	Fewer than 8 employees
West Virginia	§5-11-3	Fewer than 12 employees for each working day in each of 32 or more calendar weeks in the current or preceding calendar year
Wisconsin	§111.32	No exemption
Wyoming	§27-9-102	Fewer than 2 employees

November 2001
Sources: Research Institute of America *Employment Coordinator*
National Conference of State Legislatures

For more information, please contact:
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MEMORANDUM

DATE: February 26, 2003
FROM: Robert I. Correales, Assistant Professor; John Novak, Third-Year Law Student, William S. Boyd School of Law, University of Nevada.
TO: Chair, Nevada Senate Committee on Commerce and Labor
RE: Senate Bill 22

This memorandum responds to the following question:

Does reducing the number of employees from 15 to 5 for purposes of the Nevada statute on employment discrimination mean that those employers will suddenly have to face significant added costs to conduct their businesses?

This question was raised in the context of required accommodations for employees with disabilities. In that context a witness before this committee posed a concern that he did not want see employers with 5 or less employees all of a sudden have to provide accommodations in the form of an elevator between a first and second floor of a small business for an employee with a mobility impairment.

The answer to that question is that such a situation is extremely unlikely, so as to be almost non-existent. First, unlike the Americans with Disabilities Act, which had a compliance schedule for public accommodations, no such compliance schedule exists in the Nevada statute for employers. We have found no cases in any state that required employers of this size to install elevators for mobility-impaired employees.

Again, for a more effective understanding of this issue, it is useful to revisit some of the fundamental aspects of what constitutes a "reasonable accommodation." Employees with disabilities who can perform the essential functions of a job with or without an accommodation cannot be discriminated against on the basis of their disability in employment. Of course, the employer is free to choose whoever he or she wishes to occupy a particular position as long as the decision does not violate the law. The law does not impose an affirmative duty on the employer to hire people with disabilities.

The few people with mobility impairments who can perform the essential functions of a job with or without an accommodation can request a "reasonable accommodation" upon being hired. That accommodation does not have to be provided if it would constitute an undue economic or administrative burden on the employer.

We cannot envision a case where a court or administrative agency would insist that a small employer, particularly one who is struggling for its own existence as a business, provide high-cost accommodations to an individual employee with a mobility impairment. Most accommodations in such cases would come in the form of flexibility in setting schedules to the extent to which such schedules could be reconciled with the employer's reasonable need to run its business. Even something as simple as setting a flexible schedule would yield in the face of real-world time constraints brought about by customer availability and regular business hours.