

SENATE BILL NO. 450—COMMITTEE ON GOVERNMENT AFFAIRS
(ON BEHALF OF EQUAL RIGHTS COMMISSION OF NEVADA)

MARCH 24, 2003

Referred to Committee on Government Affairs

SUMMARY—Makes various changes to provisions governing Nevada Equal Rights Commission. (BDR 18-475)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: Yes.

~

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

AN ACT relating to the Nevada Equal Rights Commission; requiring the Commission to adopt the processing of complaints; revising requirements regarding the confidentiality of complaints and investigations; and providing other matters properly relating thereto.

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

- 1 **Section 1.** Chapter 233 of NRS is hereby amended by adding
- 2 thereto a new section to read as follows:
- 3 *The Commission shall accept any complaint alleging an*
- 4 *unlawful discriminatory practice over which it has jurisdiction*
- 5 *pursuant to this chapter. The Commission shall adopt regulations*
- 6 *setting forth the manner in which the Commission will process*
- 7 *any such complaint and determine whether to hold an informal*
- 8 *meeting or conduct an investigation concerning the complain.*
- 9 **Sec. 2.** NRS 233.020 is hereby amended to read as follows:
- 10 233.020 As used in this chapter:
- 11 1. *“Administrator” means the Administrator of the*
- 12 *Commission.*
- 13 2. “Commission” means the Nevada Equal Rights Commission
- 14 †



1 ~~2. "Director" means the Executive Director of the Nevada~~
2 ~~Equal Rights Commission.] within the Department of Employment,~~
3 ~~Training and Rehabilitation.~~

4 3. "Disability" means, with respect to a person:
5 (a) A physical or mental impairment that substantially limits one
6 or more of the major life activities of the person;
7 (b) A record of such an impairment; or
8 (c) Being regarded as having such an impairment.
9 4. "Member" means a member of the Nevada Equal Rights
10 Commission.

11 **Sec. 3.** NRS 233.090 is hereby amended to read as follows:
12 233.090 The Governor shall appoint an ~~{Executive Director}~~
13 *Administrator* of the Commission. The ~~{Director shall}~~
14 *Administrator must* have had successful experience in the
15 administration and promotion of a program comparable to the
16 program provided by this chapter.

17 **Sec. 4.** NRS 233.100 is hereby amended to read as follows:
18 233.100 The ~~{Director}~~ *Administrator* is in the unclassified
19 service of the State.

20 **Sec. 5.** NRS 233.110 is hereby amended to read as follows:
21 233.110 The ~~{Director}~~ *Administrator* shall:
22 1. Be jointly responsible to the Governor and the Commission.
23 2. Direct and supervise all of the technical and administrative
24 activities of the Commission.
25 3. Perform any lawful act which he considers necessary or
26 desirable to carry out the purposes and provisions of this chapter.

27 **Sec. 6.** NRS 233.150 is hereby amended to read as follows:
28 233.150 The Commission may:
29 1. Order its ~~{Executive Director}~~ *Administrator* to investigate
30 tensions, practices of discrimination and acts of prejudice against
31 any person or group because of race, color, creed, sex, age,
32 disability, national origin or ancestry, and may conduct hearings
33 with regard thereto.
34 2. Mediate between or reconcile the persons or groups involved
35 in those tensions, practices and acts.
36 3. Issue subpoenas for the attendance of witnesses or for the
37 production of documents or tangible evidence relevant to any
38 investigations or hearings conducted by the Commission.
39 4. Delegate its power to hold hearings and issue subpoenas to
40 any of its members or any hearing officer in its employ.
41 5. Adopt reasonable regulations necessary for the Commission
42 to carry out the functions assigned to it by law.

43 **Sec. 7.** NRS 233.165 is hereby amended to read as follows:
44 233.165 1. ~~{The Commission shall:}~~ *If the Commission*
45 *determines to conduct an investigation of a complaint which*



1 *alleges an unlawful discriminatory practice in housing in*
2 *accordance with the regulations adopted pursuant to section 1 of*
3 *this act, the Commission must:*

4 (a) Begin an investigation of ~~[a complaint which alleges an~~
5 ~~unlawful discriminatory practice in housing]~~ *the complaint* within
6 30 days after it receives the complaint.

7 (b) Complete its investigation of the complaint within 100 days
8 after it receives the complaint unless it is impracticable to do so.

9 (c) Make a final disposition of the complaint within 1 year after
10 the date it receives the complaint unless it is impracticable to do so.

11 2. If the Commission determines that it is impracticable to
12 complete an investigation or make a final disposition of a complaint
13 which alleges an unlawful discriminatory practice in housing within
14 the period prescribed in subsection 1, the Commission shall send to
15 the complainant and the person against whom the complaint was
16 filed a statement setting forth its reasons for not completing the
17 investigation or making a final disposition of the complaint within
18 that period.

19 **Sec. 8.** NRS 233.170 is hereby amended to read as follows:

20 233.170 1. When a complaint is filed whose allegations if
21 true would support a finding of unlawful practice, the Commission
22 shall *determine whether to* hold an informal meeting to attempt a
23 settlement of the dispute ~~[. To prepare for the informal meeting, the~~
24 ~~Executive Director]~~ *in accordance with the regulations adopted*
25 *pursuant to section 1 of this act. If the Commission determines to*
26 *hold an informal meeting, the Administrator* may , *to prepare for*
27 *the meeting,* request from each party any information which is
28 reasonably relevant to the complaint. No further action may be taken
29 if the parties agree to a settlement.

30 2. If an agreement is not reached ~~[, the Executive Director of~~
31 ~~the Commission]~~ *at the informal meeting, the Administrator* shall
32 *determine whether to* conduct an investigation into the alleged
33 unlawful practice ~~[.]~~ *in accordance with the regulations adopted*
34 *pursuant to section 1 of this act.* After the investigation, if the
35 ~~[Executive Director]~~ *Administrator* determines that an unlawful
36 practice has occurred, ~~[he]~~ *the Administrator* shall attempt to
37 mediate between or reconcile the parties. The party against whom a
38 complaint was filed may agree to cease the unlawful practice. If an
39 agreement is reached, no further action may be taken by the
40 complainant or by the Commission.

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



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

4 (b) Order the person to:

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

6 (2) In cases involving an unlawful employment practice,
7 restore all benefits and rights to which the aggrieved person is
8 entitled, including , but not limited to, rehiring, back pay for a
9 period not to exceed 2 years after the date of the most recent
10 unlawful practice, annual leave time, sick leave time or pay, other
11 fringe benefits and seniority, with interest thereon from the date of
12 the Commission's decision *at* a rate equal to the prime rate at the
13 largest bank in Nevada, as ascertained by the Commissioner of
14 Financial Institutions, on January 1 or July 1, as the case may be,
15 immediately preceding the date of the Commission's decision, plus
16 2 percent. The rate of interest must be adjusted accordingly on each
17 January 1 and July 1 thereafter until the judgment is satisfied.

18 4. The order of the Commission is a final decision in a
19 contested case for the purpose of judicial review. If the person fails
20 to comply with the Commission's order, the Commission shall
21 apply to the district court for an order compelling such compliance,
22 but failure or delay on the part of the Commission does not
23 prejudice the right of an aggrieved party to judicial review. The
24 court shall issue the order unless it finds that the Commission's
25 findings or order are not supported by substantial evidence or are
26 otherwise arbitrary or capricious. If the court upholds the
27 Commission's order and finds that the person has violated the order
28 by failing to cease and desist from the unlawful practice or to make
29 the payment ordered, the court shall award the aggrieved party
30 actual damages for any economic loss and no more.

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

35 **Sec. 9.** NRS 233.170 is hereby amended to read as follows:

36 233.170 1. When a complaint is filed whose allegations if
37 true would support a finding of unlawful practice, the Commission
38 shall *determine whether to* hold an informal meeting to attempt a
39 settlement of the dispute ~~[. To prepare for the informal meeting, the~~
40 ~~Executive Director]~~ *in accordance with the regulations adopted*
41 *pursuant to section 1 of this act. If the Commission determines to*
42 *hold an informal meeting, the Administrator may , to prepare for*
43 *the meeting,* request from each party any information which is
44 reasonably relevant to the complaint. Except as otherwise provided



1 in subsection 3, no further action may be taken if the parties agree to
2 a settlement.

3 2. If an agreement is not reached ~~[, the Executive Director of~~
4 ~~the Commission]~~ *at the informal meeting, the Administrator* shall
5 *determine whether to* conduct an investigation into the alleged
6 unlawful practice ~~[.]~~ *in accordance with the regulations adopted*
7 *pursuant to section 1 of this act.* After the investigation, if the
8 ~~[Executive Director]~~ *Administrator* determines that an unlawful
9 practice has occurred, ~~[he]~~ *the Administrator* shall attempt to
10 mediate between or reconcile the parties. The party against whom a
11 complaint was filed may agree to cease the unlawful practice.
12 Except as otherwise provided in subsection 3, if an agreement is
13 reached, no further action may be taken by the complainant or by
14 the Commission.

15 3. If an agreement is reached by the parties in a case involving
16 a discriminatory practice in housing, the agreement must be
17 approved by the Commission. The agreement must be made public
18 unless the parties otherwise agree and the Commission determines
19 that disclosure is not necessary to further the purposes of chapter
20 118 of NRS.

21 4. If the attempts at mediation or conciliation fail in a case
22 involving an unlawful practice in employment or public
23 accommodations, the Commission may hold a public hearing on the
24 matter. After the hearing, if the Commission determines that an
25 unlawful practice has occurred, it may:

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

29 (b) Order the person to:

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

31 (2) In cases involving an unlawful employment practice,
32 restore all benefits and rights to which the aggrieved person is
33 entitled, including, but not limited to, rehiring, back pay for a period
34 not to exceed 2 years after the date of the most recent unlawful
35 practice, annual leave time, sick leave time or pay, other fringe
36 benefits and seniority, with interest thereon from the date of the
37 Commission's decision *at* a rate equal to the prime rate at the largest
38 bank in Nevada, as ascertained by the Commissioner of Financial
39 Institutions, on January 1 or July 1, as the case may be, immediately
40 preceding the date of the Commission's decision, plus 2 percent.
41 The rate of interest must be adjusted accordingly on each January 1
42 and July 1 thereafter until the judgment is satisfied.

43 5. If the attempts at mediation or conciliation fail in a case
44 involving an unlawful housing practice:



1 (a) The complainant or the person against whom the complaint
2 was filed may elect to have the claims included in the complaint
3 decided in a court of competent jurisdiction. If the court determines
4 that the person against whom the complaint was filed has committed
5 an unlawful housing practice, the court may:

6 (1) Award to the complainant actual damages and, within the
7 limitations prescribed by federal law, punitive damages.

8 (2) Award to the prevailing party costs and reasonable
9 attorney's fees.

10 (3) Order such other relief as the court deems appropriate,
11 including, but not limited to:

12 (I) Ordering a permanent or temporary injunction;

13 (II) Issuing a temporary restraining order; or

14 (III) Enjoining the defendant from continuing the
15 unlawful practice or taking other such affirmative action.

16 (b) If an election is not made pursuant to paragraph (a), the
17 Commission shall hold a public hearing on the matter. After the
18 hearing, if the Commission determines that an unlawful practice has
19 occurred, it may:

20 (1) Serve a copy of its findings of fact within 10 days upon
21 any person found to have engaged in the unlawful practice;

22 (2) Order the person to cease and desist from the unlawful
23 practice;

24 (3) Award to the complainant actual damages; and

25 (4) Impose a civil penalty of not more than \$25,000 upon the
26 person who committed the unlawful discriminatory practice.

27 6. The order of the Commission is a final decision in a
28 contested case for the purpose of judicial review. If the person fails
29 to comply with the Commission's order, the Commission shall
30 apply to the district court for an order compelling such compliance,
31 but failure or delay on the part of the Commission does not
32 prejudice the right of an aggrieved party to judicial review. The
33 court shall issue the order unless it finds that the Commission's
34 findings or order are not supported by substantial evidence or are
35 otherwise arbitrary or capricious. If the court upholds the
36 Commission's order and finds that the person has violated the order
37 by failing to cease and desist from the unlawful practice or to make
38 the payment ordered, the court shall award the aggrieved party
39 actual damages for any economic loss and no more.

40 7. After the Commission has held a public hearing and
41 rendered a decision, the complainant is barred from proceeding on
42 the same facts and legal theory before any other administrative body
43 or officer.



1 **Sec. 10.** NRS 233.180 is hereby amended to read as follows:
2 233.180 If, after the ~~{Executive Director of the Commission}~~
3 *Administrator* has conducted a preliminary investigation into an
4 alleged unlawful discriminatory practice in housing, employment or
5 public accommodations, the Commission determines that the
6 practice will cause immediate and irreparable harm to any person
7 aggrieved by the practice, the Commission, after the informal
8 meeting and before holding a public hearing upon the matter, may
9 apply on behalf of such person to the district court for a temporary
10 restraining order or preliminary injunction as provided in the
11 Nevada Rules of Civil Procedure.

12 **Sec. 11.** NRS 233.190 is hereby amended to read as follows:

13 233.190 ~~{A#}~~

14 1. *Except as otherwise provided in this section, any*
15 information gathered by the Commission in the course of its
16 investigation of an alleged unlawful discriminatory practice in
17 housing, employment or public accommodations is confidential .
18 ~~{until the}~~

19 2. *The Commission may disclose information gathered*
20 *pursuant to subsection 1 to:*

21 (a) *Any governmental entity as appropriate or necessary to*
22 *carry out its duties pursuant to this chapter; or*

23 (b) *To any other person if the information is provided in a*
24 *manner which does not include any information that may be used*
25 *to identify the complainant, the party against whom the unlawful*
26 *discriminatory practice is alleged or any person who provided*
27 *information to the Commission during the investigation.*

28 3. *Except as otherwise provided in subsection 4, the*
29 *Commission shall disclose information gathered pursuant to*
30 *subsection 1 to the complainant and the party against whom the*
31 *unlawful discriminatory practice is alleged if:*

32 (a) *Each has consented to such disclosure; or*

33 (b) *The Commission has determined to conduct a hearing on the*
34 *matter or ~~{applies}~~ apply for a temporary restraining order or an*
35 *injunction ~~{~~*

36 ~~{If}~~ *or an action has been filed in court concerning the*
37 *complaint.*

38 4. *The Commission may not disclose to the complainant or*
39 *the party against whom the unlawful discriminatory practice is*
40 *alleged:*

41 (a) *Any information obtained during negotiations for a*
42 *settlement or attempts at mediating or conciliating the complaint.*

43 (b) *Any investigative notes or reports made by the Commission.*



1 (c) Any information that may be used to identify a person who
2 provided information to the Commission for during the
3 investigation and who has requested anonymity.

4 5. Except as otherwise provided in this section, if the
5 Commission's attempts at mediating or conciliating the cause of the
6 grievance succeed, the information ~~shall~~ gathered pursuant to
7 subsection 1 must remain confidential.

8 6. If the Commission proceeds with a hearing or applies for
9 injunctive relief, confidentiality concerning any information, except
10 negotiations for a settlement or attempts at mediating or
11 conciliating the cause of the grievance, is no longer required.

12 **Sec. 12.** NRS 233.210 is hereby amended to read as follows:

13 233.210 Any person who willfully resists, prevents, impedes or
14 interferes with the Commission, its members, the ~~Director~~
15 Administrator or agents in the performance of duties pursuant to
16 this chapter shall be fined not more than \$500.

17 **Sec. 13.** 1. This section and sections 1 to 8, inclusive, 10, 11
18 and 12 of this act become effective on October 1, 2003.

19 2. Section 8 of this act expires by limitation on the date the
20 Governor declares that the Federal Government has determined that
21 certain provisions of NRS provide rights and remedies for alleged
22 discriminatory housing practices substantially equivalent to federal
23 law.

24 3. Section 9 of this act becomes effective on the date the
25 Governor declares that the Federal Government has determined that
26 certain provisions of NRS provide rights and remedies for alleged
27 discriminatory housing practices substantially equivalent to federal
28 law.

