

CHAPTER.....

AN ACT relating to the Nevada Equal Rights Commission; requiring the Commission to adopt regulations concerning 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:

Section 1. Chapter 233 of NRS is hereby amended by adding thereto a new section to read as follows:

The Commission shall accept any complaint alleging an unlawful discriminatory practice over which it has jurisdiction pursuant to this chapter. The Commission shall adopt regulations setting forth the manner in which the Commission will process any such complaint and determine whether to hold an informal meeting or conduct an investigation concerning the complaint.

Sec. 2. NRS 233.020 is hereby amended to read as follows:

233.020 As used in this chapter:

1. *“Administrator” means the Administrator of the Commission.*

2. *“Commission” means the Nevada Equal Rights Commission*

~~†~~

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

3. *“Disability” means, with respect to a person:*

(a) A physical or mental impairment that substantially limits one or more of the major life activities of the person;

(b) A record of such an impairment; or

(c) Being regarded as having such an impairment.

4. *“Member” means a member of the Nevada Equal Rights Commission.*

Sec. 3. NRS 233.090 is hereby amended to read as follows:

233.090 The Governor shall appoint an ~~{Executive Director}~~ *Administrator* of the Commission. The ~~{Director shall}~~ *Administrator must* have had successful experience in the administration and promotion of a program comparable to the program provided by this chapter.

Sec. 4. NRS 233.100 is hereby amended to read as follows:

233.100 The ~~{Director}~~ *Administrator* is in the unclassified service of the State.

Sec. 5. NRS 233.110 is hereby amended to read as follows:

233.110 The ~~{Director}~~ *Administrator* shall:

1. Be jointly responsible to the Governor and the Commission.
2. Direct and supervise all of the technical and administrative activities of the Commission.
3. Perform any lawful act which he considers necessary or desirable to carry out the purposes and provisions of this chapter.

Sec. 6. NRS 233.150 is hereby amended to read as follows:

233.150 The Commission may:

1. Order its ~~Executive Director~~ *Administrator* to investigate tensions, practices of discrimination and acts of prejudice against any person or group because of race, color, creed, sex, age, disability, national origin or ancestry, and may conduct hearings with regard thereto.
2. Mediate between or reconcile the persons or groups involved in those tensions, practices and acts.
3. Issue subpoenas for the attendance of witnesses or for the production of documents or tangible evidence relevant to any investigations or hearings conducted by the Commission.
4. Delegate its power to hold hearings and issue subpoenas to any of its members or any hearing officer in its employ.
5. Adopt reasonable regulations necessary for the Commission to carry out the functions assigned to it by law.

Sec. 7. NRS 233.165 is hereby amended to read as follows:

233.165 1. ~~The Commission shall;~~ *If the Commission determines to conduct an investigation of a complaint which alleges an unlawful discriminatory practice in housing in accordance with the regulations adopted pursuant to section 1 of this act, the Commission must:*

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

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

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

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

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

233.170 1. When a complaint is filed whose allegations if true would support a finding of unlawful practice, the Commission shall *determine whether to* hold an informal meeting to attempt a

settlement of the dispute ~~[. To prepare for the informal meeting, the Executive Director]~~ *in accordance with the regulations adopted pursuant to section 1 of this act. If the Commission determines to hold an informal meeting, the Administrator may, to prepare for the meeting,* request from each party any information which is reasonably relevant to the complaint. No further action may be taken if the parties agree to a settlement.

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

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

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

(b) Order the person to:

(1) Cease and desist from the unlawful practice.

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

4. The order of the Commission is a final decision in a contested case for the purpose of judicial review. If the person fails to comply with the Commission's order, the Commission shall apply to the district court for an order compelling such compliance, but failure or delay on the part of the Commission does not prejudice the right of an aggrieved party to judicial review. The court shall issue the order unless it finds that the Commission's

findings or order are not supported by substantial evidence or are otherwise arbitrary or capricious. If the court upholds the Commission's order and finds that the person has violated the order by failing to cease and desist from the unlawful practice or to make the payment ordered, the court shall award the aggrieved party actual damages for any economic loss and no more.

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

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

233.170 1. When a complaint is filed whose allegations if true would support a finding of unlawful practice, the Commission shall *determine whether to* hold an informal meeting to attempt a settlement of the dispute ~~[. To prepare for the informal meeting, the Executive Director]~~ *in accordance with the regulations adopted pursuant to section 1 of this act. If the Commission determines to hold an informal meeting, the Administrator* may, *to prepare for the meeting,* request from each party any information which is reasonably relevant to the complaint. Except as otherwise provided in subsection 3, no further action may be taken if the parties agree to a settlement.

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

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

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

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

(b) Order the person to:

(1) Cease and desist from the unlawful practice.

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

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

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

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

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

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

(I) Ordering a permanent or temporary injunction;

(II) Issuing a temporary restraining order; or

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

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

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

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

(3) Award to the complainant actual damages; and

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

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

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

Sec. 10. NRS 233.180 is hereby amended to read as follows:

233.180 If, after the ~~Executive Director of the Commission~~ *Administrator* has conducted a preliminary investigation into an alleged unlawful discriminatory practice in housing, employment or public accommodations, the Commission determines that the practice will cause immediate and irreparable harm to any person aggrieved by the practice, the Commission, after the informal meeting and before holding a public hearing upon the matter, may apply on behalf of such person to the district court for a temporary restraining order or preliminary injunction as provided in the Nevada Rules of Civil Procedure.

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

233.190 ~~[(A)]~~

1. Except as otherwise provided in this section, any information gathered by the Commission in the course of its investigation of an alleged unlawful discriminatory practice in housing, employment or public accommodations is confidential .
~~[(until the)]~~

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

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

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

3. Except as otherwise provided in subsection 4, the Commission shall disclose information gathered pursuant to

subsection 1 to the complainant and the party against whom the unlawful discriminatory practice is alleged if:

(a) Each has consented to such disclosure; or

(b) The Commission has determined to conduct a hearing on the matter or ~~applies~~ apply for a temporary restraining order or an injunction ~~;~~

~~—If~~ or an action has been filed in court concerning the complaint.

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

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

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

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

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

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

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

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

Sec. 13. 1. This section and sections 1 to 6, inclusive, 8, 10, 11 and 12 of this act become effective on October 1, 2003.

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

3. Sections 7 and 9 of this act become effective on the date the Governor declares that the Federal Government has determined that certain provisions of NRS provide rights and remedies for alleged discriminatory housing practices substantially equivalent to federal law.