

SENATE BILL NO. 406—SENATORS BROOKS AND CANCELA

MARCH 21, 2019

Referred to Committee on Commerce and Labor

SUMMARY—Revises provisions relating to certain businesses.
(BDR 53-1016)

FISCAL NOTE: Effect on Local Government: No.
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 practices; provides for the sharing between certain parties to a transaction for contracted labor of responsibility for compliance with certain legal obligations placed on employers; authorizes certain workers to bring an action against a client company for the failure of a labor contractor to comply with certain legal obligations placed on employers; making it unlawful to retaliate against certain workers under certain circumstances; authorizing the Labor Commissioner and the Administrator of the Division of Industrial Relations of the Department of Business and Industry to adopt certain regulations; providing penalties; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

- 1 **Section 7** of this bill: (1) requires that a client company shares with a labor
- 2 contractor responsibility for compliance with legal obligations placed on employers
- 3 for all workers provided by the labor contractor to the client company; and (2)
- 4 prohibits a worker’s waiver of the provisions of this bill, except pursuant to a
- 5 collective bargaining agreement which satisfies certain requirements.
- 6 **Section 8** of this bill provides that the provisions of this bill are in addition to
- 7 any other theories of liability or obligation established by law.
- 8 **Section 9** of this bill provides that a client company or labor contractor is not
- 9 prohibited from establishing, exercising or enforcing by contract certain remedies
- 10 against its counterpart for liability created by the acts of the counterpart.
- 11 **Section 10** of this bill sets forth certain provisions: (1) authorizing and
- 12 governing actions brought by a worker against a client company for the failure of a
- 13 labor contractor to comply with legal obligations placed on employers; and (2)



14 provides for certain remedies and, for prevailing workers, mandatory reasonable
15 attorney's fees and costs.

16 **Section 11** of this bill makes it unlawful for a client company, labor contractor
17 or an agent or representative of a client company or contractor to retaliate against a
18 worker for exercising his or her rights under the provisions of this bill.

19 **Section 12** of this bill authorizes the Labor Commissioner and the
20 Administrator of the Division of Industrial Relations of the Department of Business
21 and Industry to adopt necessary regulations to administer and enforce certain
22 provisions of this bill.

23 **Section 13** of this bill states that the provisions of this bill must not be
24 interpreted to: (1) change the definition of independent contractors; (2) impose
25 liability for the use of independent contractors except under certain circumstances;
26 or (3) impose liability on homeowners or owners of home-based businesses for
27 labor or services received at their respective homes.

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

1 **Section 1.** Chapter 613 of NRS is hereby amended by adding
2 thereto the provisions set forth as sections 2 to 13, inclusive, of this
3 act.

4 **Sec. 2.** *As used in sections 2 to 13, inclusive, of this act,*
5 *unless the context otherwise requires, the words and terms defined*
6 *in sections 3 to 6, inclusive, of this act have the meanings ascribed*
7 *to them in those sections.*

8 **Sec. 3.** *“Client company” means a business entity, regardless*
9 *of its form, that obtains from or is provided workers by a labor*
10 *contractor to perform labor or services within its usual course of*
11 *business. The term does not include:*

12 1. *A business entity with a workforce of fewer than 25*
13 *workers, including those hired directly by the client company and*
14 *those obtained from or provided by any labor contractor;*

15 2. *The State or any political subdivision thereof, including,*
16 *without limitation, any city, county or special district; or*

17 3. *A client company, as defined in NRS 616B.670.*

18 **Sec. 4.** *“Labor contractor” means a person or entity that*
19 *provides, either with or without a contract, a client company with*
20 *workers to perform labor or services in the usual course of*
21 *business of the client company. The term does not include:*

22 1. *A nonprofit, community-based organization that provides*
23 *services to workers;*

24 2. *A labor organization;*

25 3. *An apprenticeship program or hiring hall operated*
26 *pursuant to a collective bargaining agreement; or*

27 4. *An employee leasing company, as defined in*
28 *NRS 616B.670.*



1 **Sec. 5.** *“Usual course of business” means the regular and*
2 *customary work of a client company that is performed:*

- 3 1. *On property controlled by the client company; or*
4 2. *Under the continual supervision or direction of the client*
5 *company.*

6 **Sec. 6.** *“Worker” means an employee of a labor contractor*
7 *who performs labor or services for a client company.*

8 **Sec. 7.** 1. *A client company shall share with a labor*
9 *contractor all legal responsibility for compliance with the*
10 *obligations imposed on employers by the statutes, administrative*
11 *regulations and common law of this State for all workers provided*
12 *by the labor contractor to the client company.*

13 2. *Except as otherwise provided in this subsection, a client*
14 *company may not assign the responsibility described in subsection*
15 *1 to a labor contractor or any other entity. A client company may:*

- 16 (a) *Obtain insurance for this form of liability; and*
17 (b) *Require a labor contractor to post a bond to secure proper*
18 *performance.*

19 3. *Except as otherwise provided in subsection 4, the*
20 *provisions of sections 2 to 13, inclusive, of this act may not be*
21 *waived by a worker.*

22 4. *The provisions of sections 2 to 13, inclusive, of this act may*
23 *be waived by a worker only pursuant to a bona fide collective*
24 *bargaining agreement which in its provisions covers workers.*

25 *Such a waiver must:*

26 (a) *Be explicitly set forth in the agreement in clear and*
27 *unmistakable terms; and*

28 (b) *Apply to only that period for which the agreement remains*
29 *in effect.*

30 **Sec. 8.** *The provisions of sections 2 to 13, inclusive, of this*
31 *act are in addition to and supplemental of any other theories of*
32 *liability or obligation established by statute or common law.*

33 **Sec. 9.** *The provisions of sections 2 to 13, inclusive, of this*
34 *act do not prohibit:*

35 1. *A client company from establishing, exercising or*
36 *enforcing by contract any otherwise lawful remedies against a*
37 *labor contractor for liability created by acts of the labor*
38 *contractor.*

39 2. *A labor contractor from establishing, exercising or*
40 *enforcing by contract any otherwise lawful remedies against a*
41 *client company for liability created by acts of the client company.*

42 **Sec. 10.** 1. *A worker who alleges the failure of a labor*
43 *contractor to comply with the obligations imposed on employers by*
44 *the statutes, administrative regulations and common law of this*
45 *State and who has satisfied the requirements of subsection 2 may*



1 *bring an action against the client company for which the worker*
2 *provides labor or services in the courts of this State to enforce the*
3 *provision of sections 2 to 13, inclusive, of this act and the*
4 *obligations imposed on employers by the statutes, administrative*
5 *regulations and common law of this State.*

6 2. *Not less than 30 days before filing a claim or civil action*
7 *against a client company pursuant to subsection 1, a worker or his*
8 *or her representative must notify the client company of the failure*
9 *of its labor contractor to comply with the obligations imposed on*
10 *employers by the statutes, administrative regulations and common*
11 *law of this State.*

12 3. *A worker is entitled to all remedies available under the law*
13 *or in equity which are appropriate to remedy any failure of a labor*
14 *contractor to comply with the obligations imposed on employers by*
15 *the statutes, administrative regulations and common law of this*
16 *State, including, without limitation, back pay, damages,*
17 *reinstatement or injunctive relief.*

18 4. *A worker who prevails in any action against a client*
19 *company to enforce the obligations imposed on employers by the*
20 *statutes, administrative regulations and common law of this State*
21 *must be awarded his or her reasonable attorney's fees and costs.*

22 **Sec. 11. 1.** *It is unlawful for a client company, labor*
23 *contractor or an agent or representative of a client company or*
24 *labor contractor to take any action against a worker in retaliation*
25 *for the exercise of the rights of the worker pursuant to sections 2*
26 *to 13, inclusive, of this act, including, without limitation, a worker*
27 *who mistakenly, but in good faith, alleges any failure of a labor*
28 *contractor to comply with the obligations imposed on employers by*
29 *the statutes, administrative regulations and common law of this*
30 *State.*

31 2. *A rebuttable presumption is created that the action of a*
32 *labor contractor or client company was taken in retaliation*
33 *against a worker for the exercise of the rights of the worker*
34 *protected by the provisions of sections 2 to 13, inclusive, of this act*
35 *if the worker establishes in any proceeding brought pursuant to*
36 *sections 2 to 13, inclusive, of this act that:*

37 (a) *The worker was regularly employed by or was performing*
38 *services for the client company;*

39 (b) *The worker exercised his or her rights pursuant to the*
40 *provisions of sections 2 to 13, inclusive, of this act or alleged in*
41 *good faith that the labor contractor failed to comply with the*
42 *obligations imposed on employers by the statutes, administrative*
43 *regulations and common law of this State;*



1 (c) *The labor contractor or client company reduced the pay of*
2 *the worker or demoted, terminated or otherwise penalized the*
3 *worker; and*

4 (d) *The reduction in pay, demotion, termination or other*
5 *penalty described in paragraph (c) occurred not more than 60 days*
6 *after the exercise of rights or allegation described in*
7 *paragraph (b).*

8 3. *A defendant may rebut a presumption created pursuant to*
9 *subsection 2 by proving that the true and entire reason for the*
10 *reduction in pay, demotion, termination or other penalty described*
11 *in paragraph (c) of subsection 2 was a legitimate business reason.*

12 4. *A worker may rebut a legitimate business reason asserted*
13 *by a defendant by showing that the reason was actually a pretext.*

14 **Sec. 12.** 1. *The Labor Commissioner may adopt regulations*
15 *and rules of practice and procedure necessary to administer and*
16 *enforce the provisions of sections 2 to 13, inclusive, of this act that*
17 *are under his or her jurisdiction.*

18 2. *The Administrator of the Division of Industrial Relations*
19 *of the Department of Business and Industry may adopt regulations*
20 *and rules of practice and procedure necessary to administer and*
21 *enforce the provisions of sections 2 to 13, inclusive, of this act that*
22 *are under the jurisdiction of the Division.*

23 **Sec. 13.** 1. *The provisions of sections 2 to 13, inclusive, of*
24 *this act must not be interpreted to:*

25 (a) *Change the definition of independent contractor; or*

26 (b) *Impose liability on a client company for the use of an*
27 *independent contractor other than a labor contractor unless the*
28 *labor or services which are provided by the independent contractor*
29 *are performed substantially or in their entirety in the usual course*
30 *of business of the client company.*

31 2. *The provisions of sections 2 to 13, inclusive, of this act*
32 *must not be interpreted to impose liability on:*

33 (a) *A homeowner for labor or services received at the home of*
34 *that homeowner; or*

35 (b) *The owner of a home-based business for labor or services*
36 *received at that home.*

37 **Sec. 14.** This act becomes effective:

38 1. Upon passage and approval for the purpose of adopting any
39 regulations and performing any other preparatory administrative
40 tasks that are necessary to carry out the provisions of this act; and

41 2. On January 1, 2020, for all other purposes.

