

ASSEMBLY BILL NO. 222—ASSEMBLYWOMAN TORRES

MARCH 10, 2021

Referred to Committee on Commerce and Labor

SUMMARY—Revises provisions governing employment practices. (BDR 53-739)

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

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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; making it an unlawful employment practice for an employer to take certain actions against an employee who reports, requests the correction of or refuses to engage in certain conduct; establishing procedures for certain civil actions concerning unlawful employment practices; revising provisions governing periods of limitation in certain civil actions concerning unlawful employment practices; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

1 The Nevada Supreme Court has determined that under existing law an
2 employer violates the public policy of this State protecting what is commonly
3 referred to as whistleblowing if the employer terminates the employment of an at-
4 will employee because the employee reports to the appropriate external authorities
5 conduct by the employer that the employee reasonably and in good faith suspects
6 may be illegal. However, the Court has also determined that this protection does not
7 extend to a whistleblower who reports such conduct only to a supervisor or other
8 person within the employer’s organization. (*Wiltzie v. Baby Grand Corp.*, 105 Nev.
9 291, 293 (1989); *Allum v. Valley Bank of America*, 114 Nev. 1313, 1325 (1998))
10 **Section 1** of this bill codifies in statute the whistle blower protections established
11 by the Nevada Supreme Court for employees who report to appropriate authorities,
12 whether internal or external to the employer, conduct by the employer that the
13 employee reasonably and in good faith suspects may be illegal. **Section 1** also
14 provides that those provisions apply to conduct by the employer that the employee
15 reasonably and in good faith suspects may be unsafe. **Section 1** further provides the
16 same protections to employees who request the correction of or refuse to engage in
17 such conduct. **Section 2** of this bill makes a conforming change to indicate the
18 placement of **section 1** within the Nevada Revised Statutes.



19 Under existing law, an employer may not discriminate against an employee in
20 retaliation for the employee's opposition to the employer's engagement in certain
21 unlawful employment practices or because the employee made a charge, testified,
22 assisted or participated in any manner in an investigation, proceeding or hearing
23 concerning such practices. (NRS 613.340) **Section 3** of this bill provides that if a
24 discharged employee makes a prima facie showing in a civil action against his or
25 her employer that the employee was discharged in retaliation for opposing the
26 employer's engagement in certain unlawful practices or for participating in any
27 manner in an investigation, proceeding or hearing concerning such practices, the
28 burden of proof shifts to the employer to demonstrate that the employee engaged in
29 other conduct in the workplace that constitutes gross misconduct sufficient to
30 independently justify the discharge of the employee.

31 Under existing law, if, after a complaint alleging an unfair employment practice
32 is filed with the Nevada Equal Rights Commission, the Commission does not
33 conclude that an unfair employment practice has occurred, the person alleging such
34 a practice has occurred is authorized to bring a civil action in the district court for
35 an order granting or restoring to that person the rights to which the person is
36 entitled. (NRS 613.420) Existing law prohibits a person from bringing such a civil
37 action more than 180 days after the act constituting the unfair employment practice
38 occurred or more than 90 days after the receipt of a right-to-sue letter issued by the
39 Commission, whichever is later. Existing law further provides that the 90-day and
40 180-day periods of limitation are tolled during the pendency of the complaint
41 before the Commission. (NRS 613.430) **Section 4** of this bill extends the coverage
42 of those provisions to: (1) actions in the district court for the occurrence of
43 unlawful employment practices prohibited under Title VII of the Civil Rights Act
44 of 1964; (2) issuance of right-to-sue letters by the federal Equal Employment
45 Opportunity Commission; and (3) the tolling of the 90-day and 180-day periods of
46 limitation during the pendency of a complaint before the federal Equal Employment
47 Opportunity Commission.

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 a new section to read as follows:

3 ***1. It is an unlawful employment practice for an employer to***
4 ***discharge, discipline, discriminate against in any manner or deny***
5 ***employment or promotion to, or threaten to take any such action***
6 ***against, an employee because the employee:***

7 ***(a) Reports to an appropriate authority, whether internal or***
8 ***external to the employer;***

9 ***(b) Requests correction of; or***

10 ***(c) Refuses to engage in,***
11 ***↳ conduct that the employee reasonably and in good faith***
12 ***suspects may violate a local, state or federal law or regulation or***
13 ***pose an unreasonable risk to the health or safety of any person.***

14 ***2. An employee who is discharged, discriminated against or***
15 ***otherwise suffers an adverse employment action as a result of a***



1 *violation of subsection 1 by his or her employer may bring a civil*
2 *action against the employer and obtain:*

3 (a) *Any wages and benefits lost as a result of the violation;*

4 (b) *An order of reinstatement without loss of position, seniority*
5 *or benefits; and*

6 (c) *Damages equal to the amount of the lost wages and*
7 *benefits.*

8 3. *The court shall award reasonable costs, including, without*
9 *limitation, court costs and attorney's fees, to the prevailing party*
10 *in an action brought pursuant to this section.*

11 4. *The remedy provided by this section is the exclusive*
12 *remedy for an action brought pursuant to this section.*

13 **Sec. 2.** NRS 613.310 is hereby amended to read as follows:

14 613.310 As used in NRS 613.310 to 613.4383, inclusive, *and*
15 *section 1 of this act*, unless the context otherwise requires:

16 1. "Disability" means, with respect to a person:

17 (a) A physical or mental impairment that substantially limits one
18 or more of the major life activities of the person, including, without
19 limitation, the human immunodeficiency virus;

20 (b) A record of such an impairment; or

21 (c) Being regarded as having such an impairment.

22 2. "Employer" means any person who has 15 or more
23 employees for each working day in each of 20 or more calendar
24 weeks in the current or preceding calendar year, but does not
25 include:

26 (a) The United States or any corporation wholly owned by the
27 United States.

28 (b) Any Indian tribe.

29 (c) Any private membership club exempt from taxation pursuant
30 to 26 U.S.C. § 501(c).

31 3. "Employment agency" means any person regularly
32 undertaking with or without compensation to procure employees for
33 an employer or to procure for employees opportunities to work for
34 an employer, but does not include any agency of the United States.

35 4. "Gender identity or expression" means a gender-related
36 identity, appearance, expression or behavior of a person, regardless
37 of the person's assigned sex at birth.

38 5. "Labor organization" means any organization of any kind, or
39 any agency or employee representation committee or plan, in which
40 employees participate and which exists for the purpose, in whole or
41 in part, of dealing with employers concerning grievances, labor
42 disputes, wages, rates of pay, hours of employment or other
43 conditions of employment.

44 6. "Person" includes the State of Nevada and any of its
45 political subdivisions.



1 7. "Sexual orientation" means having or being perceived as
2 having an orientation for heterosexuality, homosexuality or
3 bisexuality.

4 **Sec. 3.** NRS 613.340 is hereby amended to read as follows:

5 613.340 1. It is an unlawful employment practice for an
6 employer to discriminate against any of his or her employees or
7 applicants for employment, for an employment agency to
8 discriminate against any person, or for a labor organization to
9 discriminate against any member thereof or applicant for
10 membership, because the employee, applicant, person or member, as
11 applicable, has opposed any practice made an unlawful employment
12 practice by NRS 613.310 to 613.4383, inclusive, *and section 1 of*
13 *this act*, or because he or she has made a charge, testified, assisted
14 or participated in any manner in an investigation, proceeding or
15 hearing under NRS 613.310 to 613.4383, inclusive **H**, *and section*
16 *1 of this act.*

17 2. It is an unlawful employment practice for an employer, labor
18 organization or employment agency to print or publish or cause to
19 be printed or published any notice or advertisement relating to
20 employment by such an employer or membership in or any
21 classification or referral for employment by such a labor
22 organization, or relating to any classification or referral for
23 employment by such an employment agency, indicating any
24 preference, limitation, specification or discrimination, based on race,
25 color, religion, sex, sexual orientation, gender identity or expression,
26 age, disability or national origin, except that such a notice or
27 advertisement may indicate a preference, limitation, specification or
28 discrimination based on religion, sex, sexual orientation, gender
29 identity or expression, age, physical, mental or visual condition or
30 national origin when religion, sex, sexual orientation, gender
31 identity or expression, age, physical, mental or visual condition or
32 national origin is a bona fide occupational qualification for
33 employment.

34 *3. If an employee makes a prima facie showing in a civil*
35 *action against his or her employer that the employee was*
36 *discharged in retaliation for engaging in conduct that is protected*
37 *by subsection 1, the burden of proof shifts to the employer to*
38 *demonstrate that the employee engaged in other conduct in the*
39 *workplace that constitutes gross misconduct sufficient to*
40 *independently justify the discharge of the employee.*

41 *4. As used in this section, "gross misconduct" includes,*
42 *without limitation:*

43 *(a) Theft;*

44 *(b) Fighting;*



1 (c) *Intoxication or use of a controlled substance or any other*
2 *substance that could impair the ability of the employee to perform*
3 *the duties of his or her employment safely and efficiently;*

4 (d) *The commission of a criminal act, including, without*
5 *limitation, the sale of a controlled substance or dangerous drug;*
6 *and*

7 (e) *Any serious act of insubordination.*

8 **Sec. 4.** NRS 613.430 is hereby amended to read as follows:

9 613.430 *To the extent consistent with federal law:*

10 1. No action authorized by NRS 613.420 *or Title VII of the*
11 *Civil Rights Act of 1964, 42 U.S.C. §§ 2000e et seq.,* may be
12 brought:

13 (a) More than 180 days after the date of the act complained of;
14 or

15 (b) More than 90 days after the date of the:

16 (1) Issuance of the letter described in subsection 1 of NRS
17 613.420; or

18 (2) Receipt of the right-to-sue notice *issued by the Nevada*
19 *Equal Rights Commission* pursuant to NRS 613.412 ~~§~~ *or by the*
20 *United States Equal Employment Opportunity Commission*
21 *pursuant to 42 U.S.C. § 2000e-5(f)(1), as applicable,*

22 ↪ *whichever is later.*

23 2. When a complaint is filed with the Nevada Equal Rights
24 Commission ~~§~~ *or the United States Equal Employment*
25 *Opportunity Commission,* the limitation provided by this section is
26 tolled as to any action authorized by NRS 613.420 *or Title VII of*
27 *the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e et seq.,* during the
28 pendency of the complaint before the *Nevada Equal Rights*
29 *Commission* ~~§~~ *or the United States Equal Employment*
30 *Opportunity Commission, as applicable.*

31 **Sec. 5.** This act becomes effective upon passage and approval.

