

SENATE BILL NO. 145—SENATORS LANGE, DONATE; DALY AND OHRENSCHALL

FEBRUARY 14, 2023

Referred to Committee on Commerce and Labor

SUMMARY—Revises provisions related to employee misclassification. (BDR 53-159)

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 employee misclassification; authorizing the Labor Commissioner to use certain money to pay for additional staff for the Office of the Labor Commissioner; revising provisions relating to the communication between offices of certain state agencies of information relating to employee misclassification; revising the amount of the administrative penalty that may be imposed for certain conduct relating to employee misclassification; eliminating the Task Force on Employee Misclassification; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

1 Existing law requires the Labor Commissioner to enforce all labor laws of the
2 State of Nevada. If the Labor Commissioner has reason to believe that a person is
3 violating or has violated a labor law or regulation, the Labor Commissioner may
4 take any appropriate action and, under certain circumstances, impose an
5 administrative penalty against the person. All money collected by the Labor
6 Commissioner as an administrative penalty must be deposited in the State General
7 Fund. (NRS 607.160) **Section 1** of this bill requires the Labor Commissioner to
8 instead deposit all money collected as an administrative penalty or as an
9 investigative cost into a separate account in the State General Fund. **Section 1**
10 further authorizes the Labor Commissioner to use the money in the account to pay
11 for additional staff for the Office of the Labor Commissioner.

12 Existing law: (1) requires the offices of the Labor Commissioner, the Division
13 of Industrial Relations of the Department of Business and Industry, the
14 Employment Security Division of the Department of Employment, Training and
15 Rehabilitation, the Department of Taxation and the Attorney General to share
16 between their respective offices information relating to suspected employee



17 misclassification which is received in the performance of their official duties and
18 which is not otherwise declared by law to be confidential; and (2) authorizes such
19 offices to communicate information relating to employee misclassification which is
20 received in the performance of their official duties and which is otherwise declared
21 by law to be confidential, if the confidentiality of the information is otherwise
22 maintained under the terms and conditions required by law. (NRS 607.217) **Section**
23 **2** of this bill instead requires these offices to communicate between their respective
24 offices information relating to suspected or actual employee misclassification
25 which is received in the performance of their official duties, regardless of whether
26 the information is otherwise declared by law to be confidential. **Section 2** further
27 provides that any such information communicated between their respective offices
28 which is otherwise declared by law to be confidential must otherwise be maintained
29 under the terms and conditions required by law. **Section 4** of this bill makes a
30 conforming change to require the Department of Taxation to share such
31 information.

32 Existing law authorizes the Labor Commissioner to impose certain
33 administrative penalties against an employer who misclassifies a person as an
34 independent contractor or otherwise fails to properly classify an employee
35 including: (1) for a first offense committed by an employer who unintentionally
36 misclassifies or otherwise fails to properly classify a person as an employee, a
37 warning; (2) for a first offense committed by an employer who willfully fails to
38 properly classify a person as an employee, a fine of \$2,500 for the first incident of
39 willfully misclassifying one or more persons; and (3) for a second or subsequent
40 offense, a fine of \$5,000 for each employee who was willfully misclassified. (NRS
41 608.400) **Section 3** of this bill provides instead that any such administrative penalty
42 imposed by Labor Commissioner is a fine of \$5,000.

43 Existing law creates the Task Force on Employee Misclassification, consisting
44 of certain persons appointed by the Governor. The Task Force has various duties,
45 including: (1) evaluating the policies and practices of certain state agencies relating
46 to employee misclassification; (2) evaluating any existing fines, penalties or other
47 disciplinary action relating to employee misclassification; (3) developing certain
48 recommendations to reduce the occurrence of employee misclassification; and (4)
49 submitting an annual report to the Legislative Commission that includes a summary
50 of the Task Force's work and recommendations. (NRS 607.218, 607.219,
51 607.2195) **Section 5** of this bill eliminates the Task Force and its duties. **Section 2**
52 makes a conforming change to reorganize the definition of "employee
53 misclassification" into NRS 607.217, which is the only section to which that
54 definition applies after the elimination of the provisions in the Nevada Revised
55 Statutes relating to the Task Force.

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

1 **Section 1.** NRS 607.160 is hereby amended to read as follows:

2 607.160 1. The Labor Commissioner:

3 (a) Shall enforce all labor laws of the State of Nevada:

4 (1) Without regard to whether an employee or worker is
5 lawfully or unlawfully employed; and

6 (2) The enforcement of which is not specifically and
7 exclusively vested in any other officer, board or commission.



1 (b) May adopt regulations to carry out the provisions of
2 paragraph (a).

3 2. If the Labor Commissioner has reason to believe that a
4 person is violating or has violated a labor law or regulation, the
5 Labor Commissioner may take any appropriate action against the
6 person to enforce the labor law or regulation whether or not a claim
7 or complaint has been made to the Labor Commissioner concerning
8 the violation.

9 3. Before the Labor Commissioner may enforce an
10 administrative penalty against a person who violates a labor law or
11 regulation, the Labor Commissioner must provide the person with
12 notice and an opportunity for a hearing as set forth in NRS 607.207.

13 4. In determining the amount of any administrative penalty to
14 be imposed against a person who violates a labor law or regulation,
15 the Labor Commissioner shall consider the person's previous record
16 of compliance with the labor laws and regulations and the severity
17 of the violation.

18 5. All money collected by the Labor Commissioner as an
19 administrative penalty *or as an investigative cost* must be deposited
20 in *a separate account in* the State General Fund. *The Labor*
21 *Commissioner may use the money in the account to pay for*
22 *additional staff for the Office of the Labor Commissioner.*

23 6. The actions and remedies authorized by the labor laws are
24 cumulative. If a person violates a labor law or regulation, the Labor
25 Commissioner may seek a civil remedy, impose an administrative
26 penalty or take other administrative action against the person
27 whether or not the person is prosecuted, convicted or punished for
28 the violation in a criminal proceeding. The imposition of a civil
29 remedy, an administrative penalty or other administrative action
30 against the person does not operate as a defense in any criminal
31 proceeding brought against the person.

32 7. If, after due inquiry, the Labor Commissioner believes that a
33 person who is financially unable to employ counsel has a valid and
34 enforceable claim for wages, commissions or other demands, the
35 Labor Commissioner may present the facts to the Attorney General.
36 The Attorney General shall prosecute the claim if the Attorney
37 General determines that the claim is valid and enforceable.

38 **Sec. 2.** NRS 607.217 is hereby amended to read as follows:

39 607.217 **1.** The offices of the Labor Commissioner, Division
40 of Industrial Relations of the Department of Business and Industry,
41 Employment Security Division of the Department of Employment,
42 Training and Rehabilitation, Department of Taxation and Attorney
43 General ~~;~~

44 ~~1. Shall~~ *shall* communicate between their respective offices
45 information relating to suspected *or actual* employee



1 misclassification which is received in the performance of their
2 official duties ~~[and which]~~, *regardless of whether the information*
3 ~~is [not]~~ otherwise declared by law to be confidential.

4 ~~[2.—May communicate]~~ *Any information that is communicated*
5 between their respective offices ~~[information]~~ relating to *suspected*
6 *or actual* employee misclassification ~~[which is received in the~~
7 ~~performance of their official duties and]~~ *pursuant to this section*
8 which is otherwise declared by law to be confidential ~~[, if the~~
9 ~~confidentiality of the information is]~~ *must* otherwise *be* maintained
10 under the terms and conditions required by law.

11 *2. As used in this section, unless the context otherwise*
12 *requires, “employee misclassification” means the practice by an*
13 *employer of improperly classifying employees as independent*
14 *contractors to avoid any legal obligation under state labor,*
15 *employment and tax laws, including, without limitation, the laws*
16 *governing minimum wage, overtime, unemployment insurance,*
17 *workers’ compensation insurance, temporary disability insurance,*
18 *the payment of wages and payroll taxes.*

19 **Sec. 3.** NRS 608.400 is hereby amended to read as follows:

20 608.400 1. An employer shall not:

21 (a) Through means of coercion, misrepresentation or fraud,
22 require a person to be classified as an independent contractor or
23 form any business entity in order to classify the person as an
24 independent contractor; or

25 (b) Willfully misclassify or otherwise willfully fail to properly
26 classify a person as an independent contractor.

27 2. In addition to any other remedy or penalty provided by law,
28 the Labor Commissioner may impose an administrative penalty
29 against an employer who misclassifies a person as an independent
30 contractor or otherwise fails to properly classify a person as an
31 employee of the employer. ~~[An]~~ *The* administrative penalty imposed
32 pursuant to this section must be ~~[-~~:

33 ~~—(a) For a first offense committed by an employer who~~
34 ~~unintentionally misclassifies or otherwise fails to properly classify a~~
35 ~~person as an employee of the employer, a warning issued to the~~
36 ~~employer by the Labor Commissioner.~~

37 ~~—(b) For a first offense committed by an employer who willfully~~
38 ~~misclassifies or otherwise willfully fails to properly classify a~~
39 ~~person as an employee of the employer, a fine of \$2,500 for the first~~
40 ~~incident of willfully misclassifying or willfully failing to properly~~
41 ~~classify one or more persons as an employee of the employer~~
42 ~~imposed by the Labor Commissioner.~~

43 ~~—(c) For a second or subsequent offense,]~~ a fine of \$5,000 for
44 each employee who was ~~[willfully]~~ misclassified imposed by the
45 Labor Commissioner.



1 3. Before the Labor Commissioner may enforce an
2 administrative penalty against an employer for misclassifying or
3 otherwise failing to properly classify an employee of the employer
4 pursuant to this section, the Labor Commissioner must provide the
5 employer with notice and an opportunity for a hearing as set forth in
6 NRS 607.207. The Labor Commissioner may impose ~~an~~ *the*
7 administrative penalty as set forth in subsection 2 if the Labor
8 Commissioner finds that:

9 (a) The employer misclassified a person as an independent
10 contractor; or

11 (b) The employer otherwise failed to properly classify a person
12 as an employee of the employer.

13 **Sec. 4.** NRS 360.255 is hereby amended to read as follows:

14 360.255 1. Except as otherwise provided in this section and
15 NRS 239.0115, ~~and~~ 360.250 ~~and~~ *607.217*, the records and files
16 of the Department concerning the administration or collection of any
17 tax, fee, assessment or other amount required by law to be collected
18 or the imposition of disciplinary action are confidential and
19 privileged. The Department, an employee of the Department and
20 any other person engaged in the administration or collection of any
21 tax, fee, assessment or other amount required by law to be collected
22 or the imposition of disciplinary action or charged with the custody
23 of any such records or files:

24 (a) Shall not disclose any information obtained from those
25 records or files; and

26 (b) May not be required to produce any of the records or files for
27 the inspection of any person or governmental entity or for use in any
28 action or proceeding.

29 2. The records and files of the Department concerning the
30 administration and collection of any tax, fee, assessment or other
31 amount required by law to be collected or the imposition of
32 disciplinary action are not confidential and privileged in the
33 following cases:

34 (a) Testimony by a member or employee of the Department and
35 production of records, files and information on behalf of the
36 Department or a person in any action or proceeding before
37 the Nevada Tax Commission, the State Board of Equalization, the
38 Department, a grand jury or any court in this State if that testimony
39 or the records, files or information, or the facts shown thereby, are
40 directly involved in the action or proceeding.

41 (b) Delivery to a person or his or her authorized representative
42 of a copy of any document filed by the person pursuant to the
43 provisions of any law of this State.

44 (c) Publication of statistics so classified as to prevent the
45 identification of a particular business or document.



1 (d) Exchanges of information with the Internal Revenue Service
2 in accordance with compacts made and provided for in such cases,
3 or disclosure to any federal agency, state or local law enforcement
4 agency, including, without limitation, the Cannabis Compliance
5 Board, or local regulatory agency that requests the information for
6 the use of the agency in a federal, state or local prosecution or
7 criminal, civil or regulatory investigation.

8 (e) Disclosure in confidence to:

9 (1) The Governor or his or her agent in the exercise of the
10 Governor's general supervisory powers;

11 (2) The Budget Division of the Office of Finance for use in
12 the projection of revenue;

13 (3) Any person authorized to audit the accounts of the
14 Department in pursuance of an audit;

15 (4) The Attorney General or other legal representative of the
16 State in connection with an action or proceeding relating to a
17 taxpayer or licensee; or

18 (5) Any agency of this or any other state charged with the
19 administration or enforcement of laws relating to workers'
20 compensation, unemployment compensation, public assistance,
21 taxation, labor or gaming.

22 (f) Exchanges of information pursuant to an agreement between
23 the Nevada Tax Commission and any county fair and recreation
24 board or the governing body of any county, city or town.

25 (g) Upon written request made by a public officer of a local
26 government, disclosure of the name and address of a taxpayer or
27 licensee who must file a return with the Department. The request
28 must set forth the social security number of the taxpayer or licensee
29 about which the request is made and contain a statement signed by
30 the proper authority of the local government certifying that the
31 request is made to allow the proper authority to enforce a law to
32 recover a debt or obligation owed to the local government. Except
33 as otherwise provided in NRS 239.0115, the information obtained
34 by the local government is confidential and privileged and may not
35 be used or disclosed for any purpose other than the collection of a
36 debt or obligation owed to that local government. The Executive
37 Director may charge a reasonable fee for the cost of providing the
38 requested information.

39 (h) Disclosure of information as to amounts of any unpaid tax or
40 amounts of tax required to be collected, interest and penalties to
41 successors, receivers, trustees, executors, administrators, assignees
42 and guarantors, if directly interested.

43 (i) Disclosure of relevant information as evidence in an appeal
44 by the taxpayer from a determination of tax due if the Nevada Tax



1 Commission has determined the information is not proprietary or
2 confidential in a hearing conducted pursuant to NRS 360.247.

3 (j) Disclosure of the identity of a person and the amount of tax
4 assessed and penalties imposed against the person at any time after a
5 determination, decision or order of the Executive Director or other
6 officer of the Department imposing upon the person a penalty for
7 fraud or intent to evade a tax imposed by law becomes final or is
8 affirmed by the Nevada Tax Commission.

9 (k) Disclosure of the identity of a licensee against whom
10 disciplinary action has been taken and the type of disciplinary action
11 imposed against the licensee at any time after a determination,
12 decision or order of the Executive Director or other officer of the
13 Department imposing upon the licensee disciplinary action becomes
14 final or is affirmed by the Nevada Tax Commission.

15 (l) Disclosure of information pursuant to subsection 2 of
16 NRS 370.257.

17 (m) With respect to an application for a registration certificate to
18 operate a medical marijuana establishment pursuant to chapter 453A
19 of NRS, as that chapter existed on June 30, 2020, or a license to
20 operate a marijuana establishment pursuant to chapter 453D of
21 NRS, as that chapter existed on June 30, 2020, which was submitted
22 on or after May 1, 2017, and on or before June 30, 2020, and
23 regardless of whether the application was ultimately approved,
24 disclosure of the following information:

25 (1) The identity of an applicant, including, without
26 limitation, any owner, officer or board member of an applicant;

27 (2) The contents of any tool used by the Department to
28 evaluate an applicant;

29 (3) The methodology used by the Department to score and
30 rank applicants and any documentation or other evidence showing
31 how that methodology was applied; and

32 (4) The final ranking and scores of an applicant, including,
33 without limitation, the score assigned to each criterion in the
34 application that composes a part of the total score of an applicant.

35 (n) Disclosure of the name of a licensee and the jurisdiction of
36 that licensee pursuant to chapter 453A or 453D of NRS, as those
37 chapters existed on June 30, 2020, and any regulations adopted
38 pursuant thereto.

39 3. The Executive Director shall periodically, as he or she
40 deems appropriate, but not less often than annually, transmit to the
41 Administrator of the Division of Industrial Relations of the
42 Department of Business and Industry a list of the businesses of
43 which the Executive Director has a record. The list must include the
44 mailing address of the business as reported to the Department.



1 4. The Executive Director may request from any other
2 governmental agency or officer such information as the Executive
3 Director deems necessary to carry out his or her duties with respect
4 to the administration or collection of any tax, fee, assessment or
5 other amount required by law to be collected or the imposition of
6 disciplinary action. If the Executive Director obtains any
7 confidential information pursuant to such a request, he or she shall
8 maintain the confidentiality of that information in the same manner
9 and to the same extent as provided by law for the agency or officer
10 from whom the information was obtained.

11 5. As used in this section:

12 (a) "Applicant" means any person listed on the application for a
13 registration certificate to operate a medical marijuana establishment
14 pursuant to chapter 453A of NRS, as that chapter existed on
15 June 30, 2020, or a license to operate a marijuana establishment
16 pursuant to chapter 453D of NRS, as that chapter existed on
17 June 30, 2020.

18 (b) "Disciplinary action" means any suspension or revocation of
19 a license, registration, permit or certificate issued by the Department
20 pursuant to this title or chapter 453A or 453D of NRS, as those
21 chapters existed on June 30, 2020, or any other disciplinary action
22 against the holder of such a license, registration, permit or
23 certificate.

24 (c) "Licensee" means a person to whom the Department has
25 issued a license, registration, permit or certificate pursuant to this
26 title or chapter 453A or 453D of NRS, as those chapters existed on
27 June 30, 2020. The term includes, without limitation, any owner,
28 officer or board member of an entity to whom the Department has
29 issued a license.

30 (d) "Records" or "files" means any records and files related to
31 an investigation or audit or a disciplinary action, financial
32 information, correspondence, advisory opinions, decisions of a
33 hearing officer in an administrative hearing and any other
34 information specifically related to a taxpayer or licensee.

35 (e) "Taxpayer" means a person who pays any tax, fee,
36 assessment or other amount required by law to the Department.

37 **Sec. 5.** NRS 607.216, 607.218, 607.219 and 607.2195 are
38 hereby repealed.

39 **Sec. 6.** This act becomes effective on July 1, 2023.



TEXT OF REPEALED SECTIONS

1 **607.216 “Employee misclassification” defined.** As used in
2 NRS 607.216 to 607.2195, inclusive, unless the context otherwise
3 requires, “employee misclassification” means the practice by an
4 employer of improperly classifying employees as independent
5 contractors to avoid any legal obligation under state labor,
6 employment and tax laws, including, without limitation, the laws
7 governing minimum wage, overtime, unemployment insurance,
8 workers’ compensation insurance, temporary disability insurance,
9 wage payment and payroll taxes.

10 **607.218 Task Force on Employee Misclassification:**
11 **Creation; appointment, qualifications and terms of members;**
12 **vacancies; meetings; Chair and Vice Chair; quorum;**
13 **compensation; administrative support.**

14 1. The Task Force on Employee Misclassification is hereby
15 created.

16 2. The Governor shall appoint to serve on the Task Force:

17 (a) One person who represents an employer located in this State
18 that employs more than 500 full-time or part-time employees.

19 (b) One person who represents an employer located in this State
20 that employs 500 or fewer full-time or part-time employees.

21 (c) One person who is an independent contractor in this State.

22 (d) Two persons who represent organized labor in this State.

23 (e) One person who represents a trade or business association in
24 this State.

25 (f) One person who represents a governmental agency that
26 administers laws governing employee misclassification.

27 3. The Governor may appoint up to two additional members to
28 serve on the Task Force as the Governor deems appropriate.

29 4. After the initial terms, the members of the Task Force serve
30 a term of 2 years and until their respective successors are appointed.
31 A member may be reappointed in the same manner as the original
32 appointments.

33 5. Any vacancy occurring in the membership of the Task Force
34 must be filled in the same manner as the original appointment not
35 later than 30 days after the vacancy occurs.

36 6. The Task Force shall meet at least twice each fiscal year and
37 may meet at such additional times as deemed necessary by the
38 Chair.



1 7. At the first meeting of each fiscal year, the Task Force shall
2 elect from its members a Chair and a Vice Chair.

3 8. A majority of the members of the Task Force constitutes a
4 quorum for the transaction of business, and a majority of those
5 members present at any meeting is sufficient for any official action
6 taken by the Task Force.

7 9. The Task Force shall comply with the provisions of chapter
8 241 of NRS, and all meetings of the Task Force must be conducted
9 in accordance with that chapter.

10 10. Members of the Task Force serve without compensation.

11 11. The Labor Commissioner shall provide the personnel,
12 facilities, equipment and supplies required by the Task Force to
13 carry out its duties.

14 **607.219 Task Force on Employee Misclassification: Duties;**
15 **annual report.** The Task Force on Employee Misclassification
16 created by NRS 607.218 shall:

17 1. Evaluate the policies and practices of the Labor
18 Commissioner, Division of Industrial Relations of the Department
19 of Business and Industry, Employment Security Division of the
20 Department of Employment, Training and Rehabilitation,
21 Department of Taxation and Attorney General relating to employee
22 misclassification.

23 2. Evaluate any existing fines, penalties or other disciplinary
24 action relating to employee misclassification that are authorized to
25 be imposed by a state agency.

26 3. Develop recommendations for policies, practices or
27 proposed legislation to reduce the occurrence of employee
28 misclassification.

29 4. On or before July 1, 2020, and on or before July 1 of each
30 subsequent year, submit a written report to the Director of the
31 Legislative Counsel Bureau for submission to the Legislative
32 Commission. The report must include, without limitation, a
33 summary of the work of the Task Force and recommendations for
34 legislation concerning employee misclassification.

35 **607.2195 Task Force on Employee Misclassification:**
36 **Authority to appoint subcommittee.**

37 1. The Task Force on Employee Misclassification created by
38 NRS 607.218 may create a subcommittee to the Task Force for any
39 purpose that is consistent with NRS 607.216 to 607.2195, inclusive.

40 2. The Task Force shall appoint the members of the
41 subcommittee and designate one of the members of
42 the subcommittee as chair of the subcommittee. The chair of the
43 subcommittee must be a member of the Task Force.

44 3. The subcommittee shall meet at the times and places
45 specified by a call of the chair of the subcommittee. A majority of



1 the members of the subcommittee constitutes a quorum, and a
2 quorum may exercise any power or authority conferred on the
3 subcommittee.

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