

Amendment No. 95

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| Senate Amendment to Senate Bill No. 145 | (BDR 53-159) |
| Proposed by: Senate Committee on Commerce and Labor | |
| Amends: Summary: No Title: Yes Preamble: No Joint Sponsorship: No Digest: Yes | |

| ASSEMBLY ACTION | Initial and Date | | SENATE ACTION | Initial and Date |
|---------------------------------------|-------------------------------|-------|---------------------------------------|-------------------------------|
| Adopted <input type="checkbox"/> | Lost <input type="checkbox"/> | _____ | Adopted <input type="checkbox"/> | Lost <input type="checkbox"/> |
| Concurred In <input type="checkbox"/> | Not <input type="checkbox"/> | _____ | Concurred In <input type="checkbox"/> | Not <input type="checkbox"/> |
| Receded <input type="checkbox"/> | Not <input type="checkbox"/> | _____ | Receded <input type="checkbox"/> | Not <input type="checkbox"/> |

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) variations of green bold underlining is language proposed to be added in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill proposed to be retained in this amendment.

SLD/HAC



Date: 4/16/2023

S.B. No. 145—Revises provisions related to employee misclassification.
(BDR 53-159)



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

11 Existing law: (1) requires the offices of the Labor Commissioner, the Division of
12 Industrial Relations of the Department of Business and Industry, the Employment Security
13 Division of the Department of Employment, Training and Rehabilitation, the Department of
14 Taxation and the Attorney General to share between their respective offices information
15 relating to suspected employee misclassification which is received in the performance of their
16 official duties and which is not otherwise declared by law to be confidential; and (2)
17 authorizes such offices to communicate information relating to employee misclassification
18 which is received in the performance of their official duties and which is otherwise declared
19 by law to be confidential, if the confidentiality of the information is otherwise maintained
20 under the terms and conditions required by law. (NRS 607.217) **Section 2** of this bill instead
21 requires these offices to communicate between their respective offices information relating to
22 suspected or actual employee misclassification which is received in the performance of their
23 official duties, regardless of whether the information is otherwise declared by law to be
24 confidential. **Section 2** further provides that any such information communicated between

25 their respective offices which is otherwise declared by law to be confidential must otherwise
 26 be maintained under the terms and conditions required by law. **Section 4** of this bill makes a
 27 conforming change to require the Department of Taxation to share such information.

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

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

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

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

9 2. If the Labor Commissioner has reason to believe that a person is violating
 10 or has violated a labor law or regulation, the Labor Commissioner may take any
 11 appropriate action against the person to enforce the labor law or regulation whether
 12 or not a claim or complaint has been made to the Labor Commissioner concerning
 13 the violation.

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

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

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

5 6. The actions and remedies authorized by the labor laws are cumulative. If a
6 person violates a labor law or regulation, the Labor Commissioner may seek a civil
7 remedy, impose an administrative penalty or take other administrative action
8 against the person whether or not the person is prosecuted, convicted or punished
9 for the violation in a criminal proceeding. The imposition of a civil remedy, an
10 administrative penalty or other administrative action against the person does not
11 operate as a defense in any criminal proceeding brought against the person.

12 7. If, after due inquiry, the Labor Commissioner believes that a person who is
13 financially unable to employ counsel has a valid and enforceable claim for wages,
14 commissions or other demands, the Labor Commissioner may present the facts to
15 the Attorney General. The Attorney General shall prosecute the claim if the
16 Attorney General determines that the claim is valid and enforceable.

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

18 607.217 *1.* The offices of the Labor Commissioner, Division of Industrial
19 Relations of the Department of Business and Industry, Employment Security
20 Division of the Department of Employment, Training and Rehabilitation,
21 Department of Taxation and Attorney General ~~;~~

22 ~~—1. Shall~~ *shall* communicate between their respective offices information
23 relating to suspected *or actual* employee misclassification which is received in the
24 performance of their official duties ~~and which~~ , *regardless of whether the*
25 *information is* ~~not~~ otherwise declared by law to be confidential.

26 ~~2. May communicate~~ *Any information that is communicated* between their
27 respective offices ~~information~~ relating to *suspected or actual* employee
28 misclassification ~~which is received in the performance of their official duties and~~
29 *pursuant to this section* which is otherwise declared by law to be confidential ~~if~~ *if*
30 ~~the confidentiality of the information is~~ *must* otherwise *be* maintained under the
31 terms and conditions required by law.

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

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

40 608.400 *1.* An employer shall not:

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

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

46 2. In addition to any other remedy or penalty provided by law, the Labor
47 Commissioner may impose an administrative penalty against an employer who
48 misclassifies a person as an independent contractor or otherwise fails to properly
49 classify a person as an employee of the employer. ~~An~~ *The* administrative penalty
50 imposed pursuant to this section must be :

51 (a) For a first offense committed by an employer who ~~unintentionally~~
52 ~~misclassifies or otherwise fails to properly classify a person as an employee of the~~
53 ~~employer, a warning issued to the employer by the Labor Commissioner.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(e) Disclosure in confidence to:

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

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

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

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

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

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

11 (g) Upon written request made by a public officer of a local government,
12 disclosure of the name and address of a taxpayer or licensee who must file a return
13 with the Department. The request must set forth the social security number of the
14 taxpayer or licensee about which the request is made and contain a statement signed
15 by the proper authority of the local government certifying that the request is made
16 to allow the proper authority to enforce a law to recover a debt or obligation owed
17 to the local government. Except as otherwise provided in NRS 239.0115, the
18 information obtained by the local government is confidential and privileged and
19 may not be used or disclosed for any purpose other than the collection of a debt or
20 obligation owed to that local government. The Executive Director may charge a
21 reasonable fee for the cost of providing the requested information.

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

25 (i) Disclosure of relevant information as evidence in an appeal by the taxpayer
26 from a determination of tax due if the Nevada Tax Commission has determined the
27 information is not proprietary or confidential in a hearing conducted pursuant to
28 NRS 360.247.

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

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

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

40 (m) With respect to an application for a registration certificate to operate a
41 medical marijuana establishment pursuant to chapter 453A of NRS, as that chapter
42 existed on June 30, 2020, or a license to operate a marijuana establishment pursuant
43 to chapter 453D of NRS, as that chapter existed on June 30, 2020, which was
44 submitted on or after May 1, 2017, and on or before June 30, 2020, and regardless
45 of whether the application was ultimately approved, disclosure of the following
46 information:

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

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

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

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

4 (n) Disclosure of the name of a licensee and the jurisdiction of that licensee
5 pursuant to chapter 453A or 453D of NRS, as those chapters existed on June 30,
6 2020, and any regulations adopted pursuant thereto.

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

12 4. The Executive Director may request from any other governmental agency
13 or officer such information as the Executive Director deems necessary to carry out
14 his or her duties with respect to the administration or collection of any tax, fee,
15 assessment or other amount required by law to be collected or the imposition of
16 disciplinary action. If the Executive Director obtains any confidential information
17 pursuant to such a request, he or she shall maintain the confidentiality of that
18 information in the same manner and to the same extent as provided by law for the
19 agency or officer from whom the information was obtained.

20 5. As used in this section:

21 (a) "Applicant" means any person listed on the application for a registration
22 certificate to operate a medical marijuana establishment pursuant to chapter 453A
23 of NRS, as that chapter existed on June 30, 2020, or a license to operate a
24 marijuana establishment pursuant to chapter 453D of NRS, as that chapter existed
25 on June 30, 2020.

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

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

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

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

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

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

TEXT OF REPEALED SECTIONS

607.216 "Employee misclassification" defined. As used in NRS 607.216 to 607.2195, inclusive, unless the context otherwise requires, "employee misclassification" means the practice by an employer of improperly classifying employees as independent contractors to avoid any legal obligation under state

labor, employment and tax laws, including, without limitation, the laws governing minimum wage, overtime, unemployment insurance, workers' compensation insurance, temporary disability insurance, wage payment and payroll taxes.

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

1. The Task Force on Employee Misclassification is hereby created.
2. The Governor shall appoint to serve on the Task Force:
 - (a) One person who represents an employer located in this State that employs more than 500 full-time or part-time employees.
 - (b) One person who represents an employer located in this State that employs 500 or fewer full-time or part-time employees.
 - (c) One person who is an independent contractor in this State.
 - (d) Two persons who represent organized labor in this State.
 - (e) One person who represents a trade or business association in this State.
 - (f) One person who represents a governmental agency that administers laws governing employee misclassification.
3. The Governor may appoint up to two additional members to serve on the Task Force as the Governor deems appropriate.
4. After the initial terms, the members of the Task Force serve a term of 2 years and until their respective successors are appointed. A member may be reappointed in the same manner as the original appointments.
5. Any vacancy occurring in the membership of the Task Force must be filled in the same manner as the original appointment not later than 30 days after the vacancy occurs.
6. The Task Force shall meet at least twice each fiscal year and may meet at such additional times as deemed necessary by the Chair.
7. At the first meeting of each fiscal year, the Task Force shall elect from its members a Chair and a Vice Chair.
8. A majority of the members of the Task Force constitutes a quorum for the transaction of business, and a majority of those members present at any meeting is sufficient for any official action taken by the Task Force.
9. The Task Force shall comply with the provisions of chapter 241 of NRS, and all meetings of the Task Force must be conducted in accordance with that chapter.
10. Members of the Task Force serve without compensation.
11. The Labor Commissioner shall provide the personnel, facilities, equipment and supplies required by the Task Force to carry out its duties.

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

1. Evaluate the policies and practices of the Labor Commissioner, Division of Industrial Relations of the Department of Business and Industry, Employment Security Division of the Department of Employment, Training and Rehabilitation, Department of Taxation and Attorney General relating to employee misclassification.
2. Evaluate any existing fines, penalties or other disciplinary action relating to employee misclassification that are authorized to be imposed by a state agency.
3. Develop recommendations for policies, practices or proposed legislation to reduce the occurrence of employee misclassification.
4. On or before July 1, 2020, and on or before July 1 of each subsequent year, submit a written report to the Director of the Legislative Counsel Bureau for submission to the Legislative Commission. The report must include, without

limitation, a summary of the work of the Task Force and recommendations for legislation concerning employee misclassification.

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

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

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

3. The subcommittee shall meet at the times and places specified by a call of the chair of the subcommittee. A majority of the members of the subcommittee constitutes a quorum, and a quorum may exercise any power or authority conferred on the subcommittee.