

CHAPTER.....

AN ACT relating to employment; requiring the Director of the Department of Health and Human Services to establish a home care employment standards board under certain circumstances; prescribing the membership of a home care employment standards board; requiring such a board to conduct an investigation into certain matters relating to the employment of home care employees; requiring such a board to develop recommendations concerning the minimum wage for home care employees or the working conditions of such employees; authorizing the Director to adopt regulations implementing such recommendations; revising provisions governing the administration and enforcement of provisions governing the minimum wage paid to employees in this State; providing penalties; making appropriations; and providing other matters properly relating thereto.

**Legislative Counsel’s Digest:**

Existing law requires an employer to pay an employee a wage of not less than a certain minimum wage. (Nev. Const. Art. 15, § 16; NRS 608.250) Existing law requires the Labor Commissioner to administer and enforce the provisions of existing law governing the minimum wage. (NRS 608.270)

Existing law provides for the establishment of certain programs to provide services to certain elderly persons or persons with disabilities to allow such persons to remain in their homes or in the community. (NRS 422.396, 427A.250-427A.280, 427A.793) **Section 8** of this bill designates such a program, and any similar program established by a state agency or a local government, as a “home care program.”

Existing law authorizes an agency licensed as an agency to provide personal care services in the home to provide certain authorized medical services to persons with disabilities and certain nonmedical services related to personal care to elderly persons or persons with disabilities. (NRS 449.1935) Under existing law, certain providers of temporary respite services are not required to be licensed as an agency to provide personal care services in the home. (NRS 449.0021) Existing law authorizes a certified intermediary service organization to provide certain services related to the employment of a personal assistant who is selected by a person with a disability or other responsible person to provide certain nonmedical and authorized medical services to the person with a disability. (NRS 449.4308)

**Section 6** of this bill designates an agency to provide personal care services in the home, an intermediary service organization and certain providers of temporary respite services that have entered into a contract with a state agency or a local government to provide certain services under a home care program as “home care employers.” **Section 5** of this bill designates a person who is an employee of a home care employer and who provides personal care services, personal assistance or temporary respite services through a home care program as a “home care employee.”

**Section 13** of this bill requires the Director of the Department of Health and Human Services to establish a home care employment standards board if the



Director determines that it is necessary or upon the petition of 50 or more home care employees. **Section 13** sets forth the membership of such a board, which consists of certain representatives of home care employers and home care employees and certain other persons. **Section 14** of this bill provides that if the Director establishes a home care employment standards board upon the petition of 50 or more home care employees, the Director or his or her designee is required to meet with representatives of the petitioners and discuss certain matters relating to the employment of home care employees. **Section 15** of this bill requires the Director and the Labor Commissioner to conduct an investigation into certain matters relating to the employment of home care employees and present the findings of the investigation to a home care employment standards board at the first meeting of the board.

**Section 16** of this bill requires a home care employment standards board to conduct an investigation into certain matters of its choosing related to the wages and working conditions of home care employees and the compliance of home care employers with applicable laws. **Section 16** also requires a home care employment standards board to, based on such an investigation, develop recommendations regarding: (1) the minimum wage that may be paid to a home care employee; or (2) safe and healthful working conditions for home care employees. **Section 16** requires a home care employment standards board to submit to the Director a report with its findings and recommendations not later than 1 year after the date of its first meeting. **Section 16.5** of this bill requires the Director to make any report submitted by a home care employment standards board available on an Internet website maintained by the Director.

**Section 17** of this bill authorizes the Director to take certain actions with respect to the report of a home care employment standards board. Under **section 18** of this bill, if the Director approves of a recommendation of such a board, the Director is required to adopt regulations as necessary to: (1) establish the minimum wage recommended by the home care employment standards board as the minimum wage which may be paid by a home care employer to a home care employee in this State; or (2) provide for safe and healthful working conditions for home care employees in accordance with the recommendation of the home care employment standards board. **Section 18** also provides that if the Director establishes a minimum wage for a home care employee, the Director is also authorized to adopt regulations concerning the payment of overtime for such employees. **Section 21** of this bill provides that such regulations prevail over the provisions of existing law governing the payment of overtime generally. (NRS 608.018)

**Section 20** of this bill makes it a misdemeanor for a home care employer to take certain actions against a home care employee because the home care employee engages in or is believed to have engaged in certain activities relating to a home care employment standards board.

**Section 22** of this bill revises provisions of existing law which authorize an employee to bring a civil action against an employer who pays the employee less than the minimum wage for the purpose of allowing a home care employee to bring such an action against a home care employer who pays the homecare employee less than the minimum wage for a home care employee established by regulation pursuant to **section 18**. (NRS 608.260)

**Section 23** of this bill provides for the enforcement of the provisions governing the minimum wage for a home care employee established pursuant to **section 18** in the same manner in which the minimum wage established under existing law is enforced. (NRS 608.270)

Existing law provides that a person who violates the provisions of existing law governing the minimum wage is guilty of a misdemeanor and is subject to an



administrative fine of not more than \$5,000. (NRS 608.290) **Section 24** of this bill applies these same penalties to a person who violates the provisions governing the minimum wage for a home care employee established by the Director pursuant to **section 18**.

**Section 25** of this bill authorizes a home care employment standards board or the Labor Commissioner to develop certain recommendations related to the outbreak of the disease identified by the Centers for Disease Control and Prevention of the United States Department of Health and Human Services as COVID-19 and submit such recommendations to the Governor and the Legislature.

**Sections 3-12** of this bill define words and terms for the purposes of **sections 2-20** of this bill. **Sections 26 and 27** of this bill make appropriations to the Office of the Labor Commissioner in the Department of Business and Industry and the Division of Public and Behavioral Health of the Department of Health and Human Services, respectively, for personnel, operating and equipment costs to carry out the provisions of this bill.

EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

---

---

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

**Section 1.** Chapter 608 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 20, inclusive, of this act.

**Sec. 2.** *As used in sections 2 to 20, inclusive, of this act, unless the context otherwise requires, the words and terms defined in sections 3 to 12, inclusive, of this act have the meanings ascribed to them in those sections.*

**Sec. 3.** *“Agency to provide personal care services in the home” has the meaning ascribed to it in NRS 449.0021.*

**Sec. 4.** *“Director” means the Director of the Department of Health and Human Services.*

**Sec. 5. 1.** *“Home care employee” means a person who provides:*

*(a) Personal care services through a home care program as an employee of a home care employer that is an agency to provide personal care services in the home;*

*(b) Personal assistance through a home care program as a personal assistant for whom a home care employer that is an intermediary service organization is the employer of record; or*

*(c) Temporary respite services through a home care program as an employee of a home care employer that has entered into a contract with the Aging and Disability Services Division of the Department of Health and Human Services to provide such services.*



2. As used in this section, “personal assistant” has the meaning ascribed to it in NRS 449.4308.

**Sec. 6.** “Home care employer” means:

1. An agency to provide personal care services in the home that has entered into a contract with a state agency or local government to provide personal care services under a home care program;

2. An intermediary service organization that has entered into a contract with a state agency or local government to provide services relating to personal assistance under a home care program; or

3. A person or agency who has entered into a contract with the Aging and Disability Services Division of the Department of Health and Human Services to provide temporary respite services under a home care program.

**Sec. 7.** “Home care employment standards board” means a board established by the Director pursuant to section 13 or 17 of this act.

**Sec. 8. 1.** “Home care program” means a program established by a state agency or a local government which provides in the home personal care services, personal assistance or temporary respite services to elderly persons or persons with disabilities.

2. The term includes, without limitation:

(a) Any program established under the State Plan for Medicaid which provides, in the home, the services described in subsection 1.

(b) Any program established pursuant to NRS 427A.250 to 427A.280, inclusive.

(c) The program established pursuant to NRS 422.396.

(d) The program established pursuant to NRS 427A.793.

**Sec. 9.** “Intermediary service organization” has the meaning ascribed to it in NRS 449.4304.

**Sec. 10.** “Personal assistance” has the meaning ascribed to it in NRS 449.4308.

**Sec. 11.** “Personal care services” means the services described in NRS 449.1935.

**Sec. 12.** “Temporary respite services” has the meaning ascribed to it in NRS 449.0021.

**Sec. 13. 1.** If the Director determines that it is necessary or upon the petition of 50 or more home care employees, the Director shall establish a home care employment standards board to



*conduct an investigation and develop recommendations as provided in section 16 of this act.*

*2. A home care employment standards board must consist of:*

*(a) The Director or his or her designee, who serves as Chair and a nonvoting member; and*

*(b) The following voting members:*

*(1) The Labor Commissioner;*

*(2) Three representatives of home care employers, appointed by the Director;*

*(3) Three representatives of home care employees, appointed by the Director; and*

*(4) Three persons who receive or are representatives of persons who receive services from a home care employee, appointed by the Director.*

*3. The Director shall appoint the members of a home care employment standards board pursuant to subparagraphs (2), (3) and (4) of paragraph (b) of subsection 2 after providing public notice and soliciting applications for the appointment of such members.*

*4. The members of a home care employment standards board serve without compensation.*

*5. A majority of the voting members of a home care employment standards board constitutes a quorum to transact business, and a majority of a quorum present at any meeting is sufficient to approve any recommendation of such a board.*

*6. A home care employment standards board shall meet at the times and places specified by a call of the Chair. A home care employment standards board shall meet as often as necessary to accomplish the duties set forth in section 16 of this act, but not less than once each calendar quarter.*

**Sec. 14.** *If the Director establishes a home care employment standards board upon the petition of 50 or more home care employees pursuant to section 13 of this act, the Director or his or her designee shall, not later than 30 days after the receipt of the petition, meet with representatives of the persons who submitted the petition and discuss matters relating to the wages and working conditions of home care employees in this State and the compliance of home care employers with applicable federal, state and local laws.*

**Sec. 15.** *1. As soon as practicable after the appointment of the members of a home care employment standards board pursuant to section 13 of this act, the Director shall fix a date for the first meeting of the board. If a home care employment*



*standards board is established upon the petition of 50 or more home care employees pursuant to section 13 of this act, the first meeting of the board must be held not later than 60 days after the date of the meeting described in section 14 of this act.*

*2. Before the first meeting of a home care employment standards board, the Director and the Labor Commissioner shall conduct a preliminary investigation into the wages and working conditions of home care employees in this State and the compliance of home care employers with applicable federal, state and local laws. The Director and the Labor Commissioner shall coordinate with the Aging and Disability Services Division of the Department, the Division of Health Care Financing and Policy of the Department and the Division of Public and Behavioral Health of the Department as necessary to complete the investigation.*

*3. The Director and the Labor Commissioner shall present the results of the preliminary investigation conducted pursuant to subsection 2 to the home care employment standards board at the first meeting of the board.*

*4. As used in this section, "Department" means the Department of Health and Human Services.*

**Sec. 16.** *1. A home care employment standards board shall:*

*(a) Conduct an investigation into matters relating to the wages and working conditions of home care employees in this State and the compliance of home care employers with applicable federal, state and local laws; and*

*(b) Based on the investigation conducted pursuant to paragraph (a), develop recommendations regarding:*

*(1) The minimum wage that may be paid to a home care employee in this State; or*

*(2) Safe and healthful working conditions for home care employees.*

*2. A home care employment standards board shall determine the scope of its investigation conducted pursuant to paragraph (a) of subsection 1 and the specific matters into which it will inquire, which may include, without limitation:*

*(a) The adequacy of wage rates and other compensation policies of home care employers to ensure the provision of quality services and sufficient levels of recruitment and retention of home care employees;*

*(b) The sufficiency of levels of recruitment and retention of home care employees;*

*(c) The adequacy of the role of home care employees in making decisions affecting their wages and working conditions;*



*(d) The adequacy and enforcement of training requirements for home care employees;*

*(e) The impact of home care programs, the larger system for long-term care in this State and any efforts to reach the goal of rebalancing long-term care services toward home and community-based services on the wages and working conditions of home care employees;*

*(f) The impact of systemic racism and economic injustice on home care employees and the adequacy of efforts to alleviate such impact through the development of career paths through partnerships between labor and management and other methods; and*

*(g) The adequacy of payment practices and policies of the State as such practices and policies relate to the reimbursement of home care employers for the provision of services under a home care program.*

*3. In conducting the investigation pursuant to paragraph (a) of subsection 1, a home care employment standards board shall have the power to administer oaths, take testimony thereunder and issue subpoenas for the attendance of witnesses and the production of books, papers and any other materials relevant to the investigation.*

*4. A home care employment standards board may request information relevant to the investigation conducted pursuant to paragraph (a) of subsection 1 directly from any state agency. A state agency that receives a reasonable request for information from a home care employment standards board shall comply with the request as soon as is reasonably practicable after receiving the request.*

*5. A home care employment standards board may request direct testimony from any state agency at a meeting of the board. The head, or a designee thereof, of a state agency who receives a reasonable request for direct testimony at a meeting of a home care employment standards board shall appear at the meeting and shall comply with the request.*

*6. Not later than 1 year after the date of the first meeting of a home care employment standards board, the board shall submit to the Director a report of its findings and recommendations.*

**Sec. 16.5.** *The Director shall make any report submitted by a home care employment standards board pursuant to section 16 of this act available on an Internet website maintained by the Director.*



**Sec. 17.** *Upon receipt of a report submitted by a home care employment standards board pursuant to subsection 6 of section 16 of this act, the Director shall review the findings and each recommendation contained in the report. The Director may:*

- 1. Approve or disapprove any recommendation;*
- 2. Require the home care employment standards board that submitted the report to conduct a new investigation and develop new recommendations in accordance with section 16 of this act; or*
- 3. Establish a new home care employment standards board in the manner provided in section 13 of this act to conduct a new investigation and develop new recommendations in accordance with section 16 of this act.*

**Sec. 18.** *1. If the Director approves a recommendation contained in a report submitted by a home care employment standards board pursuant to subsection 6 of section 16 of this act, the Director shall adopt regulations necessary to:*

*(a) Establish the minimum wage recommended by the home care employment standards board as the minimum wage which may be paid to a home care employee in this State; or*

*(b) Provide for safe and healthful working conditions for home care employees in accordance with the recommendation of the home care employment standards board.*

*2. If the Director adopts regulations establishing the minimum wage which may be paid to a home care employee pursuant to paragraph (a) of subsection 1, the Director may also adopt any regulations concerning the payment of overtime to a home care employee which the Director deems appropriate and which are consistent with federal law.*

**Sec. 19.** *If the Director adopts regulations establishing the minimum wage which may be paid to a home care employee pursuant to section 18 of this act:*

*1. Each home care employer shall pay to each home care employee of the employer a wage of not less than the minimum wage established by regulation of the Director pursuant to section 18 of this act.*

*2. It is unlawful for a home care employer to employ, cause to be employed or permit to be employed, or to contract with, cause to be contracted with or permit to be contracted with, any home care employee for a wage less than that established by regulation of the Director pursuant to section 18 of this act.*

**Sec. 20.** *1. It is unlawful for a home care employer in this State to discharge, discipline, discriminate against in any manner*





*or deny employment or promotion to, or threaten to take any such action against, a home care employee because:*

*(a) The home care employee serves as a member of a home care employment standards board;*

*(b) The home care employee has actively participated in the formation of a home care employment standards board;*

*(c) The home care employee has testified or is about to testify in an investigation conducted by a home care employment standards board;*

*(d) The home care employee has engaged in any other activity related to the formation or activities of a home care employment standards board; or*

*(e) The home care employer believes that the home care employee may engage in any of the activities described in paragraphs (a) to (d), inclusive.*

*2. A home care employer who violates the provisions of subsection 1 is guilty of a misdemeanor and shall be punished by a fine of not more than \$1,000.*

**Sec. 21.** NRS 608.018 is hereby amended to read as follows:

608.018 1. An employer shall pay 1 1/2 times an employee's regular wage rate whenever an employee who receives compensation for employment at a rate less than 1 1/2 times the minimum rate set forth in NRS 608.250 works:

(a) More than 40 hours in any scheduled week of work; or

(b) More than 8 hours in any workday unless by mutual agreement the employee works a scheduled 10 hours per day for 4 calendar days within any scheduled week of work.

2. An employer shall pay 1 1/2 times an employee's regular wage rate whenever an employee who receives compensation for employment at a rate not less than 1 1/2 times the minimum rate set forth in NRS 608.250 works more than 40 hours in any scheduled week of work.

3. The provisions of subsections 1 and 2 do not apply to:

(a) Employees who are not covered by the minimum wage provisions of Section 16 of Article 15 of the Nevada Constitution;

(b) Outside buyers;

(c) Employees in a retail or service business if their regular rate is more than 1 1/2 times the minimum wage, and more than half their compensation for a representative period comes from commissions on goods or services, with the representative period being, to the extent allowed pursuant to federal law, not less than 1 month;



- (d) Employees who are employed in bona fide executive, administrative or professional capacities;
- (e) Employees covered by collective bargaining agreements which provide otherwise for overtime;
- (f) Drivers, drivers' helpers, loaders and mechanics for motor carriers subject to the Motor Carrier Act of 1935, as amended;
- (g) Employees of a railroad;
- (h) Employees of a carrier by air;
- (i) Drivers or drivers' helpers making local deliveries and paid on a trip-rate basis or other delivery payment plan;
- (j) Drivers of taxicabs or limousines;
- (k) Agricultural employees;
- (l) Employees of business enterprises having a gross sales volume of less than \$250,000 per year;
- (m) Any salesperson or mechanic primarily engaged in selling or servicing automobiles, trucks or farm equipment;
- (n) A mechanic or worker for any hours to which the provisions of subsection 3 or 4 of NRS 338.020 apply;
- (o) A domestic worker who resides in the household where he or she works if the domestic worker and his or her employer agree in writing to exempt the domestic worker from the requirements of subsections 1 and 2; and
- (p) A domestic service employee who resides in the household where he or she works if the domestic service employee and his or her employer agree in writing to exempt the domestic service employee from the requirements of subsections 1 and 2.

4. *Any regulation of the Director of the Department of Health and Human Services concerning the payment of overtime to a home care employee adopted pursuant to section 18 of this act prevails over the general provisions of this section.*

5. As used in this section ~~["domestic"]~~:

(a) *"Domestic worker"* has the meaning ascribed to it in NRS 613.620.

(b) *"Home care employee" has the meaning ascribed to it in section 5 of this act.*

**Sec. 22.** NRS 608.260 is hereby amended to read as follows:

608.260 1. If any employer pays any employee a lesser amount than the minimum wage set forth in NRS 608.250 ~~or~~ *or, if applicable, the minimum wage established by regulation of the Director of the Department of Health and Human Services pursuant to section 18 of this act*, the employee may, at any time within 2 years, bring a civil action against the employer. A contract



between the employer and the employee or any acceptance of a lesser wage by the employee is not a bar to the action.

2. If the employee prevails in a civil action brought pursuant to subsection 1:

(a) The employee is entitled to all remedies available under the law or in equity appropriate to remedy the violation by the employer which may include, without limitation, back pay, damages, reinstatement or injunctive relief; and

(b) The court must award the employee reasonable attorney's fees and costs.

**Sec. 23.** NRS 608.270 is hereby amended to read as follows:

608.270 1. The Labor Commissioner shall:

(a) Administer and enforce the provisions of NRS 608.250 ~~§~~ *and section 18 of this act*;

(b) Adopt any regulations necessary to carry out the duties set forth in paragraph (a); and

(c) Furnish the district attorney of any county or the Attorney General all data and information concerning violations of the provisions of NRS 608.250 ~~§~~ *or section 18 of this act*, occurring in the county coming to the attention of the Labor Commissioner.

2. Each district attorney shall, if a complaint is made to him or her by the Labor Commissioner or by any aggrieved person, prosecute each violation of the provisions of NRS 608.250 *or section 18 of this act* that occurs in the district attorney's county. If any such district attorney fails, neglects or refuses for 20 days to commence a prosecution for a violation of the provisions of NRS 608.250 ~~§~~ *or section 18 of this act*, after being furnished data and information concerning the violation, and diligently to prosecute the same to conclusion, the district attorney is guilty of a misdemeanor, and in addition thereto must be removed from office.

**Sec. 24.** NRS 608.290 is hereby amended to read as follows:

608.290 1. Any person who violates any provision of NRS 608.250 , *section 18 of this act* or any regulation adopted pursuant thereto is guilty of a misdemeanor.

2. In addition to any other remedy or penalty, the Labor Commissioner may impose against the person an administrative penalty of not more than \$5,000 for each such violation.

**Sec. 25.** 1. For the period of time that any emergency directive issued by the Governor pursuant to chapter 414 of NRS relating to the outbreak of the disease identified by the Centers for Disease Control and Prevention of the United States Department of Health and Human Services as COVID-19 remains in effect, a home



care employment standards board or, if such a board has not been established by December 1, 2021, the Labor Commissioner, may:

(a) Examine matters relating to COVID-19, including, without limitation, the adequacy of plans relating to the distribution of personal protective equipment to home care employees, the testing of home care employees for COVID-19 and the distribution of vaccines for COVID-19 to home care employees; and

(b) Develop recommendations concerning:

(1) Measures to ensure that plans relating to the distribution of personal protective equipment to home care employees, the testing of home care employees for COVID-19 and the distribution of vaccines for COVID-19 to home care employees are sufficient and equitable;

(2) Effective training requirements for home care employees for COVID-19 response;

(3) Protocols to allow a home care employee to report an outbreak of COVID-19 or any deficiencies relating to personal protective equipment or testing for COVID-19 without fear of retaliation; and

(4) Measures to ensure that the disbursement of federal funds for COVID-19 relief are targeted with the greatest impact.

2. In developing any recommendations pursuant to subsection 1, a home care employment standards board or the Labor Commissioner shall solicit input from home care employers and home care employees.

3. If a home care employment standards board or the Labor Commissioner develops recommendations pursuant to subsection 1, the board or the Labor Commissioner shall prepare a report summarizing such recommendations and submit the report to the Governor and to the Director of the Legislative Counsel Bureau for transmittal to the Legislature or, if the Legislature is not in session, to the Legislative Commission.

4. As used in this section:

(a) "Home care employee" has the meaning ascribed to it in section 5 of this act.

(b) "Home care employer" has the meaning ascribed to it in section 6 of this act.

(c) "Home care employment standards board" has the meaning ascribed to it in section 7 of this act.

**Sec. 26.** 1. There is hereby appropriated from the State General Fund to the Office of the Labor Commissioner in the Department of Business and Industry for personnel, operating and



equipment costs to carry out the provisions of this act the following sums:

For the Fiscal Year 2021-2022 .....	\$71,665
For the Fiscal Year 2022-2023 .....	\$88,469

2. Any balance of the sums appropriated by subsection 1 remaining at the end of the respective fiscal years must not be committed for expenditure after June 30 of the respective fiscal years by the entity to which the appropriation is made or any entity to which money from the appropriation is granted or otherwise transferred in any manner, and any portion of the appropriated money remaining must not be spent for any purpose after September 16, 2022, and September 15, 2023, respectively, by either the entity to which the money was appropriated or the entity to which the money was subsequently granted or transferred, and must be reverted to the State General Fund on or before September 16, 2022, and September 15, 2023, respectively.

**Sec. 27.** 1. There is hereby appropriated from the State General Fund to the Division of Public and Behavioral Health of the Department of Health and Human Services for personnel, operating and equipment costs to carry out the provisions of this act the following sums:

For the Fiscal Year 2021-2022 .....	\$86,609
For the Fiscal Year 2022-2023 .....	\$110,120

2. Any balance of the sums appropriated by subsection 1 remaining at the end of the respective fiscal years must not be committed for expenditure after June 30 of the respective fiscal years by the entity to which the appropriation is made or any entity to which money from the appropriation is granted or otherwise transferred in any manner, and any portion of the appropriated money remaining must not be spent for any purpose after September 16, 2022, and September 15, 2023, respectively, by either the entity to which the money was appropriated or the entity to which the money was subsequently granted or transferred, and must be reverted to the State General Fund on or before September 16, 2022, and September 15, 2023, respectively.

**Sec. 28.** 1. This section and sections 26 and 27 of this act become effective on July 1, 2021.

2. Sections 1 to 25, inclusive, of this act become effective on October 1, 2021.

