

SENATE BILL NO. 386—COMMITTEE ON COMMERCE AND LABOR

MARCH 26, 2021

Referred to Committee on Commerce and Labor

SUMMARY—Revises provisions relating to certain businesses.
(BDR 53-1010)

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 practices; requiring certain employers to provide certain employees with written notices containing certain information in the event of a layoff; requiring an employer to retain certain information relating to a laid-off employee; requiring an employer to offer certain job positions to a laid-off employee under certain circumstances; prohibiting an employer from taking certain adverse actions against certain persons; authorizing civil actions to enforce certain provisions; providing for the severability of certain provisions by a court under certain circumstances; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

1 On January 31, 2020, the United States Secretary of Health and Human
2 Services declared a public health emergency based on the threat caused by the
3 novel coronavirus. Subsequently, the President of the United States and the World
4 Health Organization issued a proclamation and announcement, respectively,
5 regarding the COVID-19 threat. On March 12, 2020, the Governor of Nevada
6 issued the Declaration of Emergency for COVID-19. Since the date of the
7 Declaration of Emergency by the Governor, the Governor has issued numerous
8 COVID-19 declaration of emergency directives, setting forth closures, safety
9 precautions and capacity limitations for public accommodations, other businesses
10 and governmental facilities. As a result of the pandemic, casino, hospitality,
11 stadium and travel-related employers have discharged, laid off and furloughed
12 workers.

13 Under existing law, and in the absence of collective bargaining agreements
14 providing applicable protections, workers who were discharged, laid off or
15 furloughed due to the pandemic are not required to be recalled to their previous
16 positions of employment. This bill requires certain employers that discharged, laid



17 off or furloughed employees to offer job positions to those employees under certain
18 conditions.

19 **Section 3** of this bill sets forth the Legislature's intent that certain employees
20 have an opportunity to return to their jobs when circumstances permit.

21 **Section 4** of this bill provides that the provisions of this bill constitute
22 minimum labor standards and do not preempt or prevent standards which provide
23 employees with greater protections or benefits.

24 **Sections 5-19** of this bill define certain terms applicable to the provisions of
25 this bill.

26 **Section 20** of this bill requires an employer, in the event of a layoff, to provide
27 an employee who is to be laid off with a written notice containing certain
28 information regarding the layoff and the employee's right to reemployment.

29 **Section 21** of this bill requires an employer to retain certain information for 2
30 years if an employee is laid off.

31 **Section 22** of this bill: (1) requires an employer to offer a laid-off employee
32 certain job positions; (2) sets forth an order of preference for job offers if multiple
33 eligible employees were laid off; (3) requires the employer to afford a laid-off
34 employee not less than 10 days within which to accept or decline an offer; and (4)
35 requires an employer to provide a laid-off employee with notice of the reasons for
36 declining to recall the laid-off employee under certain circumstances.

37 **Section 23** of this bill prohibits an employer from taking certain adverse
38 actions against certain persons for taking certain actions in relation to the
39 provisions of this bill.

40 **Section 24** of this bill: (1) authorizes the enforcement of the provisions of this
41 bill in a civil action brought by certain persons; (2) sets forth certain standards for
42 establishing and rebutting certain presumptions concerning violations of the
43 provisions of this bill in such an action; and (3) authorizes the imposition of an
44 injunction against violations and the issuance of orders of other appropriate
45 affirmative action and certain awards to a prevailing plaintiff.

46 **Section 25** of this bill: (1) imposes the requirements and duties of the
47 provisions of this bill upon certain employers that conduct certain transactions,
48 reorganizations or relocations of operations; and (2) extends the rights afforded by
49 this bill to laid-off employees of such employers.

50 **Section 26** of this bill makes the provisions of this bill applicable to all
51 employees, regardless of whether the employees are represented for purposes of
52 collective bargaining or are covered by a collective bargaining agreement.

53 **Section 27** of this bill prohibits the provisions of this bill from being construed
54 to invalidate or limit certain other rights, remedies or procedures available to an
55 employee.

56 **Section 28** of this bill provides for the severability of provisions of this bill by a
57 court under certain circumstances.

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

1 **Section 1.** Chapter 613 of NRS is hereby amended by adding
2 thereto the provisions set forth as sections 2 to 28, inclusive, of this
3 act.

4 **Sec. 2.** *Sections 2 to 28, inclusive, of this act may be cited as*
5 *the Nevada Hospitality and Travel Workers Right to Return Act.*

6 **Sec. 3.** *The Legislature hereby finds that:*



1 1. COVID-19, also known as the “Coronavirus Disease,” is a
2 respiratory disease which has spread across the globe, with many
3 thousands of cases in Nevada.

4 2. On January 31, 2020, the United States Secretary of
5 Health and Human Services declared a public health emergency
6 based on the threat caused by the novel coronavirus, and,
7 thereafter, the President of the United States issued the
8 Proclamation Declaring a National Emergency Concerning the
9 Novel Coronavirus Disease (COVID-19) Outbreak, beginning
10 March 1, 2020.

11 3. The World Health Organization announced on March 11,
12 2020, that it had characterized COVID-19 as a pandemic.

13 4. On March 12, 2020, the Governor of Nevada issued the
14 Declaration of Emergency for COVID-19, declaring the existence
15 of an emergency in the State.

16 5. On March 13, 2020, the President declared a nationwide
17 emergency pursuant to section 501 of the Robert T. Stafford
18 Disaster Relief and Emergency Assistance Act, 42 U.S.C. §§ 5121
19 et seq.

20 6. Since the Governor’s Declaration of Emergency for
21 COVID-19 on March 12, 2020, the Governor has issued numerous
22 COVID-19 declaration of emergency directives, setting forth
23 closures, safety precautions and capacity limitations for public
24 accommodations, other businesses and governmental facilities and
25 removing such restrictions as appropriate.

26 7. Jobs in the leisure and hospitality sectors are central to this
27 State’s economy and to the well-being of this State as a whole.
28 According to the Budget Division of the Office of Finance, leisure
29 and hospitality jobs constituted a significant portion of total
30 employment in this State during 2019.

31 8. Since the declaration of a national public health
32 emergency on January 31, 2020, the COVID-19 pandemic has
33 caused casino, hospitality, stadium and travel-related employers to
34 discharge, lay off and furlough workers on a massive scale. As of
35 December 2020, according to the Bureau of Labor Statistics of the
36 United States Department of Labor, Nevada experienced a
37 significant annual decrease in leisure and hospitality employment,
38 the largest decline of any sector in Nevada.

39 9. Many thousands of casino, hospitality, stadium and travel-
40 related workers have been separated from their jobs already
41 during the pandemic, and many thousands more are expected to
42 face separation in the coming months.

43 10. Federal, state and local programs and efforts by many of
44 this State’s nonprofit organizations have provided a modicum of
45 support to casino, hospitality, stadium and travel-related workers



1 *in the short term. However, what these workers need most is the*
2 *promise of a return to their previous jobs as the pandemic recedes*
3 *and business returns.*

4 *11. It is in the public interest and beneficial to the public*
5 *welfare to ensure that the State's casino, hospitality, stadium and*
6 *travel-related employers honor their former employees' right to*
7 *return to their former positions because doing so will speed the*
8 *transition back to a functioning labor market and will lessen the*
9 *damage to the State's economy. Recalling workers instead of*
10 *searching for new employees could minimize the time necessary to*
11 *match employees with jobs and reduce the unemployment rate*
12 *more quickly.*

13 *12. It is in the public interest and beneficial to the public*
14 *welfare to provide laid-off employees in the casino, hospitality,*
15 *stadium and travel-related sectors with the economic security of*
16 *knowing that they will have an opportunity to return to their jobs*
17 *when business returns. In a typical recession, workers who are*
18 *permanently laid off, without recall, often cycle through short-*
19 *term jobs before finding a stable job, and many drop out of the*
20 *labor market altogether. In addition, workers who believe that they*
21 *are likely to be called back to a steady job are more likely to*
22 *continue spending money. Ensuring a path to rehiring can relieve*
23 *workers' anxiety, which can bolster morale and increase*
24 *consumer spending, thereby supporting economic recovery.*

25 **Sec. 4. 1.** *The purpose of sections 2 to 28, inclusive, of this*
26 *act is to ensure minimum labor standards.*

27 *2. The provisions of sections 2 to 28, inclusive, of this act do*
28 *not preempt or prevent the establishment of employment standards*
29 *which are more protective of, or more beneficial for, employees,*
30 *including, without limitation, higher wages or the expansion of*
31 *coverage by ordinance, resolution, contract or any other action of*
32 *this State or any political subdivision within this State.*

33 **Sec. 5.** *As used in sections 2 to 28, inclusive, of this act,*
34 *unless the context otherwise requires, the words and terms defined*
35 *in sections 6 to 19, inclusive, of this act have the meanings*
36 *ascribed to them in those sections.*

37 **Sec. 6.** *"Airport" has the meaning ascribed to it in*
38 *NRS 496.020.*

39 **Sec. 7. 1.** *"Airport hospitality operation" means a business*
40 *that provides food and beverage, retail or other consumer goods or*
41 *services to the public at an airport.*

42 *2. The term does not include an air carrier which has been*
43 *issued an air carrier operating certificate by the Federal Aviation*
44 *Administration.*



1 **Sec. 8. 1. "Airport service provider" means a business**
2 **entity that performs, under contract with a passenger air carrier:**

3 (a) **Functions for the catering of food and beverage; or**

4 (b) **Functions on the property of the airport that are directly**
5 **related to the air transportation of persons, property or mail,**
6 **including, without limitation:**

7 (1) **The loading and unloading of property on aircraft;**

8 (2) **Assistance to passengers pursuant to 14 C.F.R. Part**
9 **382;**

10 (3) **Security;**

11 (4) **Airport ticketing and check-in;**

12 (5) **Ground-handling of aircraft; and**

13 (6) **Aircraft cleaning, sanitization and waste removal.**

14 2. **The term does not include an air carrier which has been**
15 **issued an air carrier operating certificate by the Federal Aviation**
16 **Administration.**

17 **Sec. 9. "Business entity" means a natural person,**
18 **corporation, partnership, limited partnership, limited-liability**
19 **partnership, limited-liability company, business trust, estate, trust,**
20 **association, joint venture, agency, instrumentality or any other**
21 **legal or commercial entity, whether domestic or foreign.**

22 **Sec. 10. 1. "Casino" has the meaning ascribed to the term**
23 **"licensed gaming establishment" in NRS 463.0169.**

24 2. **The term includes any contracted, leased or sublet**
25 **premises that are connected to or operated in conjunction with the**
26 **purpose of the casino, including, without limitation, facilities for**
27 **the preparation of food, concessions, retail stores, restaurants,**
28 **bars and structured parking facilities.**

29 **Sec. 11. "Covered enterprise" means an airport hospitality**
30 **operation, an airport service provider, a casino, an event center or**
31 **a hotel that is located in a county whose population is 100,000 or**
32 **more.**

33 **Sec. 12. "Employee" has the meaning ascribed to it in**
34 **NRS 608.010.**

35 **Sec. 13. "Employer" means any business entity, including an**
36 **officer or executive of a corporation, who directly or indirectly**
37 **through an agent or any other business entity, including through**
38 **the services of a temporary employment service, staffing agency or**
39 **similar entity, owns or operates a covered enterprise within this**
40 **State and employs or exercises control over the wages, hours or**
41 **working conditions of an employee.**

42 **Sec. 14. 1. "Event center" means a publicly or privately**
43 **owned structure of more than 50,000 square feet or containing**
44 **more than 5,000 seats that is used for the purposes of public**
45 **performances, sporting events, business meetings or similar events**



1 *and includes, without limitation, a concert hall, stadium, sports*
2 *arena, race track, coliseum or convention center.*

3 2. *The term includes any contracted, leased or sublet*
4 *premises that are connected to or operated in conjunction with the*
5 *purpose of the event center, including, without limitation, facilities*
6 *for the preparation of food, concessions, retail stores, restaurants,*
7 *bars and structured parking facilities.*

8 **Sec. 15. 1. “Hotel” means a resort hotel and any other**
9 **residential building that:**

10 (a) *Is designated or used for lodging and other related services*
11 *for the public, including, without limitation, the preparation and*
12 *service of food and beverages, trade shows and conventions; and*

13 (b) *Contains not less than 200 guest rooms or suites of rooms.*
14 *For the purposes of this paragraph, adjoining rooms do not*
15 *constitute a suite of rooms.*

16 2. *The term also includes any contracted, leased or sublet*
17 *premises that:*

18 (a) *Is connected to or operated in conjunction with the purpose*
19 *of the resort hotel or residential building; or*

20 (b) *Provides services at the resort hotel or residential building.*

21 **Sec. 16. “Laid-off employee” means an employee:**

22 1. *Who was employed by an employer for not less than 6*
23 *months during the 12 months immediately preceding March 12,*
24 *2020; and*

25 2. *Whose most recent separation from active service for that*
26 *employer:*

27 (a) *Occurred after March 12, 2020; and*

28 (b) *Was due to a governmental order, lack of business,*
29 *reduction in force or another economic, nondisciplinary reason.*

30 **Sec. 17. “Length of service” means the total of all periods of**
31 **time during which an employee has been in active service,**
32 **including periods of time during which the employee was on leave**
33 **or on vacation.**

34 **Sec. 18. “Resort hotel” has the meaning ascribed to it in**
35 **NRS 463.01865.**

36 **Sec. 19. “Structured parking facility” means a parking deck,**
37 **parking garage, parking structure or paved or unpaved parking**
38 **lot.**

39 **Sec. 20. 1. In the event of a layoff, an employer shall**
40 **provide an employee who is to be laid off with written notice of the**
41 **layoff, either in person or mailed to the last known address of the**
42 **employee and, if the employer possesses such contact information,**
43 **by text message and electronic mail.**

44 2. *The employer shall provide the notice required by this*
45 *section at the time of the layoff or, if the layoff took place before*



1 *the effective date of this act, not later than 20 days after the*
2 *effective date of this act.*

3 *3. The employer shall provide the notice required by this*
4 *section to each affected employee in a language that is understood*
5 *by that employee.*

6 *4. The notice required by this section must include:*

7 *(a) A notice of the layoff and the effective date of the layoff.*

8 *(b) A summary of the right to reemployment pursuant to*
9 *sections 2 to 28, inclusive, of this act or clear instructions on the*
10 *means by which the employee may access the information*
11 *regarding that right.*

12 **Sec. 21. 1.** *An employer shall retain the following records*
13 *for not less than 2 years after an employee is laid off:*

14 *(a) The full legal name of the employee;*

15 *(b) The job classification of the employee at the time of the*
16 *separation from employment;*

17 *(c) The date of hire of the employee;*

18 *(d) The last known address of the employee;*

19 *(e) The last known electronic mail address of the employee;*

20 *(f) The last known telephone number of the employee; and*

21 *(g) A copy of the written notice regarding the layoff that was*
22 *provided to the employee.*

23 *2. For the purposes of this section, 2 years is measured from*
24 *the date of the written notice provided by the employer to the laid-*
25 *off employee pursuant to section 20 of this act.*

26 **Sec. 22. 1.** *An employer shall offer a laid-off employee in*
27 *writing, by registered mail to the last known address of the*
28 *employee and, if the employer possesses such contact information,*
29 *by text message and electronic mail, each job position:*

30 *(a) Which becomes available after the effective date of this act;*
31 *and*

32 *(b) For which the laid-off employee is qualified. A laid-off*
33 *employee is qualified for a job position pursuant to this paragraph*
34 *if the laid-off employee:*

35 *(1) Held the same or a similar position at the covered*
36 *enterprise at the time of the laid-off employee's most recent*
37 *separation from active service with the employer; or*

38 *(2) Is or can be qualified for the position with the same*
39 *training that would be provided to a new employee hired for that*
40 *position.*

41 *2. An employer shall offer job positions to laid-off employees*
42 *in an order of preference corresponding to subparagraphs (1) and*
43 *(2) of paragraph (b) of subsection 1. If more than one laid-off*
44 *employee is entitled to preference for a position, the employer*



1 *must first offer the position to the laid-off employee with the*
2 *greatest length of service for the covered enterprise.*

3 3. *An employer may extend simultaneous conditional offers*
4 *of employment to laid-off employees with a final offer of*
5 *employment conditioned on application of the order of preference*
6 *set forth in subparagraphs (1) and (2) of paragraph (b) of*
7 *subsection 1.*

8 4. *An employer who offers a laid-off employee a job position*
9 *pursuant to this section shall afford the employee not less than 10*
10 *days after the date of the employee's receipt of the offer to accept*
11 *or decline the offer.*

12 5. *An employer who declines to recall a laid-off employee*
13 *because the employee lacks qualifications and hires a person other*
14 *than the laid-off employee shall, not later than 30 days after*
15 *making that decision, provide the laid-off employee with a written*
16 *notice of the decision identifying all the reasons for the decision.*

17 **Sec. 23.** *An employer shall not terminate, reduce in*
18 *compensation, refuse to employ or otherwise take any adverse*
19 *action against:*

20 1. *Any person for:*

21 (a) *Seeking to enforce by any lawful means his or her rights*
22 *pursuant to sections 2 to 28, inclusive, of this act;*

23 (b) *Participating in proceedings pursuant to sections 2 to 28,*
24 *inclusive, of this act;*

25 (c) *Opposing any practice proscribed by sections 2 to 28,*
26 *inclusive, of this act; or*

27 (d) *Otherwise asserting rights pursuant to sections 2 to 28,*
28 *inclusive, of this act.*

29 2. *An employee who mistakenly, but in good faith, alleges*
30 *noncompliance with sections 2 to 28, inclusive, of this act.*

31 **Sec. 24.** 1. *The provisions of sections 2 to 28, inclusive, of*
32 *this act may be enforced in a civil action in any court of competent*
33 *jurisdiction brought by one or more employees for and on behalf*
34 *of himself, herself or themselves and other employees similarly*
35 *situated, or the employees may designate an agent or*
36 *representative to maintain an action for and on behalf of all*
37 *employees similarly situated.*

38 2. *There is a rebuttable presumption that an employer's*
39 *action is taken in violation of section 25 of this act if it is*
40 *established that:*

41 (a) *A laid-off employee exercised rights pursuant to the*
42 *provisions of sections 2 to 28, inclusive, of this act or alleged in*
43 *good faith that the employer was not complying with the*
44 *provisions of sections 2 to 28, inclusive, of this act;*



1 (b) The employer thereafter refused to employ, terminated,
2 demoted or otherwise took adverse action against the employee;
3 and

4 (c) The employer took the action described in paragraph (b)
5 against the employee not later than 60 days after the employee
6 exercised rights or made an allegation described in paragraph (a).

7 3. An employer may rebut a presumption created pursuant to
8 subsection 2 by proving that the true and entire reason for the
9 action taken pursuant to paragraph (b) of subsection 2 was a
10 legitimate business reason. The plaintiff in the action may rebut
11 the legitimate business reason asserted by the employer by
12 showing that the reason was, in fact, a pretext.

13 4. If the court finds that the employer has violated a provision
14 of sections 2 to 28, inclusive, of this act, the court may enjoin the
15 employer from engaging in the violation and order such
16 affirmative action as may be appropriate, including, without
17 limitation, reinstatement or hiring of employees, with or without
18 back pay and fringe benefits, or any other equitable relief as the
19 court deems appropriate.

20 5. Interim earnings or amounts earnable with reasonable
21 diligence by the person or persons discriminated against shall
22 operate to reduce the back pay otherwise allowable. Before interim
23 earnings are deducted from lost wages, there must be deducted
24 from the interim earnings any reasonable amounts expended by
25 the employee in searching for, obtaining or relocating to new
26 employment.

27 6. If the plaintiff in an action which is brought pursuant to
28 this section prevails in the action, the court shall award
29 reasonable attorney's fees, expert witness fees and costs as part of
30 the cost recoverable.

31 7. In addition to the costs awarded pursuant to subsection 6,
32 the court may issue an order for an award of:

33 (a) Compensatory and punitive damages if the court finds that
34 the employer engaged in the violation with malice or with reckless
35 indifference to the requirements of the provisions of sections 2 to
36 28, inclusive, of this act; and

37 (b) Treble damages payable to an employee who was
38 terminated in violation of section 23 of this act.

39 **Sec. 25. 1. An employer that, on or after January 31, 2020:**

40 (a) Purchases or otherwise acquires the ownership of another
41 employer which owns or operates a covered enterprise; and

42 (b) Conducts the same or similar operations as those which
43 were conducted by the employer that owned or operated the
44 covered enterprise before the date of the purchase or acquisition,



1 ↳ is subject to the provisions of sections 2 to 28, inclusive, of this
2 act as if the purchasing or acquiring employer was the employer
3 that owned or operated the covered enterprise before the date of
4 the purchase or acquisition and owes to a laid-off employee the
5 rights afforded by sections 2 to 28, inclusive, of this act.

6 2. An employer that, on or after January 31, 2020:

7 (a) Purchases or otherwise acquires all or substantially all of
8 the assets of an employer that owned or operated a covered
9 enterprise; and

10 (b) With those assets, conducts the same or similar operations
11 as those which were conducted by the employer that conducted
12 operations with those assets before the date of the purchase or
13 acquisition,

14 ↳ is subject to the provisions of sections 2 to 28, inclusive, of this
15 act as if the employer which purchased or acquired the assets was
16 the employer that conducted operations with those assets before
17 the date of the purchase or acquisition and owes to a laid-off
18 employee the rights afforded by sections 2 to 28, inclusive, of this
19 act.

20 3. An employer which:

21 (a) Owns or operates a covered enterprise; and

22 (b) On or after January 31, 2020, changes the employer's form
23 of organization but continues to own or operate the covered
24 enterprise,

25 ↳ remains subject to the provisions of sections 2 to 28, inclusive,
26 of this act and owes to a laid-off employee the rights afforded by
27 sections 2 to 28, inclusive, of this act.

28 4. An employer which moves operations from a location at
29 which a laid-off employee was employed before January 31, 2020,
30 to a different location within this State remains subject to the
31 provisions of sections 2 to 28, inclusive, of this act and owes to the
32 laid-off employee the rights afforded by sections 2 to 28, inclusive,
33 of this act.

34 **Sec. 26.** The provisions of sections 2 to 28, inclusive, of this
35 act apply to all employees, as defined in section 12 of this act,
36 regardless of whether the employees are represented for purposes
37 of collective bargaining or are covered by a collective bargaining
38 agreement.

39 **Sec. 27.** The provisions of sections 2 to 28, inclusive, of this
40 act shall not be construed to:

41 1. Invalidate or limit the rights, remedies and procedures of
42 any contract or agreement that provides greater or equal
43 protection for employees than are afforded by the provisions of
44 sections 2 to 28, inclusive, of this act, notwithstanding the
45 provisions of section 26 of this act.



1 2. *Limit a discharged employee's right to bring a cause of*
2 *action for wrongful termination under common law.*

3 **Sec. 28.** *1. If any section, sentence, clause or phrase of*
4 *sections 2 to 28, inclusive, of this act is for any reason held to be*
5 *invalid or unconstitutional by a court of competent jurisdiction,*
6 *such decision shall not affect the validity of the remaining*
7 *portions of sections 2 to 28, inclusive, of this act, which shall*
8 *remain in full force and effect.*

9 2. *The Legislature hereby declares that it would have adopted*
10 *the provisions of sections 2 to 28, inclusive, of this act and each*
11 *and every section, sentence, clause and phrase thereof not*
12 *declared invalid or unconstitutional, without regard to whether*
13 *any portion of sections 2 to 28, inclusive, of this act were*
14 *subsequently declared invalid or unconstitutional.*

15 3. *The courts are hereby authorized to reform the provisions*
16 *of sections 2 to 28, inclusive, of this act in order to preserve the*
17 *maximum permissible effect of each section therein.*

18 **Sec. 29.** This act becomes effective upon passage and
19 approval, and expires by limitation on the later of:

20 1. The date on which the Governor terminates the emergency
21 described in the Declaration of Emergency for COVID-19 issued on
22 March 12, 2020; or

23 2. July 1, 2023.

