

ONE HUNDRED ONE NORTH CARSON STREET
CARSON CITY, NEVADA 89701
OFFICE: (775) 684-5670
FAX No.: (775) 684-5683



555 EAST WASHINGTON AVENUE, SUITE 5100
LAS VEGAS, NEVADA 89101
OFFICE: (702) 486-2500
FAX No.: (702) 486-2505

Office of the Governor

June 13, 2011

The Honorable Ross Miller
Secretary of State
Capitol Building
101 South Carson Street
Carson City, NV 89701

RE: Senate Bill 207 of the 76th Legislative Session

Dear Secretary Miller:

I am herewith forwarding to you, for filing within the constitutional time limit and without my approval, Senate Bill 207, which is entitled:

AN ACT relating to employment; authorizing the imposition of an administrative penalty against an employer who misclassifies an employee as an independent contractor or otherwise fails to properly classify a person as an employee of the employer under certain circumstances; and providing other matters properly relating thereto.

This bill provides the Labor Commissioner with authority to impose additional penalties against employers that misclassify employees as independent contractors or otherwise fail to properly classify persons as employees. For each unintentionally misclassified or improperly classified person, the Commissioner may impose a penalty up to \$1,000. For each person who is willfully misclassified or improperly classified, the penalty must be between \$5,000 and \$15,000. For the second offense, the penalty must be between \$15,000 and \$25,000 for each person that is misclassified or improperly classified. For the third or subsequent offense, the penalty must be at least \$25,000 for each misclassified or improperly classified employee. Under the bill, the Commissioner also has, in the case of a third or subsequent offense, the authority to submit notice to the Secretary of State of the misclassification or improper classification of persons by the employer, which triggers the revocation or suspension of the employer's business license for not more than three years. The bill also subjects those who knowingly advise an employer to misrepresent the classification or duties of an employee to civil liability in actions brought by the Attorney General.

The efficient administration of the State's labor laws is essential to achieving fair and equitable labor markets. Towards that end, the Commissioner and the Attorney General should be adequately empowered to deter and punish those who violate our labor laws. The authority provided for in this bill, however, is not clearly aimed towards that end. Instead, it creates duplicative and unnecessary authority which serves to complicate an already intricate regulatory scheme.

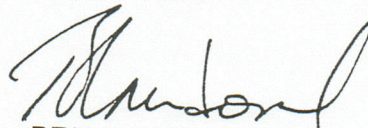
The targets of the bill are employers who fail to comply with statutory provisions requiring the payment of unemployment and business taxes, along with workers compensation taxes. However, the bill tasks the Commissioner, who traditionally enforces the State's labor laws, with determining whether persons are independent contractors for purposes of these other applicable laws. Indeed, the definition of "independent contractor" to be applied by the Commissioner is found in Chapter 616A, which relates, in part, to the enforcement of the State's industrial insurance policy, not in the State's labor laws. This mechanism is awkward. The agencies charged with enforcing these provisions should make the factual determinations as to whether an employer illegally misclassified an employee for purposes of the statutes enforced by those agencies. The cross-enforcement by the Commissioner provided for in this bill makes the regulatory picture vague.

Moreover, the penalties provided for in the bill are duplicative. The Commissioner, today, has authority under NRS 608.195(2) to impose a penalty of up to \$5,000 on any employer that misclassifies an employee. Similarly, the Administrator of the Employment Security Division can levy various forfeitures, interest payments, and civil penalties of up to \$5,000 for every violation founded on the failure to properly pay unemployment compensations taxes. The Administrator of the Industrial Relations Division may fine non-compliant employers as well. Taken together, these penalties provide a sufficient foundation from which we can effectively enforce the State's labor laws, tax laws and workers compensation laws. With improved communications between State agencies with existing enforcement authority, we can build upon that foundation.

Finally, the penalties provided for in this bill are extreme. They threaten to deter employers from efficiently managing their labor force by encouraging them to over-classify persons as employees in order to avoid the potentially devastating imposition of excessive financial penalties. In the end, this overregulation will increase labor costs to the detriment of the state's economic recovery.

Therefore, because this bill would create an unnecessarily duplicative regulatory scheme, and because the enforcement mechanisms it provides threaten to undermine the economic recovery of our state, I veto it and return it to you without my signature and without my approval.

Sincere regards,



BRIAN SANDOVAL
Governor

Enclosure

cc: The Honorable Brian Krolicki, President of the Senate (without enclosure)
The Honorable Steven Horsford, Senate Majority Leader (without enclosure)
The Honorable John Ocegüera, Speaker of the Assembly (without enclosure)
David A Byerman, Secretary of the Senate (without enclosure)
Susan Furlong, Chief Clerk of the Assembly (without enclosure)
Brenda Erdoes, Esq., Legislative Counsel (without enclosure)