ASSEMBLY BILL NO. 211–ASSEMBLYMEN AIZLEY, OHRENSCHALL, CARRILLO, HORNE; ATKINSON, CONKLIN, DONDERO LOOP, FRIERSON, GOEDHART, HAMBRICK, HOGAN, OCEGUERA, PIERCE AND STEWART

FEBRUARY 25, 2011

JOINT SPONSORS: SENATORS LESLIE, PARKS; AND DENIS

Referred to Committee on Commerce and Labor

SUMMARY—Prohibits discriminatory employment practices based upon gender identity or expression. (BDR 53-272)

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; prohibiting discriminatory employment practices based upon the gender identity or expression of a person; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law establishes that it is the policy of this State to foster the right of all persons to reasonably seek, obtain and hold employment without discrimination, distinction or restriction because of race, religious creed, color, age, sex, disability, national origin or ancestry. (NRS 233.010) Consistent with that policy, existing law protects against such discrimination with respect to apprenticeships. (NRS 610.010, 610.020, 610.150, 610.185) In addition, existing law prohibits certain employers, employment agencies, labor organizations, joint labor-management committees or contractors from engaging in certain discriminatory employment practices. For example, it is an unlawful employment practice to fail to hire or to fire or otherwise discriminate against a person, or to limit or segregate or classify an employee on the basis of race, color, religion, sex, sexual orientation, age, disability or national origin, except in certain circumstances. (NRS 338.125, 613.330, 613.340, 613.350, 613.380) **Sections 2-4, 7-13, 16 and 17** of this bill add "gender identity or expression" to the list of categories upon which discrimination is prohibited, and **sections 1, 5 and 14** of this bill define "gender identity or expression" to mean the gender-related identity, appearance, expression or behavior of a person, regardless of the person's assigned sex at birth.

Existing law authorizes the Nevada Equal Rights Commission to investigate tensions, practices of discrimination and acts of prejudice against any person with regard to employment based on race, color, creed, sex, age, disability, national origin or ancestry. (NRS 233.150) **Section 15** of this bill adds "gender identity or expression" to the list of categories upon which the Commission may investigate such allegations of discrimination.

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

Section 1. NRS 610.010 is hereby amended to read as follows:

610.010 As used in this chapter, unless the context otherwise requires:

1. "Agreement" means a written and signed agreement of indenture as an apprentice.

2. "Apprentice" means a person who is covered by a written agreement, issued pursuant to a program with an employer, or with an association of employers or an organization of employees acting as agent for an employer.

3. "Disability" means, with respect to a person:

(a) A physical or mental impairment that substantially limits one or more of the major life activities of the person;

(b) A record of such an impairment; or

(c) Being regarded as having such an impairment.

4. ***"Gender identity or expression" means a gender-related identity, appearance, expression or behavior of a person, regardless of the person's assigned sex at birth.***

5. "Program" means a program of training and instruction as an apprentice in an occupation in which a person may be apprenticed.

~~[5.]~~ ***6.*** "Sexual orientation" means having or being perceived as having an orientation for heterosexuality, homosexuality or bisexuality.

Sec. 2. NRS 610.020 is hereby amended to read as follows:

610.020 The purposes of this chapter are:

1. To open to people, without regard to race, color, creed, sex, sexual orientation, ***gender identity or expression,*** religion, disability or national origin, the opportunity to obtain training that will equip them for profitable employment and citizenship.

2. To establish, as a means to this end, an organized program for the voluntary training of persons under approved standards for apprenticeship, providing facilities for their training and guidance in the arts and crafts of industry and trade, with instruction in related and supplementary education.

3. To promote opportunities for employment for all persons, without regard to race, color, creed, sex, sexual orientation, ***gender***

identity or expression, religion, disability or national origin, under conditions providing adequate training and reasonable earnings.

4. To regulate the supply of skilled workers in relation to the demand for skilled workers.

5. To establish standards for the training of apprentices in approved programs.

6. To establish a State Apprenticeship Council with the authority to carry out the purposes of this chapter and provide for local joint apprenticeship committees to assist in carrying out the purposes of this chapter.

7. To provide for a State Director of Apprenticeship.

8. To provide for reports to the Legislature and to the public regarding the status of the training of apprentices in the State.

9. To establish procedures for regulating programs and deciding controversies concerning programs and agreements.

10. To accomplish related ends.

Sec. 3. NRS 610.150 is hereby amended to read as follows:

610.150 Every agreement entered into under this chapter must contain:

1. The names and signatures of the contracting parties and the signature of a parent or legal guardian if the apprentice is a minor.

2. The date of birth of the apprentice.

3. The name and address of the sponsor of the program.

4. A statement of the trade or craft in which the apprentice is to be trained, and the beginning date and expected duration of the apprenticeship.

5. A statement showing the number of hours to be spent by the apprentice in work and the number of hours to be spent in related and supplemental instruction, which instruction must not be less than 144 hours per year.

6. A statement setting forth a schedule of the processes in the trade or division of industry in which the apprentice is to be trained and the approximate time to be spent at each process.

7. A statement of the graduated scale of wages to be paid the apprentice and whether or not compensation is to be paid for the required time in school.

8. Statements providing:

(a) For a specific period of probation during which the agreement may be terminated by either party to the agreement upon written notice to the State Apprenticeship Council; and

(b) That after the probationary period the agreement may be cancelled at the request of the apprentice, or suspended, cancelled or terminated by the sponsor for good cause, with due notice to the apprentice and a reasonable opportunity for corrective action, and

with written notice to the apprentice and the State Apprenticeship Council of the final action taken.

9. A reference incorporating as part of the agreement the standards of the program as it exists on the date of the agreement and as it may be amended during the period of the agreement.

10. A statement that the apprentice will be accorded equal opportunity in all phases of employment and training as an apprentice without discrimination because of race, color, creed, sex, sexual orientation, ***gender identity or expression,*** religion or disability.

11. A statement naming the State Apprenticeship Council as the authority designated pursuant to NRS 610.180 to receive, process and dispose of controversies or differences arising out of the agreement when the controversies or differences cannot be adjusted locally or resolved in accordance with the program or collective bargaining agreements.

12. Such additional terms and conditions as are prescribed or approved by the State Apprenticeship Council not inconsistent with the provisions of this chapter.

Sec. 4. NRS 610.185 is hereby amended to read as follows:

610.185 The State Apprenticeship Council shall suspend for 1 year the right of any employer, association of employers or organization of employees acting as agent for an employer to participate in a program under the provisions of this chapter if the Nevada Equal Rights Commission, after notice and hearing, finds that the employer, association or organization has discriminated against an apprentice because of race, color, creed, sex, sexual orientation, ***gender identity or expression,*** religion, disability or national origin in violation of this chapter.

Sec. 5. NRS 613.310 is hereby amended to read as follows:

613.310 As used in NRS 613.310 to 613.435, inclusive, unless the context otherwise requires:

1. "Disability" means, with respect to a person:

(a) A physical or mental impairment that substantially limits one or more of the major life activities of the person, including, without limitation, the human immunodeficiency virus;

(b) A record of such an impairment; or

(c) Being regarded as having such an impairment.

2. "Employer" means any person who has 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year, but does not include:

(a) The United States or any corporation wholly owned by the United States.

(b) Any Indian tribe.

(c) Any private membership club exempt from taxation pursuant to 26 U.S.C. § 501(c).

3. "Employment agency" means any person regularly undertaking with or without compensation to procure employees for an employer or to procure for employees opportunities to work for an employer, but does not include any agency of the United States.

4. ***"Gender identity or expression" means a gender-related identity, appearance, expression or behavior of a person, regardless of the person's assigned sex at birth.***

5. "Labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment or other conditions of employment.

~~[5.]~~ ***6.*** "Person" includes the State of Nevada and any of its political subdivisions.

~~[6.]~~ ***7.*** "Sexual orientation" means having or being perceived as having an orientation for heterosexuality, homosexuality or bisexuality.

Sec. 6. NRS 613.320 is hereby amended to read as follows:

613.320 1. The provisions of NRS 613.310 to 613.435, inclusive, do not apply to:

(a) Any employer with respect to employment outside this state.

(b) Any religious corporation, association or society with respect to the employment of individuals of a particular religion to perform work connected with the carrying on of its religious activities.

2. The provisions of NRS 613.310 to 613.435, inclusive, concerning unlawful employment practices related to sexual orientation ***and gender identity or expression*** do not apply to an organization that is exempt from taxation pursuant to 26 U.S.C. § 501(c)(3).

Sec. 7. NRS 613.330 is hereby amended to read as follows:

613.330 1. Except as otherwise provided in NRS 613.350, it is an unlawful employment practice for an employer:

(a) To fail or refuse to hire or to discharge any person, or otherwise to discriminate against any person with respect to the person's compensation, terms, conditions or privileges of employment, because of his or her race, color, religion, sex, sexual orientation, ***gender identity or expression,*** age, disability or national origin; or

(b) To limit, segregate or classify an employee in a way which would deprive or tend to deprive the employee of employment opportunities or otherwise adversely affect his or her status as an

employee, because of his or her race, color, religion, sex, sexual orientation, ***gender identity or expression,*** age, disability or national origin.

2. It is an unlawful employment practice for an employment agency to:

(a) Fail or refuse to refer for employment, or otherwise to discriminate against, any person because of the race, color, religion, sex, sexual orientation, ***gender identity or expression,*** age, disability or national origin of that person; or

(b) Classify or refer for employment any person on the basis of the race, color, religion, sex, sexual orientation, ***gender identity or expression,*** age, disability or national origin of that person.

3. It is an unlawful employment practice for a labor organization:

(a) To exclude or to expel from its membership, or otherwise to discriminate against, any person because of his or her race, color, religion, sex, sexual orientation, ***gender identity or expression,*** age, disability or national origin;

(b) To limit, segregate or classify its membership, or to classify or fail or refuse to refer for employment any person, in any way which would deprive or tend to deprive the person of employment opportunities, or would limit the person's employment opportunities or otherwise adversely affect the person's status as an employee or as an applicant for employment, because of his or her race, color, religion, sex, sexual orientation, ***gender identity or expression,*** age, disability or national origin; or

(c) To cause or attempt to cause an employer to discriminate against any person in violation of this section.

4. It is an unlawful employment practice for any employer, labor organization or joint labor-management committee controlling apprenticeship or other training or retraining, including, without limitation, on-the-job training programs, to discriminate against any person because of his or her race, color, religion, sex, sexual orientation, ***gender identity or expression,*** age, disability or national origin in admission to, or employment in, any program established to provide apprenticeship or other training.

5. It is an unlawful employment practice for any employer, employment agency, labor organization or joint labor-management committee to discriminate against a person with a disability by interfering, directly or indirectly, with the use of an aid or appliance, including, without limitation, a service animal, by such a person.

6. It is an unlawful employment practice for an employer, directly or indirectly, to refuse to permit an employee with a disability to keep the employee's service animal with him or her at all times in his or her place of employment.

7. As used in this section, "service animal" has the meaning ascribed to it in NRS 426.097.

Sec. 8. NRS 613.340 is hereby amended to read as follows:

613.340 1. It is an unlawful employment practice for an employer to discriminate against any of his or her employees or applicants for employment, for an employment agency to discriminate against any person, or for a labor organization to discriminate against any member thereof or applicant for membership, because the employee, applicant, person or member, as applicable, has opposed any practice made an unlawful employment practice by NRS 613.310 to 613.435, inclusive, or because he or she has made a charge, testified, assisted or participated in any manner in an investigation, proceeding or hearing under NRS 613.310 to 613.435, inclusive.

2. It is an unlawful employment practice for an employer, labor organization or employment agency to print or publish or cause to be printed or published any notice or advertisement relating to employment by such an employer or membership in or any classification or referral for employment by such a labor organization, or relating to any classification or referral for employment by such an employment agency, indicating any preference, limitation, specification or discrimination, based on race, color, religion, sex, sexual orientation, ***gender identity or expression,*** age, disability or national origin, except that such a notice or advertisement may indicate a preference, limitation, specification or discrimination based on religion, sex, sexual orientation, ***gender identity or expression,*** age, physical, mental or visual condition or national origin when religion, sex, sexual orientation, ***gender identity or expression,*** age, physical, mental or visual condition or national origin is a bona fide occupational qualification for employment.

Sec. 9. NRS 613.350 is hereby amended to read as follows:

613.350 1. It is not an unlawful employment practice for an employer to hire and employ employees, for an employment agency to classify or refer for employment any person, for a labor organization to classify its membership or to classify or refer for employment any person, or for an employer, labor organization or joint labor-management committee controlling apprenticeship or other training or retraining programs to admit or employ any person in any such program, on the basis of his or her religion, sex, sexual orientation, ***gender identity or expression,*** age, disability or national origin in those instances where religion, sex, sexual orientation, ***gender identity or expression,*** age, physical, mental or visual condition or national origin is a bona fide occupational qualification

reasonably necessary to the normal operation of that particular business or enterprise.

2. It is not an unlawful employment practice for an employer to fail or refuse to hire and employ employees, for an employment agency to fail to classify or refer any person for employment, for a labor organization to fail to classify its membership or to fail to classify or refer any person for employment, or for an employer, labor organization or joint labor-management committee controlling apprenticeship or other training or retraining programs to fail to admit or employ any person in any such program, on the basis of a disability in those instances where physical, mental or visual condition is a bona fide and relevant occupational qualification necessary to the normal operation of that particular business or enterprise, if it is shown that the particular disability would prevent proper performance of the work for which the person with a disability would otherwise have been hired, classified, referred or prepared under a training or retraining program.

3. It is not an unlawful employment practice for an employer to fail or refuse to hire or to discharge a person, for an employment agency to fail to classify or refer any person for employment, for a labor organization to fail to classify its membership or to fail to classify or refer any person for employment, or for an employer, labor organization or joint labor-committee controlling apprenticeship or other training or retraining programs to fail to admit or employ any person in any such program, on the basis of his or her age if the person is less than 40 years of age.

4. It is not an unlawful employment practice for a school, college, university or other educational institution or institution of learning to hire and employ employees of a particular religion if the school or institution is, in whole or in substantial part, owned, supported, controlled or managed by a particular religion or by a particular religious corporation, association or society, or if the curriculum of the school or institution is directed toward the propagation of a particular religion.

5. It is not an unlawful employment practice for an employer to observe the terms of any bona fide plan for employees' benefits, such as a retirement, pension or insurance plan, which is not a subterfuge to evade the provisions of NRS 613.310 to 613.435, inclusive, as they relate to discrimination against a person because of age, except that no such plan excuses the failure to hire any person who is at least 40 years of age.

6. It is not an unlawful employment practice for an employer to require employees to adhere to reasonable workplace appearance, grooming and dress standards so long as such requirements are not precluded by law, except that an employer

shall allow an employee to appear, groom and dress consistent with the employee's gender identity or expression.

Sec. 10. NRS 613.380 is hereby amended to read as follows:

613.380 Notwithstanding any other provision of NRS 613.310 to 613.435, inclusive, it is not an unlawful employment practice for an employer to apply different standards of compensation, or different terms, conditions or privileges of employment pursuant to a bona fide seniority or merit system, or a system which measures earnings by quantity or quality of production or to employees who work in different locations, if those differences are not the result of an intention to discriminate because of race, color, religion, sex, sexual orientation, ***gender identity or expression,*** age, disability or national origin, nor is it an unlawful employment practice for an employer to give and to act upon the results of any professionally developed ability test, if the test, its administration or action upon the results is not designed, intended or used to discriminate because of race, color, religion, sex, sexual orientation, ***gender identity or expression,*** age, disability or national origin.

Sec. 11. NRS 613.400 is hereby amended to read as follows:

613.400 Nothing contained in NRS 613.310 to 613.435, inclusive, requires any employer, employment agency, labor organization or joint labor-management committee subject to NRS 613.310 to 613.435, inclusive, to grant preferential treatment to any person or to any group because of the race, color, religion, sex, sexual orientation, ***gender identity or expression,*** age, disability or national origin of the individual or group on account of an imbalance which exists with respect to the total number or percentage of persons of any race, color, religion, sex, sexual orientation, ***gender identity or expression,*** age, disability or national origin employed by any employer, referred or classified for employment by any employment agency or labor organization, admitted to membership or classified by any labor organization, or admitted to, or employed in, any apprenticeship or other training program, in comparison with the total number or percentage of persons of that race, color, religion, sex, sexual orientation, ***gender identity or expression,*** age, disability or national origin in any community, section or other area, or in the available workforce in any community, section or other area.

Sec. 12. NRS 613.405 is hereby amended to read as follows:

613.405 Any person injured by an unlawful employment practice within the scope of NRS 613.310 to 613.435, inclusive, may file a complaint to that effect with the Nevada Equal Rights Commission if the complaint is based on discrimination because of race, color, sex, sexual orientation, ***gender identity or expression,*** age, disability, religion or national origin.

Sec. 13. NRS 233.010 is hereby amended to read as follows:

233.010 1. It is hereby declared to be the public policy of the State of Nevada to protect the welfare, prosperity, health and peace of all the people of the State, and to foster the right of all persons reasonably to seek, obtain and hold ~~[employment and]~~ housing accommodations without discrimination, distinction or restriction because of race, religious creed, color, age, sex, disability, national origin or ancestry.

2. It is hereby declared to be the public policy of the State of Nevada to protect the welfare, prosperity, health and peace of all the people of the State, and to foster the right of all persons reasonably to seek and be granted services in places of public accommodation without discrimination, distinction or restriction because of race, religious creed, color, age, sex, disability, sexual orientation, national origin or ancestry.

3. ***It is hereby declared to be the public policy of the State of Nevada to protect the welfare, prosperity, health and peace of all the people of the State, and to foster the right of all persons reasonably to seek, obtain and hold employment without discrimination, distinction or restriction because of race, religious creed, color, age, sex, disability, gender identity or expression, national origin or ancestry.***

4. It is recognized that the people of this State should be afforded full and accurate information concerning actual and alleged practices of discrimination and acts of prejudice, and that such information may provide the basis for formulating statutory remedies of equal protection and opportunity for all citizens in this State.

Sec. 14. NRS 233.020 is hereby amended to read as follows:

233.020 As used in this chapter:

1. "Administrator" means the Administrator of the Commission.

2. "Commission" means the Nevada Equal Rights Commission within the Department of Employment, Training and Rehabilitation.

3. "Disability" means, with respect to a person:

(a) A physical or mental impairment that substantially limits one or more of the major life activities of the person;

(b) A record of such an impairment; or

(c) Being regarded as having such an impairment.

4. ***"Gender identity or expression" means a gender-related identity, appearance, expression or behavior of a person, regardless of the person's assigned sex at birth.***

5. "Member" means a member of the Nevada Equal Rights Commission.

~~[5.]~~ ***6.*** "Sexual orientation" means having or being perceived as having an orientation for heterosexuality, homosexuality or bisexuality.

Sec. 15. NRS 233.150 is hereby amended to read as follows:

233.150 The Commission may:

1. Order its Administrator to:

(a) With regard to public accommodation, investigate tensions, practices of discrimination and acts of prejudice against any person or group because of race, color, creed, sex, age, disability, sexual orientation, national origin or ancestry, and may conduct hearings with regard thereto.

(b) With regard to ~~[employment and]~~ housing, investigate tensions, practices of discrimination and acts of prejudice against any person or group because of race, color, creed, sex, age, disability, national origin or ancestry, and may conduct hearings with regard thereto.

(c) With regard to employment, investigate tensions, practices of discrimination and acts of prejudice against any person or group because of race, color, creed, sex, age, disability, gender identity or expression, national origin or ancestry, and may conduct hearings with regard thereto.

2. Mediate between or reconcile the persons or groups involved in those tensions, practices and acts.

3. Issue subpoenas for the attendance of witnesses or for the production of documents or tangible evidence relevant to any investigations or hearings conducted by the Commission.

4. Delegate its power to hold hearings and issue subpoenas to any of its members or any hearing officer in its employ.

5. Adopt reasonable regulations necessary for the Commission to carry out the functions assigned to it by law.

Sec. 16. NRS 281.370 is hereby amended to read as follows:

281.370 1. All personnel actions taken by state, county or municipal departments, housing authorities, agencies, boards or appointing officers thereof must be based solely on merit and fitness.

2. State, county or municipal departments, housing authorities, agencies, boards or appointing officers thereof shall not refuse to hire a person, discharge or bar any person from employment or discriminate against any person in compensation or in other terms or conditions of employment because of the person's race, creed, color, national origin, sex, sexual orientation, ***gender identity or expression,*** age, political affiliation or disability, except when based upon a bona fide occupational qualification.

3. As used in this section:

(a) "Disability" means, with respect to a person:

(1) A physical or mental impairment that substantially limits one or more of the major life activities of the person;

(2) A record of such an impairment; or

(3) Being regarded as having such an impairment.

(b) ***"Gender identity or expression" means a gender-related identity, appearance, expression or behavior of a person, regardless of the person's assigned sex at birth.***

(c) "Sexual orientation" means having or being perceived as having an orientation for heterosexuality, homosexuality or bisexuality.

Sec. 17. NRS 338.125 is hereby amended to read as follows:

338.125 1. It is unlawful for any contractor in connection with the performance of work under a contract with a public body, when payment of the contract price, or any part of such payment, is to be made from public money, to refuse to employ or to discharge from employment any person because of his or her race, color, creed, national origin, sex, sexual orientation ***, gender identity or expression,*** or age, or to discriminate against a person with respect to hire, tenure, advancement, compensation or other terms, conditions or privileges of employment because of his or her race, creed, color, national origin, sex, sexual orientation ***, gender identity or expression,*** or age.

2. Contracts between contractors and public bodies must contain the following contractual provisions:

> In connection with the performance of work under this contract, the contractor agrees not to discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, sexual orientation ***, gender identity or expression,*** or age, including, without limitation, with regard to employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including, without limitation, apprenticeship.
>
> The contractor further agrees to insert this provision in all subcontracts hereunder, except subcontracts for standard commercial supplies or raw materials.

3. Any violation of such provision by a contractor constitutes a material breach of contract.

4. As used in this section ~~[, "sexual]~~ ***:***

(a) "Gender identity or expression" means a gender-related identity, appearance, expression or behavior of a person, regardless of the person's assigned sex at birth.

(b) "Sexual orientation" means having or being perceived as having an orientation for heterosexuality, homosexuality or bisexuality.

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