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ASSEMBLY BILL NO. 166—ASSEMBLYMEN SEGERBLOM, KOIVISTO,  
OHRENSCHALL, KIHUEN; AIZLEY, MORTENSON, MUNFORD  
AND PIERCE

FEBRUARY 13, 2009

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JOINT SPONSORS: SENATORS PARKS; COPENING

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Referred to Committee on Commerce and Labor

SUMMARY—Makes various changes to provisions relating to  
employment practices. (BDR 53-30)

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.

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AN ACT relating to employment practices; prohibiting employers from subjecting an employee to abusive conduct in a work environment; requiring a court to award damages, back pay and attorney's fees consistent with provisions set forth in Title VII of the Civil Rights Act of 1964 on prevailing claims of unlawful employment practices; revising provisions relating to unlawful employment practices to prohibit employers from discriminating against an employee with respect to a physical characteristic of the employee; revising provisions relating to the time in which an employee may seek relief in district court for a claim of unlawful employment practices; and providing other matters properly relating thereto.

**Legislative Counsel's Digest:**

1 Existing law sets forth provisions proscribing unlawful employment practices.  
2 (NRS 613.310-613.435) **Section 2** of this bill prohibits employers from subjecting  
3 any employee to abusive conduct in a work environment. **Sections 4-12 and 14-18**  
4 of this bill make it an unlawful employment practice to discriminate against an  
5 employee with respect to a physical characteristic of the employee. **Section 3**  
6 of this bill requires a court to award damages, back pay and attorney's fees  
7 consistent with the provisions set forth in Title VII of the Civil Rights Act of 1964,



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8 42 U.S.C. §§ 2000e et seq., to parties who prevail on claims of unlawful  
9 employment practices.

10 Existing law provides that a complaint which alleges unlawful discriminatory  
11 practices in employment must be filed with the Nevada Equal Rights Commission  
12 not later than 300 days after the date of the occurrence of the alleged act. (NRS  
13 233.160) Existing law also provides that if the Commission does not conclude that  
14 an unfair employment practice has occurred, the person alleging the unlawful  
15 practice may seek redress in district court. (NRS 613.420) Existing law further  
16 provides that such redress may not be sought in district court more than 180 days  
17 after the date of the act complained of. (NRS 613.430) **Section 12** of this bill  
18 requires the Commission to issue a letter to the person who filed a complaint  
19 alleging an unlawful employment practice to inform him of the right to seek redress  
20 in district court if the Commission concludes that no unlawful employment practice  
21 occurred. **Section 13** of this bill revises the time in which a person may seek  
22 redress in district court by requiring the person to apply to district court within 180  
23 days after the date of the act complained of or within 90 days after the date of  
24 issuance of the letter from the Commission informing the person of his right to seek  
25 redress in district court, whichever is later.

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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 and 3 of this act.

3 **Sec. 2. 1.** *It is an unlawful employment practice for an*  
4 *employer to subject any employee to abusive conduct in a work*  
5 *environment.*

6 **2.** *It is an affirmative defense to an action for abusive*  
7 *conduct in a work environment if the employer exercised*  
8 *reasonable care to prevent and promptly correct the abusive*  
9 *conduct.*

10 **3.** *As used in this section, "abusive conduct" means the*  
11 *conduct of an employer or employee occurring in the workplace*  
12 *which a reasonable person would find hostile, offensive and*  
13 *unrelated to the legitimate business interests of the employer and*  
14 *which, unless especially egregious or severe, is directed at an*  
15 *employee on more than a single occasion, including, without*  
16 *limitation:*

17 *(a) Repeated verbal abuse in the form of derogatory remarks,*  
18 *insults and epithets;*

19 *(b) Verbal or physical conduct which is threatening,*  
20 *intimidating or humiliating; and*

21 *(c) The gratuitous sabotage or undermining of a person's*  
22 *work product.*

23 **Sec. 3.** *Except as otherwise provided by specific statute, if a*  
24 *court finds that a person has been injured by an unlawful*  
25 *employment practice within the scope of NRS 613.310 to 613.435,*



1 *inclusive, and sections 2 and 3 of this act, the court shall award*  
2 *the prevailing party damages, back pay, and costs and attorney's*  
3 *fees consistent with the provisions of Title VII of the Civil Rights*  
4 *Act of 1964, 42 U.S.C. §§ 2000e et seq., as amended.*

5 **Sec. 4.** NRS 613.310 is hereby amended to read as follows:

6 613.310 As used in NRS 613.310 to 613.435, inclusive, *and*  
7 *sections 2 and 3 of this act*, unless the context otherwise requires:

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

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

12 (b) A record of such an impairment; or

13 (c) Being regarded as having such an impairment.

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

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

20 (b) Any Indian tribe.

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

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

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

33 5. "Person" includes the State of Nevada and any of its  
34 political subdivisions.

35 6. *"Physical characteristic" means any bodily condition or*  
36 *physical attribute of a person that is a result of birth, injury,*  
37 *disease or natural biological development, including, without*  
38 *limitation:*

39 (a) *Height;*

40 (b) *Weight; and*

41 (c) *Physical mannerisms beyond the control of the person.*

42 7. "Sexual orientation" means having or being perceived as  
43 having an orientation for heterosexuality, homosexuality or  
44 bisexuality.



1     **Sec. 5.** NRS 613.320 is hereby amended to read as follows:

2     613.320 1. The provisions of NRS 613.310 to 613.435,  
3 inclusive, *and sections 2 and 3 of this act* do not apply to:

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

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

9     2. The provisions of NRS 613.310 to 613.435, inclusive, *and*  
10 *sections 2 and 3 of this act* concerning unlawful employment  
11 practices related to sexual orientation do not apply to an  
12 organization that is exempt from taxation pursuant to 26 U.S.C. §  
13 501(c)(3).

14     **Sec. 6.** NRS 613.330 is hereby amended to read as follows:

15     613.330 1. Except as otherwise provided in NRS 613.350, it  
16 is an unlawful employment practice for an employer:

17     (a) To fail or refuse to hire or to discharge any person, or  
18 otherwise to discriminate against any person with respect to his  
19 compensation, terms, conditions or privileges of employment,  
20 because of his race, color, religion, sex, sexual orientation, age,  
21 disability, *physical characteristics* or national origin; or

22     (b) To limit, segregate or classify an employee in a way which  
23 would deprive or tend to deprive him of employment opportunities  
24 or otherwise adversely affect his status as an employee, because of  
25 his race, color, religion, sex, sexual orientation, age, disability ,  
26 *physical characteristics* or national origin.

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

29     (a) Fail or refuse to refer for employment, or otherwise to  
30 discriminate against, any person because of the race, color, religion,  
31 sex, sexual orientation, age, disability , *physical characteristics* or  
32 national origin of that person; or

33     (b) Classify or refer for employment any person on the basis of  
34 the race, color, religion, sex, sexual orientation, age, disability ,  
35 *physical characteristics* or national origin of that person.

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

38     (a) To exclude or to expel from its membership, or otherwise to  
39 discriminate against, any person because of his race, color, religion,  
40 sex, sexual orientation, age, disability , *physical characteristics* or  
41 national origin;

42     (b) To limit, segregate or classify its membership, or to classify  
43 or fail or refuse to refer for employment any person, in any way  
44 which would deprive or tend to deprive him of employment  
45 opportunities, or would limit his employment opportunities or



1 otherwise adversely affect his status as an employee or as an  
2 applicant for employment, because of his race, color, religion, sex,  
3 sexual orientation, age, disability , *physical characteristics* or  
4 national origin; or

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

7 4. It is an unlawful employment practice for any employer,  
8 labor organization or joint labor-management committee controlling  
9 apprenticeship or other training or retraining, including, without  
10 limitation, on-the-job training programs, to discriminate against any  
11 person because of his race, color, religion, sex, sexual orientation,  
12 age, disability , *physical characteristics* or national origin in  
13 admission to, or employment in, any program established to provide  
14 apprenticeship or other training.

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

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

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

26 **Sec. 7.** NRS 613.340 is hereby amended to read as follows:

27 613.340 1. It is an unlawful employment practice for an  
28 employer to discriminate against any of his employees or applicants  
29 for employment, for an employment agency to discriminate against  
30 any person, or for a labor organization to discriminate against any  
31 member thereof or applicant for membership, because he has  
32 opposed any practice made an unlawful employment practice by  
33 NRS 613.310 to 613.435, inclusive, *and sections 2 and 3 of this act*  
34 or because he has made a charge, testified, assisted or participated in  
35 any manner in an investigation, proceeding or hearing under NRS  
36 613.310 to 613.435, inclusive ~~§~~, *and sections 2 and 3 of this act.*

37 2. It is an unlawful employment practice for an employer, labor  
38 organization or employment agency to print or publish or cause to  
39 be printed or published any notice or advertisement relating to  
40 employment by such an employer or membership in or any  
41 classification or referral for employment by such a labor  
42 organization, or relating to any classification or referral for  
43 employment by such an employment agency, indicating any  
44 preference, limitation, specification or discrimination, based on race,  
45 color, religion, sex, sexual orientation, age, disability , *physical*



1 *characteristics* or national origin, except that such a notice or  
2 advertisement may indicate a preference, limitation, specification or  
3 discrimination based on religion, sex, sexual orientation, age,  
4 physical, mental or visual condition or national origin when religion,  
5 sex, sexual orientation, age, physical, mental or visual condition ,  
6 *physical characteristics* or national origin is a bona fide  
7 occupational qualification for employment.

8 **Sec. 8.** NRS 613.350 is hereby amended to read as follows:

9 613.350 1. It is not an unlawful employment practice for an  
10 employer to hire and employ employees, for an employment agency  
11 to classify or refer for employment any person, for a labor  
12 organization to classify its membership or to classify or refer for  
13 employment any person, or for an employer, labor organization or  
14 joint labor-management committee controlling apprenticeship or  
15 other training or retraining programs to admit or employ any person  
16 in any such program, on the basis of his religion, sex, sexual  
17 orientation, age, disability , *physical characteristics* or national  
18 origin in those instances where religion, sex, sexual orientation, age,  
19 physical, mental or visual condition , *physical characteristics* or  
20 national origin is a bona fide occupational qualification reasonably  
21 necessary to the normal operation of that particular business or  
22 enterprise.

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

38 3. It is not an unlawful employment practice for an employer to  
39 fail or refuse to hire or to discharge a person, for an employment  
40 agency to fail to classify or refer any person for employment, for a  
41 labor organization to fail to classify its membership or to fail to  
42 classify or refer any person for employment, or for an employer,  
43 labor organization or joint labor-committee controlling  
44 apprenticeship or other training or retraining programs to fail to



1 admit or employ any person in any such program, on the basis of his  
2 age if the person is less than 40 years of age.

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

11 5. It is not an unlawful employment practice for an employer to  
12 observe the terms of any bona fide plan for employees' benefits,  
13 such as a retirement, pension or insurance plan, which is not a  
14 subterfuge to evade the provisions of NRS 613.310 to 613.435,  
15 inclusive, *and sections 2 and 3 of this act* as they relate to  
16 discrimination against a person because of age, except that no such  
17 plan excuses the failure to hire any person who is at least 40 years of  
18 age.

19 **Sec. 9.** NRS 613.380 is hereby amended to read as follows:

20 613.380 Notwithstanding any other provision of NRS 613.310  
21 to 613.435, inclusive, *and sections 2 and 3 of this act*, it is not an  
22 unlawful employment practice for an employer to apply different  
23 standards of compensation, or different terms, conditions or  
24 privileges of employment pursuant to a bona fide seniority or merit  
25 system, or a system which measures earnings by quantity or quality  
26 of production or to employees who work in different locations, if  
27 those differences are not the result of an intention to discriminate  
28 because of race, color, religion, sex, sexual orientation, age,  
29 disability , *physical characteristics* or national origin, nor is it an  
30 unlawful employment practice for an employer to give and to act  
31 upon the results of any professionally developed ability test, if the  
32 test, its administration or action upon the results is not designed,  
33 intended or used to discriminate because of race, color, religion, sex,  
34 sexual orientation, age, disability , *physical characteristics* or  
35 national origin.

36 **Sec. 10.** NRS 613.400 is hereby amended to read as follows:

37 613.400 Nothing contained in NRS 613.310 to 613.435,  
38 inclusive, *and sections 2 and 3 of this act* requires any employer,  
39 employment agency, labor organization or joint labor-management  
40 committee subject to NRS 613.310 to 613.435, inclusive, *and*  
41 *sections 2 and 3 of this act* to grant preferential treatment to any  
42 person or to any group because of the race, color, religion, sex,  
43 sexual orientation, age, disability , *physical characteristics* or  
44 national origin of the individual or group on account of an  
45 imbalance which exists with respect to the total number or



1 percentage of persons of any race, color, religion, sex, sexual  
2 orientation, age, disability , *physical characteristic* or national  
3 origin employed by any employer, referred or classified for  
4 employment by any employment agency or labor organization,  
5 admitted to membership or classified by any labor organization, or  
6 admitted to, or employed in, any apprenticeship or other training  
7 program, in comparison with the total number or percentage of  
8 persons of that race, color, religion, sex, sexual orientation, age,  
9 disability , *physical characteristic* or national origin in any  
10 community, section or other area, or in the available workforce in  
11 any community, section or other area.

12 **Sec. 11.** NRS 613.405 is hereby amended to read as follows:

13 613.405 Any person injured by an unlawful employment  
14 practice within the scope of NRS 613.310 to 613.435, inclusive, *and*  
15 *sections 2 and 3 of this act* may file a complaint to that effect with  
16 the Nevada Equal Rights Commission if the complaint is based on  
17 discrimination because of race, color, sex, sexual orientation, age,  
18 disability, religion , *physical characteristics* or national origin.

19 **Sec. 12.** NRS 613.420 is hereby amended to read as follows:

20 613.420 If the Nevada Equal Rights Commission does not  
21 conclude that an unfair employment practice within the scope of  
22 NRS 613.310 to 613.435, inclusive, *and sections 2 and 3 of this act*  
23 has occurred ~~[-any]~~ :

24 *1. Any* person alleging such a practice may apply to the district  
25 court for an order granting or restoring to that person the rights to  
26 which he is entitled under those sections ~~[-]~~ ; *and*

27 *2. The Nevada Equal Rights Commission shall issue a letter*  
28 *to the person who filed a complaint pursuant to NRS 613.405*  
29 *notifying him of his rights pursuant to subsection 1.*

30 **Sec. 13.** NRS 613.430 is hereby amended to read as follows:

31 613.430 No action authorized by NRS 613.420 may be brought  
32 more than 180 days after the date of the act complained of ~~[-]~~ *or*  
33 *more than 90 days after the date of the issuance of the letter*  
34 *described in subsection 2 of NRS 613.420, whichever is later.*  
35 When a complaint is filed with the Nevada Equal Rights  
36 Commission , the limitation provided by this section is tolled as to  
37 any action authorized by NRS 613.420 during the pendency of the  
38 complaint before the Commission.

39 **Sec. 14.** NRS 233.010 is hereby amended to read as follows:

40 233.010 1. It is hereby declared to be the public policy of the  
41 State of Nevada to protect the welfare, prosperity, health and peace  
42 of all the people of the State, and to foster the right of all persons  
43 reasonably to seek, obtain and hold employment and housing  
44 accommodations without discrimination, distinction or restriction



1 because of race, religious creed, color, age, sex, disability, *physical*  
2 *characteristics*, national origin or ancestry.

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

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

16 **Sec. 15.** NRS 233.020 is hereby amended to read as follows:  
17 233.020 As used in this chapter:

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

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

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

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

25 (b) A record of such an impairment; or

26 (c) Being regarded as having such an impairment.

27 4. "Member" means a member of the Nevada Equal Rights  
28 Commission.

29 5. *"Physical characteristic" means any bodily condition or*  
30 *physical attribute of a person that is a result of birth, injury,*  
31 *disease or natural biological development, including, without*  
32 *limitation:*

33 (a) *Height;*

34 (b) *Weight; and*

35 (c) *Physical mannerisms beyond the control of the person.*

36 6. "Sexual orientation" means having or being perceived as  
37 having an orientation for heterosexuality, homosexuality or  
38 bisexuality.

39 **Sec. 16.** NRS 233.140 is hereby amended to read as follows:  
40 233.140 The Commission shall:

41 1. Foster mutual understanding and respect among all racial,  
42 religious, disabled and ethnic groups and between the sexes in the  
43 State.



1 2. Aid in securing equal health and welfare services and  
2 facilities for all the residents of the State without regard to race,  
3 religion, sex, age, disability, *physical characteristics* or nationality.

4 3. Study problems arising between groups within the State  
5 which may result in tensions, discrimination or prejudice because of  
6 race, color, creed, sex, age, disability, *physical characteristics*,  
7 national origin or ancestry, and formulate and carry out programs of  
8 education and disseminate information with the object of  
9 discouraging and eliminating any such tensions, prejudices or  
10 discrimination.

11 4. Secure the cooperation of various racial, religious, disabled,  
12 nationality and ethnic groups, veterans' organizations, labor  
13 organizations, business and industry organizations and fraternal,  
14 benevolent and service groups, in educational campaigns devoted to  
15 the need for eliminating group prejudice, racial or area tensions,  
16 intolerance or discrimination.

17 5. Cooperate with and seek the cooperation of federal and state  
18 agencies and departments in carrying out projects within their  
19 respective authorities to eliminate intergroup tensions and to  
20 promote intergroup harmony.

21 **Sec. 17.** NRS 233.150 is hereby amended to read as follows:

22 233.150 The Commission may:

23 1. Order its Administrator to:

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

29 (b) With regard to employment and housing, investigate  
30 tensions, practices of discrimination and acts of prejudice against  
31 any person or group because of race, color, creed, sex, age,  
32 disability, *physical characteristics*, national origin or ancestry, and  
33 may conduct hearings with regard thereto.

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

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

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

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



1     **Sec. 18.** NRS 233C.110 is hereby amended to read as follows:  
2     233C.110 1. The Trustee may use money from the Account  
3 for Local Cultural Activities to support concerts, operas, ballets and  
4 public dances:

5     (a) Which are presented in this State in public parks, public  
6 facilities, universities, colleges, schools, hospitals and other  
7 institutions; and

8     (b) For which no fee is charged to the public, students, patients  
9 or other persons for attendance.

10    2. The costs for which the Trustee may expend money from the  
11 Account include the compensation of musicians, singers, other  
12 performing artists and necessary technicians, and the cost of their  
13 transportation to and from performances.

14    3. The Trustee may use no more than 10 percent of the total  
15 money expended for the payment of industrial insurance,  
16 unemployment compensation, federal taxes on employment and  
17 similar charges. In addition, he may expend money from the  
18 Account to pay his actual expenses of travel in administering the  
19 Account.

20    4. Employment of any performer or technician must comply  
21 with NRS 613.230 to 613.435, inclusive, *and sections 2 and 3 of*  
22 *this act*, and no reference to arrangement through a labor  
23 organization may be made with respect to any performance funded  
24 in whole or in part from the Account.



