

ASSEMBLY BILL NO. 90—ASSEMBLYMAN SEGERBLOM

PREFILED JANUARY 7, 2011

Referred to Committee on Commerce and Labor

SUMMARY—Makes various changes to provisions relating to employment practices. (BDR 53-277)

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 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 the provisions set forth in Title VII of the Civil Rights Act of 1964 on prevailing claims of unlawful employment practices; prohibiting 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 4-9, 11-13 and**  
4 **15-19** of this bill make it an unlawful employment practice to discriminate against  
5 an employee with respect to a physical characteristic of the employee. **Section 3** of  
6 this bill requires a court to award damages, back pay, and costs and attorney’s fees  
7 consistent with the provisions set forth in Title VII of the Civil Rights Act of 1964,  
8 42 U.S.C. §§ 2000e et seq., to parties who prevail on claims of unlawful  
9 employment practices. **Section 10** of this bill provides that the provisions  
10 proscribing unlawful employment practices do not apply to certain businesses on or  
11 near an Indian reservation with respect to certain employment practices.

12 Existing law provides that a complaint which alleges unlawful discriminatory  
13 practices in employment must be filed with the Nevada Equal Rights Commission  
14 not later than 300 days after the date of the occurrence of the alleged act.



15 (NRS 233.160) Existing law also provides that if the Commission does not  
16 conclude that an unfair employment practice has occurred, the person alleging the  
17 unlawful practice may seek redress in district court. (NRS 613.420) Existing law  
18 further provides that such redress may not be sought in district court more than 180  
19 days after the date of the act complained of. (NRS 613.430) **Section 13** of this bill  
20 requires the Commission to issue a letter to the person who filed a complaint  
21 alleging an unlawful employment practice to inform the person of the right to seek  
22 redress in district court if the Commission concludes that no unlawful employment  
23 practice occurred. **Section 14** of this bill revises the time in which a person may  
24 seek redress in district court by requiring the person to apply to district court within  
25 180 days after the date of the act complained of or within 90 days after the date of  
26 issuance of the letter from the Commission informing the person of his or her right  
27 to seek 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,*  
26 *inclusive, and sections 2 and 3 of this act, the court shall award*  
27 *the prevailing party damages, back pay, and costs and attorney's*  
28 *fees consistent with the provisions of Title VII of the Civil Rights*  
29 *Act of 1964, 42 U.S.C. §§ 2000e et seq., as amended.*



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

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

4     1. “Disability” means, with respect to a person:

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

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

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

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

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

16       (b) Any Indian tribe.

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

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

23    4. “Labor organization” means any organization of any kind, or  
24 any agency or employee representation committee or plan, in which  
25 employees participate and which exists for the purpose, in whole or  
26 in part, of dealing with employers concerning grievances, labor  
27 disputes, wages, rates of pay, hours of employment or other  
28 conditions of employment.

29    5. “Person” includes the State of Nevada and any of its  
30 political subdivisions.

31    6. *“Physical characteristic” means any bodily condition or*  
32 *physical attribute of a person that is a result of birth, injury,*  
33 *disease or natural biological development, including, without*  
34 *limitation:*

35       (a) *Height;*

36       (b) *Weight; and*

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

38    7. “Sexual orientation” means having or being perceived as  
39 having an orientation for heterosexuality, homosexuality or  
40 bisexuality.

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

42     613.320 1. The provisions of NRS 613.310 to 613.435,  
43 inclusive, *and sections 2 and 3 of this act* do not apply to:

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



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

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

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

11 613.330 1. Except as otherwise provided in NRS 613.350, it  
12 is an unlawful employment practice for an employer:

13 (a) To fail or refuse to hire or to discharge any person, or  
14 otherwise to discriminate against any person with respect to the  
15 person's compensation, terms, conditions or privileges of  
16 employment, because of his or her race, color, religion, sex, sexual  
17 orientation, age, disability , *physical characteristics* or national  
18 origin; or

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

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

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

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

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

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

40 (b) To limit, segregate or classify its membership, or to classify  
41 or fail or refuse to refer for employment any person, in any way  
42 which would deprive or tend to deprive the person of employment  
43 opportunities, or would limit the person's employment opportunities  
44 or otherwise adversely affect the person's status as an employee or  
45 as an applicant for employment, because of his or her race, color,



1 religion, sex, sexual orientation, age, disability , *physical*  
2 *characteristics* or national origin; or

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


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

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

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

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

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

25 613.340 1. It is an unlawful employment practice for an  
26 employer to discriminate against any of his or her employees or  
27 applicants for employment, for an employment agency to  
28 discriminate against any person, or for a labor organization to  
29 discriminate against any member thereof or applicant for  
30 membership, because the employee, applicant, person or member, as  
31 applicable, has opposed any practice made an unlawful employment  
32 practice by NRS 613.310 to 613.435, inclusive, *and sections 2 and*  
33 *3 of this act* or because he or she has made a charge, testified,  
34 assisted or participated in any manner in an investigation,  
35 proceeding or hearing under NRS 613.310 to 613.435, inclusive ,  
36 *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 , *physical characteristics* or  
5 national origin when religion, sex, sexual orientation, age, physical,  
6 mental or visual condition , *physical characteristics* or national  
7 origin is a bona fide 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 or her 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 a  
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 or her 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 613.390 is hereby amended to read as follows:

37 613.390 Nothing contained in NRS 613.310 to 613.435,  
38 inclusive, *and sections 2 and 3 of this act* applies to any business or  
39 enterprise on or near an Indian reservation with respect to any  
40 publicly announced employment practice of such business or  
41 enterprise under which a preferential treatment is given to any  
42 individual because the individual is an Indian living on or near a  
43 reservation.



1       **Sec. 11.** NRS 613.400 is hereby amended to read as follows:  
2       613.400 Nothing contained in NRS 613.310 to 613.435,  
3 inclusive, *and sections 2 and 3 of this act* requires any employer,  
4 employment agency, labor organization or joint labor-management  
5 committee subject to NRS 613.310 to 613.435, inclusive, *and*  
6 *sections 2 and 3 of this act* to grant preferential treatment to any  
7 person or to any group because of the race, color, religion, sex,  
8 sexual orientation, age, disability , *physical characteristics* or  
9 national origin of the individual or group on account of an  
10 imbalance which exists with respect to the total number or  
11 percentage of persons of any race, color, religion, sex, sexual  
12 orientation, age, disability , *physical characteristic* or national  
13 origin employed by any employer, referred or classified for  
14 employment by any employment agency or labor organization,  
15 admitted to membership or classified by any labor organization, or  
16 admitted to, or employed in, any apprenticeship or other training  
17 program, in comparison with the total number or percentage of  
18 persons of that race, color, religion, sex, sexual orientation, age,  
19 disability , *physical characteristic* or national origin in any  
20 community, section or other area, or in the available workforce in  
21 any community, section or other area.

22       **Sec. 12.** NRS 613.405 is hereby amended to read as follows:  
23       613.405 Any person injured by an unlawful employment  
24 practice within the scope of NRS 613.310 to 613.435, inclusive, *and*  
25 *sections 2 and 3 of this act* may file a complaint to that effect with  
26 the Nevada Equal Rights Commission if the complaint is based on  
27 discrimination because of race, color, sex, sexual orientation, age,  
28 disability, religion , *physical characteristics* or national origin.

29       **Sec. 13.** NRS 613.420 is hereby amended to read as follows:  
30       613.420 If the Nevada Equal Rights Commission does not  
31 conclude that an unfair employment practice within the scope of  
32 NRS 613.310 to 613.435, inclusive, *and sections 2 and 3 of this act*  
33 has occurred ~~[-any]~~ :

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

37       2. *The Nevada Equal Rights Commission shall issue a letter*  
38 *to the person who filed a complaint pursuant to NRS 613.405*  
39 *notifying the person of his or her rights pursuant to subsection 1.*

40       **Sec. 14.** NRS 613.430 is hereby amended to read as follows:  
41       613.430 No action authorized by NRS 613.420 may be brought  
42 more than 180 days after the date of the act complained of ~~[-]~~ *or*  
43 *more than 90 days after the date of the issuance of the letter*  
44 *described in subsection 2 of NRS 613.420, whichever is later.*  
45 When a complaint is filed with the Nevada Equal Rights





1 Commission , the limitation provided by this section is tolled as to  
2 any action authorized by NRS 613.420 during the pendency of the  
3 complaint before the Commission.

4 **Sec. 15.** NRS 233.010 is hereby amended to read as follows:

5 233.010 1. It is hereby declared to be the public policy of the  
6 State of Nevada to protect the welfare, prosperity, health and peace  
7 of all the people of the State, and to foster the right of all persons  
8 reasonably to seek, obtain and hold employment and housing  
9 accommodations without discrimination, distinction or restriction  
10 because of race, religious creed, color, age, sex, disability, *physical*  
11 *characteristics*, national origin or ancestry.

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

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

25 **Sec. 16.** NRS 233.020 is hereby amended to read as follows:

26 233.020 As used in this chapter:

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

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

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

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

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

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

36 4. "Member" means a member of the Nevada Equal Rights  
37 Commission.

38 5. *"Physical characteristic" means any bodily condition or*  
39 *physical attribute of a person that is a result of birth, injury,*  
40 *disease or natural biological development, including, without*  
41 *limitation:*

42 (a) *Height;*

43 (b) *Weight; and*

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



1       **6.** “Sexual orientation” means having or being perceived as  
2 having an orientation for heterosexuality, homosexuality or  
3 bisexuality.

4       **Sec. 17.** NRS 233.140 is hereby amended to read as follows:

5       233.140 The Commission shall:

6       1. Foster mutual understanding and respect among all racial,  
7 religious, disabled and ethnic groups and between the sexes in the  
8 State.

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

12       3. Study problems arising between groups within the State  
13 which may result in tensions, discrimination or prejudice because of  
14 race, color, creed, sex, age, disability, *physical characteristics*,  
15 national origin or ancestry, and formulate and carry out programs of  
16 education and disseminate information with the object of  
17 discouraging and eliminating any such tensions, prejudices or  
18 discrimination.

19       4. Secure the cooperation of various racial, religious, disabled,  
20 nationality and ethnic groups, veterans’ organizations, labor  
21 organizations, business and industry organizations and fraternal,  
22 benevolent and service groups, in educational campaigns devoted to  
23 the need for eliminating group prejudice, racial or area tensions,  
24 intolerance or discrimination.

25       5. Cooperate with and seek the cooperation of federal and state  
26 agencies and departments in carrying out projects within their  
27 respective authorities to eliminate intergroup tensions and to  
28 promote intergroup harmony.

29       **Sec. 18.** NRS 233.150 is hereby amended to read as follows:

30       233.150 The Commission may:

31       1. Order its Administrator to:

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

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

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



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

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

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

8 **Sec. 19.** NRS 233C.110 is hereby amended to read as follows:

9 233C.110 1. The Trustee may use money from the Account  
10 for Local Cultural Activities to support concerts, operas, ballets and  
11 public dances:

12 (a) Which are presented in this State in public parks, public  
13 facilities, universities, colleges, schools, hospitals and other  
14 institutions; and

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

17 2. The costs for which the Trustee may expend money from the  
18 Account include the compensation of musicians, singers, other  
19 performing artists and necessary technicians, and the cost of their  
20 transportation to and from performances.

21 3. The Trustee may use no more than 10 percent of the total  
22 money expended for the payment of industrial insurance,  
23 unemployment compensation, federal taxes on employment and  
24 similar charges. In addition, the Trustee may expend money from  
25 the Account to pay his or her actual expenses of travel in  
26 administering the Account.

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

