

Amendment No. CA1

Conference Committee Amendment to (BDR 53-48)
Assembly Bill No. 181 First Reprint

Proposed by: Conference Committee

Amends: Summary: No Title: Yes Preamble: No Joint Sponsorship: No Digest: Yes

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) green bold italic underlining is new language proposed in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill that is proposed to be retained in this amendment; and (6) green bold underlining is newly added transitory language.

JMM/MSN



Date: 6/1/2013

A.B. No. 181—Makes various changes to provisions governing employment practices. (BDR 53-48)



ASSEMBLY BILL NO. 181—ASSEMBLYMEN BOBZIEN, KIRKPATRICK, EISEN, ELLIOT ANDERSON, FRIERSON; AIZLEY, BENITEZ-THOMPSON, CARLTON, COHEN, DALY, DONDERO LOOP, HEALEY, OHRENSCHALL, PIERCE, SPIEGEL AND SWANK

MARCH 1, 2013

JOINT SPONSORS: SENATORS DENIS, ATKINSON, JONES AND SMITH

Referred to Committee on Commerce and Labor

SUMMARY—Makes various changes to provisions governing employment practices. (BDR 53-48)

FISCAL NOTE: Effect on Local Government: Increases or Newly Provides for Term of Imprisonment in County or City Jail or Detention Facility.
Effect on the State: Yes.

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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; **prohibiting employers from conditioning employment on a consumer credit report or other credit information; providing certain exceptions;** prohibiting employers from conditioning employment on access to an employee's social media account; ~~prohibiting a person from requesting or considering a consumer report for purposes relating to employment except under certain circumstances; revising provisions relating to the release of a consumer report that is subject to a security freeze;~~ providing civil remedies ~~and~~ **and administrative penalties;** and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law establishes various unlawful employment practices. (Chapter 613 of NRS)

~~[[This]]~~
Section 1.6 of this bill prohibits an employer from conditioning the employment of an employee or prospective employee on his or her consumer credit report or other credit information. Section 1.6 also prohibits an employer from taking certain employment actions based on the refusal of an employee or prospective employee to submit a credit report or other credit information or on the results of such a report or information. Section 1.6 further prohibits an employer from taking certain employment actions where an employee or prospective employee files a complaint, testifies in any legal proceeding or exercises his or her rights with respect to any violation committed by the employer. Section 1.7 of this bill provides certain exceptions to the preceding

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prohibitions, including, without limitation, an exception for circumstances in which the information contained in the consumer credit report or other credit information is reasonably related to the position of employment. Section 1.8 of this bill establishes the civil remedies available to a person affected by a violation committed by an employer, including employment of a prospective employee, reinstatement or promotion of an employee, payment of lost wages and benefits and the award of reasonable costs and attorney's fees. Section 1.9 of this bill authorizes the Labor Commissioner to impose an administrative penalty against an employer for each violation and to bring a civil action against the employer.

Section 2 of this bill prohibits an employer from conditioning the employment of an employee or prospective employee on his or her disclosure of the user name, password or any other information that provides access to the employee's or prospective employee's personal social media account. ~~This bill~~ Section 2 also prohibits an employer from taking certain employment actions based on the refusal of an employee or prospective employee to disclose such information. ~~This bill~~ Section 2 further provides, however, that it is not unlawful for an employer to require an employee to disclose his or her user name, password or any other information to an account or a service, other than a personal social media account, for the purpose of accessing the employer's own internal computer or information system.

~~Under existing law, a person who complies with the requirements of the Fair Credit Reporting Act, 15 U.S.C. §§ 1681 et seq., and chapter 598C of NRS is allowed to obtain a consumer report for purposes relating to the employment of the consumer. Sections 3 and 4 of this bill prohibit a person from requesting or considering a consumer report for purposes of evaluating a consumer for employment, promotion, reassignment or retention as an employee unless: (1) the use of the report is required or authorized by state or federal law; (2) the person reasonably believes that the consumer has engaged in specific activity which may constitute a violation of state or federal law and is likely to be reflected in the report; or (3) the information in the report is reasonably related to the position for which the consumer is being evaluated.~~

~~Existing law provides that if a consumer places a security freeze on his or her file maintained by a credit reporting agency, the agency is not allowed to release the consumer report without the consumer's consent except for certain purposes, which include certain purposes relating to employment of the consumer. (NRS 598C.250, 598C.280) Section 5 of this bill revises the scope of that exception to conform with section 4.)~~

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

Section 1. Chapter 613 of NRS is hereby amended by adding thereto the provisions set forth as sections 1.1 to 2 ~~and 3~~, inclusive, of this act.

Sec. 1.1. As used in sections 1.1 to 1.9, inclusive, of this act, unless the context otherwise requires, the words and terms defined in sections 1.2 to 1.5, inclusive, of this act have the meanings ascribed to them in those sections.

Sec. 1.2. "Consumer credit report" means any written, oral or other communication of information by a consumer reporting agency bearing on the credit worthiness, credit standing or credit capacity of a person.

Sec. 1.3. "Consumer reporting agency" has the meaning ascribed to it in NRS 686A.640.

Sec. 1.4. "Credit information" means any information that is related to credit and derived from a consumer credit report or found on a consumer credit report. The term does not include information that is not related to credit, regardless of whether it is contained in a consumer credit report.

Sec. 1.5. "Employer" has the meaning ascribed to it in subsection 1 of NRS 613.440.

1 Sec. 1.6. Except as otherwise provided in section 1.7 of this act, it is
2 unlawful for any employer in this State to:

3 1. Directly or indirectly, require, request, suggest or cause any employee or
4 prospective employee to submit a consumer credit report or other credit
5 information as a condition of employment;

6 2. Use, accept, refer to or inquire concerning a consumer credit report or
7 other credit information;

8 3. Discharge, discipline, discriminate against in any manner or deny
9 employment or promotion to, or threaten to take any such action against any
10 employee or prospective employee;

11 (a) Who refuses, declines or fails to submit a consumer credit report or other
12 credit information; or

13 (b) On the basis of the results of a consumer credit report or other credit
14 information; or

15 4. Discharge, discipline, discriminate against in any manner or deny
16 employment or promotion to, or threaten to take any such action against, any
17 employee or prospective employee who has;

18 (a) Filed any complaint or instituted or caused to be instituted any legal
19 proceeding pursuant to sections 1.1 to 1.9, inclusive, of this act;

20 (b) Testified or may testify in any legal proceeding instituted pursuant to
21 sections 1.1 to 1.9, inclusive, of this act; or

22 (c) Exercised his or her rights, or has exercised on behalf of another person
23 the rights afforded to him or her pursuant to sections 1.1 to 1.9, inclusive, of this
24 act.

25 Sec. 1.7. An employer may request or consider a consumer credit report or
26 other credit information for the purpose of evaluating an employee or prospective
27 employee for employment, promotion, reassignment or retention as an employee
28 if:

29 1. The employer is required or authorized, pursuant to state or federal law,
30 to use a consumer credit report or other credit information for that purpose;

31 2. The employer reasonably believes that the employee or prospective
32 employee has engaged in specific activity which may constitute a violation of state
33 or federal law; or

34 3. The information contained in the consumer credit report or other credit
35 information is reasonably related to the position for which the employee or
36 prospective employee is being evaluated for employment, promotion,
37 reassignment or retention as an employee. The information in the consumer
38 credit report or other credit information shall be deemed reasonably related to
39 such an evaluation if the duties of the position involve;

40 (a) The care, custody and handling of, or responsibility for, money, financial
41 accounts, corporate credit or debit cards, or other assets;

42 (b) Access to trade secrets or other proprietary or confidential information;

43 (c) Managerial or supervisory responsibility;

44 (d) The direct exercise of law enforcement authority as an employee of a
45 state or local law enforcement agency;

46 (e) The care, custody and handling of, or responsibility for, the personal
47 information of another person;

48 (f) Access to the personal financial information of another person;

49 (g) Employment with a financial institution that is chartered under state or
50 federal law, including a subsidiary or affiliate of such a financial institution; or

51 (h) Employment with a licensed gaming establishment, as defined in
52 NRS 463.0169.

1 Sec. 1.8. 1. An employer who violates the provisions of sections 1.1 to 1.9,
2 inclusive, of this act is liable to the employee or prospective employee affected by
3 the violation. The employer is liable for any legal or equitable relief as may be
4 appropriate, including employment of a prospective employee, reinstatement or
5 promotion of an employee and the payment of lost wages and benefits.

6 2. An action to recover the liability pursuant to subsection 1 may be
7 maintained against the employer by an employee or prospective employee:

8 (a) For or on behalf of the employee or prospective employee; and

9 (b) On behalf of other employees or prospective employees similarly situated.

10 ↪ An action must not be commenced pursuant to this section more than 3 years
11 after the date of the alleged violation.

12 3. In any action brought pursuant to this section, the court, in its discretion,
13 may allow the prevailing party reasonable costs, including attorney's fees.

14 Sec. 1.9. 1. If any person violates sections 1.1 to 1.9, inclusive, of this act,
15 the Labor Commissioner may impose against the person an administrative
16 penalty of not more than \$9,000 for each such violation.

17 2. In determining the amount of any administrative penalty to be imposed
18 against the person, the Labor Commissioner shall consider the previous record of
19 the person in terms of compliance with sections 1.1 to 1.9, inclusive, of this act
20 and the severity of the violation. Any administrative penalty imposed against the
21 person is in addition to any other remedy or penalty provided pursuant to this act.

22 3. The Labor Commissioner may bring a civil action pursuant to this
23 section to restrain violations of sections 1.1 to 1.9, inclusive, of this act. A court of
24 competent jurisdiction may issue, without bond, a temporary or permanent
25 restraining order or injunction to require compliance with sections 1.1 to 1.9,
26 inclusive, of this act, including any legal or equitable relief incident thereto as
27 may be appropriate, such as employment of a prospective employee, reinstatement
28 or promotion of an employee, and the payment of lost wages and benefits.

29 Sec. 2. 1. It is unlawful for any employer in this State to:

30 (a) Directly or indirectly, require, request, suggest or cause any employee or
31 prospective employee to disclose the user name, password, or any other
32 information that provides access to his or her personal social media account.

33 (b) Discharge, discipline, discriminate against in any manner or deny
34 employment or promotion to, or threaten to take any such action against any
35 employee or prospective employee who refuses, declines or fails to disclose the
36 user name, password or any other information that provides access to his or her
37 personal social media account.

38 2. It is not unlawful for an employer in this State to require an employee to
39 disclose the user name, password or any other information to an account or a
40 service, other than a personal social media account, for the purpose of accessing
41 the employer's own internal computer or information system.

42 3. Nothing in this section shall be construed to prevent an employer from
43 complying with any state or federal law or regulation or with any rule of a self-
44 regulatory organization, as defined in NRS 90.300.

45 4. As used in this section, "social media account" means any electronic
46 service or account or electronic content, including, without limitation, videos,
47 photographs, blogs, video blogs, podcasts, instant and text messages, electronic
48 mail programs or services, online services or Internet website profiles.

49 ~~Sec. 3. 1. Except as otherwise provided in section 4 of this act, a person~~
50 ~~shall not request or consider a consumer report for the purpose of evaluating any~~
51 ~~other person for employment, promotion, reassignment or retention as an~~
52 ~~employee.~~

1 ~~2. As used in this section, "consumer report" has the meaning ascribed to it~~
2 ~~in NRS 598C.060.~~ **(Deleted by amendment.)**

3 **Sec. 4.** ~~[Chapter 598C of NRS is hereby amended by adding thereto a new~~
4 ~~section to read as follows:~~

5 ~~A person may request or consider a consumer report for the purpose of~~
6 ~~evaluating a consumer for employment, promotion, reassignment or retention as~~
7 ~~an employee if:~~

8 ~~1. The person is required or authorized, pursuant to state or federal law, to~~
9 ~~use a consumer report for that purpose;~~

10 ~~2. The person reasonably believes that the consumer has engaged in~~
11 ~~specific activity which may constitute a violation of state or federal law; or~~

12 ~~3. The information contained in the consumer report is reasonably related~~
13 ~~to the position for which the consumer is being evaluated for employment,~~
14 ~~promotion, reassignment or retention as an employee. The information in the~~
15 ~~consumer report shall be deemed to be reasonably related to such an evaluation if~~
16 ~~the duties of the position involve:~~

17 ~~(a) The care, custody and handling of or responsibility for money, financial~~
18 ~~accounts, corporate credit or debit cards, or other assets;~~

19 ~~(b) Access to trade secrets or other proprietary or confidential information;~~

20 ~~(c) Managerial or supervisory responsibility;~~

21 ~~(d) The direct exercise of law enforcement authority as an employee of a~~
22 ~~state or local law enforcement agency;~~

23 ~~(e) The care, custody and handling of or responsibility for the personal~~
24 ~~information, as defined in NRS 603A.040, of another person;~~

25 ~~(f) Access to the personal financial information of another person;~~

26 ~~(g) Employment with a financial institution that is chartered under federal or~~
27 ~~state law; or~~

28 ~~(h) Employment with a licensed gaming establishment, as defined in NRS~~
29 ~~463.0169.~~ **(Deleted by amendment.)**

30 **Sec. 5.** ~~[NRS 598C.380 is hereby amended to read as follows:~~

31 ~~598C.380 Notwithstanding that a security freeze has been placed in the file of~~
32 ~~a consumer, a reporting agency may release the consumer report of the consumer~~
33 ~~to:~~

34 ~~1. A person with whom the consumer has an existing business relationship, or~~
35 ~~the subsidiary, affiliate or agent of that person, for any purpose relating to that~~
36 ~~business relationship.~~

37 ~~2. A licensed collection agency to which an account of the consumer has been~~
38 ~~assigned for the purposes of collection.~~

39 ~~3. A person with whom the consumer has an account or contract or to whom~~
40 ~~the consumer has issued a negotiable instrument, or the subsidiary, affiliate, agent,~~
41 ~~assignee or prospective assignee of that person, for purposes relating to that~~
42 ~~account, contract or negotiable instrument.~~

43 ~~4. A person seeking to use information in the file of the consumer for the~~
44 ~~purposes of prescreening pursuant to the Fair Credit Reporting Act, 15 U.S.C. §§~~
45 ~~1681 et seq.~~

46 ~~5. A subsidiary, affiliate, agent, assignee or prospective assignee of a person~~
47 ~~to whom access has been granted pursuant to NRS 598C.250 for the purposes of~~
48 ~~facilitating the extension of credit.~~

49 ~~6. A person seeking to provide the consumer with a copy of the consumer~~
50 ~~report or the credit score of the consumer upon the request of the consumer.~~

51 ~~7. A person administering a credit file monitoring subscription service to~~
52 ~~which the consumer has subscribed.~~

1 ~~8. A person requesting the consumer report pursuant to a court order, warrant~~
2 ~~or subpoena.~~

3 ~~9. A federal, state or local governmental entity, agency or instrumentality that~~
4 ~~is acting within the scope of its authority, including, without limitation, an agency~~
5 ~~which is seeking to collect child support payments pursuant to Part D of Title IV of~~
6 ~~the Social Security Act, 42 U.S.C. §§ 651 et seq.~~

7 ~~10. A person holding a license issued by the Nevada Gaming Commission~~
8 ~~pursuant to title 41 of NRS, or the subsidiary, affiliate, agent, assignee or~~
9 ~~prospective assignee of that person, for purposes relating to any activities~~
10 ~~conducted pursuant to the license.~~

11 ~~11. [An] If authorized pursuant to section 4 of this act, an employer, or the~~
12 ~~subsidiary, affiliate, agent, assignee or prospective assignee of that employer, for~~
13 ~~purposes of:~~

14 ~~(a) Preemployment screenings relating to the consumer; or~~

15 ~~(b) Decisions or investigations relating to the consumer's current or former~~
16 ~~employment with the employer.] (Deleted by amendment.)~~