

Assembly Bill No. 47–Committee
on Commerce and Labor

CHAPTER.....

AN ACT relating to unfair trade practices; requiring certain notice to be provided to the Attorney General before the consummation of certain transactions involving a group practice or health carrier; revising provisions relating to proceedings instituted by the Attorney General under the Nevada Unfair Trade Practice Act; revising provisions relating to noncompetition covenants; providing a penalty; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

The Nevada Unfair Trade Practice Act sets forth various activities that constitute a contract, combination or conspiracy in restraint of trade and authorizes the Attorney General to investigate and take certain actions against persons who engage in such activities, which may include, without limitation, criminal prosecution and the imposition of civil penalties. (Chapter 598A of NRS) This bill makes various changes to the Nevada Unfair Trade Practice Act.

Sections 2-10 of this bill impose certain notification requirements relating to certain transactions involving health carriers or certain business entities consisting of health care practitioners, which are designated by **section 4.2** of this bill as “group practices.” **Section 6.5** of this bill requires any party conducting business in this State who is a party to a reportable health care or health carrier transaction to, at least 30 days before the consummation of the transaction, submit to the Attorney General a notification with certain specified information relating to the transaction. **Section 5.6** of this bill defines “reportable health care or health carrier transaction” to generally mean a transaction that: (1) results in a material change to the business or corporate structure of a group practice or health carrier; and (2) causes, as a result of the transaction, a group practice or health carrier to provide within a geographic market 50 percent or more of any health care service or health carrier service.

The federal Hart-Scott-Rodino Antitrust Improvements Act of 1976 requires certain persons who intend to engage in certain mergers or acquisitions to file a notification with the Federal Trade Commission and the United States Department of Justice. (15 U.S.C. § 18a) **Section 7** of this bill requires a person who is required to file such a notification regarding any transaction involving any assets of a group practice or health carrier in this State to simultaneously submit a copy of the filing to the Attorney General. **Section 8** of this bill provides that nothing in the provisions of **sections 2-10** limits the power of the Attorney General to issue written investigative demands in connection with an investigation under the Nevada Unfair Trade Practice Act. **Section 9** of this bill provides that any information received by the Attorney General pursuant to **sections 2-10** is confidential and authorized to be disclosed only under certain circumstances. **Section 10** of this bill provides for the imposition of a civil penalty of up to \$1,000 per day for willful violations of the notification requirements set forth in **sections 2-10**.

Sections 16, 17, 19 and 20 of this bill revise provisions relating to proceedings instituted by the Attorney General under the Nevada Unfair Trade Practice Act to generally authorize additional equitable relief for violations of the Act. **Section 18**



of this bill requires public officers and employees to provide certain information to the Attorney General relating to such proceedings upon request.

Existing law requires a state agency to provide to the Executive Director of the Patient Protection Commission such information as the Executive Director may request. (NRS 439.914) **Sections 17.5 and 21.5** of this bill provide that the Attorney General is not required to provide to the Executive Director information obtained by the Attorney General under the Nevada Unfair Trade Practice Act.

Existing law provides that a noncompetition covenant is void and unenforceable unless the noncompetition covenant meets certain requirements. Under existing law, a noncompetition covenant is prohibited from restricting a former employee from providing service to a former customer or client under certain circumstances. (NRS 613.195) **Section 22.5** of this bill also prohibits an employer from bringing an action to restrict a former employee from providing service to a former customer or client under certain circumstances. **Section 22.5** also prohibits a noncompetition covenant from applying to an employee who is paid solely on an hourly wage basis, exclusive of any tips or gratuities. Finally, **section 22.5** requires a court, in an action to enforce or challenge a noncompetition covenant, to award reasonable attorney's fees and costs to the employee if the court finds that the noncompetition covenant applies to an employee paid on an hourly wage basis or that the employer has impermissibly restricted or attempted to restrict the employee from providing services to a former customer or client.

EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

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

Section 1. Chapter 598A of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 12, inclusive, of this act.

Sec. 2. *As used in sections 2 to 10, inclusive, of this act, unless the context otherwise requires, the word and terms defined in sections 3.5 to 5.9, inclusive, of this act have the meanings ascribed to them in those sections.*

Sec. 3. (Deleted by amendment.)

Sec. 3.5. *“Affiliation” means an agreement, arrangement or activity, the consummation of which results in:*

- 1. A group practice or health carrier having control of another group practice or health carrier; or*
- 2. A group practice or health carrier coming under common ownership with another group practice or health carrier.*

Sec. 4. *“Control” means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by a contract other than a commercial contract for goods or nonmanagement services or otherwise, unless the power*



is the result of an official position with or corporate office held by the person.

Sec. 4.2. *1. “Group practice” means two or more practitioners who are legally organized in a partnership, professional corporation, limited liability company formed to render professional services, medical foundation, nonprofit corporation, faculty practice plan or other similar entity:*

(a) In which each practitioner who is a member of the group provides substantially the full range of services that the practitioner routinely provides, including, without limitation, medical care, consultation, diagnosis or treatment, through the joint use of shared office space, facilities, equipment or personnel;

(b) For which substantially all of the services of the practitioners who are members of the group practice are billed in the name of the group practice and amounts so received are treated as receipts of the group; or

(c) In which the overhead expenses of, and the income from, the group are distributed in accordance with methods determined by members of the group.

2. The term includes any entity that otherwise meets the definition whose shareholders, partners or owners include single-practitioner professional corporations, limited liability companies formed to render professional services or other entities to which beneficial owners are individual practitioners.

Sec. 4.4. *“Health care service” means any service for the diagnosis, prevention, treatment, care or relief of a health condition, illness, injury or disease.*

Sec. 4.6. *“Health carrier” has the meaning ascribed to it in NRS 695G.024.*

Sec. 4.8. *“Health carrier service” means any service provided by a health carrier.*

Sec. 5. (Deleted by amendment.)

Sec. 5.3. *“Practitioner” means a physician licensed pursuant to chapter 630 or 633 of NRS, physician assistant, licensed nurse, dispensing optician, optometrist, practitioner of respiratory care, registered physical therapist, occupational therapist, licensed psychologist or perfusionist.*

Sec. 5.6. *1. “Reportable health care or health carrier transaction” means any transaction that:*

(a) Results in a material change to the business or corporate structure of a group practice or health carrier; and

(b) As a result of the transaction, would cause a group practice or health carrier to provide within a geographic market 50 percent



or more of any health care service, including, without limitation, a health care service involving a specialty, or any health carrier service.

2. The term does not include a transaction involving business entities which:

(a) Are under common ownership; or

(b) Have a contracting relationship that was established before October 1, 2021.

3. As used in this section, a “material change to the business or corporate structure of a group practice or health carrier” includes, without limitation:

(a) The merger, consolidation or affiliation of a group practice or health carrier with another group practice or health carrier;

(b) The acquisition of all or substantially all of:

(1) The properties and assets of a group practice; or

(2) The capital stock, membership interests or other equity interest of a group practice or health carrier;

(c) The employment of all or substantially all of the practitioners in a group practice; and

(d) The acquisition of one or more insolvent group practices.

Sec. 5.9. *“Specialty” means a subarea of medical practice that is recognized by the American Board of Medical Specialties.*

Sec. 6. (Deleted by amendment.)

Sec. 6.5. *1. Except as otherwise provided in subsection 2, any person conducting business in this State who is a party to a reportable health care or health carrier transaction shall, at least 30 days before the consummation of the reportable health care or health carrier transaction, submit to the Attorney General a notification on a form prescribed by the Attorney General. The notification must contain the following information, to the extent such information is applicable:*

(a) A brief description of the nature of the proposed relationship among the parties to the proposed reportable health care or health carrier transaction;

(b) The names and specialties of each practitioner working for the group practice that is the subject of the reportable health care or health carrier transaction and who is anticipated to work with the resulting group practice following the effective date of the transaction;

(c) The names of the business entities that are anticipated to provide health care services or health carrier services following the effective date of the reportable health care or health carrier transaction;



(d) An identification of each anticipated location where health care services or health carrier services are to be provided following the effective date of the reportable health care or health carrier transaction;

(e) A description of the services to be provided by practitioners at each location identified pursuant to paragraph (d); and

(f) The primary service area to be served by each location identified pursuant to paragraph (d).

2. If a person who is a party to a reportable health care or health carrier transaction is required to:

(a) Submit a copy of a filing to the Attorney General pursuant to section 7 of this act regarding the transaction, the copy of the filing submitted pursuant to section 7 of this act satisfies the requirement for notification pursuant to subsection 1.

(b) Submit a notification to the Commissioner of Insurance pursuant to NRS 692C.363 regarding the transaction, the person may satisfy the requirement for notification pursuant to subsection 1 by simultaneously submitting to the Attorney General a copy of the notification submitted to the Commissioner of Insurance.

Sec. 7. 1. Any person conducting business in this State that files a notification with the Federal Trade Commission or the United States Department of Justice pursuant to the Hart-Scott-Rodino Antitrust Improvements Act of 1976, 15 U.S.C. § 18a regarding a transaction that involves any assets of a group practice or health carrier in this State shall simultaneously submit a copy of the filing to the Attorney General.

2. A person that submits a copy of a filing to the Attorney General pursuant to subsection 1 satisfies the requirement for notice set forth in section 6 of this act.

Sec. 8. Nothing in sections 2 to 10, inclusive, of this act limits the power of the Attorney General to issue an investigative demand in connection with an investigation of a suspected violation of the provisions of this chapter pursuant to NRS 598A.100.

Sec. 9. All information received by the Attorney General pursuant to sections 2 to 10, inclusive, of this act must be kept confidential in the same manner and to the same extent as required in NRS 598A.110.

Sec. 10. 1. A person who willfully violates any provision of sections 2 to 10, inclusive, of this act is subject to a civil penalty not to exceed \$1,000 for each day of the violation.

2. The provisions of sections 2 to 10, inclusive, of this act do not establish a private right of action against any person.



Secs. 11-15. (Deleted by amendment.)

Sec. 16. NRS 598A.070 is hereby amended to read as follows:
598A.070 1. The Attorney General shall:

(a) Enforce the provisions of this chapter.
(b) Investigate suspected violations of the provisions of this chapter.

(c) Institute proceedings on behalf of the State, its agencies, political subdivisions, districts or municipal corporations, or as parens patriae of the persons residing in the State for:

(1) Injunctive relief to prevent and restrain a violation of any provision of this chapter ~~and~~, *including, without limitation, a temporary restraining order, preliminary injunction or permanent injunction.*

(2) Civil penalties for violations of the provisions of this chapter.

(3) Criminal penalties for violations of the provisions of this chapter.

(4) Other equitable relief for violations of the provisions of this chapter, including, without limitation, disgorgement or restitution.

2. Any district attorney in this State, with the permission or at the direction of the Attorney General, shall institute proceedings in the name of the State of Nevada for any violation of the provisions of this chapter.

Sec. 17. NRS 598A.090 is hereby amended to read as follows:

598A.090 The district courts have jurisdiction over actions and proceedings for violations of the provisions of this chapter and may:

1. Issue temporary restraining orders and injunctions to prevent and restrain violations of the provisions of this chapter.

2. Impose civil and criminal penalties and award damages as provided in this chapter.

3. Grant mandatory injunctions reasonably necessary to eliminate practices which are unlawful under the provisions of this chapter.

4. Grant other equitable relief the court considers appropriate for violations of the provisions of this chapter, including, without limitation, disgorgement or restitution.

Sec. 17.5. NRS 598A.110 is hereby amended to read as follows:

598A.110 *1.* Any procedure, testimony taken, document or other tangible evidence produced, or answer made under NRS 598A.100 shall be kept confidential by the Attorney General prior to the ~~institution of~~ *entry of a protective order in* an action brought



under this chapter for the alleged violation of the provisions of this chapter under investigation, unless:

~~[1.]~~ (a) Confidentiality is waived by the person upon whom the written investigative demand is made or pursuant to NRS 239.0115;

~~[2.]~~ (b) Disclosure is authorized by the district court; or

~~[3.]~~ (c) Disclosure is made pursuant to NRS 598A.080.

2. The Attorney General is not required to provide the information described in subsection 1 to the Executive Director of the Patient Protection Commission upon a request of the Executive Director pursuant to NRS 439.914.

Sec. 18. NRS 598A.150 is hereby amended to read as follows:

598A.150 It is the duty of all public officers ~~[1.]~~ *of any state agency, board or commission, and* their deputies, assistants, clerks, subordinates or employees, to render and furnish to the Attorney General, his or her deputy or other designated representative, when so requested, *including, without limitation, during the time in which discovery is being conducted in a proceeding instituted by the Attorney General,* all the information and assistance in their possession or within their power relating to investigations carried out *and proceedings instituted* under the provisions of this chapter.

Sec. 19. NRS 598A.160 is hereby amended to read as follows:

598A.160 1. The Attorney General may bring a civil action for any violation of the provisions of this chapter in the name of the State of Nevada and is entitled to recover damages and secure other relief provided by the provisions of this chapter:

(a) As parens patriae of the persons residing in this State, with respect to damages sustained directly or indirectly by such persons, or, alternatively, if the court finds in its discretion that the interests of justice so require, as a representative of a class or classes consisting of persons residing in this State who have been damaged directly or indirectly; or

(b) As parens patriae, with respect to direct or indirect damages to the general economy of the State of Nevada or any *agency or* political subdivision thereof.

2. In any action under this section, this State:

(a) May recover the aggregate damage sustained by the persons on whose behalf this State sues, without separately proving the individual claims of each such person. Proof of such damages must be based on:

(1) Statistical or sampling methods;

(2) The pro rata allocation of illegal overcharges of sales occurring within the State of Nevada; or



(3) Such other reasonable system of estimating aggregate damages as the court may permit.

(b) Shall distribute, allocate or otherwise pay the amounts so recovered in accordance with state law, or in the absence of any applicable state law, as the district court may authorize, subject to the requirement that any distribution procedure adopted afford each person on whose behalf this State sues a reasonable opportunity individually to secure the pro rata portion of such recovery attributable to his, her or its respective claims for damages, less litigation and administrative costs, including attorney fees, before any of the recovery is escheated.

Sec. 20. NRS 598A.210 is hereby amended to read as follows:
598A.210 *Except as otherwise provided in section 10 of this act:*

1. Any person threatened with injury or damage to his or her business or property by reason of a violation of any provision of this chapter may institute a civil action or proceeding for injunctive *or other equitable* relief ~~[-]~~, *including, without limitation, a temporary restraining order, a preliminary or permanent injunction, restitution or disgorgement.* If the court issues a permanent injunction, the plaintiff shall recover reasonable attorney fees, together with costs, as determined by the court.

2. Any person injured or damaged directly or indirectly in his or her business or property by reason of a violation of the provisions of this chapter may institute a civil action and shall recover treble damages, together with reasonable attorney fees and costs.

3. Any person commencing an action for any violation of the provisions of this chapter shall, simultaneously with the filing of the complaint with the court, mail a copy of the complaint to the Attorney General.

Sec. 21. NRS 239.010 is hereby amended to read as follows:

239.010 1. Except as otherwise provided in this section and NRS 1.4683, 1.4687, 1A.110, 3.2203, 41.071, 49.095, 49.293, 62D.420, 62D.440, 62E.516, 62E.620, 62H.025, 62H.030, 62H.170, 62H.220, 62H.320, 75A.100, 75A.150, 76.160, 78.152, 80.113, 81.850, 82.183, 86.246, 86.54615, 87.515, 87.5413, 87A.200, 87A.580, 87A.640, 88.3355, 88.5927, 88.6067, 88A.345, 88A.7345, 89.045, 89.251, 90.730, 91.160, 116.757, 116A.270, 116B.880, 118B.026, 119.260, 119.265, 119.267, 119.280, 119A.280, 119A.653, 119A.677, 119B.370, 119B.382, 120A.690, 125.130, 125B.140, 126.141, 126.161, 126.163, 126.730, 127.007, 127.057, 127.130, 127.140, 127.2817, 128.090, 130.312, 130.712, 136.050, 159.044, 159A.044, 172.075, 172.245, 176.01249, 176.015,



176.0625, 176.09129, 176.156, 176A.630, 178.39801, 178.4715, 178.5691, 179.495, 179A.070, 179A.165, 179D.160, 200.3771, 200.3772, 200.5095, 200.604, 202.3662, 205.4651, 209.392, 209.3923, 209.3925, 209.419, 209.429, 209.521, 211A.140, 213.010, 213.040, 213.095, 213.131, 217.105, 217.110, 217.464, 217.475, 218A.350, 218E.625, 218F.150, 218G.130, 218G.240, 218G.350, 226.300, 228.270, 228.450, 228.495, 228.570, 231.069, 231.1473, 233.190, 237.300, 239.0105, 239.0113, 239.014, 239B.030, 239B.040, 239B.050, 239C.140, 239C.210, 239C.230, 239C.250, 239C.270, 239C.420, 240.007, 241.020, 241.030, 241.039, 242.105, 244.264, 244.335, 247.540, 247.550, 247.560, 250.087, 250.130, 250.140, 250.150, 268.095, 268.0978, 268.490, 268.910, 269.174, 271A.105, 281.195, 281.805, 281A.350, 281A.680, 281A.685, 281A.750, 281A.755, 281A.780, 284.4068, 286.110, 286.118, 287.0438, 289.025, 289.080, 289.387, 289.830, 293.4855, 293.5002, 293.503, 293.504, 293.558, 293.5757, 293.870, 293.906, 293.908, 293.910, 293B.135, 293D.510, 331.110, 332.061, 332.351, 333.333, 333.335, 338.070, 338.1379, 338.1593, 338.1725, 338.1727, 348.420, 349.597, 349.775, 353.205, 353A.049, 353A.085, 353A.100, 353C.240, 360.240, 360.247, 360.255, 360.755, 361.044, 361.2242, 361.610, 365.138, 366.160, 368A.180, 370.257, 370.327, 372A.080, 378.290, 378.300, 379.0075, 379.008, 379.1495, 385A.830, 385B.100, 387.626, 387.631, 388.1455, 388.259, 388.501, 388.503, 388.513, 388.750, 388A.247, 388A.249, 391.033, 391.035, 391.0365, 391.120, 391.925, 392.029, 392.147, 392.264, 392.271, 392.315, 392.317, 392.325, 392.327, 392.335, 392.850, 393.045, 394.167, 394.16975, 394.1698, 394.447, 394.460, 394.465, 396.3295, 396.405, 396.525, 396.535, 396.9685, 398A.115, 408.3885, 408.3886, 408.3888, 408.5484, 412.153, 414.280, 416.070, 422.2749, 422.305, 422A.342, 422A.350, 425.400, 427A.1236, 427A.872, 432.028, 432.205, 432B.175, 432B.280, 432B.290, 432B.407, 432B.430, 432B.560, 432B.5902, 432C.140, 432C.150, 433.534, 433A.360, 437.145, 437.207, 439.4941, 439.840, 439.914, 439B.420, 439B.754, 439B.760, 440.170, 441A.195, 441A.220, 441A.230, 442.330, 442.395, 442.735, 442.774, 445A.665, 445B.570, 445B.7773, 447.345, 449.209, 449.245, 449.4315, 449A.112, 450.140, 450B.188, 453.164, 453.720, 453A.610, 453A.700, 458.055, 458.280, 459.050, 459.3866, 459.555, 459.7056, 459.846, 463.120, 463.15993, 463.240, 463.3403, 463.3407, 463.790, 467.1005, 480.535, 480.545, 480.935, 480.940, 481.063, 481.091, 481.093, 482.170, 482.5536, 483.340, 483.363, 483.575, 483.659, 483.800, 484A.469, 484E.070, 485.316, 501.344, 503.452, 522.040, 534A.031, 561.285, 571.160,



584.655, 587.877, 598.0964, 598.098, 598A.110, 599B.090, 603.070, 603A.210, 604A.303, 604A.710, 612.265, 616B.012, 616B.015, 616B.315, 616B.350, 618.341, 618.425, 622.238, 622.310, 623.131, 623A.137, 624.110, 624.265, 624.327, 625.425, 625A.185, 628.418, 628B.230, 628B.760, 629.047, 629.069, 630.133, 630.2673, 630.30665, 630.336, 630A.555, 631.368, 632.121, 632.125, 632.3415, 632.405, 633.283, 633.301, 633.4715, 633.524, 634.055, 634.214, 634A.185, 635.158, 636.107, 637.085, 637B.288, 638.087, 638.089, 639.2485, 639.570, 640.075, 640A.220, 640B.730, 640C.580, 640C.600, 640C.620, 640C.745, 640C.760, 640D.190, 640E.340, 641.090, 641.221, 641.325, 641A.191, 641A.262, 641A.289, 641B.170, 641B.282, 641B.460, 641C.760, 641C.800, 642.524, 643.189, 644A.870, 645.180, 645.625, 645A.050, 645A.082, 645B.060, 645B.092, 645C.220, 645C.225, 645D.130, 645D.135, 645G.510, 645H.320, 645H.330, 647.0945, 647.0947, 648.033, 648.197, 649.065, 649.067, 652.228, 653.900, 654.110, 656.105, 657A.510, 661.115, 665.130, 665.133, 669.275, 669.285, 669A.310, 671.170, 673.450, 673.480, 675.380, 676A.340, 676A.370, 677.243, 678A.470, 678C.710, 678C.800, 679B.122, 679B.124, 679B.152, 679B.159, 679B.190, 679B.285, 679B.690, 680A.270, 681A.440, 681B.260, 681B.410, 681B.540, 683A.0873, 685A.077, 686A.289, 686B.170, 686C.306, 687A.110, 687A.115, 687C.010, 688C.230, 688C.480, 688C.490, 689A.696, 692A.117, 692C.190, 692C.3507, 692C.3536, 692C.3538, 692C.354, 692C.420, 693A.480, 693A.615, 696B.550, 696C.120, 703.196, 704B.325, 706.1725, 706A.230, 710.159, 711.600, *and section 9 of this act*, sections 35, 38 and 41 of chapter 478, Statutes of Nevada 2011 and section 2 of chapter 391, Statutes of Nevada 2013 and unless otherwise declared by law to be confidential, all public books and public records of a governmental entity must be open at all times during office hours to inspection by any person, and may be fully copied or an abstract or memorandum may be prepared from those public books and public records. Any such copies, abstracts or memoranda may be used to supply the general public with copies, abstracts or memoranda of the records or may be used in any other way to the advantage of the governmental entity or of the general public. This section does not supersede or in any manner affect the federal laws governing copyrights or enlarge, diminish or affect in any other manner the rights of a person in any written book or record which is copyrighted pursuant to federal law.

2. A governmental entity may not reject a book or record which is copyrighted solely because it is copyrighted.



3. A governmental entity that has legal custody or control of a public book or record shall not deny a request made pursuant to subsection 1 to inspect or copy or receive a copy of a public book or record on the basis that the requested public book or record contains information that is confidential if the governmental entity can redact, delete, conceal or separate, including, without limitation, electronically, the confidential information from the information included in the public book or record that is not otherwise confidential.

4. If requested, a governmental entity shall provide a copy of a public record in an electronic format by means of an electronic medium. Nothing in this subsection requires a governmental entity to provide a copy of a public record in an electronic format or by means of an electronic medium if:

(a) The public record:

- (1) Was not created or prepared in an electronic format; and
- (2) Is not available in an electronic format; or

(b) Providing the public record in an electronic format or by means of an electronic medium would:

- (1) Give access to proprietary software; or
- (2) Require the production of information that is confidential and that cannot be redacted, deleted, concealed or separated from information that is not otherwise confidential.

5. An officer, employee or agent of a governmental entity who has legal custody or control of a public record:

(a) Shall not refuse to provide a copy of that public record in the medium that is requested because the officer, employee or agent has already prepared or would prefer to provide the copy in a different medium.

(b) Except as otherwise provided in NRS 239.030, shall, upon request, prepare the copy of the public record and shall not require the person who has requested the copy to prepare the copy himself or herself.

Sec. 21.5. NRS 439.914 is hereby amended to read as follows:
439.914 1. The Governor shall appoint the Executive Director of the Commission within the Office of the Governor. The Executive Director:

- (a) Must have experience in health care or health insurance;
- (b) Is in the unclassified service of the State; and
- (c) Serves at the pleasure of the Governor.

2. The Executive Director shall:

(a) Perform the administrative duties of the Commission and such other duties as are directed by the Commission; and



(b) To the extent that money is available for this purpose, appoint employees to assist the Executive Director in carrying out the duties prescribed in paragraph (a). Such employees serve at the pleasure of the Executive Director and are in the unclassified service of the State.

3. The Executive Director may request any information maintained by a state agency that is necessary for the performance of his or her duties, including, without limitation, information that is otherwise declared confidential by law. ~~[To]~~ *Except as otherwise provided in NRS 598A.110, to* the extent authorized by the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, and the regulations adopted pursuant thereto, an agency from which such information is requested shall provide the information to the Executive Director.

4. The Executive Director:

(a) Shall maintain any information obtained pursuant to subsection 3 under the same conditions as the information is maintained by the agency that provided the information; and

(b) Except as otherwise provided in this paragraph, shall not disclose any confidential information obtained pursuant to subsection 3 to any other person or entity, including, without limitation, the Commission or a member thereof. The Executive Director may disclose or publish aggregated information in a manner that does not reveal the identity of any person.

Sec. 22. (Deleted by amendment.)

Sec. 22.5. NRS 613.195 is hereby amended to read as follows:

613.195 1. A noncompetition covenant is void and unenforceable unless the noncompetition covenant:

(a) Is supported by valuable consideration;

(b) Does not impose any restraint that is greater than is required for the protection of the employer for whose benefit the restraint is imposed;

(c) Does not impose any undue hardship on the employee; and

(d) Imposes restrictions that are appropriate in relation to the valuable consideration supporting the noncompetition covenant.

2. A noncompetition covenant may not restrict , *and an employer may not bring an action to restrict*, a former employee of an employer from providing service to a former customer or client if:

(a) The former employee did not solicit the former customer or client;

(b) The customer or client voluntarily chose to leave and seek services from the former employee; and



(c) The former employee is otherwise complying with the limitations in the covenant as to time, geographical area and scope of activity to be restrained, other than any limitation on providing services to a former customer or client who seeks the services of the former employee without any contact instigated by the former employee.

↳ Any provision in a noncompetition covenant which violates the provisions of this subsection is void and unenforceable.

3. *A noncompetition covenant may not apply to an employee who is paid solely on an hourly wage basis, exclusive of any tips or gratuities.*

4. An employer in this State who negotiates, executes or attempts to enforce a noncompetition covenant that is void and unenforceable under this section does not violate the provisions of NRS 613.200.

~~[4.]~~ 5. If the termination of the employment of an employee is the result of a reduction of force, reorganization or similar restructuring of the employer, a noncompetition covenant is only enforceable during the period in which the employer is paying the employee's salary, benefits or equivalent compensation, including, without limitation, severance pay.

~~[5.]~~ 6. If an employer brings an action to enforce a noncompetition covenant *or an employee brings an action to challenge a noncompetition covenant* and the court finds the covenant is supported by valuable consideration but contains limitations as to time, geographical area or scope of activity to be restrained that are not reasonable, ~~impose~~ *imposes* a greater restraint than is necessary for the protection of the employer for whose benefit the restraint is imposed ~~and impose~~ *or imposes* undue hardship on the employee, the court shall revise the covenant to the extent necessary and enforce the covenant as revised. Such revisions must cause the limitations contained in the covenant as to time, geographical area and scope of activity to be restrained to be reasonable, *to not impose undue hardship on the employee* and to impose a restraint that is not greater than is necessary for the protection of the employer for whose benefit the restraint is imposed.

~~[6.]~~ 7. *If an employer brings an action to enforce a noncompetition covenant or an employee brings an action to challenge a noncompetition covenant and the court finds that the noncompetition covenant applies to an employee described in subsection 3 or that the employer has restricted or attempted to restrict a former employee in the manner described in*



subsection 2, the court shall award the employee reasonable attorney's fees and costs. Nothing in this subsection shall be construed as prohibiting a court from otherwise awarding attorney's fees to a prevailing party pursuant to NRS 18.010.

8. As used in this section:

(a) "Employer" means every person having control or custody of any employment, place of employment or any employee.

(b) "Noncompetition covenant" means an agreement between an employer and employee which, upon termination of the employment of the employee, prohibits the employee from pursuing a similar vocation in competition with or becoming employed by a competitor of the employer.

Secs. 23-25. (Deleted by amendment.)

