

Senate Bill No. 253—Senators Cannizzaro, Ratti, Woodhouse, Cancela, Ford; Denis, Farley, Hardy, Manendo, Parks, Segerblom and Spearman

CHAPTER.....

AN ACT relating to employment; establishing the Nevada Pregnant Workers' Fairness Act; requiring certain employers to provide reasonable accommodations to female employees and applicants for employment for a condition of the employee or applicant relating to pregnancy, childbirth or a related medical condition, except in certain circumstances; prohibiting certain other discriminatory practices by employers relating to pregnancy, childbirth or a related medical condition; authorizing the Nevada Equal Rights Commission to investigate complaints of such unlawful employment practices; requiring the Commission to carry out programs to educate employers and others about certain rights and responsibilities; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

The federal Pregnancy Discrimination Act amended title VII of the Civil Rights Act of 1964 to prohibit sex discrimination on the basis of pregnancy. (42 U.S.C. § 2000(e)(k)) The Act requires employers with 15 or more employees to treat employees and applicants for employment who are affected by pregnancy, childbirth or related medical conditions the same as other employees and applicants who have similar abilities or limitations. The Act covers all aspects of employment, including hiring, firing, promoting and providing benefits and protects against discrimination of a person who is pregnant, has been pregnant and who may become pregnant as well as anyone who has, who has had or could have a medical condition that is related to pregnancy. (29 C.F.R. § 1604.10)

Existing law in this State prohibits various types of discrimination in employment, including discrimination based on race, color, religion, sex, sexual orientation, gender identity or expression, age, disability or national origin. (NRS 613.330-613.380) In addition, existing law requires an employer that provides leave to employees for sickness or disability because of a medical condition to provide the same leave to an employee who is pregnant. (NRS 613.335) As with the federal law, existing law in this State makes these provisions applicable to an employer with 15 or more employees, and includes state and local governments. (NRS 613.310) **Sections 2-8 and 11** of this bill create the Nevada Pregnant Workers' Fairness Act which provides protections to employees in this State similar to the protections of the federal Pregnancy Discrimination Act. As with other provisions prohibiting discrimination in existing law, the Nevada Pregnant Workers' Fairness Act applies to employers with 15 or more employees and also applies to state and local governments.

Section 5 of this bill makes it an unlawful employment practice, with certain limited exceptions, for such employers to refuse to provide reasonable accommodations, upon request, to female employees and applicants for employment for a condition of the employee or applicant relating to pregnancy, childbirth or a related medical condition, unless the accommodation would impose



an undue hardship on the business of the employer. **Section 6** of this bill describes the requirements and manner in which to provide a reasonable accommodation. **Section 7** of this bill sets forth: (1) the *prima facie* burden that a female employee or applicant for employment is required to meet concerning a requested reasonable accommodation before the burden of proof shifts to the employer to demonstrate that providing such an accommodation would impose an undue hardship on the business of the employer; and (2) the manner in which to determine whether an undue hardship exists. **Section 5** also makes it an unlawful employment practice, with certain limited exceptions, for an employer to: (1) take adverse employment actions against a female employee because the employee requests or uses a reasonable accommodation for a condition of the employee relating to pregnancy, childbirth or a related medical condition; (2) deny an employment opportunity to a qualified female employee or applicant for employment based on a need for a reasonable accommodation for a condition of the employee or applicant relating to pregnancy, childbirth or a related medical condition; and (3) require a female employee or applicant for employment who is affected by a condition relating to pregnancy, childbirth or a related medical condition to accept an accommodation or to take a leave from employment if an accommodation is available.

Section 5 further authorizes an employer to require a female employee to provide an explanatory statement from the employee's physician concerning the specific accommodation recommended by the physician for the employee. **Section 11** of this bill extends the existing law requiring leave policies to be the same for pregnant employees as other employees so that it applies to a female employee who has a condition relating to pregnancy, childbirth or a related medical condition.

Section 15 of this bill authorizes a person injured by an unlawful employment practice within the scope of the Nevada Pregnant Workers' Fairness Act to file a complaint with the Nevada Equal Rights Commission.

Section 16 of this bill authorizes a person alleging an unfair employment practice under the Nevada Pregnant Workers' Fairness Act to file an action in district court if the Commission does not conclude that an unfair employment practice has occurred.

Section 17 of this bill requires the Commission to develop and carry out programs of education and disseminate information as necessary to inform employers, employees, employment agencies and job applicants about their rights and responsibilities under the Nevada Pregnant Workers' Fairness Act.

Section 18 of this bill authorizes the Commission to investigate any unlawful employment practice by an employer under the Nevada Pregnant Workers' Fairness Act.

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 613 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 8, inclusive, of this act.

Sec. 2. *The provisions of NRS 613.335 and sections 2 to 8, inclusive, of this act may be cited as the Nevada Pregnant Workers' Fairness Act.*



Sec. 3. As used in NRS 613.335 and sections 2 to 8, inclusive, of this act, unless the context otherwise requires, the words and terms defined in sections 3.3, 3.5 and 3.7 of this act have the meanings ascribed to them in those sections.

Sec. 3.3. "Condition of the applicant relating to pregnancy, childbirth or a related medical condition," "condition of the employee relating to pregnancy, childbirth or a related medical condition" or "condition of the employee or applicant relating to pregnancy, childbirth or a related medical condition" means a physical or mental condition intrinsic to pregnancy or childbirth that includes, without limitation, lactation or the need to express breast milk for a nursing child.

Sec. 3.5. "Reasonable accommodation" means an action described in section 6 of this act that is taken by an employer for a female employee or applicant for employment who has a condition relating to pregnancy, childbirth or a related medical condition.

Sec. 3.7. "Related medical condition" means any medically recognized physical or mental condition related to pregnancy, childbirth or recovery from pregnancy or childbirth. The term includes, without limitation, mastitis or other lactation-related medical condition, gestational diabetes, pregnancy-induced hypertension, preeclampsia, post-partum depression, loss or end of pregnancy and recovery from loss or end of pregnancy.

Sec. 4. 1. The Legislature hereby finds and declares that:

(a) Workplace laws must adequately protect pregnant women from being terminated from their employment because of the refusal of their employer to provide a reasonable accommodation;

(b) Women are often the primary income earners for their families and unemployment resulting from the failure of their employers to provide accommodations in the workplace is an outcome that families cannot afford to endure; and

(c) By remaining employed, pregnant women continue to provide economic security for their families, which in turn provides an economic benefit to the economy of this State.

2. The Legislature further finds and declares that it is the intent of the Legislature to fight against discrimination based on pregnancy, childbirth or a related medical condition, promote public health and ensure that women realize full and equal participation in the workforce by requiring employers to provide reasonable accommodations to employees who are pregnant, have given birth or have a related medical condition.

Sec. 5. 1. Except as otherwise provided in subsections 2 and 3, it is an unlawful employment practice for an employer to:



(a) Refuse to provide a reasonable accommodation to a female employee or applicant for employment upon request of the employee or applicant, as applicable, for a condition of the employee or applicant relating to pregnancy, childbirth or a related medical condition, unless the accommodation would impose an undue hardship on the business of the employer as determined pursuant to section 7 of this act;

(b) Take an adverse employment action against a female employee because the employee requests or uses a reasonable accommodation for a condition of the employee relating to pregnancy, childbirth or a related medical condition which may include, without limitation, refusing to promote the employee, requiring the employee to transfer to another position, refusing to reinstate the employee to the same or an equivalent position upon return to work or taking any other action which affects the terms or conditions of employment in a manner which is not desired by the employee;

(c) Deny an employment opportunity to an otherwise qualified female employee or applicant for employment based on the need of the employee or applicant, as applicable, for a reasonable accommodation for a condition of the employee or applicant relating to pregnancy, childbirth or a related medical condition;

(d) Require a female employee or applicant for employment who is affected by a condition of the employee or applicant relating to pregnancy, childbirth or a related medical condition to accept an accommodation that the employee or applicant did not request or chooses not to accept; and

(e) Require a female employee who is affected by a condition of the employee relating to pregnancy, childbirth or a related medical condition to take leave from employment if a reasonable accommodation for any such condition of the employee is available that would allow the employee to continue to work.

2. It is not an unlawful employment practice for an employer take an action set forth in this section if the action is based upon a bona fide occupational qualification.

3. An employer who is a contractor licensed pursuant to chapter 624 of NRS is not subject to:

(a) The requirements of this section with regard to a request of a female employee to provide a reasonable accommodation if the requested accommodation is to provide a place, other than a bathroom, where the employee may express breast milk and the employee is performing work at a construction job site that is



located more than 3 miles from the regular place of business of the employer; or

(b) The requirements of paragraph (d) or (e) of subsection 1 with regard to a female employee who is affected by a condition of the employee relating to pregnancy, childbirth or a related medical condition if the work duties of the employee include the performance of manual labor.

4. An employer who is a contractor licensed pursuant to chapter 624 of NRS is encouraged to provide a reasonable accommodation described in paragraph (a) of subsection 3 to the extent practicable.

5. An employer may require a female employee to provide an explanatory statement from the employee's physician concerning the specific accommodation recommended by the physician for the employee.

6. This section must not be construed to preempt, limit, diminish or otherwise affect any other provision of law relating to discrimination on the basis of sex or pregnancy.

Sec. 6. *1. If a female employee requests an accommodation for a condition of the employee relating to pregnancy, childbirth or a related medical condition, the employer and employee must engage in a timely, good faith and interactive process to determine an effective, reasonable accommodation for the employee. An accommodation may consist of a change in the work environment or in the way things are customarily carried out that allows the employee to have equal employment opportunities, including the ability to perform the essential function of the position and to have benefits and privileges of employment that are equal to those available to other employees.*

2. A reasonable accommodation provided by an employer to a female applicant for employment which is based on a condition of the applicant relating to pregnancy, childbirth or a related medical condition may consist of a modification to the application process or the manner in which things are customarily carried out that allows the applicant to be considered for employment or hired for a position.

3. A reasonable accommodation pursuant to this section may include, without limitation:

(a) Modifying equipment or providing different seating;

(b) Revising break schedules, which may include revising the frequency or duration of breaks;

(c) Providing space in an area other than a bathroom that may be used for expressing breast milk;



- (d) Providing assistance with manual labor if the manual labor is incidental to the primary work duties of the employee;
- (e) Authorizing light duty;
- (f) Temporarily transferring the employee to a less strenuous or hazardous position; or
- (g) Restructuring a position or providing a modified work schedule.

4. An employer is not required by this section or section 5 of this act to:

(a) Create a new position that the employer would not have otherwise created, unless the employer has created or would create such a position to accommodate other classes of employees; or

(b) Discharge any employee, transfer any employee with more seniority or promote any employee who is not qualified to perform the job, unless the employer has taken or would take such an action to accommodate other classes of employees.

Sec. 7. 1. If a female employee or applicant for employment makes a *prima facie* showing that the employee or applicant requested a reasonable accommodation for a condition of the employee or applicant relating to pregnancy, childbirth or a related medical condition and the employer refused to provide or attempt to provide the reasonable accommodation, the burden of proof shifts to the employer to demonstrate that providing such an accommodation would impose an undue hardship on the business of the employer.

2. To prove such an undue hardship, the employer must demonstrate that the accommodation is significantly difficult to provide or expensive considering, without limitation:

- (a) The nature and cost of the accommodation;
- (b) The overall financial resources of the employer;
- (c) The overall size of the business of the employer with respect to the number of employees and the number, type and location of the available facilities; and

(d) The effect of the accommodation on the expenses and resources of the employer or the effect of the accommodation on the operations of the employer.

3. Evidence that the employer provides or would be required to provide a similar accommodation to a similarly situated employee or applicant for employment creates a rebuttable presumption that the accommodation does not impose an undue hardship on the employer.

Sec. 8. 1. An employer shall provide a written or electronic notice to employees that they have the right to be free from



discriminatory or unlawful employment practices pursuant to NRS 613.335 and sections 2 to 8, inclusive, of this act. The notice must include a statement that a female employee has the right to a reasonable accommodation for a condition of the employee relating to pregnancy, childbirth or a related medical condition.

2. *An employer shall provide the notice required pursuant to subsection 1:*

(a) To a new employee upon commencement of employment; and

(b) Within 10 days after an employee notifies the employee's immediate supervisor that the employee is pregnant.

3. *An employer shall post the notice required pursuant to subsection 1 in a conspicuous place at the place of business of the employer that is located in an area which is accessible to employees.*

Sec. 9. NRS 613.310 is hereby amended to read as follows:

613.310 As used in NRS 613.310 to 613.435, inclusive, **and sections 2 to 8, inclusive, of this act**, unless the context otherwise requires:

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

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

(b) A record of such an impairment; or

(c) Being regarded as having such an impairment.

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

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

(b) Any Indian tribe.

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

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

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

5. "Labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which



employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment or other conditions of employment.

6. "Person" includes the State of Nevada and any of its political subdivisions.

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

Sec. 10. NRS 613.320 is hereby amended to read as follows:

613.320 1. The provisions of NRS 613.310 to 613.435, inclusive, ***and sections 2 to 8, inclusive, of this act*** do not apply to:

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

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

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

Sec. 11. NRS 613.335 is hereby amended to read as follows:

613.335 If an employer grants leave with pay, leave without pay, or leave without loss of seniority to his or her employees for sickness or disability because of a medical condition, it is an unlawful employment practice to fail or refuse to extend the same benefits to any female employee ***[who is pregnant, for a condition of the employee relating to pregnancy, childbirth or a related medical condition]***. The female employee who is pregnant must be allowed to use the leave before and after childbirth, miscarriage or other natural resolution of her pregnancy, if the leave is granted, accrued or allowed to accumulate as a part of her employment benefits.

Sec. 12. NRS 613.340 is hereby amended to read as follows:

613.340 1. It is an unlawful employment practice for an employer to discriminate against any of his or her employees or applicants for employment, for an employment agency to discriminate against any person, or for a labor organization to discriminate against any member thereof or applicant for membership, because the employee, applicant, person or member, as applicable, has opposed any practice made an unlawful employment practice by NRS 613.310 to 613.435, inclusive, ***and sections 2 to 8,***



inclusive, of this act, or because he or she has made a charge, testified, assisted or participated in any manner in an investigation, proceeding or hearing under NRS 613.310 to 613.435, inclusive ~~H~~, and sections 2 to 8, inclusive, of this act.

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

Sec. 13. NRS 613.350 is hereby amended to read as follows:

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

2. It is not an unlawful employment practice for an employer to fail or refuse to hire and employ employees, for an employment agency to fail to classify or refer any person for employment, for a labor organization to fail to classify its membership or to fail to classify or refer any person for employment, or for an employer, labor organization or joint labor-management committee controlling apprenticeship or other training or retraining programs to fail to



admit or employ any person in any such program, on the basis of a disability in those instances where physical, mental or visual condition is a bona fide and relevant occupational qualification necessary to the normal operation of that particular business or enterprise, if it is shown that the particular disability would prevent proper performance of the work for which the person with a disability would otherwise have been hired, classified, referred or prepared under a training or retraining program.

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

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

5. It is not an unlawful employment practice for an employer to observe the terms of any bona fide plan for employees' benefits, such as a retirement, pension or insurance plan, which is not a subterfuge to evade the provisions of NRS 613.310 to 613.435, inclusive, ***and sections 2 to 8, inclusive, of this act*** as they relate to discrimination against a person because of age, except that no such plan excuses the failure to hire any person who is at least 40 years of age.

6. It is not an unlawful employment practice for an employer to require employees to adhere to reasonable workplace appearance, grooming and dress standards so long as such requirements are not precluded by law, except that an employer shall allow an employee to appear, groom and dress consistent with the employee's gender identity or expression.

Sec. 14. NRS 613.390 is hereby amended to read as follows:

613.390 Nothing contained in NRS 613.310 to 613.435, inclusive, ***and sections 2 to 8, inclusive, of this act*** applies to any business or enterprise on or near an Indian reservation with respect



to any publicly announced employment practice of such business or enterprise under which a preferential treatment is given to any individual because the individual is an Indian living on or near a reservation.

Sec. 15. NRS 613.405 is hereby amended to read as follows:

613.405 Any person injured by an unlawful employment practice ~~within~~ :

1. *Within the scope of NRS 613.310 to 613.435, inclusive, and sections 2 to 8, inclusive, of this act* may file a complaint to that effect with the Nevada Equal Rights Commission if the complaint is based on discrimination because of race, color, sex, sexual orientation, gender identity or expression, age, disability, religion or national origin.

2. *Within the scope of NRS 613.335 and sections 2 to 8, inclusive, of this act may file a complaint to that effect with the Nevada Equal Rights Commission if the complaint is based on an employer's failure to comply with the provisions of NRS 613.335 and sections 2 to 8, inclusive, of this act.*

Sec. 16. NRS 613.420 is hereby amended to read as follows:

613.420 If the Nevada Equal Rights Commission does not conclude that an unfair employment practice within the scope of NRS 613.310 to 613.435, inclusive, *and sections 2 to 8, inclusive, of this act* has occurred, any person alleging such a practice may apply to the district court for an order granting or restoring to that person the rights to which the person is entitled under those sections.

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

233.140 The Commission shall:

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

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

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

4. Secure the cooperation of various racial, religious, disabled, nationality and ethnic groups, veterans' organizations, labor organizations, business and industry organizations and fraternal,



benevolent and service groups, in educational campaigns devoted to the need for eliminating group prejudice, racial or area tensions, intolerance or discrimination.

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

6. *Develop and carry out programs of education and disseminate information as necessary to inform employers, employees, employment agencies and job applicants about their rights and responsibilities set forth in NRS 613.335 and sections 2 to 8, inclusive, of this act.*

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

233.150 The Commission may:

1. Order its Administrator to:

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

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

(c) With regard to employment, investigate ~~tensions,~~ :

(1) *Tensions*, practices of discrimination and acts of prejudice against any person or group because of race, color, creed, sex, age, disability, sexual orientation, gender identity or expression, national origin or ancestry, and may conduct hearings with regard thereto ~~H~~; and

(2) *Any unlawful employment practice by an employer pursuant to the provisions of NRS 613.335 and sections 2 to 8, inclusive, of this act, and may conduct hearings with regard thereto.*

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

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

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



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

Sec. 19. 1. An employer shall provide the written notice required pursuant to section 8 of this act to existing employees of the employer to inform the employees of the rights that will become effective on October 1, 2017.

2. As used in this section, “employer” has the meaning ascribed to it in NRS 613.310.

Sec. 20. This act becomes effective:

1. Upon passage and approval for the purpose of providing the notice required pursuant to section 19 of this act; and

2. On October 1, 2017, for all other purposes.



