

Assembly Bill No. 384—Assemblymen Thompson, McCurdy II, Flores, Araujo, Carrillo; Bilbray-Axelrod, Brooks, Bustamante Adams, Carlton, Daly, Frierson, Fumo, Miller, Monroe-Moreno, Neal, Ohrenschall, Sprinkle and Yeager

Joint Sponsors: Senators Ford, Atkinson, Spearman, Cancela, Parks; Denis, Segerblom and Woodhouse

CHAPTER.....

AN ACT relating to public employment; providing generally that the criminal history of an applicant or other qualified person under consideration for a position in the unclassified or classified service of the State may be considered only under certain circumstances; prohibiting the Administrator, when examining an applicant for a position in the classified service of the State, from considering the criminal history of the applicant; providing that, except in certain circumstances, the criminal history of a person may serve as the basis for the Administrator to refuse to certify an applicant or for rescission of a conditional offer of employment in the unclassified or classified service of the State only after consideration of certain factors relating to the criminal history of the person; providing for written notice to a person if the criminal history of the person is the basis for the Administrator's refusal to certify the person or for the rescission of a conditional offer of employment; establishing similar provisions relating to the consideration by the governing body of a county, incorporated city or unincorporated town of the criminal history of an applicant for employment by a county, incorporated city or unincorporated town; authorizing the filing of a complaint with the Nevada Equal Rights Commission under certain circumstances; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law governs generally the employment of persons in the classified and unclassified service of the State. Existing law further establishes the duties of the Administrator of the Division of Human Resource Management of the Department of Administration with regard to administering competitive examinations of persons seeking employment in the classified service of the State and maintaining a list of eligible persons for employment in the classified service. (Chapter 284 of NRS) Under existing law, the Administrator may refuse to examine an applicant or refuse to certify an eligible person if the person has been found guilty of any crime involving moral turpitude or of infamous or notoriously disgraceful conduct. (NRS 284.240)



Section 2 of this bill provides, with exceptions, that the criminal history of an applicant or other qualified person under consideration for employment in the unclassified service of the State may be considered only after the earliest of: (1) the final interview conducted in person; (2) the appointing authority has made a conditional offer of employment to the applicant; or (3) if applicable, the applicant has been certified by the Administrator. **Section 3** of this bill prohibits the Administrator from considering the criminal history of an applicant in examining the applicant. Additionally, **section 3** provides, with exceptions, that the criminal history of an applicant for a position in the classified service may be considered only after the earliest of: (1) the final interview conducted in person; (2) the applicant has been certified by the Administrator; or (3) the appointing authority has made a conditional offer of employment to the applicant. **Sections 2 and 3** set forth specific factors that must be considered by an appointing authority or the Administrator before the criminal history of an applicant may be used as the basis for rescinding a conditional offer of employment or for rejection of the applicant, including: (1) whether any criminal offense charged against or committed by the person directly relates to the responsibilities of the position for which the person has applied; (2) the nature and severity of each criminal offense charged against or committed by the person; (3) the age of the person at the time of the commission of each criminal offense; (4) the period of time between the commission of each criminal offense and the date of the application for employment; and (5) any information or documentation demonstrating the person's rehabilitation. **Sections 5, 6 and 6.3** of this bill establish similar provisions relating to the consideration by the governing body of a county, incorporated city or unincorporated town, respectively, of the criminal history of an applicant for employment by the county, incorporated city or unincorporated town. **Sections 2, 3, 5, 6 and 6.3** provide that if the criminal history of an applicant is used as the basis for rejecting the applicant or rescinding a conditional offer of employment extended to the applicant, the appointing authority or the governing body of the county, incorporated city or unincorporated town, as applicable, must provide to the applicant a written statement which must specifically state the evidence presented and the reason for the rejection of the applicant or rescission of the conditional offer of employment. **Sections 2, 3, 5, 6 and 6.3** also prohibit the appointing authority or the governing body of a county, incorporated city or unincorporated town from considering certain criminal records. **Sections 2, 3, 5, 6 and 6.3** also require the appointing authority or the governing body of a county, incorporated city or unincorporated town to include certain information in an application for employment. **Sections 2, 3, 5, 6 and 6.3** do not apply to any applicant for employment: (1) as a peace officer or firefighter; or (2) in any position that entails physical access to a computer or other equipment used for access to the Nevada Criminal Justice Information System or the National Crime Information Center.

Existing law declares certain employment practices to be unlawful and authorizes any person injured by such a practice to file a complaint with the Nevada Equal Rights Commission. Generally, the Commission has jurisdiction only over practices involving discrimination on the basis of race, color, sex and certain other enumerated characteristics. (NRS 613.330, 613.405) **Section 6.5** of this bill provides that an employer that is subject to the requirements of **section 2, 3, 5, 6 or 6.3** and fails to follow the procedure required by those sections in considering the criminal history of an applicant for employment thereby engages in an unlawful employment practice. **Section 6.7** of this bill provides that the applicant in such a case may file a complaint with the Commission, regardless of whether the complaint is based on race, color, sex or some other characteristic enumerated in existing law.



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

Section 1. Chapter 284 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 and 3 of this act.

Sec. 2. 1. *Unless, pursuant to a specific provision of state or federal law, a person is disqualified from employment in a particular position because of the particular criminal history of the person, the criminal history of an applicant or other qualified person for a position in the unclassified service of the State may be considered only after the earliest of:*

- (a) The final interview conducted in person;*
- (b) The appointing authority has extended to the applicant a conditional offer of employment; or*
- (c) If applicable, the applicant has been certified by the Administrator.*

2. An appointing authority may, before examining an applicant or extending to an applicant a conditional offer of employment, notify the applicant of any provision of state or federal law that disqualifies a person with a particular criminal history from employment in a particular position.

3. Unless, pursuant to a specific provision of state or federal law, a person is disqualified from employment in a particular position because of the particular criminal history of the person, an appointing authority may rescind a conditional offer of employment extended to an otherwise qualified person who has criminal charges pending against him or her that were filed within the previous 6 months or has been convicted of a criminal offense only after considering:

- (a) Whether any criminal offense charged against the person or committed by the person directly relates to the responsibilities of the position for which the person has applied or is being considered;*
- (b) The nature and severity of each criminal offense charged against the person or committed by the person;*
- (c) The age of the person at the time of the commission of each criminal offense;*
- (d) The period between the commission of each criminal offense and the date of the application for employment in the unclassified service; and*



(e) Any information or documentation demonstrating the person's rehabilitation.

4. An appointing authority shall not consider any of the following criminal records in connection with an application for employment:

(a) Except as otherwise provided in subsection 3, an arrest of the applicant which did not result in a conviction;

(b) A record of conviction which was dismissed, expunged or sealed; or

(c) An infraction or misdemeanor for which a sentence of imprisonment in a county jail was not imposed.

5. If the criminal history of an applicant is used as a basis for rescinding a conditional offer of employment, rescission of the conditional offer of employment must:

(a) Be made in writing;

(b) Include a statement indicating that the criminal history of the applicant was the basis for the rescission of the offer; and

(c) Provide an opportunity for the applicant to discuss the basis for the rescission of the offer with the director of human resources for the appointing authority or a person designated by the director.

6. An application for employment must include a statement that:

(a) A record of conviction will not necessarily bar the applicant from employment; and

(b) The appointing authority will consider factors such as:

(1) The length of time that has passed since the offense;

(2) The age of the applicant at the time of the offense;

(3) The severity and nature of the offense;

(4) The relationship of the offense to the position for which the applicant has applied; and

(5) Evidence of the rehabilitation of the applicant.

7. This section does not apply to any applicant for employment:

(a) As a peace officer or firefighter; or

(b) In any position that entails physical access to a computer or other equipment used for access to the Nevada Criminal Justice Information System or the National Crime Information Center.

Sec. 3. 1. Unless, pursuant to a specific provision of state or federal law, a person is disqualified from employment in a particular position because of the particular criminal history of the person:



(a) The Administrator shall not consider the criminal history of an applicant in examining the applicant.

(b) The criminal history of an applicant for a position in the classified service may be considered only after the earliest of:

(1) The final interview conducted in person;

(2) The applicant has been certified by the Administrator;

or

(3) The appointing authority has extended to the applicant a conditional offer of employment.

2. The Administrator may, before examining an applicant or certifying an eligible person, notify the applicant or eligible person of any provision of state or federal law that disqualifies a person with a particular criminal history from employment in a particular position.

3. Unless, pursuant to a specific provision of state or federal law, a person is disqualified from employment in a particular position because of the particular criminal history of the person, the Administrator may refuse to certify an eligible person and an appointing authority may rescind a conditional offer of employment extended to an otherwise qualified person who has criminal charges pending against him or her that were filed within the previous 6 months or has been convicted of a criminal offense only after considering:

(a) Whether any criminal offense charged against the person or committed by the person directly relates to the responsibilities of the position for which the person has applied or is being considered;

(b) The nature and severity of each criminal offense charged against the person or committed by the person;

(c) The age of the person at the time of the commission of each criminal offense;

(d) The period between the commission of each criminal offense and the date of the application for or consideration of employment in the classified service; and

(e) Any information or documentation demonstrating the person's rehabilitation.

4. The Administrator shall not consider any of the following criminal records in connection with an application for employment:

(a) Except as otherwise provided in subsection 3, an arrest of the applicant which did not result in a conviction;

(b) A record of conviction which was dismissed, expunged or sealed; or



(c) An infraction or misdemeanor for which a sentence of imprisonment in a county jail was not imposed.

5. If the criminal history of an applicant is used as a basis for rejecting an applicant or rescinding a conditional offer of employment, such rejection or rescission of a conditional offer of employment must:

(a) Be made in writing;

(b) Include a statement indicating that the criminal history of the applicant was the basis for the rejection or rescission of the offer; and

(c) Provide an opportunity for the applicant to discuss the basis for the rejection or rescission of the offer with the director of human resources for the appointing authority or a person designated by the director.

6. An application for employment must include a statement that:

(a) A record of conviction will not necessarily bar the applicant from employment; and

(b) The Administrator will consider factors such as:

(1) The length of time that has passed since the offense;

(2) The age of the applicant at the time of the offense;

(3) The severity and nature of the offense;

(4) The relationship of the offense to the position for which the applicant has applied; and

(5) Evidence of the rehabilitation of the applicant.

7. This section does not apply to any applicant for employment:

(a) As a peace officer or firefighter; or

(b) In any position that entails physical access to a computer or other equipment used for access to the Nevada Criminal Justice Information System or the National Crime Information Center.

Sec. 4. NRS 284.240 is hereby amended to read as follows:

284.240 The Administrator may refuse to examine an applicant or, after examination, may refuse to certify an eligible person who:

1. Lacks any of the preliminary requirements established for the examination for the position or employment for which the applicant or eligible person applies.

2. Submitted to a screening test administered pursuant to NRS 284.4066, the results of which indicated the presence of a controlled substance, and the person did not provide the proof required by NRS 284.4066.

3. ~~Has been guilty of any crime involving moral turpitude or of infamous or notoriously disgraceful conduct.~~



~~4.~~ Has been dismissed from the public service for delinquency or misconduct.

~~5.~~ 4. Has made a false statement of any material fact.

~~6.~~ 5. Has, directly or indirectly, given, rendered or paid, or promised to give, render or pay, any money, service or other valuable thing to any person for, or on account of or in connection with, the examination, appointment or proposed appointment of the applicant or eligible person.

~~7.~~ 6. Has practiced, or attempted to practice, any deception or fraud in the application, certificate or examination of the applicant or eligible person, or in securing the eligibility or appointment of the applicant or eligible person.

Sec. 5. Chapter 245 of NRS is hereby amended by adding thereto a new section to read as follows:

1. Unless, pursuant to a specific provision of state or federal law, a person is disqualified from employment in a particular position because of the particular criminal history of the person, the criminal history of an applicant for employment by a county may be considered only after the earlier of:

(a) The final interview conducted in person; or

(b) The county has extended to the applicant a conditional offer of employment.

2. The board of county commissioners, a county officer or any other person acting on behalf of a county may, before selecting an applicant as a finalist for a position or extending to an applicant a conditional offer of employment, notify the applicant of any provision of state or federal law that disqualifies a person with a particular criminal history from employment in a particular position.

3. Unless, pursuant to a specific provision of state or federal law, a person is disqualified from employment in a particular position because of the particular criminal history of the person, the board of county commissioners, a county officer or any other person acting on behalf of a county may decline to make an offer of employment or rescind a conditional offer of employment extended to an otherwise qualified applicant who has criminal charges pending against him or her that were filed within the previous 6 months or has been convicted of a criminal offense only after considering:

(a) Whether any criminal offense charged against the applicant or committed by the applicant directly relates to the responsibilities of the position for which the applicant has applied;



(b) The nature and severity of each criminal offense charged against the applicant or committed by the applicant;

(c) The age of the applicant at the time of the commission of each criminal offense;

(d) The period between the commission of each criminal offense and the date of the application for employment; and

(e) Any information or documentation demonstrating the applicant's rehabilitation.

4. The board of county commissioners, a county officer or any other person acting on behalf of a county shall not consider any of the following criminal records in connection with an application for employment:

(a) Except as otherwise provided in subsection 3, an arrest of the applicant which did not result in a conviction;

(b) A record of conviction which was dismissed, expunged or sealed; or

(c) An infraction or misdemeanor for which a sentence of imprisonment in a county jail was not imposed.

5. If the criminal history of an applicant is used as a basis for rejecting an applicant or rescinding a conditional offer of employment, such rejection or rescission of a conditional offer of employment must:

(a) Be made in writing;

(b) Include a statement indicating that the criminal history of the applicant was the basis for the rejection or rescission of the offer; and

(c) Provide an opportunity for the applicant to discuss the basis for the rejection or rescission of the offer with the director of the department of human resources of the county or a person designated by the director.

6. An application for employment must include a statement that:

(a) A record of conviction will not necessarily bar the applicant from employment; and

(b) The board of county commissioners, a county officer or any other person acting on behalf of the county will consider factors such as:

(1) The length of time that has passed since the offense;

(2) The age of the applicant at the time of the offense;

(3) The severity and nature of the offense;

(4) The relationship of the offense to the position for which the applicant has applied; and

(5) Evidence of the rehabilitation of the applicant.



7. This section does not apply to any applicant for employment:

- (a) As a peace officer or firefighter; or*
- (b) In any position that entails physical access to a computer or other equipment used for access to the Nevada Criminal Justice Information System or the National Crime Information Center.*

Sec. 6. Chapter 268 of NRS is hereby amended by adding thereto a new section to read as follows:

1. Unless, pursuant to a specific provision of state or federal law, a person is disqualified from employment in a particular position because of the particular criminal history of the person, the criminal history of an applicant for employment by an incorporated city may be considered only after the earlier of:

- (a) The final interview conducted in person; or*
- (b) The incorporated city has extended to the applicant a conditional offer of employment.*

2. The governing body of an incorporated city or a city officer may, before selecting an applicant as a finalist for a position or extending to an applicant a conditional offer of employment, notify the applicant of any provision of state or federal law that disqualifies a person with a particular criminal history from employment in a particular position.

3. Unless, pursuant to a specific provision of state or federal law, a person is disqualified from employment in a particular position because of the particular criminal history of the person, the governing body or a city officer may decline to make an offer of employment or rescind a conditional offer of employment extended to an otherwise qualified applicant who has criminal charges pending against him or her that were filed within the previous 6 months or has been convicted of a criminal offense only after considering:

- (a) Whether any criminal offense charged against the applicant or committed by the applicant directly relates to the responsibilities of the position for which the applicant has applied;*
- (b) The nature and severity of each criminal offense charged against the applicant or committed by the applicant;*
- (c) The age of the applicant at the time of the commission of each criminal offense;*
- (d) The period between the commission of each criminal offense and the date of the application for employment; and*
- (e) Any information or documentation demonstrating the applicant's rehabilitation.*



4. The governing body of an incorporated city or a city officer shall not consider any of the following criminal records in connection with an application for employment:

(a) Except as otherwise provided in subsection 3, an arrest of the applicant which did not result in a conviction;

(b) A record of conviction which was dismissed, expunged or sealed; or

(c) An infraction or misdemeanor for which a sentence of imprisonment in a county jail was not imposed.

5. If the criminal history of an applicant is used as a basis for rejecting an applicant or rescinding a conditional offer of employment, such rejection or rescission of a conditional offer of employment must:

(a) Be made in writing;

(b) Include a statement indicating that the criminal history of the applicant was the basis for the rejection or rescission of the offer; and

(c) Provide an opportunity for the applicant to discuss the basis for the rejection or rescission of the offer with the director of the department of human resources of the incorporated city or a person designated by the director.

6. An application for employment must include a statement that:

(a) A record of conviction will not necessarily bar the applicant from employment; and

(b) The governing body of an incorporated city or a city officer will consider factors such as:

(1) The length of time that has passed since the offense;

(2) The age of the applicant at the time of the offense;

(3) The severity and nature of the offense;

(4) The relationship of the offense to the position for which the applicant has applied; and

(5) Evidence of the rehabilitation of the applicant.

7. This section does not apply to any applicant for employment:

(a) As a peace officer or firefighter; or

(b) In any position that entails physical access to a computer or other equipment used for access to the Nevada Criminal Justice Information System or the National Crime Information Center.

Sec. 6.3. Chapter 269 of NRS is hereby amended by adding thereto a new section to read as follows:

1. Unless, pursuant to a specific provision of state or federal law, a person is disqualified from employment in a particular



position because of the particular criminal history of the person, the criminal history of an applicant for employment by an unincorporated town may be considered only after the earlier of:

(a) The final interview conducted in person; or

(b) The unincorporated town has extended to the applicant a conditional offer of employment.

2. The town board, the board of county commissioners or any other person acting on behalf of an unincorporated town may, before selecting an applicant as a finalist for a position or extending to an applicant a conditional offer of employment, notify the applicant of any provision of state or federal law that disqualifies a person with a particular criminal history from employment in a particular position.

3. Unless, pursuant to a specific provision of state or federal law, a person is disqualified from employment in a particular position because of the particular criminal history of the person, the town board, the board of county commissioners or any other person acting on behalf of an unincorporated town may decline to make an offer of employment or rescind a conditional offer of employment extended to an otherwise qualified applicant who has criminal charges pending against him or her that were filed within the previous 6 months or has been convicted of a criminal offense only after considering:

(a) Whether any criminal offense charged against the applicant or committed by the applicant directly relates to the responsibilities of the position for which the applicant has applied;

(b) The nature and severity of each criminal offense charged against the applicant or committed by the applicant;

(c) The age of the applicant at the time of the commission of each offense;

(d) The period between the commission of each criminal offense and the date of the application for employment; and

(e) Any information or documentation demonstrating the applicant's rehabilitation.

4. A town board, the board of county commissioners or any other person acting on behalf of an unincorporated town shall not consider any of the following criminal records in connection with an application for employment:

(a) Except as otherwise provided in subsection 3, an arrest of the applicant which did not result in a conviction;

(b) A record of conviction which was dismissed, expunged or sealed; or



(c) An infraction or misdemeanor in which a sentence of imprisonment in a county jail was not imposed.

5. If the criminal history of an applicant is used as a basis for rejecting an applicant or rescinding a conditional offer of employment, such rejection or rescission of the offer of employment must:

(a) Be made in writing;

(b) Include a statement indicating that the criminal history of the applicant was the basis for the rejection or rescission of the offer; and

(c) Provide an opportunity for the applicant to discuss the basis for the rejection or rescission of the offer with the director of the department of human resources of the unincorporated town or a person designated by the director.

6. An application for employment must include a statement that:

(a) A record of conviction will not necessarily bar the applicant from employment; and

(b) The town board, the board of county commissioners or any other person acting on behalf of the unincorporated town will consider factors such as:

(1) The length of time that has passed since the offense;

(2) The age of the applicant at the time of the offense;

(3) The severity and nature of the offense;

(4) The relationship of the offense to the position for which the applicant has applied; and

(5) Evidence of the rehabilitation of the applicant.

7. This section does not apply to any applicant for employment:

(a) As a peace officer or firefighter; or

(b) In any position that entails physical access to a computer or other equipment used for access to the Nevada Criminal Justice Information System or the National Crime Information Center.

Sec. 6.5. NRS 613.330 is hereby amended to read as follows:

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

(a) To fail or refuse to hire or to discharge any person, or otherwise to discriminate against any person with respect to the person's compensation, terms, conditions or privileges of employment, because of his or her race, color, religion, sex, sexual orientation, gender identity or expression, age, disability or national origin; or



(b) To limit, segregate or classify an employee in a way which would deprive or tend to deprive the employee of employment opportunities or otherwise adversely affect his or her status as an employee, because of his or her race, color, religion, sex, sexual orientation, gender identity or expression, age, disability or national origin.

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

(a) Fail or refuse to refer for employment, or otherwise to discriminate against, any person because of the race, color, religion, sex, sexual orientation, gender identity or expression, age, disability or national origin of that person; or

(b) Classify or refer for employment any person on the basis of the race, color, religion, sex, sexual orientation, gender identity or expression, age, disability or national origin of that person.

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

(a) To exclude or to expel from its membership, or otherwise to discriminate against, any person because of his or her race, color, religion, sex, sexual orientation, gender identity or expression, age, disability or national origin;

(b) To limit, segregate or classify its membership, or to classify or fail or refuse to refer for employment any person, in any way which would deprive or tend to deprive the person of employment opportunities, or would limit the person's employment opportunities or otherwise adversely affect the person's status as an employee or as an applicant for employment, because of his or her race, color, religion, sex, sexual orientation, gender identity or expression, age, disability or national origin; or

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

4. It is an unlawful employment practice for any employer, labor organization or joint labor-management committee controlling apprenticeship or other training or retraining, including, without limitation, on-the-job training programs, to discriminate against any person because of his or her race, color, religion, sex, sexual orientation, gender identity or expression, age, disability or national origin in admission to, or employment in, any program established to provide apprenticeship or other training.

5. Except as otherwise provided in subsection 6, it is an unlawful employment practice for any employer, employment agency, labor organization or joint labor-management committee to discriminate against a person with a disability by interfering,



directly or indirectly, with the use of an aid or appliance, including, without limitation, a service animal, by such a person.

6. It is an unlawful employment practice for an employer, directly or indirectly, to refuse to permit an employee with a disability to keep the employee's service animal with him or her at all times in his or her place of employment, except that an employer may refuse to permit an employee to keep a service animal that is a miniature horse with him or her if the employer determines that it is not reasonable to comply, using the assessment factors set forth in 28 C.F.R. § 36.302.

7. *It is an unlawful employment practice for an appointing authority governed by the provisions of chapter 284 of NRS, the Administrator of the Division of Human Resource Management of the Department of Administration or the governing body of a county, incorporated city or unincorporated town to consider the criminal history of an applicant for employment without following the procedure required in section 2, 3, 5, 6 or 6.3 of this act, as applicable.*

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

Sec. 6.7. NRS 613.405 is hereby amended to read as follows:
613.405 ~~Any~~

1. *Except as otherwise provided in subsection 2, any person injured by an unlawful employment practice within the scope of NRS 613.310 to 613.435, inclusive, 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. *Any person injured by an unlawful employment practice within the scope of subsection 7 of NRS 613.330 may file a complaint to that effect with the Nevada Equal Rights Commission regardless of whether the complaint is based on discrimination because of race, color, sex, sexual orientation, gender identity or expression, age, disability, religion or national origin.*

Sec. 7. This act becomes effective on January 1, 2018.



