

Alert | Nevada Government Law & Policy



July 2019

Nevada 2019 Legislative Highlights for Businesses

The Nevada Legislature's every-other-year session ended in June. Many of the bills passed affect businesses in Nevada, particularly regarding employment practices, business-entity regulation, tax, and gaming. Given the breadth of the subject, the below summaries are high-level. However, do not hesitate to contact your Greenberg Traurig attorney if we can provide advice on how these new laws may affect your business.

Employment

Assembly Bill No. 132: Revises provisions governing employment practices (effective Jan. 1, 2020).

- Prohibits, with certain exceptions, an employer from denying employment because a drug screening test indicated the presence of marijuana.
 - Exceptions include: firefighters, emergency medical technicians, motor vehicle operators, employees required by federal or state law to submit screening tests, and positions determined, by an employer, to adversely affect the safety of others.
- Provisions also do not apply if they are: (1) inconsistent with an employment contract or collective bargaining agreement; (2) in conflict with federal law; or (3) associated with employment funded by a federal grant.

Assembly Bill No. 181: Revises provisions governing employment attendance practices (effective May 15, 2019).

- Prohibits an employer from requiring an employee be physically present, at the workplace, to notify of sickness or non-work-related injury, and/or inability to work.
- Employer may require that an employee provide notice that he/she is sick or injured and cannot report for work.
- Violation of these provisions may result in an administrative penalty of no more than \$5,000 per violation, in addition to any other remedy or penalty.
- Costs of administrative penalty proceedings may be recovered by the Labor Commissioner.

Assembly Bill No. 456: Increases the minimum wage required to be paid to employees in private employment in Nevada (effective July 1, 2019).

- Beginning July 1, 2019:
 - \$7.25 min. wage if health benefits offered by employer.
 - \$8.25 min. wage if health benefits not offered by employer.
- Beginning July 1, 2020:
 - \$8.00 min. wage if health benefits offered by employer.
 - \$9.00 min. wage if health benefits not offered by employer.
- Beginning July 1, 2021:
 - \$8.75 min. wage if health benefits offered by employer.
 - \$9.75 min. wage if health benefits not offered by employer.
- Beginning July 1, 2022:
 - \$9.50 min. wage if health benefits offered by employer.
 - \$10.50 min. wage if health benefits not offered by employer.
- Beginning July 1, 2023:
 - \$10.25 min. wage if health benefits offered by employer.
 - \$11.25 min. wage if health benefits not offered by employer.
- Beginning July 1, 2024:
 - \$11.00 min. wage if health benefits offered by employer.
 - \$12.00 min. wage if health benefits not offered by employer.

Senate Bill 192: Revises provisions relating to health benefits for employees.

- Establishes the minimum level of health benefits an employer is required to make available to an employee, and his/her dependents, in order to be authorized to pay the employee the lower minimum wage.
- (*Effective May 21, 2019, for the purpose of adopting regulations and performing any other administrative tasks necessary to carry out the provisions of this act, and on Jan. 1, 2020, for all other purposes.*)

Business Entities

Assembly Bill 207: Revises provisions relating to business entities (effective Oct. 1, 2019).

- Authorizes private corporations to include a forum selection clause within their articles of incorporation or bylaws.
- Revises provisions relating to what records private corporations, nonprofit corporations, and limited liability companies are required to keep. Also provides that if those records are not made available for inspection after a demand is served, the registered agent may also be served.
- Revises what acts constitute a breach of fiduciary duty, by a director or officer of a corporation, in order to determine individual liability for damages.
- Revises provisions relating to the ability of certain stockholders to dissent.
- Revises the definition of “issuing corporation” for the purposes of provisions relating to the acquisition of a controlling interest.
- Provides that if the dissolution of a corporation is approved by the written consent of the stockholders, the corporation is required to notify each stockholder whose written consent was not solicited, of the dissolution within 10 days of the effective date.
- Revises provisions relating to the individual liability of a person acting as the alter ego of a corporation and/or limited liability company.
- Revises provisions concerning the indemnification of certain persons by a corporation.
- Establishes the requirements by which a determination that indemnification is proper must be made. Also authorizes a corporation to indemnify a person if that determination is made.
- Establishes the circumstances under which a corporation is required to indemnify a person.
- Establishes provisions relating to the duties owed by a manager or managing member of certain limited liability companies.
- Revises provisions relating to a stockholder’s right to dissent from certain corporate actions and to obtain payment of the fair value of the stockholder’s shares.
- Provides that a stockholder who is entitled to dissent and obtain payment is prohibited from challenging the corporate action creating the entitlement unless the action in question is unlawful or constitutes or is the result of actual fraud against the stockholder or the domestic corporation.
- Revises provisions relating to the limitations on a stockholder’s right to dissent.

Senate Bill 45: Revises provisions governing business (effective May 16, 2019).

- Provides that a person is exempt from the requirement to obtain a business license if: (1) the business is not organized under the laws of Nevada, does not have an office or base of operations in Nevada, does not have a registered agent in Nevada, and does not pay wages or other remuneration to certain individuals in Nevada; (2) the business is solely providing vehicles or equipment on a short-term basis in response to an emergency; or (3) the Secretary of State determines that the person is not conducting business in Nevada.
- Authorizes the state of Nevada to contract with a person who qualifies for this exemption.

- Eliminates the authority of certain businesses to maintain required documents within the office of their registered agent. It instead requires they maintain these documents at their principal place of business or with the custodian of records.

Senate Bill 163: Revises provisions relating to technology used by certain business entities (effective Oct. 1, 2019).

- Revises the applicable definition of “electronic transmission” to include any form or process of communication facilitated through the use of a blockchain.
- Revises definition of “blockchain.”
- Authorizes a corporation, and various other entities, to keep records on a blockchain.
- Expands the Secretary of State’s authority to adopt regulations relating to the use of certain technologies.

Taxation

Senate Bill 497: Eliminates certain filing requirements related to the commerce tax (effective June 3, 2019).

- A business entity whose Nevada gross revenue, in a taxable year, exceeds \$4,000,000 shall file with the Tax Department a commerce tax return.
- A business entity whose Nevada gross revenue, in a taxable year, is \$4,000,000 or less shall not be required to file a commerce tax return for that taxable year.

Assembly Bill 190: Revises provision relating to certain construction (effective July 1, 2019).

- Sets requirements by which a contractor or subcontractor, engaged in a public work, may discharge any part of his/her obligation to pay prevailing wages to a worker by providing bona fide fringe benefits in the name of the worker.
 - Requirements include, among other things, that the bona fide fringe benefits are paid equally for all hours worked in a calendar year by the worker.
- Defines “bona fide fringe benefits” to mean a benefit in the form of a contribution to an independent third party pursuant to a fund, plan or program: (1) which is established for the sole and exclusive benefit of a worker and his/her family and dependents; and (2) for which none of the assets will revert to, or otherwise be credited to, any contributing employer or sponsor of the fund, plan or program.
- Requires the Labor Commissioner, after providing notice and an opportunity for a hearing, to: (1) impose an administrative penalty against a contractor or subcontractor who discharges any part of his/her obligation to pay prevailing wages in an unauthorized manner; (2) require the contractor or subcontractor to make the affected worker whole by paying to the worker any amounts disallowed as bona fide fringe benefits as wages; (3) report the violation to the Attorney General; and (4) notify certain entities of the violation.
- Provides that the amount of the penalty to be imposed against a contractor or subcontractor who discharges any part of his or her obligation to pay prevailing wages in an unauthorized manner must be based on the sliding scale adopted by regulation of the Labor Commissioner.
- Authorizes the Labor Commissioner to recover the costs of the proceeding if a penalty is imposed.

- Requires the Labor Commissioner to: (1) include in his/her determination of that prevailing wage, any compensation in addition to the basic hourly wage or benefit for the craft or type of work required to be paid by the collective bargaining agreement; and (2) amend the determination of the prevailing wage for the craft or type of work in response to an increase in the wage prescribed in the collective bargaining agreement that occurs before the next annual determination of that prevailing wage by the Labor Commissioner.
- Codifies requirements regarding the duration of prevailing wage rates. Limits the duration to 36 months following the date on which bids were opened; or 36 months following the date the contractor was selected or entered, if not awarded through competitive bidding process.
- Provides that if a contract for a public work is not completed or terminated within 36 months, the same prevailing wages must be paid for the next 36 months if the prevailing wages in effect are lower.
- Prohibits a public body from using a reverse auction when awarding a contract for public work.
- Clarifies prevailing wage requirements.
- Eliminates certain prohibitions found in Nevada Revised Statutes (NRS) 338.1405.

Assembly Bill 271: Revises provisions relating to call centers.

- Requires an employer who relocates a call center or certain operations of a call center to a foreign country to provide notice to the Labor Commissioner and employees being displaced at least 90 days before the relocation.
 - Exception: if an employer has not received incentive for economic development within the last 10 years, the employer is only required to provide notice that contains information set forth in the federal Worker Adjustment and Retraining Notification Act.
- Requires the employer notify the Labor Commissioner, and the affected employees, of the relocation and number of employees being displaced.
- An employer who has provided the required notice is ineligible to receive incentive for economic development from a state agency for five years. This ineligibility can be waived by the Labor Commissioner upon the request of a state agency in certain circumstances.
- Requires Labor Commissioner to: (1) impose civil penalties on an employer who fails to provide required notice; or (2) require employer, who has received economic incentive within the last 10 years and fails to provide required notice, to conduct a study, at own expense, to determine the financial impact of the failure to provide notice and impose a civil penalty in an amount based on the results of that study.
- (*Effective June 7, 2019, for the purpose of adopting any regulations and performing any other preparatory administrative tasks necessary to carry out the provisions of this act; for all other purposes, effective Jan. 1, 2020.*)

Assembly Bill 421: Revises provisions relating to construction (effective Oct. 1, 2019).

- Requires that before a claimant commences an action, or amends a complaint to add a cause of action for a constructional defect against a contractor, subcontractor, supplier, or design professional, the claimant must provide notice specifying in reasonable detail the defects, damages, or injuries to each residence or appurtenance that are the subject of the claim.
- Removes the requirement that an expert who provided an opinion concerning the alleged constructional defect, or his/her representative, be present at an inspection.

- Replaces the term “homeowner’s warranty” with “builder’s warranty” and clarifies that such a warranty is not a type of insurance.
- Provides that a claimant is required to diligently pursue a claim under the builder’s warranty if the residence or appurtenance that is the subject of a claim is covered by builder’s warranty.
- Makes Conforming changes
- Removes provision that: if a residence or appurtenance is covered by a homeowner’s warranty purchased by or on behalf of the claimant, that statutes of limitation are tolled from the time the claimant submits a claim under the homeowner’s warranty until 30 days after the insurer rejects the claim, in whole or in part.
- Removes the requirement that costs be limited to constructional defects proven by claimant.
- Extends the statute of limitation on action for recovery of certain damages from 6 years to 10 years. Also (1) authorizes an action to be commenced any time after substantial completion of an improvement; and (2) exempts lower-tiered subcontractors from such an action in certain circumstances.
- Requires that an action for constructional defect pertain to: (1) common elements; (2) any portion of the common-interest community that the association owns; or (3) any portion of the common-interest community that the association does not own, but has an obligation to maintain, repair, insure or replace because the governing documents of the association.
- Provides these provisions do not give rise to any rights or standing for a claim for constructional defect.

Senate Bill 220: Revises provisions relating to internet privacy (*effective Oct. 1, 2019*).

- Revises the definition of “operator” to exclude certain financial institutions and entities that are subject to certain federal laws.
- Requires an operator establish a designated request address through which a consumer may submit a request directing the operator not to sell certain information collected about the consumer.
- Defines “sale” as the exchange of covered information for monetary consideration by the operator to a person for the person to license or sell the covered information to additional persons.
- Authorizes the Attorney General to seek an injunction or civil penalty against an operator for violations.

Senate Bill 358: Revises provisions relating to the renewable energy portfolio standard (*effective April 22, 2019*).

- Sets findings and declarations of the Legislature that it is the policy of Nevada to: (1) encourage and accelerate the development of new renewable energy products; (2) become a leading producer and consumer of clean and renewable energy, with a 2050 goal; (3) ensure that the benefits of increased use of portfolio energy systems are received by the residents of Nevada.
- Authorizes certain electric utilities to acquire, under certain circumstances and without additional approval from the Public Utilities Commission of Nevada: (1) an existing renewable energy facility; or (2) a renewable energy facility that is being developed.
- Authorizes certain electric utilities to request approval from the Commission to exclude a renewable energy facility from its rate base and the expenses associated with the facility from its revenue

requirement and instead, charge a just and reasonable price established by the Commission for the electricity generated by the facility.

- The just and reasonable price must be established by reference to a competitive market price for electricity without reference to rate of return or cost of service principles.
- Requires the Commission adopt regulations to establish the mechanism by which certain electric utilities may charge this just and reasonable price.
- Revises the portfolio standard for 2021 and each subsequent calendar year so that by 2030, each provider of electric services will be required to generate, acquire, or save electricity from renewable energy systems.
- Eliminates the requirement that a minimum percentage of the amount of electricity that the provider is required to generate, acquire, or save be from solar renewable energy systems.
- Revises the provisions governing the calculation of the total amount of electricity sold by a provider to its retail customers.
- Authorizes the Commission to exempt a provider from some or all the requirements of its portfolio standard for a calendar year under certain limited circumstances.
- Provides that a portfolio energy system or energy efficiency measure includes a renewable energy system placed into operation before July 1, 1997, that uses waterpower to generate electricity if the waterpower is acquired by a provider from another party who is not a provider of electricity pursuant to a contract for a term not less than 10 years and the provider began acquiring the waterpower before the effective date of this act.
- Expands the definition of “provider of electric service.”
- Provides that certain providers of electric services are not subject to the jurisdiction of the Commission and are not required to provide certain reports.
- Provides that certain providers are not required to provide certain reports to the Commission during any year in which the total amount of electricity sold by the provider is less than 1,000,000 megawatt-hours.
- Requires certain providers of electric services to provide reports to the director of the Office of Energy.
- Requires certain providers to submit to the Commission a report during any year in which the total amount of electricity sold by the provider is less than 1,000,000 megawatt-hours.
- Expands the definition of “renewable energy” with regard to certain kinds of waterpower considered renewable energy.
- Provides that the revised portfolio standard is applicable to providers of new electric resources.
- Eliminates a limitation on the authority for a provider of new electric resources to use energy efficiency measures to comply with the portfolio standard.
- Requires the Commission to revise certain portfolio standards established for a provider of new electric resources to comply with the revised portfolio standard.
- Provides that certain cooperatives, nonprofit corporations, and associations are subject to the jurisdiction of the Commission for the purpose of complying with the renewable portfolio standard.
- Provides that the Commission may only impose an administrative fine or take administrative action against a provider that does not comply with its portfolio standard between 2018 and 2030 if the

provider also did not comply with its portfolio standard for the two immediately preceding calendar years.

Senate Bill 493: Revises provisions relating to misclassification of employees (Sections 14 to 16, inclusive, effective June 8, 2019. Sections 1 to 13, inclusive, effective July 1, 2019).

- Requires certain government agencies and the Attorney General to share information relating to suspected employee misclassification among their respective offices.
- Defines “employee misclassification” as the practice of classifying employees as independent contractors to avoid any legal obligation under state labor, employment, and tax laws.
- Creates the Task Force on Employee Misclassification and lists its duties.
- Clarifies that an independent contractor must hold a state or local business license to operate in Nevada.
- Provides a presumption that a person who is a contractor or subcontractor and/or who provides certain labor, and meets certain requirements is an independent contractor.
- Requires that notice identifying an employer’s industrial insurer contain definitions of “employee” and “independent contractor.”
- Authorizes the Labor Commissioner to impose various administrative penalties against employers.
- Authorizes a person to file a complaint with the Labor Commissioner to seek an administrative penalty.

Gaming

Assembly Bill 221: Revises provisions relating to gaming employees (effective July 1, 2019).

- Authorizes individuals over 18 years of age, to be employed as gaming employees by a licensed manufacturer or distributor on business premises and under certain circumstances.

Senate Bill 46: Revises provisions relating to the regulation of gaming.

- Revises the definition of “gross revenue” to include cash received as an entry fee for all contests or tournaments, with certain exceptions.
- Extends prohibition of certain gaming-related acts without first obtaining and maintaining all required gaming licenses.
- Revises the definition of “service provider” to mean a person who: (1) is a cash access and wagering instrument service provider; or (2) meets certain criteria established by the Commission.
- Revises sections of NRS to provide for: (1) the licensure of an interactive gaming service provider; and (2) the registration of service providers.
- *(Effective May 25, 2019, for the purpose of adopting regulations and performing any other preparatory administrative tasks necessary to carry out the provisions of this act; effective July 1, 2019, for all other purposes.)*

Senate Bill 72: Makes various changes related to gaming.

- Revises the definition of “cashless wagering system.”

- Authorizes Nevada Gaming Control Board to temporarily suspend registration of a registered gaming employee if he/she is arrested by an agent of the Board. Also requires Nevada Gaming Commission to adopt regulations establishing the process for issuing these temporary suspensions of registration.
- Indefinitely extends the Board's exception to Open Meeting Law. This applies to proceedings in which the Board is making a determination on whether: (1) certain violations have occurred; or (2) to file certain complaints with the Commission.
- Provides that Open Meeting Law does not apply to any action or proceeding of the Board that is related to: (1) an interpretation of provisions of state law or regulations related to gaming or of the applicability of any federal or state law or regulation to such provisions; or (2) a determination as to whether the Board will issue an industry notice.
- Requires a registered gaming employee to file a change of employment notice if he/she: (1) is a security guard employed in an unarmed position and becomes employed as a security guard in an unarmed or armed position; or (2) is not a security guard and becomes employed as a security guard in an unarmed or armed position.
- Revises provisions relating to the submission of an application for registration or renewal as a gaming employee or a change of employment notice to the Board.
- Adds theft to the list of crimes for which the Board can suspend or object to the registration of a gaming employee.
- Revises the definition of "associated equipment."
- Revises legislative findings related to hosting centers to provide for technological advancements, which allow certain equipment to be located at a hosting center.
- *(Section 15 and 16 effective May 14, 2019. Sections 1 to 14, inclusive, effective May 14, 2019 for the purpose of adopting any regulations and performing any other preparatory administrative tasks necessary to carry out the provisions of this act; effective July 1, 2019, for all other purposes.)*

Senate Bill 73: Revises provisions relating to gaming.

- Revises the definition of "gaming device" to include mobile gaming. This makes mobile gaming subject to the same regulation and control as a gaming device.
- Removes or repeals all provisions with individual references to mobile gaming. There is an exemption from these amended provisions for: (1) individuals with a non-restricted license for a mobile gaming system or a license for the operation of a mobile gaming system; (2) individuals who acquire a financial interest in the operator of a mobile gaming system or the operation of such a system; or (3) a successor in interest of an individual who acquired such a financial interest.
- Requires that certain persons notify the Chair of the Board and apply for a finding of suitability with the Commission if they acquire or hold a certain percentage of voting securities of a publicly traded corporation that is registered with the Commission.
- Requires certain individuals or plan sponsors, of a pension/employee benefit plan, to (1) notify the Chair; (2) apply for a finding of suitability with the Commission; and (3) pay a sum of money to the Board if the individual or plan sponsor obtains beneficial ownership in a publicly traded corporation and the person or plan sponsor has the intent to engage in certain proscribed activities.

- Exception: certain individuals who (1) acquire less than 10 percent beneficial ownership in a corporation through a pension or employee benefit plan; or (2) plan sponsors who acquire less than 10 percent ownership in a corporation.
- (Sections 1, 1.3, 1.5, 10.2 to 10.8, inclusive, and Section 21 effective May 29, 2019, for the purpose of adopting regulations and performing any other preparatory administrative tasks to carry out the amendatory provisions of this act; effective Jan. 1, 2020, for all other purposes. Sections 1.7 to 10, inclusive, and 11 to 20, inclusive, effective July 1, 2019.)

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