

1 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

2
3
4 JEFF MYERS, individually and on
behalf of others similarly situated,

5 Appellant,

6 vs.

7 RENO CAB COMPANY, INC.

8 Respondent.

9
10 _____/
11 ARTHUR SHATS and RICHARD
FRATIS, individually and on behalf of
12 others similarly situated,

13 Appellants,

14 vs.

15 ROY L. STREET, individually and dba
16 CAPITOL CAB,

17 Respondent.

18 _____/
19

20 **RESPONDENTS' SUPPLEMENTAL BRIEF PURSUANT**
TO COURT'S ORDER OF FEBRUARY 26, 2021

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21
22
23
24
25
26

TABLE OF CONTENTS

TABLE OF AUTHORITIES iv

SUMMARY OF THE SUPPLEMENTAL ARGUMENT 1

RELEVANT PROCEDURAL BACKGROUND 3

ARGUMENT 5

I. *DANCER* DOES APPLY TO RESOLUTION OF THE TAXI DRIVER’S NRS CHAPTER 608 CLAIMS. 5

II. *DANCER* CLARIFIES THAT NRS 608.0155 DOES NOT APPLY TO THE MWA. 9

III. *DANCER* DID NOT ADDRESS NRS 706.473’S STATUTORILY DEFINED INDEPENDENT CONTRACTOR RELATIONSHIP. 10

IV. *DANCER* DID NOT ADDRESS THE EXISTENCE OF OTHER PRE-EXISTING STATUTORY EXCLUDED EMPLOYMENT RELATIONSHIPS. 10

V. *DANCER* DID NOT ADDRESS THIS COURT’S DECISION IN YELLOW CAB OF RENO V. DISTRICT COURT, AND THE APPLICATION OF *STARE DECISIS*. 15

VI. *DANCER* DOES NOT APPLY BECAUSE A STATUTORY “INDEPENDENT CONTRACTOR” IS NOT SUBJECT TO THE MWA. 17

VII. *DANCER* DOES NOT APPLY BECAUSE THE STATUTORILY DEFINED INDEPENDENT CONTRACTOR RELATIONSHIP PREEXISTED THE MWA. 18

VIII. *DANCER* DOES NOT APPLY BECAUSE THE MWA AND NRS 706.473 CAN BE READ IN HARMONY. 19

1
2
3
4
5
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9
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18
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26

IX. *DANCER* DOES NOT APPLY BECAUSE THE LEGISLATURE, NOT THE COURT, IS SOLELY VESTED WITH THE AUTHORITY TO CHANGE THE LAW EMBODIED IN NRS 706.473. 20

X. *DANCER* DOES NOT APPLY BECAUSE THE MWA CANNOT IMPAIR THE CONTRACTUAL OBLIGATIONS ESTABLISHED IN NRS 706.473. 21

XI. ADDITIONAL CONSIDERATIONS. 24

XII. CONCLUSION. 24

CERTIFICATE OF COMPLIANCE PURSUANT TO RULE 28.2 26

CERTIFICATE OF SERVICE 28

ADDENDUM 29

1 **TABLE OF AUTHORITIES**

2 **NEVADA CASES**

3

4 Allianz Ins. Co. v. Gagnon, 109 Nev. 990, 860 P.2d 720, 723 (1993)..... 19

5 Breen v. Caesars Palace, 102 Nev. 79, 86, 715 P.2d 1070, 1075 (1986)..... 20

6 City of Las Vegas v. Macchiaverna, 99 Nev. 256, 258, 661 P.2d 879,

7 880 (1983)..... 17

8 Doe Dancer I v. LaFuente, Inc., 137 Nev. Adv. Op. 3,

9 ___ P.3d ___ (2021)..... 1, 5, 7, 9, 18, 19

10 Koscot Interplanetary, Inc. v. Draney, 90 Nev. 450, 456,

11 530 P.2d 108, 112 (1974)..... 22

12 Nevada Att'y for Injured Workers v. Nev. Self-Insurers Ass'n,

13 126 Nev. 74, 84, 225 P.3d 1265, 1271 (2010)..... 18

14 Nevada Employment Sec. Dept. v. Capri Resorts, Inc.,

15 104 Nev. 527, 529, 763 P.2d 50, 52 (1988)..... 11, 12

16 Nevada Power Co. v. Haggerty, 115 Nev. 353, 364,

17 989 P.2d 870, 877 (1999)..... 18

18 Nicholas v. State, 116 Nev. 40, 44–45, 992 P.2d 262, 265 (2000)..... 23

19

20 Orion Portfolio Servs. 2 LLC v. Cty. of Clark,

21 126 Nev. 397, 402, 245 P.3d 527, 531 (2010)..... 17

22 Spencer v. Harrah's Inc., 98 Nev. 99, 101–02, 641 P.2d 481, 482 (1982)..... 17

23 State v. Harich Tahoe Developments, 108 Nev. 175, 178,

24 825 P.2d 1234, 1236–37 (1992)..... 12

25 Terry v. Sapphire Gentlemen's Club, 130 Nev. 879,

26 336 P.3d 951 (2014)..... 5, 6, 8, 9

1	<u>Thomas v. Eighth Jud. Dist. Ct.</u> , 133 Nev. 468, 486,	
2	402 P.3d 619, 634 (2017).....	16
3	<u>We The People Nevada v. Miller</u> , 124 Nev. 874, 881,	
4	192 P.3d 1166, 1171 (2008).....	20
5	<u>Yellow Cab of Reno v. District Court</u> , 127 Nev. 583, 592,	
6	262 P.3d 699, 704 (2011).....	2, 15, 16
7	<u>Zenor v. State, Dep't of Transp.</u> , 134 Nev. 109, 111,	
8	412 P.3d 28, 30 (2018).....	19
9	<u>EXTRA JURISDICTIONAL CASE LAW</u>	
10	<u>Bershauer/Phillips Const. Co. v. Seattle School Dist. No.1</u> ,	
11	881 P.2d 986, 991 (Wash. 1994).....	10
12	<u>Energy Reserves Group, Inc. v. Kansas Power & Light Co.</u> ,	
13	459 U.S. 400, 411–12 (1983).....	22-23
14	<u>Gen. Motors Corp. v. Romein</u> , 503 U.S. 181, 186 (1992).....	22
15	<u>In re LaFortune</u> , 652 F.2d 842 (9th Cir.1981).....	22
16	<u>Losada v. Golden Gate Disposal Co.</u> , 950 F.2d 1395, 1399 (9th Cir. 1991).....	10
17	<u>Shaw v. North Pennsylvania Rail Road Co.</u> , 101 U.S. 557, 565 (1879).....	17
18	<u>U.S. Trust Co. of N.Y. v. New Jersey</u> , 431 U.S. 1, 25 (1977).....	23
19	<u>Webster v. Fall</u> , 266 U.S. 507, 511, 45 S. Ct. 148, 149,	
20	69 L. Ed. 411 (1925).....	10
21	<u>NEVADA CONSTITUTION</u>	
22	<u>Nev. Const. art. 1, § 15</u>	21
23		
24		
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NEVADA STATUTE

NRS 608.0155 1, 2, 3, 4, 6, 7, 9, 24

NRS 612.133 10

NRS 706.151 13, 22

NRS 706.151(1)(a) 12

NRS 706.151(2) 13

NRS 706.473 2, 3, 4, 10

NRS 706.475(1)(a), (2)(d) 13

NEVADA RULES

NAC 706 3

OTHER

U.S. Const. art. 1, § 10, cl. 1 21

Antonin Scalia & Bryan A. Garner, Reading Law: The Interpretation
of Legal Texts 324 (2012) 18

Ballots; Labor Comm'r; Wages, 05-04 Op. Nev. Att’y Gen. 18, 18 (2005) 19

1 **SUMMARY OF THE SUPPLEMENTAL ARGUMENT**

2 Statutorily defined independent contractors are not subject to the MWA.

3
4 This appeal focuses on the authority of the Nevada Legislature to enact laws
5 defining what is a statutory “independent contractor” relationship. The statutorily
6 defined taxicab driver “independent contractor” relationship at issue in this appeal
7
8 predates the enactment of the Nevada Constitution, Article 15, Section 16,
9 commonly known as the Minimum Wage Amendment (the “MWA”) by thirty-
10 three (33) years.

11
12 This Court’s recent decision in Doe Dancer I v. LaFuente, Inc., 137 Nev.
13 Adv. Op. 3, ___P.3d ___ (2021) (hereinafter “*Dancer*”) has very limited
14 application to resolution of this appeal. *Dancer* does relate to a prior order of the
15 district court denying summary judgment. *Dancer* does not relate to the
16 dispositive order of the district court which granted summary judgment in favor of
17 Respondents. This appeal focuses primarily on the inapplicability of the MWA in
18 relation to the preexisting legally defined “independent contractor” relationship
19 embodied in NRS 706.473.

20
21 This Supplement demonstrates *Dancer* is applicable based upon the
22 following:
23

- 24 1. *Dancer* clarifies that NRS 608.0155 does apply to the Taxi Driver’s
25
26 NRS Chapter 608 claims.

1 2. *Dancer* clarifies that NRS 608.0155 does not apply to the Taxi
2 Driver’s MWA claims.
3

4 This Supplement also demonstrates *Dancer* is not applicable to the Taxi
5 Driver’s claims under Chapter 608 or the MWA based upon the following:

- 6 3. *Dancer* did not address NRS 706.473’s statutorily defined
7 independent contractor relationship.
8
- 9 4. *Dancer* did not address the existence of any pre-existing statutory
10 defined independent contractor relationships.
11
- 12 5. *Dancer* did not address this Court’s decision in Yellow Cab of Reno
13 v. District Court, 127 Nev. 583, 592, 262 P.3d 699, 704 (2011) and
14 the application of *stare decisis*.
15
- 16 6. *Dancer* does not apply because a statutory “independent contractor” is
17 not subject to the MWA.
18
- 19 7. *Dancer* does not apply because the statutory “independent
20 contractor” relationship preexisted the MWA.
21
- 22 8. *Dancer* does not apply because the MWA and NRS 706.473 can be
23 read in harmony.
24
- 25 9. *Dancer* does not apply because the Legislature, not the Court, is
26 solely vested with the authority to change the law embodied in NRS
 706.473.

1 10. *Dancer* does not apply because the MWA cannot impair the
2 contractual obligations established in NRS 706.473.
3

4 **RELEVANT PROCEDURAL BACKGROUND**

5 The Appellants Jeff Myers, Arthur Shatz and Richard Fratis (hereinafter
6 “Taxi Drivers”) all leased taxicabs from Reno Cab Company, Inc. and Roy L.
7 Street, an individual doing business as Capitol Cab Company (hereinafter “Reno
8 Cab”) under a statutorily defined and regulated independent contractor lease
9 agreement. The independent contractor lease agreements were approved by the
10 Nevada Transportation Authority (“NTA”) and complied with all provisions of
11 NRS 706.473 and NAC 706. III JA 598 (“In this case, all of the requirements of
12 NRS 706.473 and NAC 706.3753 have been satisfied, thus creating an independent
13 contractor relationship between the Plaintiffs and the Defendants.”). The Taxi
14 Drivers’ Complaints sought damages for an alleged breach of the MWA and for
15 damages under NRS 608.040. I JA 1-18.
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20 Reno Cab moved for summary judgment, asserting that the “economic
21 realities” test was for Chapter 608 claims and was abrogated and superseded by the
22 Nevada Legislature’s enactment of NRS 608.0155. Further, Reno Cab argued that
23 the MWA was not implicated because as a matter of law, the Taxi Drivers were not
24 employees but were statutorily defined “independent contractors.” The district
25 court agreed with Reno Cab and entered summary judgment on these issues and
26

1 held that the Nevada Legislature’s “conclusive presumption” test embodied in
2 NRS 608.0155 was the new test applicable to an independent contractor versus
3 employee status disputes.¹ II JA 401-415. This determination is directly impacted
4 by *Dancer*.

6 This appeal, however, primarily focuses on the summary judgment rendered
7 in favor of the Reno Cab on the grounds that the Taxi Drivers were independent
8 contractors as a matter of law pursuant to the provisions of NRS Chapter 706.473
9 and therefore, the MWA and NRS Chapter 608 does not apply. Specifically, the
10 district court found as follows:
11

13 Because all statutory and administrative requirements have been
14 satisfied, the Plaintiffs are independent contractors as a matter of law. As
15 such, the protections afforded to “employees” in the Minimum Wage
16 Amendment (“the MWA”) and NRS 608.040 do not apply.

17 III JA 600. Of clarification on this appeal, the district court did not evaluate
18 whether the economic realities test applied to determination of “employee” status
19 under the MWA. Of course, *Dancer* did address this particular point.

20 Taxi Drivers appealed both orders of the district court. But, as discussed,
21 *Dancer* only applies to one issue in the order denying summary judgment, *i.e.*,
22 608.0155 does supersede the economic realities test for claims brought under NRS
23

25 ¹ The application of NRS 706.473 was also raised in Reno Cab’s initial motion for
26 summary judgment, however, the district court did not address its application at
that time. II JA 413, fn.6.

1 Chapter 608 abrogating the decision in Terry v. Sapphire Gentlemen's Club, 130
2 Nev. 879, 336 P.3d 951 (2014) (“Terry”). Taxi Drivers’ supplemental brief merely
3 argues that *Dancer* resolves all issues in the Taxi Drivers’ favor and the economic
4 reality test supersede any and all laws in Nevada regardless of whether the law pre-
5 existed or post-existed the enactment of the MWA. Supp. B., p.3. Reno Cab
6 disagrees with the Taxi Drivers’ overgenerous mischaracterization.
7
8

9 **ARGUMENT**

10 **I. *DANCER* DOES APPLY TO RESOLUTION OF THE TAXI**
11 **DRIVER’S NRS CHAPTER 608 CLAIMS.**

12 In *Dancer*, the Court recognized that its prior decision in Terry was limited
13 to an analysis of an “employee” under the state’s statutory minimum wage laws
14 embodied in NRS Chapter 608. *Dancer* was the sequel to Terry and was tasked
15 with determining if NRS 608.0155’s provisions applied to the definition of
16 “employee” under the MWA and/or if the economic realities test applied instead.²
17
18

19 As with the dancers in *Dancer*, the Taxi Drivers in this action brought
20 claims under both Chapter 608 and the MWA. *Dancer*, *6. However, on appeal,
21
22

23
24 ² *Dancer*, *1 (“To resolve Doe Dancers’ appeal, we must again interpret the term
25 ‘employee,’ this time pursuant to the MWA, apply that interpretation to the
26 circumstances at issue here, and then determine whether NRS 608.0155’s statutory
expansion of the definition of independent contractor . . . excludes workers who
would otherwise be MWA employees from its protections.”).

1 the appellants in *Dancer* “abandoned their statute-based claims, instead relying
2 solely on the constitutional protections the MWA extends to ‘employees.’” *Id.*,
3
4 *7. Accordingly, *Dancer* did not include an analysis of the application of NRS
5 608.0155 to any state law claim premised on NRS Chapter 608, because those
6 claims had been abandoned in *Dancer*.
7

8 As this Court is aware, in *Terry*, the Court focused on NRS Chapter 608 to
9 determine “employee” status and adopted “the economic realities test that federal
10 courts use” in examining employment relationships. *Id.* The Court adopted the
11 federal test in the absence of direction by the Legislature, and to drive this point
12 home, this Court stated:
13

14 **[T]he Legislature has not clearly signaled its intent that Nevada's**
15 **minimum wage scheme should deviate from the federally set course, and**
16 **for the practical reasons examined above, our state's and federal minimum**
17 **wage laws should be harmonious in terms of which workers qualify as**
18 **employees under them. We therefore adopt the FLSA's “economic realities”**
test for employment in the context of Nevada's minimum wage laws.

19 *Id.* (emphasis added). Because the Nevada Legislature had not spoken, the Court
20 in *Terry* adopted the federal economic realities test to define an “employee” under
21 NRS Chapter 608.³
22

24 ³ *Dancer*, *2 (“As noted, in *Terry*, we determined that certain performers . . . were
25 “employees” within the meaning of NRS Chapter 608 (governing “Compensation,
26 Wages and Hours”) . . . such that they were entitled to the state statutory minimum
wage.”).

1 In the present action, the district court ruled that the Legislature’s enactment
2 of NRS 608.0155 abrogated the “economic realities” test under Nevada Chapter
3 608 claims and held:
4

5 [T]he Court construes NRS 608.0155 to supersede the decisions in
6 *Thomas* and *Sapphire*, and abrogate the Supreme Court’s adoption of the
7 federal economic realities test [in Terry].

8 II JA 409. In support of its decision, the district court reasoned: [NRS 608.0155’s
9 test] acknowledges a purposeful modification of Nevada’s statutory scheme made
10 in response to Supreme Court opinions the Legislature found to necessitate
11 clarification.” Id., 410. Accordingly, the district court did in fact rule that NRS
12 608.0155’s criteria applied to Taxi Drivers’ NRS Chapter 608 claims.
13

14 *Dancer* confirmed that the district court’s analysis on this particular issue
15 was proper and appropriate. Specifically, in *Dancer* this Court implicitly affirmed
16 the district court’s ruling and held that 608.0155 applies to Chapter 608 claims as
17 follows:
18

19
20 **[T]he definition of independent contractor in NRS 608.0155**
21 **applies only to NRS Chapter 608 claims”**

22 *Dancer* **21-22 (emphasis added).

23 Strangely, Taxi Drivers argue that because of *Dancer*, this Court must
24 reverse and remand to the district court to apply NRS 608.0155’s factors when
25 evaluating Taxi Drivers’ NRS Chapter 608 claims. Supp., p. 5 (“To the extent the
26

1 proper test for employee status under NRS 608.040 is the one set forth in NRS
2 608.0155, reversal is required so the district court can properly apply that test.”).
3
4 Taxi Drivers fail to recognize that the district court did in fact rule that NRS
5 608.0155 was the proper test to apply in determining Taxi Drivers’ NRS Chapter
6 608 claims and also failed to address the district court denied summary judgment
7
8 on the NRS 608.0155 analysis finding questions of fact existed.⁴

9 Regarding the Taxi Driver’s Chapter 608 claims, the district court correctly
10 held that the Legislature’s enactment of NRS 608.0155 was an appropriate act in
11 response to this Court’s decision in Terry. In rendering its decision, the district
12 court correctly applied the foregoing principals and concluded that the Legislature
13 clearly “signaled” its intention to deviate from the “economic realities” test by
14 enactment and implementation of NRS 608.0155. II JA 408-409. The district
15 court also correctly held that under the separation of powers, the Legislature had
16 the power to enact the laws for the judiciary to enforce and when the Legislature
17 enacted NRS 608.0155, abrogating the economic realities test such action was “a
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23 ⁴ Taxi Drivers’ Supplemental Brief offers no explanation why they ignore the
24 district court’s analysis which specifically is captioned “**III. Application of the**
25 **NRS 608.0155 Test**” in the district court’s order. II JA 410. Further Taxi Drivers
26 offer no explanation why they do not address the district court’s finding that there
were questions of fact regarding “three of the five” criteria in NRS 608.0155(c) so
summary judgment on this analysis was denied. Id., 412. Taxi Drivers’ argument
on this issue is facially erroneous.

1 purposeful modification of Nevada’s statutory scheme” made in response to this
2 Court’s opinions. II JA 409-410.

3
4 Accordingly, *Dancer* affirms the district court’s analysis that the enactment
5 of NRS 608.0155 abrogated the adoption of the federal economic realities test in
6 Terry for NRS Chapter 608 claims.

7
8 **II. DANCER CLARIFIES THAT NRS 608.0155 DOES NOT APPLY TO**
9 **THE MWA.**

10 However, the district court also held that NRS 608.0155 applied to the Taxi
11 Drivers MWA claims. Specifically, the Court held “to allow the MWA to be
12 interpreted by the economic realities test rather than by NRS 608.0155, the
13 MWA’s application would be substantially expanded beyond the limits set by the
14 duly elected members of the Nevada Legislature.” II JA 414.

15
16 *Dancer* has resolved the issue that NRS 608.0155 does not apply to the
17 Taxi Drivers’ WMA claims. Accordingly, the district court’s analysis that the
18 term “employee” in the MWA is subject to the NRS 608.0155 test is incorrect.

19
20 However, while important, this determination is only relevant if this case is
21 remanded. This is because unlike in *Dancer*, the district court did not grant
22 summary judgment on this ground. Instead, the district court granted summary
23 judgment finding that the MWA and Chapter 608 did not apply as a matter of law
24 to statutory independent contractors under NRS 706.473.
25
26

1 **III. DANCER DID NOT ADDRESS NRS 706.473'S STATUTORILY**
2 **DEFINED INDEPENDENT CONTRACTOR RELATIONSHIP.**

3 This argument is self-explanatory. *Dancer* did not address NRS 706.473 so
4 has no precedential value to an analysis of this statute. If a case does not address a
5 legal concept or issue, it has no precedential effect. Webster v. Fall, 266 U.S. 507,
6 511, 45 S. Ct. 148, 149, 69 L. Ed. 411 (1925) (“Questions which merely lurk in the
7 record, neither brought to the attention of the court nor ruled upon, are not to be
8 considered as having been so decided as to constitute precedents.”); Losada v.
9 Golden Gate Disposal Co., 950 F.2d 1395, 1399 (9th Cir. 1991) (“The character of
10 the payments under the relevant state law [on worker’s compensation] was not at
11 issue” in prior case so no inconsistency); Bershauer/Phillips Const. Co. v. Seattle
12 School Dist. No.1, 881 P.2d 986, 991 (Wash. 1994) (“In cases where a legal theory
13 is not discussed in the opinion, that case is not controlling on a future case where
14 the legal theory is properly raised.”).

15 **IV. DANCER DID NOT ADDRESS THE EXISTENCE OF OTHER PRE-**
16 **EXISTING STATUTORY EXCLUDED EMPLOYMENT**
17 **RELATIONSHIPS.**

18 The Legislature has created a statutory exemption from Nevada’s
19 unemployment compensation provisions for licensed real estate sales persons,
20 brokers and time share workers. *See e.g.*, NRS 612.133 (“‘Employment’ shall not
21 include services performed by a licensed real estate salesman or licensed real estate
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1 broker who is employed as a salesman or associate broker by another licensed real
2 estate broker, whether such services are performed for such employer or for a third
3 person, if such services are performed for remuneration solely by way of
4 commission.”). This Court has not hesitated to enforce this statute.
5

6 Specifically, in Nevada Employment Sec. Dept. v. Capri Resorts, Inc., 104
7 Nev. 527, 529, 763 P.2d 50, 52 (1988) this Court held that time share workers were
8 “not employees as contemplated by the unemployment compensation statutes”. In
9 so holding, this Court stated: “Upon our review of the applicable statutes, we
10 conclude that a timeshare sales agent fits within the statutory exemption created for
11 a licensed real estate salesperson.” Id. at 428, 763 P.2d at 51.
12

13
14 Of relevance and import to this case, the foundational reasoning of this
15 Court in Capri Resorts to uphold the employment exclusion of real estate
16 professionals was due to the extensive regulatory oversight of these professionals
17 and, as such, the Legislature properly determined they did not need other
18 employment related protections. Specifically, the Court analyzed the following:
19
20

21 The Real Estate Division has promulgated extensive regulations
22 concerning timeshare sales agents in accordance with its *529 statutory duty.
23 See Nev. Admin. Code Ch. 119A. Timeshare sales agents must meet the
24 educational requirements set by the Division. NAC 119A.375. Their
25 activities are closely supervised by the project broker, who is also licensed
26 by the Division. NAC 119A.240, 119A.265(2). Each project office is
supervised by a licensed real estate broker, who is responsible for reporting
to the Division any circumstances surrounding the discharge of a sales agent.
NAC 119A.100, 119A.115. The project brokers are responsible for

1 informing the sales agents of the regulatory requirements of Chapter 119A,
2 and any necessary disciplinary measures are taken by the Real Estate
3 Division against the brokers and sales agents. NAC 119A.245, 119A.290.

4 Id. at 528-529, 763 P.2d at 52.

5 Because of such heavy regulatory oversight, this Court “conclude[d] that a
6 fair reading of Chapter 119A reveals legislative intent to place timeshare
7 sales agents squarely within the authority of the Real Estate Division, with all of
8 the corresponding regulatory obligations.” Id. at 528, 763 P.2d at 51-52.

9 Subsequently in 1992, this Court reaffirmed its holding in Capri Resorts and held
10 that a time share representative did not fall within the statutory framework
11 excluding specific real estate professionals from the definition of an employee
12 entitled to unemployment benefits. State v. Harich Tahoe Developments, 108
13 Nev. 175, 178, 825 P.2d 1234, 1236–37 (1992) (“a time-share ‘representative’ is
14 not a ‘sales agent’ or a ‘licensed real estate salesperson.’”).
15
16
17

18 As detailed in the Answering Brief, taxi drivers are regulated as a profession
19 by the Nevada Transportation Authority (the “NTA”). The Nevada Legislature
20 specifically declared that its purpose and policy in enacting NRS Chapter 706 was
21 “to make it the duty of the [NTA] to regulate [and] enforce the provisions of this
22 chapter and the regulations adopted by the [NTA] pursuant to it.” NRS
23 706.151(1)(a). Further, “[a]ll of the provisions of [NRS Chapter 706] must be
24 administered and enforced with a view to carrying out the declaration of policy
25
26

1 contained in this section.” NRS 706.151(2). Crucially, the Legislature delegated
2 authority to the NTA to implementing and adopting regulations to carry out
3 Chapter 706’s provisions, including enacting procedures for approving, or
4 revoking, such independent contractor agreements. NRS 706.475(1)(a), (2)(d).
5

6 Based upon the foregoing, this Court should refrain from applying the
7 MWA’s provisions to taxi drivers, who are defined under the law as statutorily
8 independent contractors. The fundamental concerns of the MWA are not
9 implicated in this statutorily defined independent contractor relationship because
10 these taxi drivers are overseen and regulated by the NTA.
11
12

13 Further, the purpose and reasoning for making taxi drivers’ independent
14 contractors furthers a multitude of other public policy and safety concerns. NRS
15 706.151 details the Legislative purpose for establishing such statutory independent
16 contractor relationship as follows:
17

18 1. It is hereby declared to be the purpose and policy of the
19 Legislature in enacting this chapter:

20 (a) . . . to regulate fully regulated carriers, operators of tow cars
21 and brokers of regulated services to the extent provided in this chapter
22 and to confer upon the Department of Motor Vehicles the power to
23 license all motor carriers and to make it the duty of the Department of
24 Motor Vehicles and the Department of Public Safety to enforce the
25 provisions of this chapter and the regulations adopted by the Authority
26 pursuant to it, to relieve the undue burdens on the highways arising by
reason of the use of the highways by vehicles in a gainful occupation
thereon.

1 (b) To provide for reasonable compensation for the use of the
2 highways in gainful occupations, and enable the State of Nevada, by
3 using license fees, to provide for the proper construction, maintenance
4 and repair thereof, and thereby protect the safety and welfare of the
traveling and shipping public in their use of the highways.

5 (c) To provide for fair and impartial regulation, to promote
6 safe, adequate, economical and efficient service and to foster sound
economic conditions in motor transportation.

7 . . .

8 **2. All of the provisions of this chapter must be administered and**
9 **enforced with a view to carrying out the declaration of policy contained**
10 **in this section.**

11 Id. (emphasis added). Accordingly, while the enactment of the MWA has
12 underlying policy considerations, the enactment of NRS Chapter 706 has equally
13 powerful public policy and overriding safety policies in play. Specifically, the
14 NTA with protection of all drivers also ensures they receive “reasonable
15 compensation” for use of the highways in Nevada “in gainful occupations”. In
16 addition, the NTA is charged with ensuring the “safety” of drivers, vehicles and
17 passengers in this State, which oversight has enormous impact on the State and the
18 State’s tourism industry.
19
20

21 The “independent contractor” relationship in NRS 706.473 is part of a
22 separate and expansive Legislative objective to protect and regulate taxi drivers
23 and others who are gainfully employed in such industry. There is no need to
24 expand the protections of the MWA to such industry as the participants in the
25 transportation industry are already protected.
26

1 Lastly, as detailed in the district court’s order granting summary judgment, it
2 is undisputed that all NTA regulatory and legal requirements for establishing the
3 independent contractor relationship exist in this case. III JA 600 (“Because all
4 statutory and administrative requirements have been satisfied, the Plaintiffs are
5 independent contractors as a matter of law.”).⁵ Because compliance with NRS
6 706.473 by Reno Cab was established as undisputed facts, this Court should
7
8 uphold the district court’s decision that statutorily defined independent contractors
9 do not fall within the definition of “employee” in the MWA.
10

11
12 **V. DANCER DID NOT ADDRESS THIS COURT’S DECISION IN**
13 **YELLOW CAB OF RENO V. DISTRICT COURT, AND THE**
14 **APPLICATION OF STARE DECISIS.**

15 In Yellow Cab of Reno v. District Court, 127 Nev. 583, 262 P.3d 699 (2011)
16 this Court previously addressed the NRS 706.473 statutorily defined independent
17 contractor relationship. This Court held that although an employment relationship
18 “typically” depends on the issue of control (*i.e.*, an economic realities type
19 analysis), such analysis was irrelevant since compliance with NRS 706.473’s
20 provisions was dispositive. Specifically, in Yellow Cab, this Court held if the
21 statute’s provisions are established, then an independent contractor relationship
22 existed as a matter of law:
23
24

25
26 ⁵ For an extensive list of the multitude of NRS and NAC provisions applicable to
an independent contractor lease, see III JA 519-522.

1 NRS 706.473 specifically authorizes the licensing of a taxicab
2 to an independent contractor if the requirements of that statute and
3 any administrative regulations promulgated in accordance with NRS
4 706.475 are met. Thus, under the statutory scheme, **the existence of**
5 **this statutorily created independent contractor relationship turns**
6 **not on the issue of control, but on whether all of the statutory and**
7 **administrative requirements for creating such an independent**
8 **contractor relationship have been established.**

9 Id. at 591-92, 262 P.3d at 704 (emphasis added). Accordingly, this Court has
10 already analyzed and affirmed the validity and legality of NRS 706.473's
11 statutorily defined independent contractor relationship.

12 *Stare decisis* requires this Court to affirm the district court's ruling and
13 *Dancer* does not impact that analysis. In Justice Pickering's dissent in Thomas v.
14 Eighth Jud. Dist. Ct., 133 Nev. 468, 486, 402 P.3d 619, 634 (2017) she artfully and
15 succinctly discusses the application of *stare decisis* as follows:

16
17 Stare decisis requires us to follow existing case law unless
18 "compelling" reasons exist for overruling it. Miller v. Burk, 124 Nev. 579,
19 597, 188 P.3d 1112, 1124 (2008). "Mere disagreement" will not do. Id. A
20 prior holding must have proven "badly reasoned" or "unworkable" before
21 we will destabilize our case law by overruling it.

22 Id. *Dancer* does not impact the NRS 706.473 analysis because *Dancer* did not
23 consider it and/or *Yellow Cab*. Because *Dancer* does not modify, alter or in any
24 way apply to this Court's prior analysis in Yellow Cab, the doctrine of *stare decisis*
25 applies.

1 **VI. *DANCER* DOES NOT APPLY BECAUSE A STATUTORY**
2 **“INDEPENDENT CONTRACTOR” IS NOT SUBJECT TO THE**
3 **MWA.**

4 This argument is simple and straightforward. NRS 706.473 statutorily
5 defines an independent contractor. Orion Portfolio Servs. 2 LLC v. Cty. of Clark,
6 126 Nev. 397, 402, 245 P.3d 527, 531 (2010) (“When a statute is clear and
7 unambiguous, this court gives effect to the plain and ordinary meaning of the
8 words and does not resort to the rules of construction.”). As independent
9 contractors, the taxi drivers are not subject to the MWA. The Court must enforce
10 the statute according to its plain meaning. The MWA only applies to “employees”
11 and statutory “independent contractors” are not included within the scope of the
12 MWA. Shaw v. North Pennsylvania Rail Road Co., 101 U.S. 557, 565 (1879)
13 (“No statute is to be construed as altering the common law, further than its words
14 import. It is not to be construed as making any innovation upon the common law
15 which it does not fairly express.”).
16
17
18
19

20 Further, this Court has previously reiterated it has no authority to go beyond
21 the face of an unambiguous statute. Spencer v. Harrah's Inc., 98 Nev. 99, 101–02,
22 641 P.2d 481, 482 (1982) (“We are not empowered . . . to go beyond the face of
23 the statute to lend it a construction contrary to its clear meaning.”); City of Las
24 Vegas v. Macchiaverna, 99 Nev. 256, 258, 661 P.2d 879, 880 (1983) (“When the
25 language of a statute is plain, its intention must be deduced from such language,
26

1 and the court has no right to go beyond it.” (citation omitted)). As such, *Dancer*
2 has no application to the interpretation and/or enforcement of NRS 706.473.

3
4 **VII. DANCER DOES NOT APPLY BECAUSE THE STATUTORY**
5 **INDEPENDENT CONTRACTOR RELATIONSHIP**
6 **PREEXISTED THE MWA.**

7 In *Dancer*, this Court looked to the existence of federal law under the Fair
8 Labor Standards Act (“FSLA”) because it “predates the MWA by decades”.
9 *Dancer*, p.*9. The *Dancer* Court then highlighted the canon of construction
10 holding that the Legislature is presumed to enact a statute with full knowledge of
11 existing statutes relating to the same subject matter.⁶ Applying this canon of
12 construction this Court held that all legal persons should know that the term
13 “employee” carried with it “the old soil” from its transplanted usage.
14

15 Using this identical reasoning, when the MWA was enacted, the statutory
16 “independent contractors” under NRS 706.473 had existed for over three (3)
17 decades. The Court is bound to accept that the voters knew and understood the
18
19

20
21 ⁶ Id. (“Antonin Scalia & Bryan A. Garner, Reading Law: The Interpretation of
22 Legal Texts 324 (2012); cf. Nevada Att’y for Injured Workers v. Nev. Self-Insurers
23 Ass’n, 126 Nev. 74, 84, 225 P.3d 1265, 1271 (2010) (presuming “that the
24 Legislature enacted the statute with full knowledge of existing statutes relating to
25 the same subject” (internal quotations omitted)).” *See also Nevada Power Co. v.*
26 Haggerty, 115 Nev. 353, 364, 989 P.2d 870, 877 (1999) (when Legislature enacts a
statute court presumes that it does so “with full knowledge of existing statutes
relating to the same subject.” (citing Runion v. State, 116 Nev. 1041, 1047, 13
P.3d 52, 56 fn.2 (2000)).

1 existence of these statutorily defined independent contractors and that they were
2 not to be impacted by the MWA.⁷ Zenor v. State, Dep't of Transp., 134 Nev. 109,
3 111, 412 P.3d 28, 30 (2018) (reasoning that the Legislature's omission of language
4 was intentional). Again, because the MWA did not seek to impact any preexisting
5 statutorily defined independent contractor relationship, the district court's decision
6 must be affirmed.
7

8
9 **VIII. *DANCER* DOES NOT APPLY BECAUSE THE MWA AND NRS
10 706.473 CAN BE READ IN HARMONY.**

11 Again, using the analytical framework contained in *Dancer*, this Court is to
12 read statutes in harmony so as to avoid any conflict. *Dancer*, *8 (*citing Int'l Game*
13 *Tech., Inc. v. Second Judicial Dist. Court*, 179 P.3d 556, 560, 124 Nev. 193, 200-
14 01 (2008) (noting that “a statute's provisions should be read as a whole . . . and,
15 when possible, any conflict is harmonized”). *See also Allianz Ins. Co. v. Gagnon*,
16 109 Nev. 990, 860 P.2d 720, 723 (1993) (“Whenever possible, this court will
17 interpret a rule or statute in harmony with other rules and statutes.”).
18

19
20 The MWA and NRS 706.473's statutorily defined independent contractor
21 relationship are simple to harmonize. The MWA applies to “employees” and not
22
23

24 ⁷ *Id.* (“Ballots; Labor Comm'r; Wages, 05-04 Op. Nev. Att'y Gen. 18, 18 (2005)
25 (stating that in this context “the voters should be presumed to know the state of the
26 law in existence related to the subject upon which they vote” (citing *Bounties for*
Destruction of Predatory Animals, 34-153 Op. Nev. Att'y Gen: (1934)))”).

1 “independent contractors”. NRS 706.473 statutorily defines independent
2 contractors. Accordingly, both can be read harmoniously without conflict. The
3 only method a conflict can exist is if this Court holds that in 1973, the Nevada
4 Legislature acted without authority in enacting NRS 706.473’s provisions. As
5 briefed herein, there are too many obstacles to such a determination by this Court.
6
7 We The People Nevada v. Miller, 124 Nev. 874, 881, 192 P.3d 1166, 1171 (2008)
8 (“the interpretation of a statute or constitutional provision will be harmonized with
9 other statutes or provisions to avoid unreasonable or absurd results.”).
10

11
12 **IX. *DANCER DOES NOT APPLY BECAUSE THE LEGISLATURE, NOT***
13 ***THE COURT, IS SOLELY VESTED WITH THE AUTHORITY TO***
14 ***CHANGE THE LAW EMBODIED IN NRS 706.473.***

15 This is another straightforward argument. If the independent contractor
16 protections embodied in NRS 706.473 are to be altered, amended or terminated, or
17 if the entire statutory scheme of NRS Chapter 706 and/or NAC Chapter 706
18 applicable to the NTA’s oversight and regulation of the taxicab industry is to be
19 altered in such a substantial manner, then it is solely within the power of the
20 Legislature to accomplish. Breen v. Caesars Palace, 102 Nev. 79, 86, 715 P.2d
21 1070, 1075 (1986) (“It is for Congress, not the courts, to revise longstanding
22 legislation in order to accommodate the effects of changing social conditions.”
23
24 (*citing* United States v. Lorenzetti, 467 U.S. 167, 104 S.Ct. 2284, 2292, 81 L.Ed.2d
25 134 (1984)).
26

1 Accordingly, as stated in *Dancer*, this Court only has the “right and the
2 duty . . . to interpret the [legislative] document” not “to rewrite the words.”
3
4 *Dancer*, *8 (citing Edward H. Levi, *The Nature of Judicial Reasoning*, 32 U. Chi.
5 L. Rev. 395. 404 (1965)). Therefore, it is reasoned that this Court is not
6 empowered to alter the statutorily defined “independent contractor” contained in
7
8 NRS 706.473 under the guise of interpreting the MWA.

9 **X. DANCER DOES NOT APPLY BECAUSE THE MWA CANNOT**
10 **IMPAIR THE CONTRACTUAL OBLIGATIONS ESTABLISHED IN**
11 **NRS 706.473.**

12 Reno Cab also contends that ignoring NRS 706.473’s provisions and
13 allowing the MWA to disregard such statutorily defined independent contractor in
14 exchange for a broad application of an “economic realities” test would violate the
15 Contracts Clauses of the United States and Nevada Constitutions. U.S. Const. art.
16 1, § 10, cl. 1; Nev. Const. art. 1, § 15.⁸ The independent contractor contracts at
17 issue predated the enactment of the MWA. III JA 470, 484, 499. The Contracts
18 Clauses protect against impairment of the independent contractor lease agreements
19
20 at issue in this case.
21
22
23
24

25 ⁸ U.S. Const. art. I, § 10, cl. 1 (“No State shall . . . pass any . . . Law impairing the
26 Obligation of Contracts”); Nevada Const. Art. 1, §15 (“No . . . law impairing
 the obligation of contracts shall ever be passed.”).

1 The independent contractor contracts were authorized and enacted pursuant
2 to the police power of the State to protect the public health, welfare and safety.
3
4 NRS 706.151. Therefore, NRS 706.473 and the statutorily defined independent
5 contractor agreements are presumed valid. Koscot Interplanetary, Inc. v. Draney,
6 90 Nev. 450, 456, 530 P.2d 108, 112 (1974) (“Statutes, if enacted in the exercise of
7
8 police power, are presumed to promote the public welfare and they come to court
9 with the presumption of validity.”).

10 An interpretation of the MWA that would obviate statutorily defined
11 independent contractor agreements under NRS 706.473 using an “economic
12 realities test” would violate the Contracts Clauses. The United States Supreme
13 Court has established a two-step test to determine whether a state statute violates
14 the Contract Clause. In re LaFortune, 652 F.2d 842 (9th Cir.1981). The court
15 must first determine whether the state law in question “substantially impairs the
16 contractual relationship.” Id. at 846. This inquiry contains three components:
17 “whether there is a contractual relationship, whether a change in law impairs that
18 contractual relationship, and whether the impairment is substantial.” Gen. Motors
19 Corp. v. Romein, 503 U.S. 181, 186 (1992). Where there is substantial
20 impairment, the state “must have a significant and legitimate public purpose
21 behind the regulation,” such as “remedying of a broad and general social or
22 economic problem.” Energy Reserves Group, Inc. v. Kansas Power & Light Co.,

1 459 U.S. 400, 411–12 (1983); *see also* U.S. Trust Co. of N.Y. v. New Jersey, 431
2 U.S. 1, 25 (1977).

3
4 Using solely an economic realities test to determine the Taxi Drivers’
5 employment status while ignoring NRS 706.473’s statutorily defined independent
6 contractor agreements would substantially impair all such agreements. The
7 independent contractors would no longer be a statutorily defined independent
8 contractor. That impairment is substantial as it would require a wholesale
9 disregard of the NTA’s oversight and regulation of an entire industry premised on
10 NRS 706.473 independent contractor agreements.
11

12
13 While the enactment of the MWA may address a social and/or economic
14 problem, the enactment of NRS Chapter 706 and NAC Chapter 706 also address
15 equally compelling and competing public welfare, safety and economic problems.
16 Accordingly, it is suggested that the MWA cannot trump NRS Chapter 706 and
17 NAC Chapter 706 as to do so would violate the Contracts Clauses of the United
18 States and Nevada Constitutions. *See e.g.*, Nicholas v. State, 116 Nev. 40, 44–45,
19 992 P.2d 262, 265 (2000) (“An employee’s rights become absolutely vested when
20 he retires and all conditions for his retirement benefits have been met. That right is
21 constitutionally protected against impairment once absolutely vested. . . . Public
22 employment contracts are within the ambit of the contract clause.”).
23
24
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26

///

1 **XI. ADDITIONAL CONSIDERATIONS.**

2 Based upon this Supplemental Brief, it is clear that this case presents a very
3 specialized and limited non-application of the MWA. The taxicab industry is
4 heavily regulated by the NTA for the purpose of promoting the health, safety and
5 public welfare of not only drivers, but passengers and all vehicles and equipment
6 used in the transportation industry. Upholding the non-applicability of statutorily
7 defined independent contractors from the MWA promotes the policies of NRS
8 Chapter 706 and also promotes the protections of Chapter 706 that seeks to
9 ensure taxi drivers receive “reasonable compensation” for use of the highways in
10 Nevada pursuing their “gainful occupations.”
11

12 Recognition of the validity of NRS 706.473’s independent contractor
13 agreements will not open Pandora’s Box. Instead, upholding the district court’s
14 decision will identify a limited non-applicability to the MWA existing in an
15 industry that is already heavily regulated by a Department of the State of Nevada
16 exercising administrative oversight and control over such taxi drivers.
17

18 **XII. CONCLUSION.**

19 Based upon the foregoing, *Dancer* affirms that NRS 608.0155 does apply to
20 NRS Chapter 608 claims. *Dancer* affirms the district court erred in its analysis
21 that NRS 608.0155 applied to the determination of an “employee” under the MWA
22 and that NRS 608.0155 does not apply to the MWA. However, as extensively
23
24
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1 detailed herein, *Dancer* does not provide any support for disregarding the district
2 court's determination that NRS 706.473's independent contractor relationships are
3 excluded from the scope of the MWA and Chapter 608 as a matter of law.
4

5 Accordingly, the district court's grant of summary judgment holding that NRS
6 706.473's independent contractor relationships are not subject to any claims under
7 NRS Chapter 608 or the MWA as a matter of law must be affirmed.
8

9 DATED this 23rd day of March, 2021.

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1 sanctions in the event that the accompanying brief is not in conformity with the
2 requirements of the Nevada Rules of Appellate Procedure.

3
4 DATED this 23rd day of March, 2021.

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1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRAP 25, I certify that I am an employee of SIMONS HALL
3
4 JOHNSTON PC, and that on this date I caused to be served a true copy of the
5 **RESPONDENTS' SUPPLEMENTAL BRIEF PURSUANT TO COURT'S**
6 **ORDER OF FEBRUARY 26, 2021** on all parties to this action by the method(s)
7 indicated below:
8

9 by using the Supreme Court Electronic Filing System:
10

11 Leon Greenberg, Esq.
12 Curtis Coulter, Esq.
13 *Attorneys for Appellants*

14
15 DATED: This 23rd day of March, 2021.

16
17 
18 JODI ALHASAN

1 **ADDENDUM**

2
3 **I. U.S. CONSTITUTION**

4 **U.S. Const. art I, §10, cl. 1**

5 No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of
6 Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold
7 and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post
8 facto Law, or Law impairing the Obligation of Contracts, or grant any Title of
Nobility.

9 **II. NEVADA CONSTITUTION**

10 **Nev. Const. Art. 1, §15**

11
12 **Sec: 15. Bill of attainder; ex post facto law; obligation of contract.** No bill
13 of attainder, ex-post-facto law, or law impairing the obligation of contracts shall
ever be passed.

14 **III. NEVADA STATUTES**

15
16 **NRS 608.0155 Persons presumed to be independent contractor.**

17 1. Except as otherwise provided in subsection 2, for the purposes of this
chapter, a person is conclusively presumed to be an independent contractor if:

18 (a) Unless the person is a foreign national who is legally present in
19 the United States, the person possesses or has applied for an employer
20 identification number or social security number or has filed an income tax
return for a business or earnings from self-employment with the Internal
Revenue Service in the previous year;

21 (b) The person is required by the contract with the principal to hold
22 any necessary state business license or local business license and to maintain
any necessary occupational license, insurance or bonding in order to operate
23 in this State; and

24 (c) The person satisfies three or more of the following criteria:

25 (1) Notwithstanding the exercise of any control necessary to
26 comply with any statutory, regulatory or contractual obligations, the
person has control and discretion over the means and manner of the
performance of any work and the result of the work, rather than the

1 means or manner by which the work is performed, is the primary
2 element bargained for by the principal in the contract.

3 (2) Except for an agreement with the principal relating to the
4 completion schedule, range of work hours or, if the work contracted
5 for is entertainment, the time such entertainment is to be presented,
6 the person has control over the time the work is performed.

7 (3) The person is not required to work exclusively for one
8 principal unless:

9 (I) A law, regulation or ordinance prohibits the person
10 from providing services to more than one principal; or

11 (II) The person has entered into a written contract to
12 provide services to only one principal for a limited period.

13 (4) The person is free to hire employees to assist with the
14 work.

15 (5) The person contributes a substantial investment of capital
16 in the business of the person, including, without limitation, the:

17 (I) Purchase or lease of ordinary tools, material and
18 equipment regardless of source;

19 (II) Obtaining of a license or other permission from the
20 principal to access any work space of the principal to perform
21 the work for which the person was engaged; and

22 (III) Lease of any work space from the principal required
23 to perform the work for which the person was engaged.

24 The determination of whether an investment of capital is substantial for the
25 purpose of this subparagraph must be made on the basis of the amount of income
26 the person receives, the equipment commonly used and the expenses commonly
incurred in the trade or profession in which the person engages.

27 2. A natural person is conclusively presumed to be an independent
28 contractor if the person is a contractor or subcontractor licensed pursuant
29 to chapter 624 of NRS or is directly compensated by a contractor or subcontractor
30 licensed pursuant to chapter 624 of NRS for providing labor for which a license
31 pursuant to chapter 624 of NRS is required to perform and:

32 (a) The person has been and will continue to be free from control or
33 direction over the performance of the services, both under his or her contract
34 of service and in fact;

35 (b) The service is either outside the usual course of the business for
36 which the service is performed or that the service is performed outside of all
the places of business of the enterprises for which the service is performed;
and

1 (c) The service is performed in the course of an independently
2 established trade, occupation, profession or business in which the person is
3 customarily engaged, of the same nature as that involved in the contract of
4 service.

5 3. The fact that a person is not conclusively presumed to be an
6 independent contractor for failure to satisfy three or more of the criteria set forth in
7 paragraph (c) of subsection 1 does not automatically create a presumption that the
8 person is an employee.

9 4. As used in this section:

10 (a) "Foreign national" has the meaning ascribed to it in NRS
11 294A.325.

12 (b) "Providing labor" does not include the delivery of supplies.
13 (Added to NRS by 2015, 1743; A 2019, 3159)

14 **NRS 612.133 "Employment": Service by licensed real estate salesperson or**
15 **broker excluded.**

16 "Employment" shall not include services performed by a licensed real estate
17 salesperson or licensed real estate broker who is employed as a salesperson or
18 associate broker by another licensed real estate broker, whether such services are
19 performed for such employer or for a third person, if such services are performed
20 for remuneration solely by way of commission.

21 (Added to NRS by 1957, 59)

22 **NRS 706.151 Legislative declaration of purpose.**

23 1. It is hereby declared to be the purpose and policy of the Legislature in
24 enacting this chapter:

25 (a) Except to the extent otherwise provided in NRS
26 706.881 to 706.885, inclusive, to confer upon the Authority the power and to
make it the duty of the Authority to regulate fully regulated carriers,
operators of tow cars and brokers of regulated services to the extent
provided in this chapter and to confer upon the Department of Motor
Vehicles the power to license all motor carriers and to make it the duty of
the Department of Motor Vehicles and the Department of Public Safety to
enforce the provisions of this chapter and the regulations adopted by the
Authority pursuant to it, to relieve the undue burdens on the highways
arising by reason of the use of the highways by vehicles in a gainful
occupation thereon.

1 (b) To provide for reasonable compensation for the use of the
2 highways in gainful occupations, and enable the State of Nevada, by using
3 license fees, to provide for the proper construction, maintenance and repair
4 thereof, and thereby protect the safety and welfare of the traveling and
shipping public in their use of the highways.

5 (c) To provide for fair and impartial regulation, to promote safe,
6 adequate, economical and efficient service and to foster sound economic
conditions in motor transportation.

7 (d) To encourage the establishment and maintenance of reasonable
charges for:

8 (1) Intrastate transportation by fully regulated carriers; and

9 (2) Towing services performed without the prior consent of the
10 owner of the vehicle or the person authorized by the owner to operate
11 the vehicle, Without unjust discriminations against or undue
preferences or advantages being given to any motor carrier or
applicant for a certificate of public convenience and necessity.

12 (e) To discourage any practices which would tend to increase or
13 create competition that may be detrimental to the traveling and shipping
public or the motor carrier business within this State.

14 2. All of the provisions of this chapter must be administered and enforced
with a view to carrying out the declaration of policy contained in this section.

15 (Added to NRS by 1971, 690; A 1981, 1019; 1983, 1222; 1995, 2612; 1997,
16 1930, 2670; 1999, 492; 2003, 1400; 2007, 2052)

17 **NRS 706.473 Leasing of taxicab to independent contractor: Authorization**
18 **in certain counties; limitations; approval of agreement; liability for violations;**
19 **intervention in civil action by Authority.**

20 1. In a county whose population is less than 700,000, a person who holds a
21 certificate of public convenience and necessity which was issued for the operation
22 of a taxicab business may, upon approval from the Authority, lease a taxicab to an
23 independent contractor who does not hold a certificate of public convenience and
24 necessity. A person may lease only one taxicab to each independent contractor
with whom the person enters into a lease agreement. The taxicab may be used only
in a manner authorized by the lessor's certificate of public convenience and
necessity.

25 2. A person who enters into a lease agreement with an independent
26 contractor pursuant to this section shall submit a copy of the agreement to the

1 Authority for its approval. The agreement is not effective until approved by the
2 Authority.

3 3. A person who leases a taxicab to an independent contractor is jointly
4 and severally liable with the independent contractor for any violation of the
5 provisions of this chapter or the regulations adopted pursuant thereto, and shall
6 ensure that the independent contractor complies with such provisions and
7 regulations.

8 4. The Authority or any of its employees may intervene in a civil action
9 involving a lease agreement entered into pursuant to this section.

10 (Added to NRS by 1993, 2649; A 1997, 1948; 2011, 1312)

11
12
13 **NRS 706.475 Leasing of taxicab to independent contractor: Regulations of
14 Authority.**

15 1. The Authority shall adopt such regulations as are necessary to:

16 (a) Carry out the provisions of NRS 706.473; and

17 (b) Ensure that the taxicab business remains safe, adequate and
18 reliable.

19 2. Such regulations must include, without limitation:

20 (a) The minimum qualifications for an independent contractor;

21 (b) Requirements related to liability insurance;

22 (c) Minimum safety standards; and

23 (d) The procedure for approving a lease agreement and the provisions
24 that must be included in a lease agreement concerning the grounds for the
25 revocation of such approval.

26 (Added to NRS by 1993, 2649; A 1997, 1949)