

SENATE BILL NO. 224—COMMITTEE ON
COMMERCE, LABOR AND ENERGY

MARCH 6, 2015

Referred to Committee on Commerce, Labor and Energy

SUMMARY—Revises provisions relating to employment.
(BDR 53-985)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

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

AN ACT relating to employment; establishing a conclusive presumption that a person is an independent contractor if certain conditions are met; excluding the relationship between a principal and an independent contractor from certain provisions governing the payment of minimum wage to an employee; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

1 Section 16 of Article 15 of the Nevada Constitution defines the term
2 “employee” and requires each employer to pay a certain minimum wage to each
3 employee. Existing law imposes certain additional requirements relating to
4 compensation, wages and hours of employees. (Chapter 608 of NRS) **Section 1** of
5 this bill establishes a conclusive presumption that a person is an independent
6 contractor, rather than an employee, if certain conditions are met. **Section 5** of this
7 bill excludes the relationship between a principal and an independent contractor
8 from those relationships that constitute employment relationships for the purpose of
9 requiring the payment of a minimum wage. **Section 7** of this bill applies the
10 provisions of this bill to any action or proceeding to recover unpaid wages pursuant
11 to a requirement to pay a minimum wage in which a final decision has not been
12 rendered as of the effective date of this bill.



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

1 **Section 1.** Chapter 608 of NRS is hereby amended by adding
2 thereto a new section to read as follows:

3 ***1. For the purposes of this chapter, a person is conclusively***
4 ***presumed to be an independent contractor if:***

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

11 ***(b) The person is required by the contract with the principal to***
12 ***hold any state or local business license and to maintain any***
13 ***occupational license, insurance or bonding that may be required***
14 ***by law for the trade or profession in which the person engages***
15 ***pursuant to the contract; and***

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

17 ***(1) Notwithstanding the exercise of any control necessary***
18 ***to comply with any statutory, regulatory or contractual***
19 ***obligations, the person has control and discretion over the means***
20 ***and manner of the performance of any work and the result of the***
21 ***work, rather than the means or manner by which the work is***
22 ***performed, is the primary element bargained for by the principal***
23 ***in the contract.***

24 ***(2) Except for an agreement with the principal relating to***
25 ***the completion schedule, range of work hours or, if the work***
26 ***contracted for is entertainment, the time such entertainment is to***
27 ***be presented, the person has control over the time the work is***
28 ***performed.***

29 ***(3) The person is not required to work exclusively for one***
30 ***principal unless:***

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

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

35 ***(4) The person is free to hire employees to assist with the***
36 ***work.***

37 ***(5) The person contributes a substantial investment of***
38 ***capital in the business of the person, including, without limitation,***
39 ***the purchase or lease of ordinary tools, material and equipment***
40 ***regardless of source and the lease of any work space from the***
41 ***principal required to perform the work for which the person was***
42 ***engaged. The determination of whether an investment of capital is***



1 *substantial for the purpose of this paragraph must be made on the*
2 *basis of the amount of income the person receives and the*
3 *equipment commonly used in the trade or profession in which*
4 *the person engages.*

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

9 *3. As used in this section, "foreign national" has the meaning*
10 *ascribed to it in NRS 294A.325.*

11 **Sec. 2.** (Deleted by amendment.)

12 **Sec. 3.** (Deleted by amendment.)

13 **Sec. 4.** (Deleted by amendment.)

14 **Sec. 5.** NRS 608.255 is hereby amended to read as follows:

15 608.255 For the purposes of this chapter and any other
16 statutory or constitutional provision governing the minimum wage
17 paid to an employee, the following relationships do not constitute
18 employment relationships and are therefore not subject to those
19 provisions:

20 1. The relationship between a rehabilitation facility or
21 workshop established by the Department of Employment, Training
22 and Rehabilitation pursuant to chapter 615 of NRS and an individual
23 with a disability who is participating in a training or rehabilitative
24 program of such a facility or workshop.

25 2. The relationship between a provider of jobs and day training
26 services which is recognized as exempt pursuant to the provisions of
27 26 U.S.C. § 501(c)(3) and which has been issued a certificate by the
28 Division of Public and Behavioral Health of the Department of
29 Health and Human Services pursuant to NRS 435.130 to 435.310,
30 inclusive, and a person with an intellectual disability or a person
31 with a related condition participating in a jobs and day training
32 services program.

33 *3. The relationship between a principal and an independent*
34 *contractor.*

35 **Sec. 6.** (Deleted by amendment.)

36 **Sec. 7.** The amendatory provisions of this act apply to an
37 action or proceeding to recover unpaid wages pursuant to Section 16
38 of Article 15 of the Nevada Constitution or NRS 608.250 to
39 608.290, inclusive, in which a final decision has not been rendered
40 before, on or after the effective date of this act.

41 **Sec. 8.** This act becomes effective upon passage and approval.



