

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 necessary state or local business license and to maintain***  
13 ***any necessary occupational license, insurance or bonding; and***

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

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

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

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

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

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

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

35       ***(5) The person contributes a substantial investment of***  
36 ***capital in the business of the person, including, without limitation,***  
37 ***the:***

38       ***(I) Purchase or lease of ordinary tools, material and***  
39 ***equipment regardless of source;***

40       ***(II) Obtaining of a license or other permission from the***  
41 ***principal to access any work space of the principal to perform the***  
42 ***work for which the person was engaged; and***



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

3            *↪ The determination of whether an investment of capital is*  
4 *substantial for the purpose of this subparagraph must be made on*  
5 *the basis of the amount of income the person receives, the*  
6 *equipment commonly used and the expenses commonly incurred*  
7 *in the trade or profession in which the person engages.*

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

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

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

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

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

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

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

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

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

37            *3. The relationship between a principal and an independent*  
38 *contractor.*

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

40            **Sec. 7.** The amendatory provisions of this act apply to an  
41 action or proceeding to recover unpaid wages pursuant to Section 16  
42 of Article 15 of the Nevada Constitution or NRS 608.250 to  
43 608.290, inclusive, in which a final decision has not been rendered  
44 before, on or after the effective date of this act.



\* S B 2 2 4 R 2 \*

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

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\* S B 2 2 4 R 2 \*