(REPRINTED WITH ADOPTED AMENDMENTS)
THIRD REPRINT **S.B. 259**

SENATE BILL NO. 259–SENATOR PORTER

FEBRUARY 25, 1999

Referred to Committee on Taxation

SUMMARY—Revises provisions governing taxation of certain businesses. (BDR 32-1099)

FISCAL NOTE: Effect on Local Government: Yes.
Effect on the State or on Industrial Insurance: Yes.

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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 business; revising the requirements for certain businesses to qualify for a partial abatement of certain taxes imposed on the personal property of the business or to comply with certain duties imposed for the privilege of conducting business in this state; increasing the membership of the commission on tourism; revising the provisions concerning legislative appropriations to the commission on economic development for awarding grants to develop certain programs for occupational education; and providing other matters properly relating thereto.

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

Section 1. NRS 361.0687 is hereby amended to read as follows:

361.0687 1. A person who intends to locate or expand a business in this state may apply to the commission on economic development for a partial abatement from the taxes imposed by this chapter on the personal property of the new or expanded business.

2. The commission on economic development may approve an application for a partial abatement if the commission makes the following determinations:

(a) The goals of the business are consistent with the goals of the commission and the community concerning industrial development and diversification.

(b) The abatement is a significant factor in the decision of the applicant to locate or expand a business in this state or the appropriate affected local government determines that the abatement will be beneficial to the economic development of the community.

(c) The average hourly wage which will be paid by the new or expanded business to its employees in this state is at least 125 percent of the average statewide industrial hourly wage as established by the employment security division of the department of employment, training and rehabilitation on July 1 of each fiscal year.

(d) The business will provide a health insurance plan for all employees that includes an option for health insurance coverage for dependents of the employees.

(e) The cost to the business for the benefits the business provides to its employees in this state will meet the minimum requirements for benefits established by the commission pursuant to subsection ~~[8.]~~ ***9.***

(f) A capital investment for personal property will be made to locate or expand the business in Nevada which is at least:

(1) ~~[If]~~ ***Except as otherwise provided in subparagraph (2), if*** the personal property directly related to the establishment of the business in this state is primarily located in a county whose population:

(I) Is 100,000 or more, $50,000,000.

(II) Is less than 100,000, $20,000,000.

(2) If the personal property directly related to the ***establishment of the business in this state is primarily located in a city or town whose population is less than 25,000, and the city or town is located in a county whose population is 100,000 or more, $20,000,000.***

(3) Except as otherwise provided in subparagraph (4), if the personal property directly related to the expansion of the business is primarily located in a county whose population:

(I) Is 100,000 or more, $10,000,000.

(II) Is less than 100,000, $4,000,000.

(4) If the personal property directly related to the expansion of the business is primarily located in a city or town whose population is less than 25,000, and that city or town is located in a county whose population is 100,000 or more, $4,000,000.

(g) The business will create at least the following number of new, full-time and permanent jobs in the State of Nevada by the fourth quarter that it is in operation:

(1) ~~[If]~~ ***Except as otherwise provided in subparagraph (2), if*** a new business will be primarily located in a county whose population:

(I) Is 100,000 or more, 100 jobs.

(II) Is less than 100,000, 35 jobs.

(2) If ***a new business will be primarily located in a city or town whose population is less than 25,000, and that city or town is located in a county whose population is 100,000 or more, 35 jobs.***

(3) Except as otherwise provided in subparagraph (4), if an expanded business will be primarily located in a county whose population:

(I) Is 100,000 or more, and the business has at least 100 employees in this state, 20 jobs. An expanded business primarily located in such a county that has less than 100 employees is not eligible for a partial abatement pursuant to this section.

(II) Is less than 100,000, and the business has at least 35 employees in this state, 10 jobs. An expanded business primarily located in such a county that has less than 35 employees is not eligible for a partial abatement pursuant to this section.

(4) If an expanded business that has at least 35 employees in this state will be primarily located in a city or town whose population is less than 25,000, and that city or town is located in a county whose population is 100,000 or more, 10 jobs. An expanded business primarily located in such a city or town that has less than 35 employees is not eligible for a partial abatement pursuant to this section.

(h) For the expansion of a business primarily located ~~[in]~~ ***:***

(1) Except as otherwise provided in subparagraph (3), in a county whose population ~~[:~~

~~(1) Is]~~ ***is*** 100,000 or more, the book value of the assets of the business in this state is at least $20,000,000.

(2) ~~[Is]~~ ***In a county whose population is*** less than 100,000, the book value of the assets of the business in this state is at least $5,000,000.

(3) In a city or town whose population is less than 25,000, and that city or town is located in a county whose population is 100,000 or more, the book value of the assets of the business in this state is at least $5,000,000.

(i) The business is registered pursuant to the laws of this state or the applicant commits to obtain a ~~[valid]~~ business license and all other permits required by the county, city or town in which the business operates.

(j) The proposed abatement has been approved by the governing body of the appropriate affected local government as determined pursuant to the regulations adopted pursuant to subsection ~~[8.]~~ ***9.*** In determining whether to approve a proposed abatement, the governing body shall consider whether the taxes to be paid by the business are sufficient to pay for any investment required to be made by the local government for services associated with the relocation or expansion of the business, including, without limitation, costs related to the construction and maintenance of roads, sewer and water services, fire and police protection and the construction and maintenance of schools.

(k) The applicant has executed an agreement with the commission which states that the business will continue in operation in Nevada for 10 or more years after the date on which a certificate of eligibility for the abatement is issued pursuant to subsection 5 and will continue to meet the eligibility requirements ~~[contained]~~ ***set forth*** in this subsection. The agreement must bind the successors in interest of the business for the required period.

3. An applicant shall, upon the request of the executive director of the commission on economic development, furnish him with copies of all records necessary to verify that the applicant meets the requirements of subsection 2.

4. The percentage of the abatement must be 50 percent of the taxes payable each year.

5. If an application for a partial abatement is approved, the commission on economic development shall immediately forward a certificate of eligibility for the abatement to:

(a) The department; and

(b) The county assessor of each county in which personal property directly related to the establishment or expansion of the business will be located.

6. Upon receipt by the department of the certificate of eligibility, the taxpayer is eligible for an abatement from the tax imposed by this chapter for 10 years:

(a) For the expansion of a business, on all personal property of the business that is located in Nevada and directly related to the expansion of the business in this state.

(b) For a new business, on all personal property of the business that is located in Nevada and directly related to the establishment of the business in this state.

7. If a business for which an abatement has been approved is not maintained in this state in accordance with the agreement required ~~[in]~~ ***pursuant to*** subsection 2, for at least 10 years after the commission on economic development approved the abatement, the person who applied for the abatement shall repay to ~~[the]~~ ***each*** county treasurer ~~[or treasurers]~~ who would have received the taxes but for the abatement the total amount of all taxes that were abated pursuant to this section. The person who applied for the abatement shall pay interest on the amount due at the rate of 10 percent per annum for each month, or portion thereof, from the last day of the month following the period for which the payment would have been made if the abatement had not been granted until the date of the actual payment of the tax.

8. A county treasurer:

(a) Shall deposit any money that he receives pursuant to subsection 7 in one or more of the funds established by a local government of the county pursuant to NRS 354.611, 354.6113 or 354.6115; and

(b) May use the money deposited pursuant to paragraph (a) only for the purposes authorized by NRS 354.611, 354.6113 and 354.6115.

9. The commission on economic development shall adopt regulations necessary to carry out the provisions of this section. The regulations must include, but not be limited to:

(a) A method for determining the appropriate affected local government to approve a proposed abatement and the procedure for obtaining ~~[such]~~ ***that*** approval; and

(b) Minimum requirements for benefits that a business applying for a partial abatement must offer to its employees to be approved for the partial abatement.

10. The department shall adopt regulations concerning how county assessors shall administer partial abatements approved pursuant to this section.

11. An applicant for an abatement who is aggrieved by a final decision of the commission on economic development may petition for judicial review in the manner provided in chapter 233B of NRS.

Sec. 2. NRS 364A.020 is hereby amended to read as follows:

364A.020 1. "Business" includes:

(a) A corporation, partnership, proprietorship, business association and any other similar organization that conducts an activity for profit;

(b) The activities of a natural person which are deemed to be a business pursuant to NRS 364A.120; and

(c) A trade show or convention held in this state in which a business described in paragraph (a) or (b) takes part, or which a person who conducts such a business attends, for a purpose related to the conduct of the business.

2. The term includes an independent contractor.

3. The term does not include:

(a) A nonprofit religious, charitable, fraternal or other organization that qualifies as a tax-exempt organization pursuant to 26 U.S.C. § 501(c); ~~[or]~~

(b) A governmental entity ~~[.]~~ ***; or***

(c) A business that creates or produces motion pictures. As used in this paragraph, "motion pictures" has the meaning ascribed to it in NRS 231.020.

Sec. 3. NRS 364A.130 is hereby amended to read as follows:

364A.130 1. Except as otherwise provided in subsection 6 ***,*** ~~[and NRS 364A.153,]~~ a person shall not conduct a business in this state unless he has a business license issued by the department.

2. The application for a business license must:

(a) Be made upon a form prescribed by the department;

(b) Set forth the name under which the applicant transacts or intends to transact business and the location of his place or places of business;

(c) Declare the estimated number of employees for the previous calendar quarter;

(d) Be accompanied by a fee of $25; and

(e) Include any other information that the department deems necessary.

3. The application must be signed by:

(a) The owner, if the business is owned by a natural person;

(b) A member or partner, if the business is owned by an association or partnership; or

(c) An officer or some other person specifically authorized to sign the application, if the business is owned by a corporation.

4. If the application is signed pursuant to paragraph (c) of subsection 3, written evidence of the signer's authority must be attached to the application.

5. For the purposes of this chapter, a person shall be deemed to conduct a business in this state if a business for which the person is responsible:

(a) Is incorporated pursuant to chapter 78 or 78A of NRS;

(b) Has an office or other base of operations in this state; or

(c) Pays wages or other remuneration to a natural person who performs in this state any of the duties for which he is paid.

6. A person who takes part in a trade show or convention held in this state for a purpose related to the conduct of a business is not required to obtain a business license specifically for that event.

Sec. 4. NRS 364A.170 is hereby amended to read as follows:

364A.170 1. A proposed business that qualifies pursuant to the provisions of this section is entitled to an exemption of:

(a) Eighty percent of the amount of tax otherwise due pursuant to NRS 364A.140 during the first 4 quarters of its operation;

(b) Sixty percent of the amount of tax otherwise due pursuant to NRS 364A.140 during the second 4 quarters of its operation;

(c) Forty percent of the amount of tax otherwise due pursuant to NRS 364A.140 during the third 4 quarters of its operation; and

(d) Twenty percent of the amount of tax otherwise due pursuant to NRS 364A.140 during the fourth 4 quarters of its operation.

2. A proposed business is entitled to the exemption pursuant to subsection 1 if:

(a) ~~[In]~~ ***Except as otherwise provided in paragraph (b), in*** a county whose population is 35,000 or more:

(1) The business will have 75 or more full-time employees on the payroll of the business by the fourth quarter that it is in operation;

(2) Establishing the business will require the business to make a capital investment of $1,000,000 in Nevada; and

(3) The exemption is approved by the commission on economic development pursuant to subsection 3.

(b) In a county whose population is less than 35,000 ~~[:]~~ ***or in a city or town located in a county specified in paragraph (a) whose population is less than 25,000:***

(1) The business will have 25 or more full-time employees on the payroll of the business by the fourth quarter that it is in operation;

(2) Establishing the business will require the business to make a capital investment of $250,000 in Nevada; and

(3) The exemption is approved by the commission on economic development pursuant to subsection 3.

3. A proposed business must apply to the commission on economic development to obtain the exemption authorized pursuant to this section. The commission shall certify a business's eligibility for the exemption pursuant to this section if:

(a) The proposed business commits to the requirements of subparagraphs (1) and (2) of paragraph (a) or (b) of subsection 2, whichever is applicable; and

(b) The proposed business is consistent with the commission's plan for economic diversification and development.

Upon certification, the commission shall immediately forward the certificate of eligibility for the exemption to the Nevada tax commission.

4. Upon receipt of ~~[such a]~~ ***the*** certificate, the Nevada tax commission shall include the exemption in the calculation of the tax paid by the business. A business for which an exemption is approved that does not:

(a) Have the required number of full-time employees on the payroll of the business by the fourth quarter that it is in operation; or

(b) Make the required capital investment in Nevada in the course of establishing the business,

~~[is required to]~~ ***shall*** repay to the department the amount of the exemption that was allowed pursuant to this section before the business's failure to comply unless the Nevada tax commission determines that the business has substantially complied with the requirements of this section. The business is also required to pay interest on the amount due at the rate most recently established pursuant to NRS 99.040 for each month, or portion thereof, from the last day of the month following the period for which the payment would have been made had the exemption not been granted until the date of payment of the tax.

5. The commission on economic development shall adopt regulations governing the determination made pursuant to subsection 3 of a proposed business's eligibility for the exemption provided in this section.

6. The Nevada tax commission:

(a) Shall adopt regulations governing the investments that qualify for the purposes of the required capital investment pursuant to subparagraph (2) of paragraph (a) or (b) of subsection 2.

(b) May adopt such other regulations as are necessary to carry out the provisions of this section.

Sec. 5. NRS 231.068 is hereby amended to read as follows:

231.068 ***1.*** The commission on economic development, to the extent of legislative appropriations, may grant money to a postsecondary educational institution to develop a program for occupational education which is designed to teach skills in a short ~~[time]~~ ***period*** to persons who are needed for employment by new or existing businesses.

2. Any money appropriated to the commission on economic development for awarding grants to develop a program specified in subsection 1 must be accounted for separately in the state general fund. The money in the account:

(a) Does not revert to the state general fund at the end of any fiscal year; and

(b) Must be carried forward to the next fiscal year.

Sec. 6. NRS 231.170 is hereby amended to read as follows:

231.170 1. The commission on tourism is composed of the lieutenant governor, who is its chairman, and ~~[six]~~ ***eight*** members who are appointed by the governor.

2. The governor shall appoint as members of the commission persons who are informed on and have experience in travel and tourism, including the business of gaming.

3. The chief administrative officers of ***the*** county fair and recreation boards ~~[of counties whose population is 100,000 or more]~~ ***or, if there is no county fair and recreation board in the county, the chairman of the board of county commissioners, of the three counties that paid the largest amount of the proceeds from the taxes imposed on the revenue from the rental of transient lodging to the department of taxation for deposit with the state treasurer for credit to the fund for the promotion of tourism created by NRS 231.250 for the previous fiscal year*** are ex officio but nonvoting members of the commission. ***A change in any member of the commission who serves pursuant to the provisions of this subsection that is required because of a change in the amount of the proceeds paid to the department of taxation by each county must be effective on January 1 of the calendar year immediately following the fiscal year in which the proceeds were paid to the department of taxation.***

4. ~~[The]~~ ***In addition to the appointments made pursuant to subsection 3, the*** governor shall appoint ***:*** ~~[at least one member who is a resident of:]~~

(a) ***At least one member who is a resident of*** Clark County.

(b) ***At least one member who is a resident of*** Washoe County.

(c) ~~[A county]~~ ***At least two members who are residents of counties*** whose population is ~~[35,000]~~ ***50,000*** or less.

(d) One member who is a resident of any county in this state.

Sec. 7. NRS 608.300 is hereby amended to read as follows:

608.300 As used in NRS 608.300 to 608.330, inclusive, unless the context otherwise requires:

1. "Artist" means an actor, musician, dancer or athlete.

2. "Production" means ~~[:~~

~~(a) A stage production; or~~

~~(b) A motion picture, as that term is defined in NRS 231.020, that uses artists.]~~ ***a stage production, concert, trade show, exhibition, convention or sporting event.*** The term includes the technical personnel used to create and produce the production.

3. "Producer-promoter-employer" means a natural person who, or a firm, association or corporation which, supervises or finances a production or attempts to organize a production. ~~[The term also includes a company that, in connection with the production of a motion picture within this state:~~

~~(a) Is hired or established to organize or manage the payroll of the production and is the employer of record of any or all of the persons engaged in the production; or~~

~~(b) Is responsible for all of the debts and obligations incurred by a motion picture company in the production.]~~

Sec. 8. NRS 608.310 is hereby amended to read as follows:

608.310 1. Except as otherwise provided in subsection 4, a producer-promoter-employer intending to do business in this state must obtain a permit from the labor commissioner.

2. An application for the permit required by subsection 1 must contain information concerning:

(a) The applicant's name and permanent address;

(b) The financing for the production;

(c) The type of production intended by the applicant, the number of artists, technical personnel and other persons required for the production and where the applicant intends to exhibit the production; and

(d) Such other information as the labor commissioner may require by regulation for the protection of persons associated with the entertainment industry.

3. The commissioner may by regulation require a reasonable fee for processing an application.

4. The provisions of this section do not apply to any producer-promoter-employer who produces proof to the commissioner or, in a county whose population is 400,000 or more, produces proof to the department or agency within that county which is authorized to issue business licenses on behalf of the county that he:

(a) Has been in the business of a producer-promoter-employer in this state for the 5-year period immediately preceding the filing of the application and has had no successful wage claim filed with the labor commissioner during that period;

(b) Has sufficient tangible assets in this state which, if executed upon, would equal or exceed the amount of bond required; ***or***

(c) Holds a license to operate a nonrestricted gaming operation in this state ***.*** **[**~~; or~~

~~(d) If the producer-promoter-employer is engaged in the production of a motion picture, as that term is defined in NRS 231.020, within a county whose population is 400,000 or more, has contracted with a company to organize or manage the payroll of the production and the company is the employer of record of any or all of the persons engaged in the production.~~

~~5. If a producer-promoter-employer is exempt from the provisions of this section pursuant to subsection 4, he may request a waiver confirming that exemption from:~~

~~(a) The director of the division of motion pictures of the commission on economic development; or~~

~~(b) In a county whose population is 400,000 or more, the department or agency within that county which is authorized to issue business licenses on behalf of the county.~~

~~If the request is made pursuant to paragraph (b), the department or agency shall submit the request to the division of motion pictures in accordance with NRS 608.325. The labor commissioner shall, within 1 working day, approve such a request upon confirmation that the producer-promoter-employer fulfills one or more of the criteria for an exemption set forth in subsection 4. A waiver approved pursuant to this subsection is effective for a period of 5 years unless the labor commissioner determines that good cause exists to revoke the waiver. Upon the expiration of a waiver at the end of the 5-year period, the labor commissioner may extend the waiver for an additional period if the labor commissioner determines that the producer-promoter-employer has acted in good faith and has complied with the statutes and regulations of this state.~~**]**

Sec. 9. NRS 608.330 is hereby amended to read as follows:

608.330 Any person who fails to comply with the provisions of NRS 608.300 to 608.330, inclusive **[**~~:~~

~~1. Is~~**]** ***, is*** guilty of a misdemeanor ***.*** **[**~~; and~~

~~2. May be prohibited by the division of motion pictures of the commission on economic development from proceeding with the production until the division determines that he is in compliance with those provisions.~~**]**

Sec. 10. NRS 364A.153 and 608.325 are hereby repealed.

TEXT OF REPEALED SECTIONS

364A.153 Responsibility of certain agencies to collect tax from out-of-state businesses engaged in creating or producing motion pictures in Nevada.

1. The division of motion pictures of the commission on economic development or, in a county whose population is 400,000 or more, the department or agency within that county which is authorized to issue business licenses on behalf of the county, as agents of the department of taxation, shall collect the tax imposed by this chapter from those businesses that engage in the business of creating or producing motion pictures, as that term is defined in NRS 231.020, that are not residents or do not have a permanent place of business in this state. All taxes collected pursuant to this subsection must be immediately forwarded to the department upon receipt.
2. The tax must be calculated pursuant to NRS 364A.140 and 364A.150 upon the number of hours worked in this state, but a person who conducts a business described in subsection 1 need not obtain a business license under this chapter.

608.325 Duties of certain agencies upon request for waiver or posting of bond by producer-promoter-employer; effect of request for waiver or posting of bond. In a county whose population is 400,000 or more, if the department or agency within that county which is authorized to issue business licenses on behalf of the county receives:

1. A request for a waiver pursuant to subsection 5 of NRS 608.310; or
2. A bond posted pursuant to NRS 608.320,

the department or agency shall, within 1 working day, transmit the request or bond to the division of motion pictures of the commission on economic development. Upon the receipt of a request or bond, the producer-promoter-employer to whom the request or bond pertains shall be deemed to have complied with NRS 231.128.

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