

SENATE BILL NO. 388—COMMITTEE ON TAXATION

MARCH 29, 2005

Referred to Committee on Taxation

SUMMARY—Revises provisions governing applicability of requirements for state business license and certain taxes on businesses. (BDR 32-821)

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

~

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

AN ACT relating to business; revising the provisions governing the applicability of the requirements for a state business license and certain taxes on businesses; and providing other matters properly relating thereto.

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

- 1 **Section 1.** NRS 360.765 is hereby amended to read as follows:
2 360.765 1. ~~["Business" includes:~~
3 ~~—(a) A corporation, partnership, proprietorship, limited liability~~
4 ~~company, business association, joint venture, limited liability~~
5 ~~partnership, business trust and their equivalents organized under the~~
6 ~~laws of this State or another jurisdiction and any other person that~~
7 ~~conducts an activity]~~ *Except as otherwise provided in subsection 2,*
8 *"business" means:*
9 *(a) Any person, except a natural person, that performs a*
10 *service or engages in a trade for profit; ~~and~~*
11 ~~—(b) The activities of a] or~~
12 *(b) Any natural person ~~[which are deemed to be a business~~*
13 ~~pursuant to NRS 360.785.] who performs a service or engages in a~~
14 *trade for profit if the person is required to file with the Internal*
15 *Revenue Service a Schedule C (Form 1040), Profit or Loss From*
16 *Business form, or its equivalent or successor form, a Schedule E*
17 *(Form 1040), Supplemental Income and Loss form, or its*



equivalent or successor form, or a Schedule F (Form 1040), Profit or Loss From Farming form, or its equivalent or successor form, for that activity.

2. The term does not include:

(a) A governmental entity.

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

(c) A person who operates a business from his home and earns from that business not more than 66 2/3 percent of the average annual wage, as computed for the preceding calendar year pursuant to chapter 612 of NRS and rounded to the nearest hundred dollars.

(d) A business whose primary purpose is to create or produce motion pictures. As used in this paragraph, "motion pictures" has the meaning ascribed to it in NRS 231.020.

Sec. 2. Chapter 363A of NRS is hereby amended by adding thereto a new section to read as follows:

"Business activity" means the performance of a service or engagement in a trade for profit.

Sec. 3. NRS 363A.010 is hereby amended to read as follows:

363A.010 As used in this chapter, unless the context otherwise requires, the words and terms defined in NRS 363A.020 to 363A.060, inclusive, *and section 2 of this act* have the meanings ascribed to them in those sections.

Sec. 4. NRS 363A.030 is hereby amended to read as follows:

363A.030 "Employer" means any financial institution who is required to pay a contribution pursuant to NRS 612.535 for any calendar quarter *with respect to any business activity of the financial institution*, except an Indian tribe, a nonprofit organization or a political subdivision. For the purposes of this section:

1. "Indian tribe" includes any entity described in subsection 10 of NRS 612.055.

2. "Nonprofit organization" means a nonprofit religious, charitable, fraternal or other organization that qualifies as a tax-exempt organization pursuant to 26 U.S.C. § 501(c).

3. "Political subdivision" means any entity described in subsection 9 of NRS 612.055.

Sec. 5. NRS 363A.050 is hereby amended to read as follows:

363A.050 1. Except as otherwise provided in subsection 2, "financial institution" means:

(a) An institution licensed, registered or otherwise authorized to do business in this State pursuant to the provisions of chapter 604, 645B, 645E or 649 of NRS or title 55 or 56 of NRS, or a similar



1 institution chartered or licensed pursuant to federal law and doing
2 business in this State;

3 (b) Any person primarily engaged in:

4 (1) The purchase, sale and brokerage of securities;

5 (2) Originating, underwriting and distributing issues of
6 securities;

7 (3) Buying and selling commodity contracts on either a spot
8 or future basis for the person's own account or for the account of
9 others, if the person is a member or is associated with a member of a
10 recognized commodity exchange;

11 (4) Furnishing space and other facilities to members for the
12 purpose of buying, selling or otherwise trading in stocks, stock
13 options, bonds or commodity contracts;

14 (5) Furnishing investment information and advice to others
15 concerning securities on a contract or fee basis;

16 (6) Furnishing services to holders of or brokers or dealers in
17 securities or commodities;

18 (7) Holding or owning the securities of banks for the sole
19 purpose of exercising some degree of control over the activities of
20 the banks whose securities the person holds;

21 (8) Holding or owning securities of companies other than
22 banks, for the sole purpose of exercising some degree of control
23 over the activities of the companies whose securities the person
24 holds;

25 (9) Issuing shares, other than unit investment trusts and face-
26 amount certificate companies, whose shares contain a provision
27 requiring redemption by the company upon request of the holder of
28 the security;

29 (10) Issuing shares, other than unit investment trusts and
30 face-amount certificate companies, whose shares contain no
31 provision requiring redemption by the company upon request by the
32 holder of the security;

33 (11) Issuing unit investment trusts or face-amount
34 certificates;

35 (12) The management of the money of trusts and foundations
36 organized for religious, educational, charitable or nonprofit research
37 purposes;

38 (13) The management of the money of trusts and foundations
39 organized for purposes other than religious, educational, charitable
40 or nonprofit research;

41 (14) Investing in oil and gas royalties or leases, or fractional
42 interests therein;

43 (15) Owning or leasing franchises, patents and copyrights
44 which the person in turn licenses others to use;



(16) Closed-end investments in real estate or related mortgage assets operating in such a manner as to meet the requirements of the Real Estate Investment Trust Act of 1960, as amended;

(17) Investing; or

(18) Any combination of the activities described in this paragraph,

↳ who is ~~doing~~ *conducting a business activity* in this State;

(c) Any other person conducting loan or credit card processing activities in this State; and

(d) Any other bank, bank holding company, national bank, savings association, federal savings bank, trust company, credit union, building and loan association, investment company, registered broker or dealer in securities or commodities, finance company, dealer in commercial paper or other business entity engaged in the business of lending money, providing credit, securitizing receivables or fleet leasing, or any related business entity, ~~doing~~ *conducting a business activity* in this State.

2. The term does not include a credit union organized under the provisions of chapter 678 of NRS or the Federal Credit Union Act.

Sec. 6. NRS 363A.130 is hereby amended to read as follows:

363A.130 1. There is hereby imposed an excise tax on each employer at the rate of 2 percent of the wages, as defined in NRS 612.190, paid by the employer during a calendar quarter with respect to employment ~~in~~ *in connection with the business activities of the employer.*

2. The tax imposed by this section must not be deducted, in whole or in part, from any wages of persons in the employment of the employer.

3. Each employer shall, on or before the last day of the month immediately following each calendar quarter for which the employer is required to pay a contribution pursuant to NRS 612.535:

(a) File with the Department:

(1) A return on a form prescribed by the Department; and

(2) A copy of any report required by the Employment Security Division of the Department of Employment, Training and Rehabilitation for determining the amount of the contribution required pursuant to NRS 612.535 for any wages paid by the employer during that calendar quarter; and

(b) Remit to the Department any tax due pursuant to this section for that calendar quarter.

4. Except as otherwise provided in subsection 5, an employer may deduct from the total amount of wages reported and upon which the excise tax is imposed pursuant to this section any amount



1 authorized pursuant to this section that is paid by the employer for
2 health insurance or a health benefit plan for its employees in the
3 calendar quarter for which the tax is paid. The amounts for which
4 the deduction is allowed include:

5 (a) For an employer providing a program of self-insurance for
6 its employees, all amounts paid during the calendar quarter for
7 claims, direct administrative services costs, including such services
8 provided by the employer, and any premiums paid for individual or
9 aggregate stop-loss insurance coverage. An employer is not
10 authorized to deduct the costs of a program of self-insurance unless
11 the program is a qualified employee welfare benefit plan pursuant to
12 the Employee Retirement Income Security Act of 1974, 29 U.S.C.
13 §§ 1001 et seq.

14 (b) The premiums for a policy of health insurance or reinsurance
15 for a health benefit plan for its employees.

16 (c) Any amounts paid by an employer to a Taft-Hartley trust
17 formed pursuant to 29 U.S.C. § 186(c)(5) for participation in an
18 employee welfare benefit plan.

19 (d) Such other similar payments for health care or insurance for
20 health care for employees as are authorized by the Department.

21 5. An employer may not deduct from the wages upon which
22 the excise tax is imposed pursuant to this section:

23 (a) Amounts paid for health care or premiums paid for insurance
24 for an industrial injury or occupational disease for which coverage is
25 required pursuant to chapters 616A to 616D, inclusive, or 617 of
26 NRS; or

27 (b) Any payments made by employees for health care or health
28 insurance or amounts deducted from the wages of employees for
29 such care or insurance.

30 6. An employer claiming the deduction allowed pursuant to
31 subsection 4 shall submit with the return filed pursuant to subsection
32 3 proof of the amount paid in the calendar quarter that qualifies for
33 the deduction. If the amount of the deduction exceeds the amount of
34 reported wages, the excess amount may be carried forward to the
35 following calendar quarter until the deduction is exhausted.

36 7. As used in this section ~~["employee"]~~ :

37 (a) *"Employee" means an employee whose wages are included*
38 *in the measure of the tax imposed by this section.*

39 (b) *"Employee welfare benefit plan" has the meaning ascribed*
40 *to it in 29 U.S.C. § 1002.*

41 **Sec. 7.** Chapter 363B of NRS is hereby amended by adding
42 thereto a new section to read as follows:

43 *"Business activity" means the performance of a service or*
44 *engagement in a trade for profit.*



1 **Sec. 8.** NRS 363B.010 is hereby amended to read as follows:

2 363B.010 As used in this chapter, unless the context otherwise
3 requires, the words and terms defined in NRS 363B.020 to
4 363B.050, inclusive, *and section 7 of this act* have the meanings
5 ascribed to them in those sections.

6 **Sec. 9.** NRS 363B.030 is hereby amended to read as follows:

7 363B.030 “Employer” means any employer who is required to
8 pay a contribution pursuant to NRS 612.535 for any calendar quarter
9 *with respect to any business activity of the employer*, except a
10 financial institution, an Indian tribe, a nonprofit organization or a
11 political subdivision. For the purposes of this section:

12 1. “Financial institution” has the meaning ascribed to it in
13 NRS 363A.050.

14 2. “Indian tribe” includes any entity described in subsection 10
15 of NRS 612.055.

16 3. “Nonprofit organization” means a nonprofit religious,
17 charitable, fraternal or other organization that qualifies as a tax-
18 exempt organization pursuant to 26 U.S.C. § 501(c).

19 4. “Political subdivision” means any entity described in
20 subsection 9 of NRS 612.055.

21 **Sec. 10.** NRS 363B.110 is hereby amended to read as follows:

22 363B.110 1. There is hereby imposed an excise tax on each
23 employer at the rate of 0.65 percent of the wages, as defined in NRS
24 612.190, paid by the employer during a calendar quarter with
25 respect to employment *in connection with the business activities*
26 *of the employer*.

27 2. The tax imposed by this section must not be deducted, in
28 whole or in part, from any wages of persons in the employment of
29 the employer.

30 3. Each employer shall, on or before the last day of the month
31 immediately following each calendar quarter for which the
32 employer is required to pay a contribution pursuant to
33 NRS 612.535:

34 (a) File with the Department:

35 (1) A return on a form prescribed by the Department; and

36 (2) A copy of any report required by the Employment
37 Security Division of the Department of Employment, Training and
38 Rehabilitation for determining the amount of the contribution
39 required pursuant to NRS 612.535 for any wages paid by the
40 employer during that calendar quarter; and

41 (b) Remit to the Department any tax due pursuant to this chapter
42 for that calendar quarter.

43 4. Except as otherwise provided in subsection 5, an employer
44 may deduct from the total amount of wages reported and upon
45 which the excise tax is imposed pursuant to this section any amount



1 authorized pursuant to this section that is paid by the employer for
2 health insurance or a health benefit plan for its employees in the
3 calendar quarter for which the tax is paid. The amounts for which
4 the deduction is allowed include:

5 (a) For an employer providing a program of self-insurance for
6 its employees, all amounts paid during the calendar quarter for
7 claims, direct administrative services costs, including such services
8 provided by the employer, and any premiums paid for individual or
9 aggregate stop-loss insurance coverage. An employer is not
10 authorized to deduct the costs of a program of self-insurance unless
11 the program is a qualified employee welfare benefit plan pursuant to
12 the Employee Retirement Income Security Act of 1974, 29 U.S.C.
13 §§ 1001 et seq.

14 (b) The premiums for a policy of health insurance or reinsurance
15 for a health benefit plan for its employees.

16 (c) Any amounts paid by an employer to a Taft-Hartley trust
17 formed pursuant to 29 U.S.C. § 186(c)(5) for participation in an
18 employee welfare benefit plan.

19 (d) Such other similar payments for health care or insurance for
20 health care for employees as are authorized by the Department.

21 5. An employer may not deduct from the wages upon which
22 the excise tax is imposed pursuant to this section:

23 (a) Amounts paid for health care or premiums paid for insurance
24 for an industrial injury or occupational disease for which coverage is
25 required pursuant to chapters 616A to 616D, inclusive, or 617 of
26 NRS; or

27 (b) Any payments made by employees for health care or health
28 insurance or amounts deducted from the wages of employees for
29 such care or insurance.

30 6. An employer claiming the deduction allowed pursuant to
31 subsection 4 shall submit with the return filed pursuant to subsection
32 3 proof of the amount paid in the calendar quarter that qualifies for
33 the deduction. If the amount of the deduction exceeds the amount of
34 reported wages, the excess amount may be carried forward to the
35 following calendar quarter until the deduction is exhausted.

36 7. As used in this section ~~["employee"]~~ :

37 (a) *"Employee" means an employee whose wages are included*
38 *in the measure of the tax imposed by this section.*

39 (b) *"Employee* welfare benefit plan" has the meaning ascribed
40 to it in 29 U.S.C. § 1002.

41 **Sec. 11.** NRS 360.785 is hereby repealed.

42 **Sec. 12.** This act becomes effective on July 1, 2005.



TEXT OF REPEALED SECTION

360.785 Activities of natural person constituting business.
The activity or activities conducted by a natural person shall be deemed to be a business that is subject to the provisions of NRS 360.760 to 360.795, inclusive, if the person is required to file with the Internal Revenue Service a Schedule C (Form 1040), Profit or Loss From Business Form, or its equivalent or successor form, a Schedule E (Form 1040), Supplemental Income and Loss Form, or its equivalent or successor form, or a Schedule F (Form 1040), Profit or Loss From Farming Form, or its equivalent or successor form, for the business.

③⑩



* S B 3 8 8 *