

ASSEMBLY BILL NO. 104—ASSEMBLYMEN HANSEN; PAUL
ANDERSON, DUNCAN, ELLISON, FIORE, GRADY, HARDY,
OSCARSON AND WHEELER

FEBRUARY 13, 2013

JOINT SPONSOR: SENATOR GUSTAVSON

Referred to Committee on Judiciary

SUMMARY—Revises provisions governing aliens unlawfully
present in the United States. (BDR 14-94)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: 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 immigration; providing under certain
circumstances for the verification of the immigration
status of persons who are arrested and booked into a jail
or correctional facility; requiring certain applicants for the
issuance or renewal of a state business license to submit
with the application a copy of certain tax forms; requiring
the Office of the Attorney General to negotiate and
implement a cooperative law enforcement agreement with
the Attorney General of the United States regarding the
enforcement of federal immigration laws by certain state
and local employees; requiring public employers to use E-
Verify to verify eligibility for employment for current and
prospective employees; requiring contractors and
subcontractors on a public work to use E-Verify to verify
eligibility for employment for workers on the public
work; and providing other matters properly relating
thereto.

Legislative Counsel's Digest:

- 1 **Section 1** of this bill requires a law enforcement agency, upon the arrest and
- 2 booking of a person into a jail or correctional facility, to: (1) verify the immigration
- 3 status of the person with federal immigration authorities; and (2) if the person is



verified as being an unauthorized alien, detain the person or transfer the person into federal custody, at the discretion of the federal immigration authorities, unless the person provides identification that would not have been issued to him or her absent proof of legal presence in the United States.

Existing law provides that an applicant for the issuance or renewal of a state business license must submit an application to the Secretary of State. (NRS 76.100, 76.130) **Sections 2 and 3** of this bill require that if an applicant for the issuance or renewal of a state business license employs five or more employees, the application for issuance or renewal, as applicable, must be accompanied by a copy of each Internal Revenue Service Form 1099 that the business was required to file in the preceding calendar year.

Federal law authorizes the Attorney General of the United States to enter into written agreements with states under which certain officers or employees of the state or a political subdivision of the state who are determined by the Attorney General of the United States to be qualified to perform a function of an immigration officer regarding the investigation, apprehension or detention of aliens in the United States may carry out such a function, at the expense of the state or political subdivision, and to the extent such function is consistent with state and local law. (8 U.S.C. § 1357(g)) **Section 4** of this bill requires the Attorney General of this State to negotiate and implement such an agreement.

Federal law establishes the federal "E-Verify system" as an electronic program through which employers verify the employment eligibility of their employees. (8 U.S.C. § 1324a) **Section 5** of this bill requires each public employer in this State to register and participate in the E-Verify system to verify the employment eligibility of current and prospective employees.

Under existing law, a contractor or subcontractor on a public work must comply with certain requirements, such as making employment decisions without discrimination based on race, color, creed, national origin, sex, sexual orientation or age. (NRS 338.125) **Section 6** of this bill requires a contractor or subcontractor on a public work to register and participate in the E-Verify system to verify the employment eligibility of all workers on the public work.

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

Section 1. Chapter 171 of NRS is hereby amended by adding thereto a new section to read as follows:

1. Except as otherwise provided in subsection 2, if a person is arrested and booked into a jail or correctional facility, the law enforcement agency having custody of the person shall ensure that a request for verification of the immigration status of the arrested person is submitted promptly to federal immigration authorities pursuant to 8 U.S.C. § 1373. The law enforcement agency that has custody of a person verified to be an unauthorized alien shall, at the discretion of the federal immigration authorities:

(a) Detain the person; or

(b) Transfer the person into federal custody.

2. A person whose immigration status is subject to verification pursuant to this section is presumed not to be an



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1 *unauthorized alien, and his or her immigration status need not be*
2 *verified with federal immigration authorities, if the person*
3 *provides to the law enforcement agency any of the following:*

4 *(a) A valid driver's license issued by the Department of Motor*
5 *Vehicles;*

6 *(b) A valid identification card issued by the Department of*
7 *Motor Vehicles; or*

8 *(c) Any valid document of identification issued by a federal,*
9 *state or local government, if:*

10 *(1) The document bears a photographic image of the*
11 *holder; and*

12 *(2) The entity that issued the document requires proof of*
13 *legal presence in the United States as a condition of issuance.*

14 *3. As used in this section, "unauthorized alien" has the*
15 *meaning ascribed to it in 8 U.S.C. § 1324a(h)(3).*

16 **Sec. 2.** NRS 76.100 is hereby amended to read as follows:

17 76.100 1. A person shall not conduct a business in this State
18 unless and until the person obtains a state business license issued by
19 the Secretary of State. If the person is:

20 (a) An entity required to file an initial or annual list with the
21 Secretary of State pursuant to this title, the person must obtain the
22 state business license at the time of filing the initial or annual list.

23 (b) Not an entity required to file an initial or annual list with the
24 Secretary of State pursuant to this title, the person must obtain the
25 state business license before conducting a business in this State.

26 2. An application for a state business license must:

27 (a) Be made upon a form prescribed by the Secretary of State;

28 (b) Set forth the name under which the applicant transacts or
29 intends to transact business, or if the applicant is an entity organized
30 pursuant to this title and on file with the Secretary of State, the exact
31 name on file with the Secretary of State, the entity number as
32 assigned by the Secretary of State, if known, and the location in this
33 State of the place or places of business;

34 (c) *If the applicant employs five or more employees, be*
35 *accompanied by a copy of each Internal Revenue Service Form*
36 *1099 that the business was required to file in the preceding year;*

37 (d) Be accompanied by a fee in the amount of \$100; and

38 ~~144~~ (e) Include any other information that the Secretary of
39 State deems necessary.

40 ➔ If the applicant is an entity organized pursuant to this title and on
41 file with the Secretary of State and the applicant has no location in
42 this State of its place of business, the address of its registered agent
43 shall be deemed to be the location in this State of its place of
44 business.

45 3. The application must be signed pursuant to NRS 239.330 by:



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- 1 (a) The owner of a business that is owned by a natural person.
- 2 (b) A member or partner of an association or partnership.
- 3 (c) A general partner of a limited partnership.
- 4 (d) A managing partner of a limited-liability partnership.
- 5 (e) A manager or managing member of a limited-liability
- 6 company.

7 (f) An officer of a corporation or some other person specifically
8 authorized by the corporation to sign the application.

9 4. If the application for a state business license is defective in
10 any respect or the fee required by this section is not paid, the
11 Secretary of State may return the application for correction or
12 payment.

13 5. The state business license required to be obtained pursuant
14 to this section is in addition to any license to conduct business that
15 must be obtained from the local jurisdiction in which the business is
16 being conducted.

17 6. For the purposes of this chapter, a person shall be deemed to
18 conduct a business in this State if a business for which the person is
19 responsible:

20 (a) Is organized pursuant to this title, other than a business
21 organized pursuant to:

22 (1) Chapter 82 or 84 of NRS; or

23 (2) Chapter 81 of NRS if the business is a nonprofit
24 religious, charitable, fraternal or other organization that qualifies as
25 a tax-exempt organization pursuant to 26 U.S.C. § 501(c).

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

27 (c) Has a registered agent in this State; or

28 (d) Pays wages or other remuneration to a natural person who
29 performs in this State any of the duties for which he or she is paid.

30 7. As used in this section, "registered agent" has the meaning
31 ascribed to it in NRS 77.230.

32 **Sec. 3.** NRS 76.130 is hereby amended to read as follows:

33 76.130 1. A person who applies for renewal of a state
34 business license shall submit a fee in the amount of \$100 to the
35 Secretary of State:

36 (a) If the person is an entity required to file an annual list with
37 the Secretary of State pursuant to this title, at the time the person
38 submits the annual list to the Secretary of State, unless the person
39 submits a certificate or other form evidencing the dissolution of the
40 entity; or

41 (b) If the person is not an entity required to file an annual list
42 with the Secretary of State pursuant to this title, on the last day of
43 the month in which the anniversary date of issuance of the state
44 business license occurs in each year, unless the person submits a
45 written statement to the Secretary of State, at least 10 days before



1 that date, indicating that the person will not be conducting a
2 business in this State after that date.

3 *↪ If the person employs five or more employees, the application*
4 *for renewal must be accompanied by a copy of each Internal*
5 *Revenue Service Form 1099 that the business was required to file*
6 *in the preceding calendar year.*

7 2. The Secretary of State shall, 90 days before the last day for
8 filing an application for renewal of the state business license of a
9 person who holds a state business license, provide to the person a
10 notice of the state business license fee due pursuant to this section
11 and a reminder to file the application for renewal required pursuant
12 to this section. Failure of any person to receive a notice does not
13 excuse the person from the penalty imposed by law.

14 3. If a person fails to submit the annual state business license
15 fee required pursuant to this section in a timely manner and the
16 person is:

17 (a) An entity required to file an annual list with the Secretary of
18 State pursuant to this title, the person:

19 (1) Shall pay a penalty of \$100 in addition to the annual state
20 business license fee;

21 (2) Shall be deemed to have not complied with the
22 requirement to file an annual list with the Secretary of State; and

23 (3) Is subject to all applicable provisions relating to the
24 failure to file an annual list, including, without limitation, the
25 provisions governing default and revocation of its charter or right to
26 transact business in this State, except that the person is required to
27 pay the penalty set forth in subparagraph (1).

28 (b) Not an entity required to file an annual list with the Secretary
29 of State, the person shall pay a penalty in the amount of \$100 in
30 addition to the annual state business license fee. The Secretary of
31 State shall provide to the person a written notice that:

32 (1) Must include a statement indicating the amount of the
33 fees and penalties required pursuant to this section and the costs
34 remaining unpaid.

35 (2) May be provided electronically, if the person has
36 requested to receive communications by electronic transmission, by
37 electronic mail or other electronic communication.

38 **Sec. 4.** Chapter 228 of NRS is hereby amended by adding
39 thereto a new section to read as follows:

40 *1. The Attorney General of this State shall negotiate and*
41 *enter into a written agreement with the Attorney General of the*
42 *United States providing for the designation of certain investigative*
43 *or law enforcement officers as qualified to perform certain*
44 *functions of an immigration officer in relation to the investigation,*
45 *apprehension or detention of any alien in this State.*



1 2. *An agreement entered into pursuant to subsection 1 must:*
2 (a) *Meet the requirements of 8 U.S.C. § 1357(g).*
3 (b) *Be signed on behalf of the State by the Attorney General of*
4 *this State and the Governor.*

5 3. *This section shall not be construed to require the existence*
6 *of an agreement pursuant to subsection 1 for any investigative or*
7 *law enforcement officer of this State or a political subdivision*
8 *thereof to communicate with the Federal Government regarding*
9 *the immigration status of any person, or otherwise to cooperate*
10 *with the Federal Government in the identification, apprehension,*
11 *detention or removal of any alien not lawfully present in the*
12 *United States, to the full extent permitted by law.*

13 4. *As used in this section:*
14 (a) *“Alien” has the meaning ascribed to it in 8 U.S.C. § 1101.*
15 (b) *“Immigration officer” has the meaning ascribed to it in 8*
16 *U.S.C. § 1101.*

17 (c) *“Investigative or law enforcement officer” has the meaning*
18 *ascribed to it in NRS 179.435.*

19 **Sec. 5.** Chapter 281 of NRS is hereby amended by adding
20 thereto a new section to read as follows:

21 1. *Each public employer in this State shall register and*
22 *participate in the E-Verify system to verify the employment*
23 *eligibility of:*

24 (a) *Each prospective employee of the public employer; and*
25 (b) *Each person employed by the public employer.*

26 2. *As used in this section, “E-Verify system” means an*
27 *electronic program through which employers verify the*
28 *employment eligibility of their employees administered through*
29 *the United States Department of Homeland Security and*
30 *established pursuant to 8 U.S.C. § 1324a.*

31 **Sec. 6.** Chapter 338 of NRS is hereby amended by adding
32 thereto a new section to read as follows:

33 1. *Each contractor and subcontractor on a public work shall*
34 *register and participate in the E-Verify system to verify the*
35 *employment eligibility of all workers on the public work.*

36 2. *As used in this section, “E-Verify system” means an*
37 *electronic program through which employers verify the*
38 *employment eligibility of their employees administered through*
39 *the United States Department of Homeland Security and*
40 *established pursuant to 8 U.S.C. § 1324a.*

41 **Sec. 7.** NRS 338.015 is hereby amended to read as follows:

42 338.015 1. The Labor Commissioner shall enforce the
43 provisions of NRS 338.010 to 338.130, inclusive **H**, and *section 6*
44 *of this act.*



1 2. In addition to any other remedy or penalty provided in this
2 chapter, if any person, including, without limitation, a public body,
3 violates any provision of NRS 338.010 to 338.130, inclusive, *and*
4 *section 6 of this act* or any regulation adopted pursuant thereto, the
5 Labor Commissioner may, after providing the person with notice
6 and an opportunity for a hearing, impose against the person an
7 administrative penalty of not more than \$5,000 for each such
8 violation.

9 3. The Labor Commissioner may, by regulation, establish a
10 sliding scale based on the severity of the violation to determine the
11 amount of the administrative penalty to be imposed against the
12 person pursuant to this section.

13 4. The Labor Commissioner shall report the violation to the
14 Attorney General, and the Attorney General may prosecute the
15 person in accordance with law.

