

Amendment No. 599

Senate Amendment to Senate Bill No. 224	(BDR 53-985)
<b>Proposed by:</b> Senate Committee on Commerce, Labor and Energy	
<b>Amendment Box:</b> Replaces Amendment Nos. 308 and 575.	
<b>Amends:</b> Summary: No Title: Yes Preamble: No Joint Sponsorship: No Digest: Yes	

ASSEMBLY ACTION				Initial and Date	SENATE ACTION				Initial and Date
Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____	Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____
Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____
Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) variations of green bold underlining is language proposed to be added in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill proposed to be retained in this amendment.

AAK/JRS



Date: 4/15/2015

S.B. No. 224—Revises provisions relating to employment. (BDR 53-985)



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; ~~prohibiting a person from recovering unpaid wages in certain proceedings unless the person consents to his or her participation in writing;~~ and providing other matters properly relating thereto.

**Legislative Counsel's Digest:**

Section 16 of Article 15 of the Nevada Constitution defines the term "employee" and requires each employer to pay a certain minimum wage to each employee. Existing law imposes certain additional requirements relating to compensation, wages and hours of employees. (Chapter 608 of NRS) ~~Section 2 of this bill defines the term "independent contractor."~~ **Section 1 of this bill establishes a conclusive presumption that a person is an independent contractor, rather than an employee, if certain conditions are met.** Section 5 of this bill excludes the relationship between a principal and an independent contractor from those relationships that constitute employment relationships for the purpose of requiring the payment of a minimum wage. ~~Section 3 of this bill prohibits a person from recovering unpaid wages in a proceeding relating to the payment of a minimum wage unless the person consents in writing to become a plaintiff in such a proceeding and such a consent is filed with the court or agency in which the proceeding is brought.~~ Section 7 of this bill applies the provisions of this bill to any action or proceeding to recover unpaid wages pursuant to a requirement to pay a minimum wage in which a final decision has not been 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:

**Section 1.** Chapter 608 of NRS is hereby amended by adding thereto ~~the provisions set forth as sections 2 and 3 of this act,~~ **a new section to read as follows:**

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

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

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

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

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

18 (2) Except for an agreement with the principal relating to the completion  
19 schedule, range of work hours or, if the work contracted for is entertainment, the  
20 time such entertainment is to be presented, the person has control over the time  
21 the work is performed.

22 (3) The person is not required to work exclusively for one principal  
23 unless:

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

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

28 (4) The person is free to hire employees to assist with the work.

29 (5) The person contributes a substantial investment of capital in the  
30 business of the person, including, without limitation, the purchase or lease of  
31 ordinary tools, material and equipment regardless of source and the lease of any  
32 work space from the principal required to perform the work for which the person  
33 was engaged. The determination of whether an investment of capital is  
34 substantial for the purpose of this paragraph must be made on the basis of the  
35 amount of income the person receives and the equipment commonly used in the  
36 trade or profession in which the person engages.

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

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

43 Sec. 2. ~~["Independent contractor" means any person who renders service~~  
44 ~~for a specified recompense or no recompense for a specified result, under the~~  
45 ~~control of the person's principal as to the result of the person's work only and not~~  
46 ~~as to the means by which such result is accomplished. Factors that must be~~  
47 ~~considered to determine whether a person is an independent contractor are~~  
48 ~~whether the person:~~

49 ~~1. Is free to establish his or her days and hours of performance and is~~  
50 ~~substantially free from the control and direction of the person's principal.~~

51 ~~2. Is customarily engaged in a trade or business of the work being~~  
52 ~~performed which is established independently of the principal.~~

~~3. Is free to offer the same services to competitors of the principal or to customers of the competitors of the principal.~~

~~4. Receives compensation from the principal or from some other person or entity and is a tenant or customer of the principal.~~

~~5. Holds a current state business license issued by the Secretary of State pursuant to chapter 76 of NRS.~~

~~6. Intended to be an independent contractor rather than an employee of the principal at the time the person's services were engaged.~~

~~7. Does not have contributions, premiums or taxes imposed pursuant to chapters 363A, 363B, 612 and 616.1 to 617, inclusive, of NRS withheld or paid on his or her behalf by the principal.~~

~~8. Leases space or equipment from the principal.~~ (Deleted by amendment.)

**Sec. 3.** ~~[A person may not recover unpaid wages in a proceeding pursuant to Section 16 of Article 15 of the Nevada Constitution or this section and NRS 608.250 to 608.290, inclusive, unless he or she gives his or her consent in writing to become a plaintiff and his or her consent is filed with the court or agency in which the proceeding is brought.]~~ (Deleted by amendment.)

**Sec. 4.** ~~[NRS 608.007 is hereby amended to read as follows:  
608.007 As used in this chapter, unless the context otherwise requires, the words and terms defined in NRS 608.010 to 608.012, inclusive, and section 2 of this act have the meanings ascribed to them in those sections.]~~ (Deleted by amendment.)

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

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

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

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

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

**Sec. 6.** ~~[NRS 444.300 is hereby amended to read as follows:  
444.300 Any person employed by a children's camp on a written contract basis for a specified term longer than 1 week is exempt from the provisions of NRS 608.250 to 608.290, inclusive, and section 3 of this act and chapter 609 of NRS relating to daily and weekly hours of labor only if such camp is operated by a nonprofit organization which is exempt from federal income tax under I.R.C. § 501.]~~ (Deleted by amendment.)

**Sec. 7.** The amendatory provisions of this act apply to an action or proceeding to recover unpaid wages pursuant to Section 16 of Article 15 of the Nevada Constitution or NRS 608.250 to 608.290, inclusive, ~~and section 3 of this act~~ in which a final decision has not been rendered before, on or after the effective date of this act.

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