

SENATE BILL NO. 352—SENATOR GUSTAVSON

MARCH 16, 2015

Referred to Committee on Judiciary

SUMMARY—Enacts the Nevada Liberty Preservation Act.
(BDR 15-719)

FISCAL NOTE: Effect on Local Government: May have Fiscal Impact.
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 crimes; enacting the Nevada Liberty Preservation Act; providing penalties; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

1 This bill enacts the Nevada Liberty Preservation Act. **Section 4** of this bill
2 enacts a legislative finding that sections 1021 and 1022 of the National Defense
3 Authorization Act for Fiscal Year 2012 (Pub. L. No. 112-81, 125 Stat. 1298) are
4 invalid and illegal in this State because they violate the United States Constitution,
5 the Nevada Constitution and various provisions of federal law. In particular,
6 **section 4** declares that those sections authorize: (1) the indefinite detention, without
7 charge or trial, of persons apprehended within the United States; (2) the prosecution
8 by military tribunals under the law of war of persons apprehended within the
9 United States; and (3) the transfer to foreign jurisdictions of persons apprehended
10 within the United States. **Section 5** of this bill makes it unlawful for federal
11 officers, agents, contractors or employees and state officers and employees to
12 implement or attempt to implement sections 1021 and 1022 of the federal Act and
13 imposes criminal penalties for doing so. **Section 6** of this bill requires the Director
14 of the Department of Public Safety or any other agency of this State to provide
15 prompt notice to the Governor and the Legislature of any attempt or request by a
16 federal officer, agent, contractor or employee to implement section 1021 or 1022 of
17 the federal Act.



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

Section 1. Chapter 196 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 6, inclusive, of this act.

Sec. 2. *Sections 2 to 6, inclusive, of this act may be cited as the Nevada Liberty Preservation Act.*

Sec. 3. *As used in sections 2 to 6, inclusive, of this act, unless the context otherwise requires, "National Defense Authorization Act" means the National Defense Authorization Act of 2012, Public Law 112-81, 125 Stat. 1298.*

Sec. 4. *The Legislature hereby finds and declares that:*

1. The Tenth Amendment to the United States Constitution authorizes the Federal Government to exercise only those powers specifically delegated to it under Section 8 of Article I of the United States Constitution.

2. The guaranty of the constitutional limitations on federal power is a matter of contract between the several states, including the State of Nevada, and the Federal Government at the time the United States Constitution was ratified and subsequently amended by the Bill of Rights.

3. Article VI of the United States Constitution provides that the laws of the United States are the supreme law of the land only if those laws are adopted in accordance with the powers delegated to the Federal Government in the United States Constitution.

4. The President of the United States has asserted that the Authorization for the Use of Military Force, Public Law 107-40, 115 Stat. 224, enacted in 2001, authorizes the President to indefinitely detain, without charge, any person, including a citizen of the United States or a lawful resident alien, regardless of whether the person is apprehended inside or outside the borders of the United States.

5. Sections 1021 and 1022 of the National Defense Authorization Act authorize:

(a) The indefinite detention, without charge or trial, of persons apprehended within the United States;

(b) The prosecution by military tribunals under the law of war of persons apprehended within the United States; and

(c) The transfer to foreign jurisdictions of persons apprehended within the United States.

6. In authorizing the actions described in subsection 5, sections 1021 and 1022 of the National Defense Authorization Act are inimical to the liberty, security and well-being of the residents of the State of Nevada by violating:



- 1 (a) *The Nevada Constitution;*
2 (b) *The limits of federal power authorized by Section 8 of*
3 *Article I of the United States Constitution;*
4 (c) *The Posse Comitatus Act, 18 U.S.C. § 1385, by authorizing*
5 *the Armed Forces of the United States to police the United States;*
6 *and*
7 (d) *Each of the following provisions of the United States*
8 *Constitution:*
9 (1) *Clause 2 of Section 9 of Article I, ensuring the right of*
10 *habeas corpus;*
11 (2) *The First Amendment, ensuring the right of the people*
12 *to petition the Federal Government for the redress of grievances;*
13 (3) *The Fourth Amendment, ensuring the right of the*
14 *people to be free from unreasonable searches and seizures;*
15 (4) *The Fifth Amendment, requiring capital or infamous*
16 *crimes to be brought before a grand jury before charging the*
17 *defendant and prohibiting the deprivation of a person's life, liberty*
18 *or property without due process of law;*
19 (5) *The Sixth Amendment, ensuring the right of an accused*
20 *to a speedy trial by an impartial jury in the state or district where*
21 *the offense was alleged to have been committed, the right to be*
22 *informed of the nature and cause of accusations and charges*
23 *levied, the right to retain legal counsel and the right to confront*
24 *witnesses;*
25 (6) *The Eighth Amendment, prohibiting excessive bail and*
26 *finest and prohibiting cruel and unusual punishment; and*
27 (7) *The Fourteenth Amendment, prohibiting the*
28 *deprivation of a person's life, liberty or property without due*
29 *process of law.*
30 7. *The actions described in subsection 5, as authorized by*
31 *sections 1021 and 1022 of the National Defense Authorization Act,*
32 *and the enforcement of those actions, are illegal within this State.*
33 8. *Sections 1021 and 1022 of the National Defense*
34 *Authorization Act violate portions of federal law, the United States*
35 *Constitution and the Nevada Constitution and, as such, are invalid*
36 *and illegal in this State.*
37 9. *It is the policy of this State to refuse to provide material*
38 *support for or to participate in any way with the implementation*
39 *within this State of sections 1021 and 1022 of the National*
40 *Defense Authorization Act.*
41 **Sec. 5. 1. It is unlawful to:**
42 (a) *Implement or enforce or attempt to implement or enforce*
43 *section 1021 or 1022 of the National Defense Authorization Act in*
44 *this State; or*



1 (b) Comply with any other statute, rule, regulation or order
2 that has the effect of implementing or enforcing section 1021 or
3 1022 of the National Defense Authorization Act in this State.

4 2. An officer, agent or employee of the United States or an
5 employee of a corporation providing services to the United States
6 who violates subsection 1 is guilty of a category D felony and shall
7 be punished by imprisonment in the state prison for a minimum
8 term of not less than 1 year and a maximum term of not more than
9 4 years, or by a fine of not more than \$10,000, or by both fine and
10 imprisonment.

11 3. A public officer or employee of this State who violates
12 subsection 1 is guilty of a category E felony and shall be punished
13 by imprisonment in the state prison for a minimum term of not
14 less than 1 year and a maximum term of not more than 4 years, or
15 by a fine of not more than \$5,000, or by both fine and
16 imprisonment.

17 Sec. 6. If an officer, agent or employee of the United States
18 or an employee of a corporation providing services to the United
19 States attempts to implement section 1021 or 1022 of the National
20 Defense Authorization Act by requesting or requiring an officer or
21 employee of the Department of Public Safety or any other agency
22 of this State to perform an act that violates subsection 1 of section
23 5 of this act, the Director of the Department or the administrative
24 chief of the agency of this State shall promptly notify the Governor
25 and the Director of the Legislative Counsel Bureau who shall
26 transmit the notice to the Legislature or, if the Legislature is not in
27 session, to the Legislative Commission.

