

ASSEMBLY JUDICIARY COMMITTEE MINUTES

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DATE: February 14, 1975

MEMBERS PRESENT: Vice-Chairman Hayes
Mr. Sena
Mr. Lowman
Mr. Polish
Mr. Hickey
Mr. Banner
Mrs. Wagner

MEMBERS EXCUSED: Chairman Barengo
Mr. Heaney

GUESTS: Bud Campos, Nevada State Parole & Probation
Lawrence O. McCracken, Director, Employment
Security Department
James Oliver, Administrative Services Officer,
Employment Security Department
Tom Young, S.P.P. Co.
Bob Price, Assemblyman and Sponsor of Bill
Judge Keith Hayes
Gino Del Carlo

The meeting was called to order at 9:15 a.m. by Vice-Chairman Hayes for the purpose of discussing AB-42, the illegal alien bill.

Mr. Lawrence O. McCracken, Director, Employment Security Department, stated that if this particular bill is to proceed further and receive further consideration he would like to suggest an amendment. He felt that lines 3 and 4 of Page 2 should be deleted since this is in direct conflict with NRS 612.265, the statute relating to nondisclosure of confidential information. Mr. McCracken's suggested amendment is attached hereto, marked Exhibit A, and made a part of these Minutes. He further stated that this information is unavailable even to the FBI or IRS.

Mr. Hickey requested legal counsel and questioned if there were any constitutional considerations involved.

Mr. Bob Price, sponsor of the bill, stated that he was aware of the problem involving the confidentiality of information in the Employment Security Office, and the effect the bill would have on it. He has requested amendments to be drawn and they should be available at the beginning of next week. He asked the Committee to withhold any action until these amendments are available. He also felt that John Reiser of the NIC should be contacted to see what effect, if any, this legislation would have on his office.

Questioned by Mr. Price, Mr. McCracken stated that his office audits about 1,000 employers yearly out of a total of 14,000, and that it is very difficult, if not impossible, for his investigators to determine the status of an employee, whether or not he is a legal or illegal alien, if the employee is being paid in cash. His office does not "count heads" but compare social security numbers with the employee's records to see if they have a wage credit.

Mr. Price asked how Mr. McCracken's office "catches" potential illegal alien employees who make no contribution to the fund and make no claims. Mr. McCracken stated that his office can not "pick that up" as they have no mechanism for this problem. He also felt that the credibility of the Security Employment Office would be questioned and deteriorated if his office is compelled to give out the information that would be permitted under this bill.

Mr. Lowman stated he felt the questions of the Committee about the bill were aimed at whether or not the information on employees would be available, but that Mr. McCracken's concern was breaching security with the employer. Mr. Price stated that a court order could compel the availability of the information to any agency in the State.

Mr. Sena asked if there was an automatic fine imposed on an employer for not contributing to the fund for an employee. Mr. McCracken stated that most cases were handled on an individual basis; that there was an automatic penalty, but not an automatic fine, and that most situations were settled by the court and employer. In response to Mr. Banner's question, Mr. McCracken stated that his office does not audit every employer each year.

The three areas of prima facie evidence constituting an employer's knowledge of an employee's status as an alien, legal or illegal, are: 1) Payment to the employee of less than the minimum wage; 2) Failure of the employer to make quarterly payments of withholding or FICA tax; and 3) funds paid to the Employment Security office.

Mr. Sena asked if there was any agreement between Immigration authorities and the Employment Security Office for a cross-check. Mr. McCracken stated that in the past there has been no reciprocal agreement between the two. In response to Mr. Sena's next question as to whether the Employment Security Office ever checks on social security numbers to see if they match up, Mr. Oliver stated that "we do not check with Social Security or IRS because it would be disclosing information."

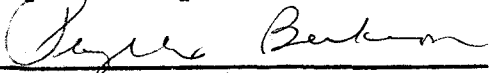
Mr. Hickey felt the Committee should look into the possible

Federal requirement to compare Social Security numbers with employees.

Vice-Chairman Hayes suggested delaying any action until the Committee checks with legal counsel and the proposed amendments are received.

Mr. Banner moved and Mr. Sena seconded the motion to adjourn at 9:45 a.m. It was unanimously approved.

Respectfully submitted,



PHYLLIS BERKSON
Acting Secretary

ESD TESTIMONY ON AB-42
JUDICIARY COMMITTEE
FEBRUARY 14, 1975, 9:00 AM

MR. CHAIRMAN AND MEMBERS, I AM LAWRENCE McCracken, EXECUTIVE DIRECTOR OF THE EMPLOYMENT SECURITY DEPARTMENT.

I WOULD LIKE TO ASK THAT ASSEMBLY BILL 42 DEALING WITH EMPLOYMENT OF ALIENS BE AMENDED. AS PRESENTED, THE BILL PROVIDES ON LINE 17, "ANY OF THE FOLLOWING ACTS OF COMMISSION OR OMISSION CONSTITUTE PRIMA FACIE EVIDENCE...." WHICH IS IN CONFLICT WITH THE DISCLOSURE OF INFORMATION PROVISION OF NRS 612.265. THE LATTER SECTION OF THE LAW IS IN EXISTENCE TO PROTECT CLIENTS (CLAIMANTS AND EMPLOYERS) SERVED BY THE EMPLOYMENT SECURITY DEPARTMENT.

THE REQUESTED AMENDMENT COULD EASIEST BE ACHIEVED BY DELETION OF LINES 3 AND 4 ON PAGE TWO OF THE SUBJECT BILL.

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A. B. 42

ASSEMBLY BILL NO. 42—ASSEMBLYMEN PRICE, MANN, DEMERS, SENA, MOODY, FORD, CRADDOCK, SCHOFIELD, POLISH, HAYES, LOWMAN, JEFFREY, HICKEY, MURPHY, DREYER, MAY, VERGIELS, HEANEY, BENKOVICH, CHRISTENSEN, WAGNER AND JACOBSEN

JANUARY 27, 1975

Referred to Committee on Judiciary

SUMMARY—Prohibits employment of aliens who are not entitled under federal law to work in the United States. Fiscal Note: No. (BDR 53-643)

EXPLANATION—Matter in *italics* is new; matter in brackets [] is material to be omitted.

AN ACT relating to the employment of aliens; prohibiting employment of aliens not entitled by federal law to work in the United States; providing penalties; 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. Chapter 613 of NRS is hereby amended by adding
- 2 thereto the provisions set forth as sections 2 to 5, inclusive, of this act.
- 3 SEC. 2. *As used in sections 2 to 5, inclusive, of this act, "alien*
- 4 *entitled to work in the United States" means an alien in actual possession*
- 5 *of written evidence, issued to him under the laws of the United States, of:*
- 6 *1. His lawful admission to the United States;*
- 7 *2. His lawful residence in the United States; or*
- 8 *3. An authorization by the Immigration and Naturalization Service*
- 9 *of the United States Department of Justice allowing him to remain in the*
- 10 *United States,*
- 11 *if such written evidence does not on its face restrict his right to work in*
- 12 *the United States.*
- 13 SEC. 3. 1. *It is unlawful for any person, company, corporation,*
- 14 *partnership, society, association or organization of any kind, public or*
- 15 *private, knowingly to employ in any capacity in this state an alien other*
- 16 *than an alien entitled to work in the United States.*
- 17 2. *Any of the following acts of commission or omission constitute*
- 18 *prima facie evidence of an employer's knowledge of an employee's status*
- 19 *as an alien other than an alien entitled to work in the United States:*

ESD could possibly become involved in detecting aliens or employers using aliens!

1 (a) Payment to the employee of a wage less than the legally applicable
2 minimum wage.

3 (b) Failure by the employer to pay legally required ~~unemployment~~
4 insurance contributions on behalf of the employee.

5 (c) Failure by the employer to make legally required quarterly tax pay-
6 ments of withheld federal income tax or Federal Insurance Contributions
7 Act (F.I.C.A.) contributions on behalf of the employee.

8 (d) Failure by the employer to make legally required payments under
9 the Nevada Industrial Insurance Act on behalf of the employee.

10 (e) Failure by the employer to include on the employee's employment
11 application form or elsewhere on the employee's personnel record a
12 signed statement by the employer or his duly authorized representative
13 that:

14 (1) Evidence of the employee's United States citizenship; or

15 (2) Evidence that the employee, at the time of employment, was an
16 alien entitled to work in the United States,
17 was shown to the employer or his duly authorized representative at or
18 before the commencement of the employee's employment.

19 SEC. 4. The labor commissioner shall adopt regulations necessary for
20 the enforcement of sections 2 and 3 of this act.

21 SEC. 5. A violation of any of the provisions of sections 2 and 3 of
22 this act or of any regulation adopted pursuant thereto is punishable:

- 23 1. For the first offense, by a fine of \$500.
- 24 2. For the second offense, by a fine of \$500 and imprisonment in the
25 county jail for not more than 6 months.
- 26 3. For each subsequent offense, as a gross misdemeanor.