

Nevada adds fee for home-based businesses

By Sean Whaley, Nevada News Bureau

CARSON CITY – A regulation requiring thousands of home-based businesses to pay a \$200 annual fee won approval from a legislative panel.

Secretary of State Ross Miller has been trying to get the regulation approved for several months, but has seen the regulation stymied by strong opposition from some Nevada residents and Republican lawmakers who argued the regulation exceeded his authority.

The regulation affects home-based businesses operating as limited liability companies and corporations that earn less than \$27,000. It does not apply to individuals operating businesses out of their homes.

The Legislative Commission's Subcommittee to Review Regulations, made up of four Democrats and two Republicans, approved the regulation on a party-line vote. The same subcommittee deferred action on the regulation in December, sending it to the full 12-member Legislative Commission for action.

That panel, made up of an equal number of Republicans and Democrats, failed to act on the proposed rule at a meeting on Feb. 15.

The subcommittee took up the regulation again this month. The approval means the regulation can now take effect.

Sen. Michael Roberson, R-Las Vegas, a member of the subcommittee, asked how Miller could be given the authority to collect the fee from a new class of businesses since there is

no clear legislative authority to do so.

“That’s been my argument, that we are now forcing home-based businesses, including people who sell Tupperware or whatever product or service, even though they don’t open their home up to the public; they now have to make the difficult choice of waiving the legal protection of our LLC statute or facing this tax increase,” Roberson said. “And I do not think this is the time in our economy in this state to be doing that, and putting those smallest home-based businesses in that difficult position.”

Roberson said the panel should request an official written opinion from Attorney General Catherine Cortez Masto on the issue before taking a vote.

But Assemblywoman Debbie Smith, D-Sparks, said lawmakers rely on their own legal counsel and that she was comfortable with the advice from Legislative Counsel Brenda Erdoes that the approval of the regulation on a simple majority vote was proper.

Erdoes said the panel did not have the authority to request such an opinion from the attorney general.

Roberson then asked Miller to request the legal opinion, saying there appeared to be confusion as to what the attorney general’s office position is on the issue.

The regulation will require home-based businesses that are on file with Miller’s office as limited liability companies and corporations to pay the business license fee. The companies had previously paid the fee, but an interpretation provided to Miller’s office by a deputy attorney general in 2009 had exempted them from paying the fee. Miller said that interpretation was a mistake.

The action by the legislative subcommittee was condemned by the group Nevada Families/Eagle Forum.

"This regulation is taxation by regulation," said Janine Hansen, in a statement on behalf of the organizations. "The process violates the Nevada Constitution which requires a two-thirds vote of the Legislature to impose a tax, and it violates the separation of powers."

"It is appalling that Ross Miller would seek to impose, by regulation, what he could not get through the Legislature," Hansen said.

She was referring to Assembly Bill 78, which was approved by the Legislature in the 2011 session but never made it to Gov. Brian Sandoval for his signature.

Erdoes told the subcommittee that there was no two-thirds vote requirement to approve the regulation. The two-thirds requirement applies to the Legislature, not the subcommittee, she said.

Erdoes said a bill passed in the 2009 session, approved with a two-thirds majority, gave Miller's office the authority to adopt regulations needed to collect the fee. The failure of AB78 to win approval in 2011 has no effect on the regulation, she said.

Following the vote, Miller said: "My office will be enforcing the home-based business exemption in accordance with the original intent of the Legislature, which will level the playing field for the many businesses that have been compliant and paying the appropriate fees."

The regulation clarifies that the home-based business exemption applies only to natural persons, i.e. sole proprietors or general partnerships who meet the requirements of the exemption.