

CHAPTER 186

LABOR AND INDUSTRY

HOUSE BILL 93-1305

BY REPRESENTATIVES Lawrence, Agler, Reeser, R. Hernandez, and Allen;
also SENATORS Schroeder and Tebedo.

AN ACT

CONCERNING THE TREATMENT OF EMPLOYEE LEASING COMPANIES UNDER THE COLORADO EMPLOYMENT SECURITY ACT, AND, IN CONNECTION THEREWITH, DESCRIBING CERTAIN REPORTING REQUIREMENTS FOR THE EMPLOYEE LEASING AND CLIENT COMPANIES.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. 8-70-114, Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

8-70-114. Employing unit - definition. (1) "Employing unit" means any individual or type of organization, including any partnership, association, trust, estate, joint stock company, insurance company, or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or successor thereof, or legal representative of a deceased person, who ~~has in his employ~~ EMPLOYS one or more individuals performing services ~~for him~~ within this state. All individuals performing services within this state for any employing unit which maintains two or more separate establishments within this state shall be deemed to be employed by a single employing unit for all the purposes of articles 70 to 82 of this title. Each individual employed to perform or to assist in performing the work of any agent or employee of an employing unit shall be deemed to be employed by such employing unit for all the purposes of articles 70 to 82 of this title, whether such individual was hired or paid directly by such employing unit or by the agent or employee if the employing unit had actual or constructive knowledge of the work. Nothing in this section shall be construed to mean that a common paymaster may be considered a single employing unit for purposes of considering the services performed by another employing unit subject to a single or common payroll.

(2) (a) FOR PURPOSES OF THIS SECTION, "EMPLOYEE LEASING COMPANY" MEANS

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

AN EMPLOYEE LEASING COMPANY OR A BUSINESS MANAGEMENT COMPANY.

(b) NOTWITHSTANDING THE PROVISIONS OF SUBSECTION (1) OF THIS SECTION, AN EMPLOYEE LEASING COMPANY SHALL BE CONSIDERED AN EMPLOYING UNIT OF A CLIENT COMPANY'S WORKERS IF IT RETAINS THE RIGHT TO PERFORM THE FOLLOWING FUNCTIONS:

(I) SET THE WORKERS' RATE OF PAY;

(II) PAY THE WORKERS FROM ITS OWN ACCOUNT OR ACCOUNTS; AND

(III) HIRE AND TERMINATE THE WORKERS AFTER CONSULTATION WITH THE CLIENT COMPANY.

(c) FOR THE PURPOSES OF THIS SECTION, AN EMPLOYEE LEASING COMPANY SHALL BE DEFINED AS ANY EMPLOYING UNIT WHICH, FOR A FEE, PLACES A CLIENT COMPANY'S WORKERS ONTO ITS PAYROLL AND ASSIGNS THEM TO THE CLIENT COMPANY FOR AT LEAST SIX CONSECUTIVE MONTHS.

(d) IF AN EMPLOYEE LEASING COMPANY DOES NOT MEET THE REQUIREMENTS OF THIS SUBSECTION (2), THE CLIENT COMPANY SHALL BE CONSIDERED THE EMPLOYING UNIT.

(e) EACH EMPLOYEE LEASING COMPANY SHALL MAINTAIN AND HAVE OPEN FOR INSPECTION BY THE DEPARTMENT OF LABOR AND EMPLOYMENT A LISTING OF ITS CLIENT COMPANIES AND THEIR RESPECTIVE WORKERS AND SHALL MAINTAIN THE RECORDS AND REPORTS AS REQUIRED BY THE "COLORADO EMPLOYMENT SECURITY ACT", AS DESCRIBED IN ARTICLES 70 TO 82 OF THIS TITLE.

(3) (a) THE STATUS OF AN EMPLOYEE LEASING COMPANY AS THE EMPLOYING UNIT OF A CLIENT COMPANY'S WORKERS SHALL BE REVOKED BY THE DIVISION IF SUCH EMPLOYEE LEASING COMPANY FAILS TO FILE THE REQUIRED REPORTS OR PAY THE TAXES DUE UNDER THE PROVISIONS OF ARTICLES 70 TO 82 OF THIS TITLE. THE EFFECTIVE DATE OF ANY SUCH REVOCATION SHALL BE THE FIRST DAY OF THE QUARTER FOR WHICH THE REPORTS AND TAXES ARE DUE. IN THE EVENT OF SUCH A REVOCATION, THE CLIENT COMPANY SHALL BECOME LIABLE FOR THE REPORTS AND TAXES DUE.

(b) THE PROVISIONS OF PARAGRAPH (a) OF THIS SUBSECTION (3) SHALL APPLY IF ANY PORTION OF AN EMPLOYING UNIT'S BUSINESS ACTIVITY CAN BE CHARACTERIZED AS AN EMPLOYEE LEASING COMPANY, AS DEFINED IN SUBSECTION (2) OF THIS SECTION.

(c) THE PROVISIONS OF PARAGRAPH (a) OF THIS SUBSECTION (3) SHALL NOT APPLY IF AN EMPLOYEE LEASING COMPANY ACTS AS AN AGENT FOR A CLIENT COMPANY PURSUANT TO THE PROVISIONS OF SUBSECTION (1) OF THIS SECTION, FILES THE REQUIRED REPORTS, AND PAYS THE TAXES DUE UNDER AN ACCOUNT ESTABLISHED FOR THE CLIENT COMPANY.

(d) THE PROVISIONS OF PARAGRAPH (a) OF THIS SUBSECTION (3) SHALL NOT APPLY TO ANY TEMPORARY HELP CONTRACTING FIRM, AS DEFINED IN SECTION 8-73-105.5, C.R.S. HOWEVER, IF ANY PORTION OF SUCH FIRM'S BUSINESS ACTIVITY CAN BE CHARACTERIZED AS AN EMPLOYEE LEASING COMPANY, AS DEFINED IN SUBSECTION (2)

OF THIS SECTION, THAT PORTION OF THE FIRM'S BUSINESS SHALL BE SUBJECT TO THE PROVISIONS OF THIS SUBSECTION (3).

(4) AN EMPLOYEE LEASING COMPANY SHALL NOT REPORT WAGES FOR ANY CLIENT COMPANY THAT WOULD NOT OTHERWISE BE SUBJECT TO ARTICLES 70 TO 82 OF THIS TITLE.

(5) AN EMPLOYEE LEASING COMPANY OR BUSINESS MANAGEMENT COMPANY SHALL NOT REPORT REMUNERATION PAID:

(a) FOR SERVICES PERFORMED BY INDIVIDUALS WHO ARE CLIENTS AND WHO ARE SOLE PROPRIETORS OR PARTNERS IN A PARTNERSHIP; OR

(b) FOR ANY OTHER SERVICES WHICH WOULD NOT OTHERWISE CONSTITUTE EMPLOYMENT PURSUANT TO ARTICLES 70 TO 82 OF THIS TITLE.

SECTION 2. 8-76-104, Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

8-76-104. Successor employer. (6) NO EXPERIENCE RATE TRANSFER PROVIDED BY THIS SECTION SHALL OCCUR WHEN A CLIENT COMPANY'S ACCOUNT IS MADE INACTIVE AS A RESULT OF ITS ENTERING INTO AN AGREEMENT WITH AN EMPLOYEE LEASING COMPANY, AS DEFINED IN SECTION 8-70-114 (2), OR WHEN AN AGREEMENT BETWEEN A CLIENT COMPANY AND AN EMPLOYEE LEASING COMPANY IS TERMINATED.

SECTION 3. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: May 6, 1993