

## CHAPTER 52

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**INSURANCE**

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**SENATE BILL 99-031**

BY SENATORS Anderson, Chlouber, Lamborn, Phillips, Powers, Teck, Wattenberg, Blickensderfer, and Owen;  
also REPRESENTATIVES Berry, Ament, Dean, Leyba, May, McElhany, Coleman, Hoppe, Larson, McKay, McPherson, Plant,  
Spence, Tapia, and Young.

**AN ACT**

CONCERNING THE AUTHORITY OF EMPLOYEE LEASING COMPANIES TO PROVIDE EMPLOYER BENEFIT  
PLANS ON BEHALF OF EMPLOYEES.

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

**SECTION 1.** 8-70-114 (2) (b) (VIII) and (2) (e), Colorado Revised Statutes, are amended, and the said 8-70-114 (2) is further amended BY THE ADDITION OF A NEW PARAGRAPH, to read:

**8-70-114. Employing unit - definition.** (2) (b) Notwithstanding the provisions of subsection (1) of this section, an employee leasing company shall be considered an employing unit or the co-employer of a work-site employer's employees if, pursuant to an employee leasing company contract with the work-site employer, it has the following rights and responsibilities:

(VIII) An employee leasing company, as the employing unit or co-employer, may aggregate all employees for the purpose of sponsoring and administering workers' compensation plans pursuant to article 44 of this title AND FULLY INSURED HEALTH COVERAGE PLANS, AS DEFINED IN SECTION 10-16-102 (22.5), C.R.S., employee pension benefit plans, and provision of benefits pursuant to such plans. AS EMPLOYING UNITS OR CO-EMPLOYERS, EMPLOYEE LEASING COMPANIES SHALL BE ENTITLED TO SPONSOR FULLY INSURED EMPLOYER PLANS AND OFFER EMPLOYEE BENEFITS TO THE FULL EXTENT AFFORDED EMPLOYERS BY LAW. A HEALTH PLAN SPONSORED BY AN EMPLOYEE LEASING COMPANY WITH AN AGGREGATE OF MORE THAN FIFTY EMPLOYEES SHALL COMPLY WITH ALL THE PROVISIONS OF COLORADO LAW THAT APPLY TO LARGE EMPLOYER HEALTH PLANS, INCLUDING CONSUMER AND PROVIDER PROTECTIONS, MANDATED BENEFITS, NONDISCRIMINATION AND FAIR MARKETING RULES, PREEXISTING LIMITATIONS, AND OTHER REQUIRED HEALTH PLAN

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

POLICY PROVISIONS, AND THE CARRIER UNDERWRITING THE PLAN SHALL BE RESPONSIBLE FOR ASSURING COMPLIANCE WITH THIS REQUIREMENT PURSUANT TO SECTION 10-16-214 (5), C.R.S. Notwithstanding any provision of this section to the contrary, any workers' compensation insurance carrier may issue an insurance policy that insures either the employee leasing company or the work-site employer as the employer pursuant to the "Workers' Compensation Act of Colorado", articles 40 to 47 of this title. NOTWITHSTANDING ANY PROVISION OF THIS SECTION TO THE CONTRARY, ANY INSURANCE CARRIER MAY ISSUE AN INSURANCE POLICY THAT INSURES THE EMPLOYEE LEASING COMPANY AS THE EMPLOYER PURSUANT TO ARTICLE 16 OF TITLE 10, C.R.S. AN INSURANCE CARRIER THAT ISSUES AN INSURANCE POLICY TO AN EMPLOYEE LEASING COMPANY SHALL BE ENTITLED TO RELY UPON A COPY OF THE CERTIFICATION FILED BY THE EMPLOYEE LEASING COMPANY WITH THE DEPARTMENT OF LABOR AND EMPLOYMENT UNDER PARAGRAPH (e) OF THIS SUBSECTION (2), IF SUCH CERTIFICATION IS CURRENTLY VALID, FOR THE PURPOSE OF DETERMINING WHETHER THE LEASING COMPANY IS AN "EMPLOYER" UNDER COLORADO LAW.

(e) Each employee leasing company shall maintain and have open for inspection by the department of labor and employment a listing of its work-site employers and their collective employees 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. EACH EMPLOYEE LEASING COMPANY SHALL ANNUALLY CERTIFY WITH AN INDEPENDENT OPINION OF COUNSEL TO THE DEPARTMENT THAT IT IS IN COMPLIANCE WITH THE RIGHTS AND RESPONSIBILITIES SET FORTH IN PARAGRAPH (b) OF THIS SUBSECTION (2) AND THAT IT IS OFFERING TO ALL CLIENTS IN ITS SERVICE AGREEMENTS THOSE ITEMS REQUIRED IN PARAGRAPH (b) OF THIS SUBSECTION (2). THE DEPARTMENT OF LABOR AND EMPLOYMENT MAY REQUIRE EMPLOYEE LEASING COMPANIES TO SUBMIT DOCUMENTATION TO SHOW COMPLIANCE WITH THE PROVISIONS OF PARAGRAPH (b) OF THIS SUBSECTION (2) AND MAY CONDUCT ANY NECESSARY REVIEW TO VERIFY THAT THE EMPLOYEE LEASING COMPANY IS AN EMPLOYING UNIT OR CO-EMPLOYER UNDER THIS SECTION.

(f) EACH EMPLOYEE LEASING COMPANY SHALL MAINTAIN AND PROVIDE UPON REQUEST TO A CARRIER, AS DEFINED IN SECTION 10-16-102 (8), C.R.S., WITH WHICH THE EMPLOYEE LEASING COMPANY REQUESTS A CONTRACT, THE CERTIFICATION REQUIRED IN PARAGRAPH (e) OF THIS SUBSECTION (2).

**SECTION 2.** 10-16-105 (8) (a) (I), (8) (a) (VII), (8) (a) (X), and (8) (a) (XI), Colorado Revised Statutes, are amended to read:

**10-16-105. Small group sickness and accident insurance - guaranteed issue - mandated provisions for basic and standard health benefit plans.**

(8) (a) (I) The premium rate charged during a rating period to small employers shall be based on a single, same index rate, applicable to all small employers, adjusted for case characteristics and coverage; except that the index rate may be multiplied by a rate adjustment factor for each small employer group pursuant to subparagraphs (III) to (VII) of this paragraph (a) to calculate a different premium. The rate adjustment factor shall only be based on actual claims experience on the small employer carrier's plan, industry, and class of business; except that, for health benefit plans issued prior to July 1, 1994, the rate adjustment factor may also be based on duration of coverage since the original issue date and gender mix. ~~For the purposes of this subsection (8), small employer carriers may put all those small employers that have contracts with~~

~~an employee leasing company, as defined in section 8-70-114 (2) (a) (I), C.R.S., into a single industry category called "small employers that have employee leasing company contracts": Small employer carriers shall apply the rate adjustment factors uniformly with respect to all small employers.~~

(VII) For health benefit plans newly issued and all health benefit plans renewed on and after January 1, 1998, no rate adjustment factor shall be used. ~~except as provided in subparagraph (X) of this paragraph (a):~~

~~(X) On and after January 1, 1998, a small employer carrier may give all those small employers who have contracts with an employee leasing company a class of business discount if:~~

~~(A) The employee leasing company is solely responsible for collecting and remitting premiums with respect to the small employers with whom it has employee leasing company contracts and who obtain coverage through the employee leasing company;~~

~~(B) The small employer carrier providing coverage through the employee leasing company guarantees the issuance of such coverage to every work-site employer with whom the leasing company has a contract and to their eligible employees. The work-site employer and its eligible employees shall have the right to such coverage within the first sixty days after the effective date of the employee leasing company contract. After the expiration of that sixty-day period, a work-site employer who declines coverage within the first sixty days of the effective date of entering into an employee leasing company contract because such work-site employer has obtained or intends to obtain coverage from another source shall not subsequently be issued coverage through the employee leasing company for a minimum of five years. After the expiration of that sixty-day period a work-site employer who declines coverage within the first sixty days of the effective date of entering into an employee leasing company contract because such work-site employer has not offered and opts to continue not to offer and contribute to coverage for the work-site employer's employees shall subsequently be issued coverage through the employee leasing company only if the work-site employer has not offered coverage to the work-site employer's employees from another source for the lesser of either the last two years or since the inception of the work-site employer's business. A work-site employer who opts for coverage under the plan offered by the employee leasing company and later drops that coverage shall not be issued coverage through the employee leasing company for at least five years.~~

~~(C) Both the employee leasing company and the carrier providing a health benefit plan through the employee leasing company maintain a record of the reasons a work-site employer cites for declining coverage at the time of the initial offering of such coverage;~~

~~(D) Prior to providing coverage to the small employers who have contracts with an employee leasing company, the employee leasing company submits and annually resubmits to the commissioner for review and approval sufficient documentation to show that the employee leasing company meets the definition of an employee leasing company pursuant to section 8-70-114, C.R.S.; and~~

~~(E) The class of business discount is based solely on savings related to marketing costs and the costs of collecting premiums.~~

~~(XI) Nothing in subparagraph (X) of this paragraph (a) shall be construed to exempt employee leasing companies, carriers, or any other entity from the requirements of article 18 of title 6, C.R.S., concerning health care coverage cooperatives. Nothing in subparagraph (X) of this paragraph (a) shall be construed to exempt a carrier that provides coverage to the employees of a small employer, including those small employers that may have contracted for services with an employee leasing company, from the small group provisions of this title.~~

**SECTION 3.** 10-16-214, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

**10-16-214. Group sickness and accident insurance.** (5) A CARRIER WRITING HEALTH BENEFIT COVERAGE FOR AN EMPLOYEE LEASING COMPANY SHALL ENSURE THAT ANY HEALTH BENEFIT PLAN MARKETED OR SOLD TO SUCH COMPANY THAT COVERS EMPLOYEES IN COLORADO COMPLIES WITH ALL THE PROVISIONS OF COLORADO LAW THAT APPLY TO LARGE EMPLOYER HEALTH PLANS, INCLUDING CONSUMER AND PROVIDER PROTECTIONS, MANDATED BENEFITS, NONDISCRIMINATION AND FAIR MARKETING RULES, PREEXISTING LIMITATIONS, AND OTHER REQUIRED HEALTH PLAN POLICY PROVISIONS.

**SECTION 4. Effective date - applicability.** This act shall take effect upon passage and shall apply to contracts of insurance in effect on or after said date.

**SECTION 5. 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: March 25, 1999