

CHAPTER 144

LABOR AND INDUSTRY

HOUSE BILL 07-1312

BY REPRESENTATIVE(S) McGihon, Frangas, and Jahn;
also SENATOR(S) Veiga.

AN ACT

CONCERNING CLARIFICATION THAT A CONTRACT BETWEEN AN EMPLOYEE LEASING COMPANY AND A WORK-SITE EMPLOYER DOES NOT ALTER THE FUNDAMENTAL IDENTITY OF THE WORK-SITE EMPLOYER AS A DISTINCT BUSINESS ENTITY FOR THE PURPOSE OF APPLYING LOCAL, STATE, AND FEDERAL LAWS AND REGULATIONS TO WORK-SITE EMPLOYERS IN THE SAME MANNER AS APPLIED TO SIMILAR BUSINESS ENTITIES, REGARDLESS OF WORK-SITE EMPLOYER STATUS.

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

SECTION 1. 8-70-114 (6), Colorado Revised Statutes, is amended to read:

8-70-114. Employing unit - definition. (6) (a) Nothing in this section shall exempt a work-site employer or any employee from any other licensing requirements imposed by local, state, or federal law. An employee who is licensed, registered, or certified by a unit of local, state, or federal government shall, for the purposes of such license, registration, or certification, be considered an employee of the work-site employer. AN EMPLOYEE LEASING COMPANY SHALL NOT BE DEEMED TO ENGAGE IN ANY OCCUPATION, TRADE, PROFESSION, OR OTHER ACTIVITY THAT IS SUBJECT TO LICENSING, REGISTRATION, OR CERTIFICATION REQUIREMENTS, OR IS OTHERWISE REGULATED BY A GOVERNMENTAL ENTITY, SOLELY BY ENTERING INTO AND MAINTAINING AN EMPLOYEE LEASING COMPANY CONTRACT WITH A WORK-SITE EMPLOYER OR WORK-SITE EMPLOYEES WHO ARE SUBJECT TO SUCH REQUIREMENTS OR REGULATION.

(b) **Collective bargaining agreements.** NOTHING CONTAINED IN THIS SUBSECTION (6) OR IN ANY EMPLOYEE LEASING COMPANY CONTRACT SHALL AFFECT, MODIFY, OR AMEND ANY COLLECTIVE BARGAINING AGREEMENT, OR THE RIGHTS OR OBLIGATIONS OF ANY WORK-SITE EMPLOYER, EMPLOYEE LEASING COMPANY, OR WORK-SITE EMPLOYEE UNDER THE FEDERAL "NATIONAL LABOR RELATIONS ACT", 29 U.S.C. SEC. 151 ET SEQ., OR THE FEDERAL "RAILWAY LABOR ACT", 45 U.S.C.

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

SEC. 151 ET SEQ.

(c) **Tax credits and other incentives.** FOR PURPOSES OF DETERMINATION OF EMPLOYMENT-BASED TAX CREDITS, SUCH AS ECONOMIC DEVELOPMENT, ENTERPRISE ZONE, DEVELOPMENT ZONE, AND OTHER SUCH ECONOMIC INCENTIVES PROVIDED BY THE STATE OR ANY OTHER GOVERNMENTAL ENTITY, WORK-SITE EMPLOYEES SHALL BE DEEMED EMPLOYEES SOLELY OF THE WORK-SITE EMPLOYER. A WORK-SITE EMPLOYER SHALL BE ENTITLED TO THE BENEFIT OF ANY TAX CREDIT, ECONOMIC INCENTIVE, OR OTHER BENEFIT ARISING AS THE RESULT OF THE EMPLOYMENT OF WORK-SITE EMPLOYEES OF THE WORK-SITE EMPLOYER. IF THE GRANT OR AMOUNT OF ANY CREDIT, BENEFIT, OR OTHER INCENTIVE IS BASED ON NUMBER OF EMPLOYEES, THEN EACH WORK-SITE EMPLOYER SHALL BE TREATED AS EMPLOYING ONLY THOSE WORK-SITE EMPLOYEES COEMPLOYED BY THE WORK-SITE EMPLOYER. WORK-SITE EMPLOYEES WORKING FOR OTHER WORK-SITE EMPLOYERS OF THE EMPLOYEE LEASING COMPANY SHALL NOT BE COUNTED. UPON REQUEST BY A WORK-SITE EMPLOYER OR AN AGENCY OR DEPARTMENT OF THIS STATE, EACH EMPLOYEE LEASING COMPANY SHALL PROVIDE EMPLOYMENT INFORMATION REASONABLY REQUIRED BY ANY AGENCY OR DEPARTMENT OF THIS STATE RESPONSIBLE FOR ADMINISTRATION OF ANY TAX CREDIT OR ECONOMIC INCENTIVE AND NECESSARY TO SUPPORT ANY REQUEST, CLAIM, APPLICATION, OR OTHER ACTION BY A WORK-SITE EMPLOYER SEEKING THE TAX CREDIT OR ECONOMIC INCENTIVE.

(d) **Disadvantaged business.** WITH RESPECT TO A BID, CONTRACT, PURCHASE ORDER, OR AGREEMENT ENTERED INTO WITH THE STATE OR A POLITICAL SUBDIVISION OF THE STATE, A WORK-SITE EMPLOYER'S STATUS OR CERTIFICATION AS A SMALL, MINORITY-OWNED, DISADVANTAGED, OR WOMEN-OWNED BUSINESS ENTERPRISE OR AS A HISTORICALLY UNDERUTILIZED BUSINESS IS NOT AFFECTED BECAUSE THE WORK-SITE EMPLOYER HAS ENTERED INTO AN EMPLOYEE LEASING COMPANY CONTRACT OR USES THE SERVICES OF AN EMPLOYEE LEASING COMPANY.

(e) **Taxes, fees, other assessments.** (I) A TAX, FEE, SURCHARGE, PENALTY, OR ANY OTHER ASSESSMENT ON A WORK-SITE EMPLOYER OR EMPLOYEE LEASING COMPANY ON THE BASIS OF THE NUMBER OF EMPLOYEES SHALL BE ASSESSED:

(A) AGAINST THE WORK-SITE EMPLOYER FOR THE WORK-SITE EMPLOYEES UNDER THE EMPLOYEE LEASING COMPANY CONTRACT WITH THE EMPLOYEE LEASING COMPANY; AND

(B) AGAINST THE EMPLOYEE LEASING COMPANY FOR THE EMPLOYEES OF THE EMPLOYEE LEASING COMPANY WHO ARE NOT WORK-SITE EMPLOYEES FOR ANY WORK-SITE EMPLOYERS IN THE STATE.

(II) FOR A TAX IMPOSED OR CALCULATED UPON THE BASIS OF TOTAL PAYROLL, AN EMPLOYEE LEASING COMPANY MAY APPLY ANY SMALL BUSINESS ALLOWANCE OR EXEMPTION AVAILABLE TO THE WORK-SITE EMPLOYER FOR THE WORK-SITE EMPLOYEES FOR PURPOSES OF COMPUTING THE TAX.

(III) THE PROVISIONS OF THIS PARAGRAPH (e) SHALL NOT APPLY TO THE REPORTING, WITHHOLDING, AND PAYING OF TAXES PURSUANT TO SUBPARAGRAPHS (VI) AND (VII) OF PARAGRAPH (b) OF SUBSECTION (2) OF THIS SECTION.

SECTION 2. 39-30-105 (5) (c), Colorado Revised Statutes, is amended to read:

39-30-105. Credit for new business facility employees. (5) (c) For purposes of this section, a partnership, S corporation, limited liability company, or other entity electing not to be taxed as a corporation may pass through the credits earned under this section in any tax year to its participating partners, shareholders, or members, hereinafter referred to as the "investors" of the entity, in any percentage the entity chooses, up to the amount of the credit earned in the tax year. Credits earned but unclaimed in a tax year for which the entity elects to be taxed as a corporation may not be distributed to investors in a later tax year for which the entity elects not to be taxed as a corporation. In any tax year for which the entity elects not to be taxed as a corporation, all credits passed through to investors may be carried forward at the investor level for the carryover periods specified in this section. For purposes of this section, a taxpayer may only claim the new business facility employee credit for employees for whom the taxpayer withholds social security, medicare, and income taxes under the taxpayer's own federal and state taxpayer identification numbers. ~~Where an employee leasing company employs and withholds taxes for an individual who qualifies as a new business facility employee, only the employee leasing company may claim the new business facility employee credit for that employee.~~

SECTION 3. Effective date. This act shall take effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly that is allowed for submitting a referendum petition pursuant to article V, section 1 (3) of the state constitution, (August 8, 2007, if adjournment sine die is on May 9, 2007); except that, if a referendum petition is filed against this act or an item, section, or part of this act within such period, then the act, item, section, or part, if approved by the people, shall take effect on the date of the official declaration of the vote thereon by proclamation of the governor.

Approved: April 16, 2007