

CHAPTER 22

LABOR AND INDUSTRY

HOUSE BILL 98-1067

BY REPRESENTATIVES Tate and Reeser;
also SENATORS Matsunaka, Hernandez, and Weddig.

AN ACT

CONCERNING THE CONFORMING OF CERTAIN PROVISIONS OF THE "COLORADO EMPLOYMENT SECURITY ACT" TO THE SCOPE OF COVERAGE OF PROVISIONS OF FEDERAL LAW.

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

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

8-70-114. Employing unit - definition. (1) "Employing unit" means any individual or type of organization, including any partnership, LIMITED LIABILITY PARTNERSHIP, LIMITED LIABILITY COMPANY, LIMITED LIABILITY LIMITED 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 employs one or more individuals performing services within this state. All individuals performing services within this state for any employing unit ~~which~~ THAT 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.

SECTION 2. 8-70-120 (1) (b), Colorado Revised Statutes, is amended to read:

8-70-120. Employment - agricultural labor. (1) (b) Such service is not

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

agricultural labor if performed ~~before January 1, 1995~~, by an individual who is an alien admitted to the United States to perform service in agricultural labor pursuant to sections 214 (c) and 101 (a) (15) (H) of the federal "Immigration and Nationality Act".

SECTION 3. The introductory portion to 8-70-136 (1), Colorado Revised Statutes, is amended to read:

8-70-136. Employment does not include - salespersons. (1) "Employment" does not include services performed by an individual as a licensed real estate ~~salesman~~ SALESPERSON or as a direct seller engaged in the trade or business of selling, or soliciting the sale of, a consumer product in a home or in an establishment other than a permanent retail establishment OR AS AN INDIVIDUAL ENGAGED IN THE TRADE OR BUSINESS OF THE DELIVERING OR DISTRIBUTION OF NEWSPAPERS OR SHOPPING NEWS, INCLUDING ANY SERVICES DIRECTLY RELATED TO SUCH TRADE OR BUSINESS
if:

SECTION 4. 8-70-140 (1) (a) and the introductory portion to 8-70-140 (1) (c), Colorado Revised Statutes, are amended, and the said 8-70-140 (1) (c) is further amended BY THE ADDITION OF A NEW SUBPARAGRAPH, to read:

8-70-140. Employment does not include - nonprofit organizations - government entities. (1) For the purposes of sections 8-70-118 and 8-70-119, "employment" does not include services performed:

(a) In the employ of a church OR A convention or association of churches or in the employ of an organization ~~which~~ THAT is operated primarily for religious purposes and ~~which~~ THAT is operated, supervised, controlled, or principally supported by a church or convention or association of churches OR IN THE EMPLOY OF AN ELEMENTARY OR SECONDARY SCHOOL THAT IS OPERATED PRIMARILY FOR RELIGIOUS PURPOSES; or

(c) In the employ of a governmental entity referred to in section 8-70-119 if such service is performed by an individual in the exercise of ~~his~~ SUCH INDIVIDUAL'S duties:

(VI) AS AN ELECTION OFFICIAL OR ELECTION WORKER IF THE AMOUNT OF REMUNERATION RECEIVED BY THE INDIVIDUAL DURING THE CALENDAR YEAR FOR SERVICES AS AN ELECTION OFFICIAL OR ELECTION WORKER IS LESS THAN ONE THOUSAND DOLLARS.

SECTION 5. Article 70 of title 8, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

8-70-140.8. Employment does not include - owners. "EMPLOYMENT" DOES NOT INCLUDE SERVICES PERFORMED BY MEMBERS OF A LIMITED LIABILITY COMPANY, SOLE PROPRIETORS, OR PARTNERS IN A PARTNERSHIP.

SECTION 6. 8-70-142 (1), Colorado Revised Statutes, is amended BY THE ADDITION OF THE FOLLOWING NEW PARAGRAPHS to read:

8-70-142. Wages - remuneration not included as wages. (1) "Wages" does not include:

(n) ANY PAYMENT MADE TO OR ON BEHALF OF AN EMPLOYEE OR SUCH EMPLOYEE'S BENEFICIARY UNDER AN ARRANGEMENT TO WHICH SECTION 26 U.S.C. SEC. 408 (p) APPLIES, OTHER THAN ANY ELECTIVE CONTRIBUTIONS UNDER SECTION 26 U.S.C. SEC. 408 (p)(2)(A)(I).

(o) ANY PAYMENT MADE TO OR FOR THE BENEFIT OF AN EMPLOYEE IF, AT THE TIME OF SUCH PAYMENT, IT IS REASONABLE TO BELIEVE THAT THE EMPLOYEE WILL BE ABLE TO EXCLUDE SUCH PAYMENT FROM INCOME PURSUANT TO SECTION 26 U.S.C. SEC. 106 (b).

SECTION 7. 8-76-104 (5) (g), (5) (h), and (5) (i), Colorado Revised Statutes, are amended, and the said 8-76-104 is further amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS, to read:

8-76-104. Successor employer. (5) (g) The transfer of experience with respect to a segregable unit shall be of no force and effect unless an application for such transfer, signed by both the predecessor employer and the successor, is filed with the division. Such application shall be filed within ~~thirty~~ SIXTY days after the ~~date of transfer~~ NOTICE OF EMPLOYER LIABILITY FROM THE DIVISION IS MAILED TO THE SUCCESSOR EMPLOYER. SUCH NOTICE SHALL CONTAIN INFORMATION PERTAINING TO SEGREGABLE UNIT TRANSFERS.

(5) (h) ~~When any part of the predecessor's trade or business utilizes the services of ninety percent or more of the total number of employees in covered employment on the payroll for each of the four pay periods immediately preceding the transfer to a successor, the entire separate account including the actual tax, benefit, and payroll experience of the predecessor shall pass to the successor for the purpose of the rate of computation of such successor.~~

(i) ~~If the division finds that no reasonable business purpose for the transfer or acquisition exists, other than a more favorable rate of tax, the experience and reserve account attributable to such unit shall not be transferred to the successor employer and shall revert to the predecessor employer.~~

(7) WHEN ANY PART OF THE PREDECESSOR'S TRADE OR BUSINESS UTILIZES THE SERVICES OF NINETY PERCENT OR MORE OF THE TOTAL NUMBER OF EMPLOYEES IN COVERED EMPLOYMENT ON THE PAYROLL FOR EACH OF THE FOUR PAY PERIODS IMMEDIATELY PRECEDING THE TRANSFER TO A SUCCESSOR, THE ENTIRE SEPARATE ACCOUNT, INCLUDING THE ACTUAL TAX, BENEFIT, AND PAYROLL EXPERIENCE OF THE PREDECESSOR, SHALL PASS TO THE SUCCESSOR FOR THE PURPOSE OF THE RATE OF COMPUTATION OF SUCH SUCCESSOR.

(8) IF THE DIVISION FINDS THAT NO REASONABLE BUSINESS PURPOSE FOR THE TRANSFER OR ACQUISITION EXISTS, OTHER THAN A MORE FAVORABLE RATE OF TAX, THE EXPERIENCE AND RESERVE ACCOUNT ATTRIBUTABLE TO SUCH UNIT SHALL NOT BE TRANSFERRED TO THE SUCCESSOR EMPLOYER AND SHALL REVERT TO THE PREDECESSOR EMPLOYER.

SECTION 8. Effective date - applicability. This act shall take effect upon passage and shall apply to acts committed on or after said date.

SECTION 9. 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 23, 1998