

CHAPTER 338

**LABOR AND INDUSTRY**

**HOUSE BILL 01-1404**

BY REPRESENTATIVE(S) Alexander, Groff, Hefley, Jameson, Larson, Mace, Miller, Romanoff, and Williams S.;  
also SENATOR(S) Dyer (Durango) and Tate.

**AN ACT**

CONCERNING AMENDMENTS TO COLORADO LAW TO CONFORM TO FEDERAL LAW REGARDING THE  
TREATMENT OF INDIAN TRIBES FOR UNEMPLOYMENT INSURANCE PURPOSES.

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

**SECTION 1.** 8-70-113 (1), Colorado Revised Statutes, is amended BY THE  
ADDITION OF A NEW PARAGRAPH to read:

**8-70-113. Employer - definition.** (1) "Employer" means:

(k) ANY INDIAN TRIBE FOR WHICH SERVICE IN EMPLOYMENT AS DEFINED UNDER  
SECTION 8-70-125.5 IS PERFORMED.

**SECTION 2.** Article 70 of title 8, Colorado Revised Statutes, is amended BY  
THE ADDITION OF A NEW SECTION to read:

**8-70-125.5. Employment - Indian tribes.** (1) "EMPLOYMENT" MEANS SERVICE  
PERFORMED IN THE EMPLOY OF AN INDIAN TRIBE, AS DEFINED IN SECTION 3306 (u) OF  
THE "FEDERAL UNEMPLOYMENT TAX ACT", 26 U.S.C. SEC. 3301 ET SEQ. ("FUTA"),  
IF SUCH SERVICE IS EXCLUDED FROM "EMPLOYMENT", AS DEFINED IN FUTA SOLELY  
BY REASON OF SECTION 3306 (c) (7) OF FUTA, AND IS NOT OTHERWISE EXCLUDED  
FROM "EMPLOYMENT" UNDER THE PROVISIONS OF ARTICLES 70 TO 82 OF THIS TITLE.

(2) BENEFITS BASED ON SERVICE IN EMPLOYMENT DEFINED IN THIS SECTION SHALL  
BE PAYABLE IN THE SAME AMOUNT, ON THE SAME TERMS, AND SUBJECT TO THE SAME  
CONDITIONS AS BENEFITS PAYABLE ON THE BASIS OF OTHER SERVICE SUBJECT TO THE  
PROVISIONS OF ARTICLES 70 TO 82 OF THIS TITLE.

**SECTION 3.** The introductory portions to 8-70-140 (1) and (1) (c) and 8-70-140

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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.*

(1) (c) (II), (1) (c) (V), and (1) (e), Colorado Revised Statutes, are amended to read:

**8-70-140. Employment does not include - nonprofit organizations - governmental entities - Indian tribes.** (1) For the purposes of sections 8-70-118, and 8-70-119, AND 8-70-125.5, "employment" does not include services performed:

(c) In the employ of a governmental entity referred to in section 8-70-119 OR AN INDIAN TRIBE REFERRED TO IN SECTION 8-70-125.5 if such service is performed by an individual in the exercise of such individual's duties:

(II) As a member of a legislative body or a member of the judiciary of a state or political subdivision THEREOF, OR OF AN INDIAN TRIBE;

(V) In a position ~~which~~ THAT, pursuant to the laws of this state OR INDIAN TRIBAL LAW, is designated as a major, nontenured policymaking or advisory position, or a policymaking or advisory position the performance of the duties of which ordinarily does not require more than eight hours per week;

(e) By an individual receiving work relief or work training as part of an unemployment work relief or work training program assisted or financed in whole or in part by public funds OR BY AN INDIAN TRIBE; or

**SECTION 4.** The introductory portion to 8-73-107 (3), Colorado Revised Statutes, is amended to read:

**8-73-107. Eligibility conditions - penalty.** (3) For the purpose of this subsection (3), "educational institution" includes the Colorado school for the deaf and the blind; except that such term does not include a headstart program ~~which~~ THAT is not a part of a school administered by a board of education because such headstart employees are not subject to the same employment conditions as other employees of the school. Compensation is payable on the basis of services to which sections 8-70-119, and 8-70-125, AND 8-70-125.5 apply in the same amount, on the same terms, and subject to the same conditions as compensation payable on the basis of other services subject to articles 70 to 82 of this title; except that:

**SECTION 5.** Article 76 of title 8, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

**8-76-115. Coverage of Indian tribes.** (1) INDIAN TRIBES OR TRIBAL UNITS, INCLUDING ALL SUBDIVISIONS OR SUBSIDIARIES OF, AND BUSINESS ENTERPRISES WHOLLY OWNED BY, SUCH INDIAN TRIBES, SUBJECT TO THE PROVISIONS OF ARTICLES 70 TO 82 OF THIS TITLE SHALL PAY TAXES UNDER THE SAME TERMS AND CONDITIONS UNDER SECTIONS 8-76-101 TO 8-76-103 AS APPLY TO OTHER TAXPAYING EMPLOYERS UNLESS AN ELECTION IS MADE, IN THE SAME MANNER PROVIDED IN SECTION 8-76-108 (1) (d), TO MAKE PAYMENTS IN LIEU OF TAXES INTO THE UNEMPLOYMENT COMPENSATION FUND IN AMOUNTS EQUAL TO THE AMOUNT OF BENEFITS ATTRIBUTABLE TO SERVICE IN THE EMPLOY OF THE INDIAN TRIBE.

(2) INDIAN TRIBES SHALL DETERMINE IF PAYMENTS IN LIEU OF TAXES WILL BE ELECTED BY THE TRIBE AS A WHOLE, BY INDIVIDUAL TRIBAL UNITS, OR BY COMBINATIONS OF INDIVIDUAL TRIBAL UNITS. TWO OR MORE INDIVIDUAL TRIBAL

UNITS MAY APPLY WITH THE DIVISION FOR THE ESTABLISHMENT OF A GROUP ACCOUNT IN THE SAME MANNER AND SUBJECT TO THE SAME TERMS AS SET FORTH IN SECTION 8-76-110 (6).

(3) INDIAN TRIBES OR TRIBAL UNITS ELECTING TO MAKE PAYMENTS IN LIEU OF TAXES SHALL BE BILLED FOR THE FULL AMOUNT OF BENEFITS ATTRIBUTABLE TO SERVICE IN THE EMPLOY OF SAID INDIAN TRIBES OR TRIBAL UNITS, AND PAYMENT SHALL BE MADE WITH RESPECT TO SAID BILLINGS IN THE MANNER PROVIDED IN SECTION 8-76-108 (1) (c).

(4) THE DIVISION MAY REQUIRE ANY INDIAN TRIBE OR TRIBAL UNIT THAT ELECTS TO BECOME LIABLE FOR PAYMENTS IN LIEU OF TAXES TO EXECUTE AND FILE WITH THE DIVISION A SURETY BOND OR TO DEPOSIT MONEY OR SECURITIES IN THE MANNER PROVIDED IN SECTION 8-76-110 (4).

(5) (a) FAILURE OF THE INDIAN TRIBE OR TRIBAL UNIT TO MAKE REQUIRED PAYMENTS PURSUANT TO SUBSECTION (3) OF THIS SECTION, TO PAY TAXES PURSUANT TO SECTIONS 8-76-101 TO 8-76-103, TO PAY ASSESSMENTS OF INTEREST AND PENALTIES PURSUANT TO SECTIONS 8-79-101 AND 8-79-104, OR TO EXECUTE AND FILE A SURETY BOND OR DEPOSIT MONEY OR OTHER SECURITY PURSUANT TO SECTION 8-76-110 (4) WITHIN NINETY DAYS OF RECEIPT OF A DELINQUENCY NOTICE BY THE DIVISION SHALL CAUSE THE INDIAN TRIBE TO LOSE THE OPTION TO MAKE PAYMENTS IN LIEU OF TAXES EFFECTIVE WITH THE BEGINNING OF THE FOLLOWING CALENDAR YEAR UNLESS A DIVISION-APPROVED PAYMENT PLAN IS ESTABLISHED OR PAYMENT IN FULL IS RECEIVED WITHIN THE SAID NINETY-DAY PERIOD.

(b) THE DIVISION SHALL NOTIFY THE UNITED STATES INTERNAL REVENUE SERVICE AND THE UNITED STATES DEPARTMENT OF LABOR OF FAILURES BY THE INDIAN TRIBE OR TRIBAL UNIT TO COMPLY WITH THIS SUBSECTION (5).

(6) ANY INDIAN TRIBE THAT LOSES THE OPTION TO MAKE PAYMENTS IN LIEU OF TAXES DUE TO LATE PAYMENT OR NONPAYMENT, AS DESCRIBED IN SUBSECTION (5) OF THIS SECTION, SHALL HAVE SUCH OPTION REINSTATED EFFECTIVE WITH THE BEGINNING OF THE FOLLOWING CALENDAR YEAR IF, BY MARCH 1 OF SAID YEAR, ALL CONTRIBUTIONS HAVE BEEN TIMELY MADE AND NO TAXES, PAYMENTS IN LIEU OF TAXES FOR BENEFITS PAID, PENALTIES, OR INTEREST REMAIN OUTSTANDING.

(7) (a) FAILURE OF THE INDIAN TRIBE OR ANY TRIBAL UNIT THEREOF TO MAKE ANY PAYMENT REQUIRED BY SUBSECTION (5) OF THIS SECTION, AFTER ALL COLLECTION ACTIVITIES DEEMED NECESSARY BY THE DIVISION HAVE BEEN EXHAUSTED, SHALL CAUSE SERVICES PERFORMED FOR SUCH TRIBE TO NOT BE TREATED AS "EMPLOYMENT" FOR PURPOSES OF SECTION 8-70-125.5.

(b) THE DIVISION MAY DETERMINE THAT ANY INDIAN TRIBE THAT LOSES COVERAGE UNDER THE PROVISIONS OF THIS SUBSECTION (7) MAY HAVE SERVICES PERFORMED FOR SUCH TRIBE AGAIN INCLUDED AS "EMPLOYMENT" FOR PURPOSES OF SECTION 8-70-125.5 IF ALL TAXES, PAYMENTS IN LIEU OF TAXES, PENALTIES AND INTEREST, OR SURETY BOND OR PAYMENT OF OTHER MONEY OR SECURITY HAVE BEEN PAID.

(8) NOTICES OF PAYMENT AND REPORTING DELINQUENCY TO INDIAN TRIBES OR THEIR TRIBAL UNITS SHALL INCLUDE INFORMATION STATING THAT FAILURE TO MAKE

FULL PAYMENT WITHIN THE PRESCRIBED TIME PERIOD:

(a) SHALL CAUSE THE INDIAN TRIBE TO BE LIABLE FOR TAXES UNDER THE "FEDERAL UNEMPLOYMENT TAX ACT", 26 U.S.C. SEC. 3301 ET SEQ.;

(b) SHALL CAUSE THE INDIAN TRIBE TO LOSE THE OPTION TO MAKE PAYMENTS IN LIEU OF TAXES; AND

(c) MAY CAUSE THE INDIAN TRIBE TO BE EXCEPTED FROM THE DEFINITION OF "EMPLOYER" AS PROVIDED IN SECTION 8-70-113 (1) (k) AND MAY CAUSE SERVICES IN THE EMPLOY OF THE INDIAN TRIBE, AS PROVIDED IN SECTION 8-70-125.5, TO BE EXCEPTED FROM "EMPLOYMENT".

(9) EXTENDED BENEFITS PAID THAT ARE ATTRIBUTABLE TO SERVICE IN THE EMPLOY OF AN INDIAN TRIBE AND NOT REIMBURSED BY THE FEDERAL GOVERNMENT SHALL BE FINANCED IN THEIR ENTIRETY BY SUCH INDIAN TRIBE IN THE MANNER PROVIDED IN SECTION 8-76-108 (1) (e).

**SECTION 6. Effective date.** This act shall take effect December 21, 2000.

**SECTION 7. 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.

Became Law: June 9, 2001