

SENATE BILL NO. 361—COMMITTEE ON COMMERCE AND LABOR

MARCH 23, 2009

Referred to Committee on Commerce and Labor

SUMMARY—Revises provisions relating to employee leasing companies. (BDR 53-1125)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to employee leasing companies; authorizing the Administrator of the Division of Industrial Relations of the Department of Business and Industry to adopt regulations relating to a third party that may act on behalf of an employee leasing company; providing various means for an employee leasing company and its clients to provide workers' compensation coverage; requiring employee leasing companies to pay an annual registration fee; requiring employee leasing companies to submit certain audited financial statements; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Section 3 of this bill authorizes the Administrator of the Division of Industrial Relations of the Department of Business and Industry to adopt regulations to allow an employee leasing company to enter into an agreement with a person to act on its behalf with regard to certain regulatory provisions.

Section 4 of this bill provides for the ways that an employee leasing company and its clients may satisfy the requirement to obtain workers' compensation coverage for their employees. **Sections 9 and 10** of this bill make changes consistent with the provisions of **section 4**.

Section 7 of this bill requires an employee leasing company to pay a fee for the issuance or renewal of its certificate of registration.

Section 8 of this bill requires an employee leasing company to provide certain financial statements along with its application for the issuance or renewal of a certificate of registration.



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THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. NRS 616A.465 is hereby amended to read as follows:

616A.465 1. Except as otherwise provided in this section, the Division shall:

(a) Regulate insurers pursuant to chapters 616A to 617, inclusive, of NRS;

(b) Investigate insurers regarding compliance with statutes and the Division's regulations;

(c) Determine whether an employee leasing company is entitled to a certificate of registration pursuant to NRS 616B.673; and

(d) Regulate employee leasing companies pursuant to the provisions of NRS 616B.670 to 616B.697, inclusive ~~§~~ , and *sections 3 and 4 of this act.*

2. The Commissioner is responsible for reviewing rates, investigating the solvency of insurers, authorizing private carriers pursuant to chapter 680A of NRS and certifying:

(a) Self-insured employers pursuant to NRS 616B.300 to 616B.330, inclusive, and 616B.336;

(b) Associations of self-insured public or private employers pursuant to NRS 616B.350 to 616B.446, inclusive; and

(c) Third-party administrators pursuant to chapter 683A of NRS.

3. The Department of Administration is responsible for contested claims relating to industrial insurance pursuant to NRS 616C.310 to 616C.385, inclusive. The Administrator is responsible for administrative appeals pursuant to NRS 616B.215.

4. The Nevada Attorney for Injured Workers is responsible for legal representation of claimants pursuant to NRS 616A.435 to 616A.460, inclusive, and 616D.120.

5. The Division is responsible for the investigation of complaints. If a complaint is filed with the Division, the Administrator shall cause to be conducted an investigation which includes a review of relevant records and interviews of affected persons. If the Administrator determines that a violation may have occurred, the Administrator shall proceed in accordance with the provisions of NRS 616D.120 and 616D.130.

6. As used in this section, "employee leasing company" has the meaning ascribed to it in NRS 616B.670.

Sec. 2. Chapter 616B of NRS is hereby amended by adding thereto the provisions set forth as sections 3 and 4 of this act.

Sec. 3. 1. *The Administrator may adopt regulations authorizing and setting forth qualifications for a person selected by an employee leasing company to act on behalf of the employee*



1 *leasing company in complying with the requirements of NRS*
2 *616B.670 to 616B.697, inclusive, and sections 3 and 4 of this act*
3 *and any regulations adopted pursuant thereto, including, without*
4 *limitation, any requirements regarding obtaining or renewing a*
5 *certificate of registration. Such a person must be independent of*
6 *the employee leasing company and approved by the Administrator.*

7 *2. Nothing in this section or any regulations adopted*
8 *pursuant thereto:*

9 *(a) Limits or otherwise affects the authority of the*
10 *Administrator to issue or revoke a certificate of registration of an*
11 *employee leasing company;*

12 *(b) Limits or otherwise affects the authority of the*
13 *Administrator to investigate compliance with or enforce any*
14 *provision of NRS 616B.670 to 616B.697, inclusive, and sections 3*
15 *and 4 of this act and any regulations adopted pursuant thereto; or*

16 *(c) Requires an employee leasing company to authorize a*
17 *person to act on its behalf.*

18 **Sec. 4. 1.** *An employee leasing company may satisfy its*
19 *obligation to provide coverage for workers' compensation for the*
20 *employees that the employee leasing company leases to each client*
21 *company by:*

22 *(a) Confirming that the client company has obtained a policy*
23 *of workers' compensation insurance directly from an insurer, and*
24 *maintains that policy, which covers all of the employees of the*
25 *client company, including, without limitation, the employees*
26 *leased from the employee leasing company, subject to the same*
27 *requirements and conditions as if the client company were the sole*
28 *employer of the leased employees;*

29 *(b) Confirming that the client company is a member of an*
30 *association of self-insured employers which is certified by the*
31 *Commissioner and which has assumed responsibility, and*
32 *maintains responsibility, for covering all of the employees of the*
33 *client company, including, without limitation, the employees*
34 *leased from the employee leasing company, subject to the same*
35 *requirements and conditions as if the client company were the sole*
36 *employer of the leased employees;*

37 *(c) Confirming that the client company is certified by the*
38 *Commissioner as a self-insured employer which self-insures all of*
39 *the employees of the client company, including, without limitation,*
40 *the employees leased from the employee leasing company, subject*
41 *to the same requirements and conditions as if the client company*
42 *were the sole employer of the leased employees;*

43 *(d) Obtaining a policy of workers' compensation insurance*
44 *directly from an insurer, and maintaining that policy, which*
45 *covers all of the employees leased to the client company or all of*



1 *the employees leased to the client company and other client*
2 *companies affiliated with the client company such that:*

3 *(1) The policy covers the liability of both the employee*
4 *leasing company and the client company or companies for*
5 *payments required by chapters 616A to 616D, inclusive, or chapter*
6 *617 of NRS; and*

7 *(2) The employee leasing company controls payments and*
8 *communications related to the policy; or*

9 *(e) Obtaining a policy of workers' compensation insurance*
10 *directly from an insurer, and maintaining that policy, which*
11 *covers:*

12 *(1) All of the employees of the employee leasing company*
13 *who are leased to the client company;*

14 *(2) All of the employees of the employee leasing company*
15 *who work directly for the employee leasing company and are not*
16 *leased to any client company; and*

17 *(3) Some or all of the employees of the employee leasing*
18 *company who are leased to other client companies.*

19 *2. With respect to a policy of workers' compensation*
20 *insurance described in paragraph (a) of subsection 1:*

21 *(a) The policy may name the employee leasing company as an*
22 *additional insured; and*

23 *(b) If the employee leasing company is licensed as a producer*
24 *of insurance pursuant to NRS 683A.261 and is authorized by the*
25 *insurer, the employee leasing company may negotiate coverage,*
26 *collect premiums on behalf of the insurer and otherwise act as an*
27 *intermediary with respect to the policy.*

28 *3. If an employee leasing company or a client company*
29 *maintains a policy of workers' compensation insurance which*
30 *provides coverage for leased employees, each insurer insuring*
31 *leased employees shall report to the Commissioner:*

32 *(a) Payroll and claims data for each client company in a*
33 *manner that identifies both the client company and the employee*
34 *leasing company; and*

35 *(b) The status of coverage with respect to each client company*
36 *in accordance with any applicable requirements regarding proof*
37 *of coverage.*

38 *4. If the services that an employee leasing company offers to*
39 *a client company do not include obtaining and maintaining a*
40 *policy of workers' compensation insurance for the employees*
41 *which the employee leasing company will lease to the client*
42 *company, the employee leasing company shall:*

43 *(a) Before entering into an agreement with the client company*
44 *to provide services as an employee leasing company, provide*
45 *written notice to the client company that the client company will*



1 remain responsible for providing coverage for workers'
2 compensation for all of the employees of the client company,
3 including, without limitation, the employees leased from the
4 employee leasing company; and

5 (b) In the written agreement with the client company to
6 provide services as an employee leasing company, clearly set forth
7 the responsibility of the client company to provide coverage for
8 workers' compensation for all of the employees of the client
9 company, including, without limitation, the employees leased from
10 the employee leasing company.

11 5. If an employee leasing company offers to provide coverage
12 for workers' compensation for the employees that the employee
13 leasing company leases to a client company in accordance with
14 paragraph (d) or (e) of subsection 1:

15 (a) The coverage for workers' compensation must not take
16 effect until the client company executes the written agreement
17 required by NRS 616B.688 between the employee leasing company
18 and the client company; and

19 (b) The written agreement required by NRS 616B.688 between
20 the employee leasing company and the client company must:

21 (1) Explain that coverage for workers' compensation does
22 not take effect until the effective date designated by the insurer in
23 the policy of workers' compensation insurance;

24 (2) Provide that, while the policy of workers' compensation
25 insurance is in force, the employee leasing company will pay all
26 premiums required by the policy, including, without limitation,
27 any adjustments or assessments, and will be entitled to any
28 refunds of premiums;

29 (3) Set forth the procedures by which the client company or
30 the employee leasing company may terminate the agreement and
31 any fees or costs payable upon termination;

32 (4) Provide that, except as otherwise provided by law, all
33 services provided by the employee leasing company to the client
34 company will cease immediately on the effective date of any
35 termination of the agreement;

36 (5) Provide that the insurer from whom the policy of
37 workers' compensation insurance is obtained by the employee
38 leasing company has the right to inspect the premises and records
39 of the client company;

40 (6) Provide that the loss experience of the client company
41 will continue to be reported in the name of the client company to
42 the Commissioner and will be available to subsequent insurers
43 upon request;

44 (7) Provide that the policy of workers' compensation
45 insurance covers only those employees acknowledged in writing by



1 *the employee leasing company to be employees of the employee*
2 *leasing company who are being leased to the client company;*

3 (8) *Explain that the client company is responsible at all*
4 *times for providing coverage for workers' compensation for any*
5 *employees of the client company who are not leased from the*
6 *employee leasing company; and*

7 (9) *Provide that the client company must provide*
8 *satisfactory evidence of the coverage required by subparagraph (8)*
9 *to the insurer from whom the policy of workers' compensation*
10 *insurance is obtained by the employee leasing company.*

11 6. *Nothing in this section prohibits the employees of an*
12 *employee leasing company who are leased to one or more client*
13 *companies from being considered as a group for the purposes of*
14 *any eligibility for dividends, discounts on premiums, rating*
15 *arrangements or options or obtaining policies with large*
16 *deductibles.*

17 7. *The exclusive remedy provided by NRS 616A.020 applies to*
18 *the employee leasing company, the client company and to all*
19 *employees of the client company, including, without limitation, the*
20 *employees leased from the employee leasing company, whether the*
21 *employee leasing company or the client company provides the*
22 *coverage for workers' compensation.*

23 8. *The Administrator and the Commissioner may adopt*
24 *regulations to carry out the provisions of this section.*

25 **Sec. 5.** NRS 616B.670 is hereby amended to read as follows:

26 616B.670 As used in NRS 616B.670 to 616B.697, inclusive,
27 *and sections 3 and 4 of this act*, unless the context otherwise
28 requires:

29 1. "Applicant" means a person seeking a certificate of
30 registration pursuant to NRS 616B.670 to 616B.697, inclusive, *and*
31 *sections 3 and 4 of this act* to operate an employee leasing
32 company.

33 2. "Client company" means a company which leases
34 employees, for a fee, from an employee leasing company pursuant
35 to a written or oral agreement.

36 3. "Employee leasing company" means a company which,
37 pursuant to a written or oral agreement:

38 (a) Places any of the regular, full-time employees of a client
39 company on its payroll and, for a fee, leases them to the client
40 company on a regular basis without any limitation on the duration of
41 their employment; or

42 (b) Leases to a client company:

43 (1) Five or more part-time or full-time employees; or

44 (2) Ten percent or more of the total number of employees
45 within a classification of risk established by the Commissioner.



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Sec. 6. NRS 616B.673 is hereby amended to read as follows:

616B.673 1. A person shall not operate an employee leasing company in this State unless he has complied with the provisions of NRS 616B.670 to 616B.697, inclusive ~~[H]~~, *and sections 3 and 4 of this act*. The Administrator shall issue a certificate of registration to each applicant who complies with the provisions of NRS 616B.670 to 616B.697, inclusive ~~[H]~~, *and sections 3 and 4 of this act*.

2. Any person who violates the provisions of subsection 1 is guilty of a misdemeanor.

3. Each certificate of registration issued by the Administrator pursuant to NRS 616B.670 to 616B.697, inclusive, *and sections 3 and 4 of this act* expires 1 year after it is issued unless renewed before that date.

Sec. 7. NRS 616B.679 is hereby amended to read as follows:

616B.679 1. Each application must include:

(a) The applicant's name and title of his position with the employee leasing company.

(b) The applicant's age, place of birth and social security number.

(c) The applicant's address.

(d) The business address of the employee leasing company.

(e) The business address of the registered agent of the employee leasing company, if the applicant is not the registered agent.

(f) If the applicant is a:

(1) Partnership, the name of the partnership and the name, address, age, social security number and title of each partner.

(2) Corporation, the name of the corporation and the name, address, age, social security number and title of each officer of the corporation.

(g) Proof of:

(1) Compliance with the provisions of NRS 360.780.

(2) The payment of any premiums for industrial insurance required by chapters 616A to 617, inclusive, of NRS.

(3) The payment of contributions or payments in lieu of contributions required by chapter 612 of NRS.

(4) Insurance coverage for any benefit plan from an insurer authorized pursuant to title 57 of NRS that is offered by the employee leasing company to its employees.

(h) *A registration or renewal fee of \$500.*

(i) Any other information the Administrator requires.

2. Each application must be notarized and signed under penalty of perjury:

(a) If the applicant is a sole proprietorship, by the sole proprietor.

(b) If the applicant is a partnership, by each partner.



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(c) If the applicant is a corporation, by each officer of the corporation.

3. An applicant shall submit to the Administrator any change in the information required by this section within 30 days after the change occurs. The Administrator may revoke the certificate of registration of an employee leasing company which fails to comply with the provisions of NRS 616B.670 to 616B.697, inclusive ~~H~~, *and sections 3 and 4 of this act.*

4. If an insurer cancels an employee leasing company's policy, the insurer shall immediately notify the Administrator in writing. The notice must comply with the provisions of NRS 687B.310 to 687B.355, inclusive, and must be served personally on or sent by first-class mail or electronic transmission to the Administrator.

Sec. 8. NRS 616B.679 is hereby amended to read as follows:

616B.679 1. Each application must include:

(a) The applicant's name and title of his position with the employee leasing company.

(b) The applicant's age, place of birth and social security number.

(c) The applicant's address.

(d) The business address of the employee leasing company.

(e) The business address of the registered agent of the employee leasing company, if the applicant is not the registered agent.

(f) If the applicant is a:

(1) Partnership, the name of the partnership and the name, address, age, social security number and title of each partner.

(2) Corporation, the name of the corporation and the name, address, age, social security number and title of each officer of the corporation.

(g) Proof of:

(1) Compliance with the provisions of NRS 360.780.

(2) The payment of any premiums for industrial insurance required by chapters 616A to 617, inclusive, of NRS.

(3) The payment of contributions or payments in lieu of contributions required by chapter 612 of NRS.

(4) Insurance coverage for any benefit plan from an insurer authorized pursuant to title 57 of NRS that is offered by the employee leasing company to its employees.

(h) *A financial statement of the applicant setting forth the financial condition of the employee leasing company. Except as otherwise provided in subsection 5, the financial statement must include, without limitation:*

(1) For an application for issuance of a certificate of registration, the most recent audited financial statement of the



1 *applicant, which must have been completed not more than 13*
2 *months before the date of application; or*

3 *(2) For an application for renewal of a certificate of*
4 *registration, an audited financial statement which must have been*
5 *completed not more than 180 days after the end of the applicant's*
6 *fiscal year.*

7 *(i) A registration or renewal fee of \$500.*

8 ~~[(i)]~~ *(j) Any other information the Administrator requires.*

9 2. Each application must be notarized and signed under penalty
10 of perjury:

11 (a) If the applicant is a sole proprietorship, by the sole
12 proprietor.

13 (b) If the applicant is a partnership, by each partner.

14 (c) If the applicant is a corporation, by each officer of the
15 corporation.

16 3. An applicant shall submit to the Administrator any change in
17 the information required by this section within 30 days after the
18 change occurs. The Administrator may revoke the certificate of
19 registration of an employee leasing company which fails to comply
20 with the provisions of NRS 616B.670 to 616B.697, inclusive, and
21 sections 3 and 4 of this act.

22 4. If an insurer cancels an employee leasing company's policy,
23 the insurer shall immediately notify the Administrator in writing.
24 The notice must comply with the provisions of NRS 687B.310 to
25 687B.355, inclusive, and must be served personally on or sent by
26 first-class mail or electronic transmission to the Administrator.

27 *5. A financial statement submitted with an application*
28 *pursuant to this section must be prepared in accordance with*
29 *generally accepted accounting principles, must be audited by an*
30 *independent certified public accountant licensed to practice in the*
31 *jurisdiction in which the accountant is located and must be*
32 *without qualification as to the status of the employee leasing*
33 *company as a going concern. An employee leasing company that*
34 *has not had sufficient operating history to have an audited*
35 *financial statement based upon at least 12 months of operating*
36 *history must present financial statements reviewed by a certified*
37 *public accountant covering its entire operating history. Each*
38 *financial statement must:*

39 *(a) Indicate that the applicant has maintained positive working*
40 *capital, as defined by generally accepted accounting principles,*
41 *throughout the period covered by the financial statement; or*

42 *(b) Be accompanied by a bond, irrevocable letter of credit or*
43 *securities with a minimum market value equaling the maximum*
44 *deficiency in working capital plus \$100,000. The bond, irrevocable*
45 *letter of credit or securities must be held by a depository institution*



1 *designed by the Administrator to secure payment by the applicant*
2 *of all taxes, wages, benefits or other entitlements payable by the*
3 *applicant.*

4 **Sec. 9.** NRS 616B.682 is hereby amended to read as follows:

5 616B.682 Each employee leasing company operating in this
6 State shall:

7 1. Maintain an office or similar site in this State for retaining,
8 reviewing and auditing its payroll records and written agreements
9 with client companies.

10 2. Maintain at that office or similar site in this State records
11 establishing that the employee leasing company ~~{maintains}~~ :

12 (a) *Maintains* current policies of workers' compensation
13 insurance providing coverage for each employee it leases to each
14 client company ~~{}~~; *or*

15 (b) *Pursuant to section 4 of this act, otherwise satisfies its*
16 *obligation to provide coverage for workers' compensation for the*
17 *employees that the employee leasing company leases to each client*
18 *company.*

19 3. Keep the records described in subsection 2 open for
20 inspection and copying, during its regular business hours, by:

21 (a) Each employee it leases to each client company and any
22 representative of each such employee; and

23 (b) The public.

24 **Sec. 10.** NRS 616B.685 is hereby amended to read as follows:

25 616B.685 If a person operates an employee leasing company
26 and a temporary employment service in this State, the person ~~{shall~~
27 ~~maintain}~~ :

28 1. *Shall maintain* separate payroll records for the company and
29 the service. The records must be maintained in this State. ~~{A~~
30 ~~separate}~~

31 2. *Shall not maintain a* policy of workers' compensation
32 insurance ~~{must be maintained for}~~ *which covers both employees of*
33 *the employee leasing company {} and employees of the temporary*
34 *employment service.*

35 **Sec. 11.** NRS 616B.691 is hereby amended to read as follows:

36 616B.691 1. For the purposes of chapters 612 and 616A to
37 617, inclusive, of NRS, an employee leasing company which
38 complies with the provisions of NRS 616B.670 to 616B.697,
39 inclusive, *and sections 3 and 4 of this act* shall be deemed to be the
40 employer of the employees it leases to a client company.

41 2. If an employee leasing company complies with the
42 provisions of subsection 3, the employee leasing company shall be
43 deemed to be the employer of its leased employees for the purposes
44 of sponsoring and maintaining any benefit plans, including, without



1 limitation, for the purposes of the Employee Retirement Income
2 Security Act of 1974, 29 U.S.C. §§ 1001 et seq.

3 3. An employee leasing company shall not offer its employees
4 any self-funded industrial insurance program. An employee leasing
5 company shall not act as a self-insured employer or be a member of
6 an association of self-insured public or private employers pursuant
7 to chapters 616A to 616D, inclusive, or chapter 617 of NRS.

8 4. If an employee leasing company fails to:

9 (a) Pay any contributions, premiums, forfeits or interest due; or

10 (b) Submit any reports or other information required,
11 ➤ pursuant to this chapter or chapter 612, 616A, 616C, 616D or 617
12 of NRS, the client company is jointly and severally liable for the
13 contributions, premiums, forfeits or interest attributable to the wages
14 of the employees leased to it by the employee leasing company.

15 **Sec. 12.** NRS 616B.694 is hereby amended to read as follows:

16 616B.694 The Administrator may adopt regulations to carry
17 out the provisions of NRS 616B.670 to 616B.697, inclusive ~~and~~, and
18 *sections 3 and 4 of this act.*

19 **Sec. 13.** NRS 616B.697 is hereby amended to read as follows:

20 616B.697 An action for damages caused by the failure of an
21 employee leasing company to comply with the provisions of NRS
22 616B.670 to 616B.697, inclusive, *and sections 3 and 4 of this act*
23 may be brought against any person who is required to sign the
24 application for a certificate of registration for the employee leasing
25 company.

26 **Sec. 14.** 1. This section and sections 1 to 7, inclusive, and 9
27 to 13, inclusive, of this act become effective on October 1, 2009.

28 2. Section 8 of this act becomes effective on January 1, 2010.

