

ASSEMBLY BILL NO. 389—ASSEMBLYMAN PAUL ANDERSON

MARCH 17, 2015

Referred to Committee on Commerce and Labor

SUMMARY—Revises provisions governing employee leasing companies. (BDR 53-766)

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; revising the method for calculation of unemployment contributions for employees of an employee leasing company leased to a client company; altering the definition of “employee leasing company” to describe the nature of the relevant agreement; authorizing an employee leasing company that applies for a certificate of registration to provide consolidated or combined financial statements with its application; repealing the requirement that an employee leasing company maintain an office in this State; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

- 1 Existing law requires employers to contribute a percentage of an employee’s
- 2 wages to the Unemployment Compensation Fund. (Chapter 612 of NRS) The
- 3 standard rate of contribution is 2.95 percent of the employee’s wages; however, an
- 4 employer may be eligible for a different rate of contribution based on the
- 5 employer’s actual payroll, contribution and benefit experience. (NRS 612.540-
- 6 612.550) **Section 1** of this bill allows an employee leasing company to choose
- 7 whether to use its own calculated contribution rate or the calculated contribution
- 8 rate of a client company for employees leased to the client company.
- 9 Existing law defines the term “employee leasing company.” (NRS 616B.670)
- 10 **Section 2** of this bill revises the definition of an employee leasing company to
- 11 emphasize that the agreement between an employee leasing company and client
- 12 company contemplates an ongoing relationship with an allocation of rights, duties
- 13 and obligations.
- 14 Existing law requires an employee leasing company to have a certificate of
- 15 registration to operate in this State. (NRS 616B.673) To receive a certificate of
- 16 registration, an employee leasing company must submit an application to the
- 17 Administrator of the Division of Industrial Relations of the Department of Business



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18 and Industry which must include, among other things, financial statements of the
19 applicant. (NRS 616B.679) **Section 3** of this bill allows an employee leasing
20 company to meet this requirement by submitting consolidated or combined
21 financial statements that include, but are not exclusive to, the employee leasing
22 company.

23 Existing law requires an employee leasing company to maintain an office or
24 similar site in this State for retaining, reviewing and auditing its payroll records and
25 agreements with client companies. In addition, the office must be open during
26 normal business hours for the inspection and copying of certain records by
27 employees and the public. (NRS 616B.682) **Section 5** of this bill repeals these
28 provisions.

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

1 **Section 1.** Chapter 612 of NRS is hereby amended by adding
2 thereto a new section to read as follows:

3 *1. For the purposes of this section and NRS 612.535 to*
4 *612.550, inclusive, an employee leasing company's contribution*
5 *rate for any employee that the employee leasing company leases to*
6 *a client company must, pursuant to the selection of the employee*
7 *leasing company in accordance with subsections 2 and 3, be based*
8 *on:*

9 *(a) The classification calculated pursuant to NRS 612.550 for*
10 *the employee leasing company based on the employee leasing*
11 *company's actual payroll, contribution and benefit experience; or*

12 *(b) The classification calculated pursuant to NRS 612.550 for*
13 *each client company based on the client company's actual payroll,*
14 *contribution and benefit experience. If the employee leasing*
15 *company chooses to have the contribution rate for employees*
16 *calculated pursuant to this paragraph, the employee leasing*
17 *company may pay the required contributions as a third-party, on*
18 *behalf of the client company, into the account of the client*
19 *company.*

20 *2. An employee leasing company that holds a valid certificate*
21 *of registration pursuant to NRS 616B.670 to 616B.697, inclusive,*
22 *before October 1, 2015, must, before January 1, 2016, select which*
23 *of the classification options provided for in subsection 1 that the*
24 *employee leasing company elects to use. The selected classification*
25 *option becomes effective on January 1, 2016. If an employee*
26 *leasing company fails to make an election of a classification*
27 *option before January 1, 2016, the Administrator shall make the*
28 *election on behalf of the employee leasing company. Once an*
29 *employee leasing company has made an election or, due to a*
30 *failure to make an election in a timely manner the Administrator*
31 *has made an election on behalf of the employee leasing company*



1 *pursuant to this section, the employee leasing company may not*
2 *thereafter elect another classification option.*

3 *3. An employee leasing company that receives a valid*
4 *certificate of registration pursuant to NRS 616B.670 to 616B.697,*
5 *inclusive, on or after October 1, 2015, must, within 120 days after*
6 *receipt of the certificate, elect which of the classification options*
7 *provided for in subsection 1 that the employee leasing company*
8 *desires to use. The selected rate classification option becomes*
9 *effective on January 1 of the year immediately following the year*
10 *in which the employee leasing company makes the election. If an*
11 *employee leasing company fails to make an election of a*
12 *classification option within 120 days after receipt of a certificate,*
13 *the Administrator shall make the election on behalf of the*
14 *employee leasing company. Once an employee leasing company*
15 *has made an election or, due to a failure to make an election in a*
16 *timely manner the Administrator has made an election on behalf*
17 *of the employee leasing company pursuant to this section, the*
18 *employee leasing company may not elect another classification*
19 *option.*

20 *4. As used in this section, unless the context otherwise*
21 *requires:*

22 *(a) "Client company" has the meaning ascribed to it in*
23 *NRS 616B.670.*

24 *(b) "Employee leasing company" has the meaning ascribed to*
25 *it in NRS 616B.670.*

26 **Sec. 2.** NRS 616B.670 is hereby amended to read as follows:

27 616B.670 As used in NRS 616B.670 to 616B.697, inclusive,
28 unless the context otherwise requires:

29 1. "Applicant" means a person seeking a certificate of
30 registration pursuant to NRS 616B.670 to 616B.697, inclusive, to
31 operate an employee leasing company.

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

35 3. "Employee leasing company" means a company which,
36 pursuant to a written or oral agreement ~~;~~

37 ~~—(a) Places intended by the parties to create an ongoing~~
38 ~~relationship, places any of the regular, full-time employees of a~~
39 ~~client 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~~~~
41 ~~~~of 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.]~~



1 **4. “Ongoing relationship” means a relationship wherein the**
2 **rights, duties and obligations of an employer which arise out of an**
3 **employment relationship are allocated between the employee**
4 **leasing company and the client company on an ongoing, long-**
5 **term basis. The term does not include a temporary or project-**
6 **specific agreement between an employee leasing company and a**
7 **client company.**

8 **Sec. 3.** NRS 616B.679 is hereby amended to read as follows:

9 616B.679 1. Each application must include:

10 (a) The applicant’s name and title of his or her position with the
11 employee leasing company.

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

14 (c) The applicant’s address.

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

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

18 (f) If the applicant is a:

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

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

24 (g) Proof of:

25 (1) Compliance with the provisions of chapter 76 of NRS.

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

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

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

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

37 (1) For an application for issuance of a certificate of
38 registration, the most recent audited financial statement ~~to~~ **that**
39 **includes** the applicant, which must have been completed not more
40 than 13 months before the date of application; or

41 (2) For an application for renewal of a certificate of
42 registration, an audited financial statement **that includes the**
43 **applicant and** which must have been completed not more than 180
44 days after the end of the applicant’s fiscal year.

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



- 1 (j) Any other information the Administrator requires.
2 2. Each application must be notarized and signed under penalty
3 of perjury:
4 (a) If the applicant is a sole proprietorship, by the sole
5 proprietor.
6 (b) If the applicant is a partnership, by each partner.
7 (c) If the applicant is a corporation, by each officer of the
8 corporation.
9 3. An applicant shall submit to the Administrator any change in
10 the information required by this section within 30 days after the
11 change occurs. The Administrator may revoke the certificate of
12 registration of an employee leasing company which fails to comply
13 with the provisions of NRS 616B.670 to 616B.697, inclusive.
14 4. If an insurer cancels an employee leasing company's policy,
15 the insurer shall immediately notify the Administrator in writing.
16 The notice must comply with the provisions of NRS 687B.310 to
17 687B.355, inclusive, and must be served personally on or sent by
18 first-class mail or electronic transmission to the Administrator.
19 5. A financial statement submitted with an application pursuant
20 to this section must be prepared in accordance with generally
21 accepted accounting principles, must be audited by an independent
22 certified public accountant licensed to practice in the jurisdiction in
23 which the accountant is located and must be without qualification as
24 to the status of the employee leasing company as a going concern.
25 ~~+~~ ***Ann*** ***Except as otherwise provided in subsection 6, an*** employee
26 leasing company that has not had sufficient operating history to
27 have an audited financial statement based upon at least 12 months of
28 operating history must present financial statements reviewed by a
29 certified public accountant covering its entire operating history. The
30 financial statements must be prepared not more than 13 months
31 before the submission of an application and must:
32 (a) ~~Indicate that the applicant has~~ ***Demonstrate, in the***
33 ***statement,*** positive working capital, as defined by generally
34 accepted accounting principles, for the period covered by the
35 financial statements; or
36 (b) Be accompanied by a bond, irrevocable letter of credit or
37 securities with a minimum market value equaling the maximum
38 deficiency in working capital for the period covered by the financial
39 statements plus \$100,000. The bond, irrevocable letter of credit or
40 securities must be held by a depository institution designated by the
41 Administrator to secure payment by the applicant of all taxes,
42 wages, benefits or other entitlements payable by the applicant.
43 ***6. An applicant required to submit a financial statement***
44 ***pursuant to this section may submit a consolidated or combined***



1 *audited financial statement that includes, but is not exclusive to,*
2 *the applicant.*

3 **Sec. 4.** NRS 616B.691 is hereby amended to read as follows:

4 616B.691 1. An employee leasing company which complies
5 with the provisions of NRS 616B.670 to 616B.697, inclusive, shall
6 be deemed to be ~~the~~ *an* employer of the employees it leases to a
7 client company. The provisions of this subsection apply only for the
8 purposes of chapters 612 and 616A to 617, inclusive, of NRS.

9 2. An employee leasing company shall be deemed to be an
10 employer of its leased employees for the purposes of offering,
11 sponsoring and maintaining any benefit plans. The provisions of this
12 subsection do not affect the employer-employee relationship that
13 exists between a leased employee and a client company.

14 3. *An employee leasing company shall comply with the*
15 *provisions of section 1 of this act.*

16 4. An employee leasing company shall not offer, sponsor or
17 maintain for its leased employees any self-funded insurance
18 program. An employee leasing company shall not act as a self-
19 insured employer or be a member of an association of self-insured
20 public or private employers pursuant to chapters 616A to 616D,
21 inclusive, or chapter 617 of NRS or title 57 of NRS.

22 ~~4.1~~ 5. If an employee leasing company fails to:

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

24 (b) Submit any reports or other information required,

25 ↪ pursuant to this chapter or chapter 612, 616A, 616C, 616D or 617
26 of NRS, the client company is jointly and severally liable for the
27 contributions, premiums, forfeits or interest attributable to the wages
28 of the employees leased to it by the employee leasing company.

29 **Sec. 5.** NRS 616B.682 is hereby repealed.

TEXT OF REPEALED SECTION

616B.682 Employee leasing company to maintain office or similar site in State; maintenance, inspection and copying of records. Each employee leasing company operating in this State shall:

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

2. Maintain at that office or similar site in this State records establishing that the employee leasing company:



(a) Maintains current policies of workers' compensation insurance providing coverage for each employee it leases to each client company; or

(b) Pursuant to NRS 616B.692, otherwise satisfies its obligation to provide coverage for workers' compensation for the employees that the employee leasing company leases to each client company.

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

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

(b) The public.



