For the purpose of creating a rebuttable presumption that an individual is an independent contractor, the bill allows the individual to establish that the person for whom he or she is performing services does not combine the business operations with the individual's business and the individual performs work that is not the primary work of the person or related to the primary work of the person. The bill authorizes the parties to demonstrate the satisfaction of the factors considered by the division of employment insurance in the department of labor and employment.
(division) in a manner other than a written document. If an individual is determined to be an employee for the purposes of the wage theft laws, the individual is deemed an employee for the purposes of determining eligibility for unemployment insurance compensation benefits.

The bill exempts payment for services to an election judge for the purposes of calculating total unemployment compensation benefits.

Current law requires a deduction from the weekly total and partial unemployment benefit amounts of the part of wages that exceeds 25% of the weekly benefit amount. The bill changes the percentage of wages for calculating the deduction to 50%.

When determining whether an individual qualifies for unemployment insurance, the bill directs the division to consider whether the individual has separated from employment or has refused to accept new employment because:

- The employer requires the individual to work in an environment that is not in compliance with: Federal centers for disease control and prevention guidelines applicable to the employer's business and workplace at the time of the determination; state and federal laws, rules, and regulations concerning disease mitigation and workplace safety; an executive order issued by the governor requiring the employer to close the business or modify the operation of the business; and any public health order issued by the department of public health and environment or a local government;

- The individual is the primary caretaker of a child enrolled in a school that is closed due to a public health emergency or of a family member or household member who is quarantined due to an illness during a public health emergency; or

- The employee is immunocompromised and more susceptible to illness during a public health emergency.

The bill changes the time period that an interested party has to respond to a notice of claim received by the division concerning unemployment benefits from 12 calendar days to 7 calendar days.

Current law authorizes the division to approve a work share plan submitted by an employer if the employee's normal weekly work hours have been reduced by at least 10% but not more than 40%. The bill changes the amount that hours may be reduced to an amount consistent with rules adopted by the division and federal law.

The bill removes the cap on the amount of money that can be paid into and remain in the employment support fund.

The bill requires the director of the division to study and report to the general assembly the feasibility of creating an unemployment insurance compensation program and fund for individuals engaged in
independent trades, occupations, and professions.

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

SECTION 1. In Colorado Revised Statutes, 8-70-115, amend (1)(b) and (1)(c); repeal (1)(d), (2), and (3); and add (3.5) as follows:


(1) (b) Notwithstanding any other provision of this subsection (1) and notwithstanding the provisions of section 8-80-101, service performed by an individual for another shall be deemed to be employment, irrespective of whether the common-law relationship of master and servant exists, unless and until it is shown to the satisfaction of the division that such the individual is free from control and direction in the performance of the service, both under his the individual's contract for the performance of service and in fact; and such the individual is customarily engaged in an independent trade, occupation, profession, or business related to the service performed. For purposes of this section, the degree of control exercised by the person for whom the service is performed over the performance of the service or over the individual performing the service, if exercised pursuant to the requirements of any state or federal statute or regulation, shall not be considered.

(c) To evidence that such the individual is engaged in an independent trade, occupation, profession, or business and is free from control and direction in the performance of the service, the individual and the person for whom services are performed may either show by a preponderance of the evidence that the conditions set forth in paragraph (b) of this subsection (1) subsection (1)(b) of this section have been satisfied, or they may demonstrate in a written document, signed by both
parties, that the person for whom services are performed does not THE
PERSON FOR WHOM THE SERVICES ARE PERFORMED MAY CREATE A
REBUTTABLE PRESUMPTION THAT AN INDIVIDUAL IS ENGAGED IN AN
INDEPENDENT TRADE, OCCUPATION, PROFESSION, OR BUSINESS AND IS FREE
FROM CONTROL AND DIRECTION IN THE PERFORMANCE OF THE SERVICE BY
ESTABLISHING THAT:

(I) Require the individual to work exclusively for the person for
whom services are performed; except that the individual may choose to
work exclusively for the said person for a finite period of time specified
in the document;

(II) Establish a quality standard for the individual; except that
such person can provide plans and specifications regarding the work but
cannot oversee the actual work or instruct the individual as to how the
work will be performed;

(III) Pay a salary or hourly rate but rather a fixed or contract rate;

(IV) Terminate the work during the contract period unless the
individual violates the terms of the contract or fails to produce a result
that meets the specifications of the contract;

(V) Provide more than minimal training for the individual;

(VI) Provide tools or benefits to the individual; except that
materials and equipment may be supplied;

(VII) Dictate the time of performance; except that a completion
schedule and a range of mutually agreeable work hours may be
established;

(VIII) Pay the individual personally but rather makes checks
payable to the trade or business name of the individual; and

(IX) THE PERSON DOES NOT combine his THE PERSON'S business
operations in any way with the individual's business, but instead
maintains such operations as separate and distinct; AND

(X) THE INDIVIDUAL PERFORMS WORK THAT IS NOT THE PRIMARY
WORK OF THE PERSON OR RELATED TO THE PRIMARY WORK OF THE PERSON
FOR WHOM THE INDIVIDUAL PERFORMS WORK.

(d) A document may satisfy the requirements of paragraph (e) of
this subsection (1) if such document demonstrates, by a preponderance of
the evidence, the existence of such factors listed in subparagraphs (I) to
(IX) of paragraph (c) of this subsection (1) as are appropriate to the
parties' situation.

(2) Where the parties use a written document pursuant to
paragraph (c) of subsection (1) of this section, such document may be the
contract for performance of service or a separate document. Such
document shall create a rebuttable presumption of an independent
contractor relationship between the parties, where such document
contains a disclosure, in type which is larger than the other provisions in
the document or in bold-faced or underlined type, that the independent
contractor is not entitled to unemployment insurance benefits unless
unemployment compensation coverage is provided by the independent
contractor or some other entity, and that the independent contractor is
obligated to pay federal and state income tax on any moneys paid
pursuant to the contract relationship.

(3) Where the parties use a written document pursuant to
paragraph (c) of subsection (1) of this section, and one of the parties is a
professional whose license to practice a particular occupation under the
laws of the state of Colorado requires such professional to exercise a
supervisory function with regard to an entire project, such supervisory
role shall not affect such professional's status as part of the independent contractor relationship.

(3.5) (a) If an individual or a similarly situated individual is found to be an employee for the purposes of Article 4 of this Title 8, the individual or similarly situated individual is an employee for the purposes of this section.

(b) A finding that an individual or similarly situated individual is not an employee for the purposes of Article 4 of this Title 8 does not preclude a finding that the individual or similarly situated individual is an employee for the purposes of this section.

SECTION 2. In Colorado Revised Statutes, 8-73-102, amend (4); and add (8) as follows:

8-73-102. Weekly benefit amount for total unemployment - definitions. (4) There shall be deducted from the weekly benefit amount that part of wages payable to such an individual with respect to such a week that is in excess of twenty-five percent of the weekly benefit amount, and the weekly benefit amount resulting shall be computed to the next lower multiple of one dollar.

(8) As used in this section:

(a) "ELECTION JUDGE" has the same meaning as in Section 1-6-101 (1).

(b) "WAGES" does not include payment made to an election judge for services.

SECTION 3. In Colorado Revised Statutes, 8-73-103, amend (1) as follows:

8-73-103. Benefits for partial unemployment. (1) Each eligible
individual who is partially unemployed shall be paid a partial benefit. Partial benefits shall be in an amount equal to the eligible individual's weekly benefit amount for total unemployment, minus that part of wages payable to such the individual with respect to such the week which that is in excess of twenty-five fifty percent of his the individual's weekly benefit amount as computed in accordance with section 8-73-102, and the benefit payment resulting shall be computed to the next lower multiple of one dollar.

SECTION 4. In Colorado Revised Statutes, 8-73-108, amend (5)(b) introductory portion; and add (4)(w), (4)(x), (4)(y), (5)(b)(IV), and (5)(b)(V) as follows:

8-73-108. Benefit awards. (4) Full award. An individual separated from a job must be given a full award of benefits if the division determines that any of the following reasons and pertinent related conditions exist. The determination of whether or not the separation from employment must result in a full award of benefits is the responsibility of the division. The following reasons must be considered, along with any other factors that may be pertinent to such determination:

(w) Separating from employment because the employer requires the employee to work in an environment that is not in compliance with:

(I) Federal Centers for Disease Control and Prevention guidelines applicable to the employer's business and workplace at the time of the determination;

(II) State and federal laws, rules, and regulations concerning disease mitigation and workplace safety;

(III) An executive order issued by the governor requiring
THE EMPLOYER TO CLOSE THE BUSINESS OR MODIFY THE OPERATION OF
THE BUSINESS; AND

(IV) ANY PUBLIC HEALTH ORDER ISSUED BY THE DEPARTMENT OF
PUBLIC HEALTH AND ENVIRONMENT OR A LOCAL GOVERNMENT TO CLOSE
THE BUSINESS OR MODIFY THE OPERATION OF THE BUSINESS;

(x) SEPARATING FROM EMPLOYMENT BECAUSE THE EMPLOYEE IS
THE PRIMARY CARETAKER OF:

(I) A CHILD ENROLLED IN A SCHOOL THAT IS CLOSED DUE TO A
PUBLIC HEALTH EMERGENCY; OR

(II) A FAMILY MEMBER OR HOUSEHOLD MEMBER WHO IS
QUARANTINED DUE TO AN ILLNESS DURING A PUBLIC HEALTH EMERGENCY;

(y) SEPARATING FROM EMPLOYMENT BECAUSE THE EMPLOYEE IS
IMMUNOCOMPROMISED AND MORE SUSCEPTIBLE TO ILLNESS OR DISEASE
DURING A PUBLIC HEALTH EMERGENCY AS EVIDENCED BY THE EMPLOYEE'S
HEALTH CARE PROVIDER.

(5) Disqualification. (b) The DIVISION SHALL CONSIDER THE
refusal of suitable work or refusal of referral to suitable work at any time
after the last separation from employment that occurred prior to the time
of filing the initial claim shall be considered in determining the direct and
proximate cause of the separation. In determining whether or not any
work is suitable for an individual, THE DIVISION SHALL CONSIDER the
degree of risk involved to his THE INDIVIDUAL's health, safety, and
morals, his THE INDIVIDUAL's physical fitness and prior training, his THE
INDIVIDUAL's experience and prior earnings, his THE INDIVIDUAL's length
of unemployment and prospects for securing work in his THE
INDIVIDUAL's customary occupation, and the distance of the available
local work from his THE INDIVIDUAL's residence. shall be considered.
Notwithstanding any other provisions of articles 70 to 82 of this title, no work shall be deemed suitable and shall not be denied under articles 70 to 82 of this title to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

(IV) The employer requires the individual to work in an environment that is not in compliance with:

(A) Federal Centers for Disease Control and Prevention guidelines applicable to the employer's business and workplace at the time of the determination;

(B) State or federal laws, rules, and regulations concerning disease mitigation and workplace safety;

(C) An executive order issued by the governor requiring the employer to close the business or modify the operation of the business; and

(D) Any public health order issued by the Department of Public Health and Environment or a local government to close the business or modify the operation of the business;

(V) The individual is the primary caretaker of:

(A) A child enrolled in a school that is closed due to a public health emergency; or

(B) A family member or household member who is quarantined due to an illness during a public health emergency.

SECTION 5. In Colorado Revised Statutes, 8-74-102, amend (1) as follows:

8-74-102. Deputy's decision - rules. (1) Upon receipt of a claim, the division shall notify any other interested parties of the claim by mail
or electronic means in accordance with such rules as the director of the
division may promulgate. **Such** the interested parties **shall** **MUST** be
afforded **twelve** **SEVEN** calendar days after the date of **such** the notice of
the claim to present any information pertinent to the claim by mail,
telephone, or electronic means in accordance with such rules as the
director of the division may promulgate. **Such** the information **shall**
**MUST** be received by the division within **twelve** **SEVEN** calendar days after
said date. If the **twelfth** **SEVENTH** calendar day falls on a weekend or a
state holiday, **such** the date **shall** **MUST** be moved to the first working day
immediately following such weekend or holiday. The interested party may
present information out of time only if good cause is shown. A deputy to
be designated by the director of the division shall promptly examine all
materials submitted. Whenever information submitted is not clearly
adequate to substantiate a decision, the deputy shall promptly seek the
necessary information. If it is necessary to obtain information by mail
from any source, the information shall be received by the division no later
than seven calendar days after the date of the request for information. On
the basis of the deputy's review, the deputy shall determine the validity of
the claim and, if valid, when payment shall commence, the amount
payable, and the duration of payment. The deputy shall issue a decision
in all cases, even if the claimant has insufficient qualifying wages, unless
the interested employer did not receive notice of the claim, except when
the separation from employment is due to a lack of work and no alleged
disqualifying circumstances are indicated, or unless the claimant did not
file a continued claim. The deputy's decision shall set forth findings of
fact, conclusions of law, and an order. The division shall promptly
provide all interested parties with copies of the deputy's decision.
SECTION 6. In Colorado Revised Statutes, 8-75-203, amend (1)(b)(I) and (2)(c) as follows:

8-75-203. Work share program - work share plan - eligibility of employer - approval - denial - rules. (1) (b) (I) The director shall establish a voluntary work share program for the purpose of allowing the payment of unemployment compensation benefits to employees whose wages and hours have been reduced. In order to participate in the work share program, an employer shall submit a work share plan in writing to the director for approval. If the employer is subject to a collective bargaining agreement, the collective bargaining unit must agree in writing to the work share plan prior to implementation. An employer that is a negative excess employer pursuant to section 8-76-102.5 (3) is not eligible to participate in the work share program IN ACCORDANCE WITH RULES ADOPTED BY THE DIRECTOR CONCERNING ELIGIBILITY REQUIREMENTS.

(2) An employer must submit a work share plan to the division on forms and following procedures required by the director. The director may approve a work share plan if:

(c) The plan reduces the normal work for an employee in the affected unit by at least ten percent and not more than forty percent AN AMOUNT CONSISTENT WITH RULES PROMULGATED BY THE DIRECTOR AND AUTHORIZED UNDER 26 U.S.C. SEC. 3306 (v);

SECTION 7. In Colorado Revised Statutes, 8-75-204, amend (1) introductory portion and (1)(b) as follows:

8-75-204. Employee eligibility for unemployment benefits under the work share plan - employee eligibility for job training. (1) Notwithstanding any other provision of this title TITLE 8, an employee
may be eligible for unemployment compensation benefits for a particular week pursuant to this part 2 if:

(b) The employee's normal weekly work hours have been reduced by at least ten percent but not more than forty percent and the employee has received a corresponding reduction in wages for that week.

SECTION 8. In Colorado Revised Statutes, 8-77-109, amend (1)(b) as follows:

8-77-109. Employment support fund - employment and training technology fund - created - uses. (1) (b) (I) There is hereby established the employment support fund. This fund consists of the first 0.0011 assessed as part of each employer's premium under section 8-76-102.5 (3)(a) or the amount expended from the employment support fund in the year prior to July 1, 2011, adjusted by the same percentage change prescribed in section 8-70-103 (6.5), whichever is less. The division must transfer to the unemployment compensation fund amounts in excess of the amount expended from the employment support fund in the year prior to July 1, 2011, adjusted each year by the same percentage change prescribed in section 8-70-103 (6.5). In addition, revenues to pay nonprincipal-related bond costs for bonds issued under section 29-4-710.7, C.R.S., or section 8-71-103 (2)(d) may be added to amounts assessed under this section. The division may transfer any moneys in the employment support fund to the unemployment bond repayment account created in section 8-77-103.5 to pay nonprincipal-related bond costs for bonds issued under section 29-4-710.7, C.R.S., or section 8-71-103 (2)(d):
The employment support fund is not included in or administered by the enterprise established pursuant to section 8-71-103 (2).

(II) This paragraph (b) is effective December 31, 2012.

SECTION 9. In Colorado Revised Statutes, add 8-77-110 as
follows:

8-77-110. Unemployment insurance compensation program -
independent trades, occupations, and professions - study - report.

(1) The director of the division shall study the feasibility of
creating an unemployment insurance compensation program and
fund for individuals engaged in independent trades, occupations,
and professions. In studying the issue, the director shall
consider:

(a) The need for an unemployment compensation insurance
program for independent workers, including how many
individuals would participate in the program;

(b) Who would be responsible for making payments into
the fund;

(c) The potential for maintaining a solvent fund;

(d) The interaction of a new program with the current
unemployment insurance compensation program;

(e) Applicable federal laws and regulations; and

(f) Any other issues that the director finds relevant in
studying the feasibility of creating an unemployment
compensation insurance fund for independent workers.

(2) On or before January 15, 2021, the director of the division shall report the findings of the study and any
recommendations that result from the study to the business,
LABOR, AND TECHNOLOGY COMMITTEE OF THE SENATE AND THE BUSINESS
AFFAIRS AND LABOR COMMITTEE OF THE HOUSE OF REPRESENTATIVES, OR
THEIR SUCCESSOR COMMITTEES.

SECTION 10. Safety clause. The general assembly hereby finds,
determines, and declares that this act is necessary for the immediate
preservation of the public peace, health, or safety.