

Second Regular Session
Seventy-second General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 20-1279.01 Kristen Forrestal x4217

SENATE BILL 20-207

SENATE SPONSORSHIP

Hansen and Winter, Bridges, Danielson, Pettersen

HOUSE SPONSORSHIP

(None),

Senate Committees
Finance

House Committees

A BILL FOR AN ACT

101 CONCERNING UNEMPLOYMENT INSURANCE.

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

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

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

(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.

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

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

4 **8-70-115. Employment - federal unemployment tax act.**

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

19 (c) To evidence that ~~such~~ THE individual is engaged in an
20 independent trade, occupation, profession, or business and is free from
21 control and direction in the performance of the service, the individual and
22 the person for whom services are performed may ~~either~~ show by a
23 preponderance of the evidence that the conditions set forth in ~~paragraph~~
24 (b) of this subsection (1) SUBSECTION (1)(b) OF THIS SECTION have been
25 satisfied. ~~or they may demonstrate in a written document, signed by both~~

1 ~~parties, that the person for whom services are performed does not~~ THE
2 PERSON FOR WHOM THE SERVICES ARE PERFORMED MAY CREATE A
3 REBUTTABLE PRESUMPTION THAT AN INDIVIDUAL IS ENGAGED IN AN
4 INDEPENDENT TRADE, OCCUPATION, PROFESSION, OR BUSINESS AND IS FREE
5 FROM CONTROL AND DIRECTION IN THE PERFORMANCE OF THE SERVICE BY
6 ESTABLISHING THAT:

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

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

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

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

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

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

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

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

27 (IX) THE PERSON DOES NOT combine ~~his~~ THE PERSON'S business

1 operations in any way with the individual's business, but instead
2 maintains such operations as separate and distinct; AND

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

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

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

23 (3) ~~Where the parties use a written document pursuant to~~
24 ~~paragraph (c) of subsection (1) of this section, and one of the parties is a~~
25 ~~professional whose license to practice a particular occupation under the~~
26 ~~laws of the state of Colorado requires such professional to exercise a~~
27 ~~supervisory function with regard to an entire project, such supervisory~~

1 ~~role shall not affect such professional's status as part of the independent~~
2 ~~contractor relationship.~~

3 (3.5) (a) IF AN INDIVIDUAL OR A SIMILARLY SITUATED INDIVIDUAL
4 IS FOUND TO BE AN EMPLOYEE FOR THE PURPOSES OF ARTICLE 4 OF THIS
5 TITLE 8, THE INDIVIDUAL OR SIMILARLY SITUATED INDIVIDUAL IS AN
6 EMPLOYEE FOR THE PURPOSES OF THIS SECTION.

7 (b) A FINDING THAT AN INDIVIDUAL OR SIMILARLY SITUATED
8 INDIVIDUAL IS NOT AN EMPLOYEE FOR THE PURPOSES OF ARTICLE 4 OF THIS
9 TITLE 8 DOES NOT PRECLUDE A FINDING THAT THE INDIVIDUAL OR
10 SIMILARLY SITUATED INDIVIDUAL IS AN EMPLOYEE FOR THE PURPOSES OF
11 THIS SECTION.

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

14 **8-73-102. Weekly benefit amount for total unemployment -**
15 **definitions.** (4) There shall be deducted from the weekly benefit amount
16 that part of wages payable to ~~such~~ AN individual with respect to ~~such~~ A
17 week that is in excess of ~~twenty-five~~ FIFTY percent of the weekly benefit
18 amount, and the weekly benefit amount resulting shall be computed to the
19 next lower multiple of one dollar.

20 (8) AS USED IN THIS SECTION:

21 (a) "ELECTION JUDGE" HAS THE SAME MEANING AS IN SECTION
22 1-6-101 (1).

23 (b) "WAGES" DOES NOT INCLUDE PAYMENT MADE TO AN ELECTION
24 JUDGE FOR SERVICES.

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

27 **8-73-103. Benefits for partial unemployment.** (1) Each eligible

1 individual who is partially unemployed shall be paid a partial benefit.
2 Partial benefits shall be in an amount equal to the eligible individual's
3 weekly benefit amount for total unemployment, minus that part of wages
4 payable to ~~such~~ THE individual with respect to ~~such~~ THE week ~~which~~
5 THAT is in excess of ~~twenty-five~~ FIFTY percent of ~~his~~ THE INDIVIDUAL'S
6 weekly benefit amount as computed in accordance with section 8-73-102,
7 and the benefit payment resulting shall be computed to the next lower
8 multiple of one dollar.

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

12 **8-73-108. Benefit awards. (4) Full award.** An individual
13 separated from a job must be given a full award of benefits if the division
14 determines that any of the following reasons and pertinent related
15 conditions exist. The determination of whether or not the separation from
16 employment must result in a full award of benefits is the responsibility of
17 the division. The following reasons must be considered, along with any
18 other factors that may be pertinent to such determination:

19 (w) SEPARATING FROM EMPLOYMENT BECAUSE THE EMPLOYER
20 REQUIRES THE EMPLOYEE TO WORK IN AN ENVIRONMENT THAT IS NOT IN
21 COMPLIANCE WITH:

22 (I) FEDERAL CENTERS FOR DISEASE CONTROL AND PREVENTION
23 GUIDELINES APPLICABLE TO THE EMPLOYER'S BUSINESS AND WORKPLACE
24 AT THE TIME OF THE DETERMINATION;

25 (II) STATE AND FEDERAL LAWS, RULES, AND REGULATIONS
26 CONCERNING DISEASE MITIGATION AND WORKPLACE SAFETY;

27 (III) AN EXECUTIVE ORDER ISSUED BY THE GOVERNOR REQUIRING

1 THE EMPLOYER TO CLOSE THE BUSINESS OR MODIFY THE OPERATION OF
2 THE BUSINESS; AND

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

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

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

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

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

16 (5) **Disqualification.** (b) The DIVISION SHALL CONSIDER THE
17 refusal of suitable work or refusal of referral to suitable work at any time
18 after the last separation from employment that occurred prior to the time
19 of filing the initial claim ~~shall be considered~~ in determining the direct and
20 proximate cause of the separation. In determining whether or not any
21 work is suitable for an individual, THE DIVISION SHALL CONSIDER the
22 degree of risk involved to ~~his~~ THE INDIVIDUAL'S health, safety, and
23 morals, ~~his~~ THE INDIVIDUAL'S physical fitness and prior training, ~~his~~ THE
24 INDIVIDUAL'S experience and prior earnings, ~~his~~ THE INDIVIDUAL'S length
25 of unemployment and prospects for securing work in ~~his~~ THE
26 INDIVIDUAL'S customary occupation, and the distance of the available
27 local work from ~~his~~ THE INDIVIDUAL'S residence. ~~shall be considered.~~

1 Notwithstanding any other provisions of articles 70 to 82 of this ~~title, no~~
2 TITLE 8, THE DIVISION SHALL NOT DEEM work ~~shall be deemed~~ TO BE
3 suitable and SHALL NOT DENY benefits ~~shall not be denied~~ under articles
4 70 to 82 of this ~~title~~ TITLE 8 to any otherwise eligible individual for
5 refusing to accept new work under any of the following conditions:

6 (IV) THE EMPLOYER REQUIRES THE INDIVIDUAL TO WORK IN AN
7 ENVIRONMENT THAT IS NOT IN COMPLIANCE WITH:

8 (A) FEDERAL CENTERS FOR DISEASE CONTROL AND PREVENTION
9 GUIDELINES APPLICABLE TO THE EMPLOYER'S BUSINESS AND WORKPLACE
10 AT THE TIME OF THE DETERMINATION;

11 (B) STATE OR FEDERAL LAWS, RULES, AND REGULATIONS
12 CONCERNING DISEASE MITIGATION AND WORKPLACE SAFETY;

13 (C) AN EXECUTIVE ORDER ISSUED BY THE GOVERNOR REQUIRING
14 THE EMPLOYER TO CLOSE THE BUSINESS OR MODIFY THE OPERATION OF
15 THE BUSINESS; AND

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

19 (V) THE INDIVIDUAL IS THE PRIMARY CARETAKER OF:

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

22 (B) A FAMILY MEMBER OR HOUSEHOLD MEMBER WHO IS
23 QUARANTINED DUE TO AN ILLNESS DURING A PUBLIC HEALTH EMERGENCY.

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

26 **8-74-102. Deputy's decision - rules.** (1) Upon receipt of a claim,
27 the division shall notify any other interested parties of the claim by mail

1 or electronic means in accordance with such rules as the director of the
2 division may promulgate. ~~Such~~ THE interested parties ~~shall~~ MUST be
3 afforded ~~twelve~~ SEVEN calendar days after the date of ~~such~~ THE notice of
4 the claim to present any information pertinent to the claim by mail,
5 telephone, or electronic means in accordance with such rules as the
6 director of the division may promulgate. ~~Such~~ THE information ~~shall~~
7 MUST be received by the division within ~~twelve~~ SEVEN calendar days after
8 said date. If the ~~twelfth~~ SEVENTH calendar day falls on a weekend or a
9 state holiday, ~~such~~ THE date ~~shall~~ MUST be moved to the first working day
10 immediately following such weekend or holiday. The interested party may
11 present information out of time only if good cause is shown. A deputy to
12 be designated by the director of the division shall promptly examine all
13 materials submitted. Whenever information submitted is not clearly
14 adequate to substantiate a decision, the deputy shall promptly seek the
15 necessary information. If it is necessary to obtain information by mail
16 from any source, the information shall be received by the division no later
17 than seven calendar days after the date of the request for information. On
18 the basis of the deputy's review, the deputy shall determine the validity of
19 the claim and, if valid, when payment shall commence, the amount
20 payable, and the duration of payment. The deputy shall issue a decision
21 in all cases, even if the claimant has insufficient qualifying wages, unless
22 the interested employer did not receive notice of the claim, except when
23 the separation from employment is due to a lack of work and no alleged
24 disqualifying circumstances are indicated, or unless the claimant did not
25 file a continued claim. The deputy's decision shall set forth findings of
26 fact, conclusions of law, and an order. The division shall promptly
27 provide all interested parties with copies of the deputy's decision.

1 **SECTION 6.** In Colorado Revised Statutes, 8-75-203, **amend**
2 (1)(b)(I) and (2)(c) as follows:

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

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

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

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

25 **8-75-204. Employee eligibility for unemployment benefits**
26 **under the work share plan - employee eligibility for job training.**

27 (1) Notwithstanding any other provision of this ~~title~~ TITLE 8, an employee

1 may be eligible for unemployment compensation benefits for a particular
2 week pursuant to this part 2 if:

3 (b) The employee's normal ~~weekly work hours have~~
4 REMUNERATION HAS been reduced by ~~at least ten percent but not more~~
5 ~~than forty percent and the employee has received a corresponding~~
6 ~~reduction in wages for that week~~ AN AMOUNT CONSISTENT WITH A
7 REDUCTION IN HOURS RULES AS ESTABLISHED IN AN APPROVED WORK
8 SHARE PLAN PURSUANT TO SECTION 8-75-203 (2)(c); and

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

11 **8-77-109. Employment support fund - employment and**
12 **training technology fund - created - uses.** (1) (b) ~~(f)~~ There is hereby
13 established the employment support fund. This fund consists of the first
14 0.0011 assessed as part of each employer's premium under section
15 8-76-102.5 (3)(a) or the amount expended from the employment support
16 fund in the year prior to July 1, 2011. ~~adjusted by the same percentage~~
17 ~~change prescribed in section 8-70-103 (6.5), whichever is less.~~ The
18 division must transfer to the unemployment compensation fund amounts
19 in excess of the amount expended from the employment support fund in
20 the year prior to July 1, 2011, ~~adjusted each year by the same percentage~~
21 ~~change prescribed in section 8-70-103 (6.5).~~ In addition, revenues to pay
22 ~~nonprincipal-related bond costs for bonds issued under section~~
23 ~~29-4-710.7, C.R.S., or section 8-71-103 (2)(d) may be added to amounts~~
24 ~~assessed under this section.~~ The division may transfer any moneys in the
25 employment support fund to the unemployment bond repayment account
26 created in section ~~8-77-103.5~~ to pay nonprincipal-related bond costs for
27 bonds issued under section ~~29-4-710.7, C.R.S., or section 8-71-103 (2)(d).~~

1 ~~The employment support fund is not included in or administered by the~~
2 ~~enterprise established pursuant to section 8-71-103 (2).~~

3 ~~(H) This paragraph (b) is effective December 31, 2012.~~

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

6 **8-77-110. Unemployment insurance compensation program -**
7 **independent trades, occupations, and professions - study - report.**

8 (1) THE DIRECTOR OF THE DIVISION SHALL STUDY THE FEASIBILITY OF
9 CREATING AN UNEMPLOYMENT INSURANCE COMPENSATION PROGRAM AND
10 FUND FOR INDIVIDUALS ENGAGED IN INDEPENDENT TRADES, OCCUPATIONS,
11 AND PROFESSIONS. IN STUDYING THE ISSUE, THE DIRECTOR SHALL
12 CONSIDER:

13 (a) THE NEED FOR AN UNEMPLOYMENT COMPENSATION INSURANCE
14 PROGRAM FOR INDEPENDENT WORKERS, INCLUDING HOW MANY
15 INDIVIDUALS WOULD PARTICIPATE IN THE PROGRAM;

16 (b) WHO WOULD BE RESPONSIBLE FOR MAKING PAYMENTS INTO
17 THE FUND;

18 (c) THE POTENTIAL FOR MAINTAINING A SOLVENT FUND;

19 (d) THE INTERACTION OF A NEW PROGRAM WITH THE CURRENT
20 UNEMPLOYMENT INSURANCE COMPENSATION PROGRAM;

21 (e) APPLICABLE FEDERAL LAWS AND REGULATIONS; AND

22 (f) ANY OTHER ISSUES THAT THE DIRECTOR FINDS RELEVANT IN
23 STUDYING THE FEASIBILITY OF CREATING AN UNEMPLOYMENT
24 COMPENSATION INSURANCE FUND FOR INDEPENDENT WORKERS.

25 (2) ON OR BEFORE JANUARY 15, 2021, THE DIRECTOR OF THE
26 DIVISION SHALL REPORT THE FINDINGS OF THE STUDY AND ANY
27 RECOMMENDATIONS THAT RESULT FROM THE STUDY TO THE BUSINESS,

1 LABOR, AND TECHNOLOGY COMMITTEE OF THE SENATE AND THE BUSINESS
2 AFFAIRS AND LABOR COMMITTEE OF THE HOUSE OF REPRESENTATIVES, OR
3 THEIR SUCCESSOR COMMITTEES.

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