

**Second Regular Session
Seventy-second General Assembly
STATE OF COLORADO**

REENGROSSED

*This Version Includes All Amendments
Adopted in the House of Introduction*

LLS NO. 20-1279.01 Kristen Forrestal x4217

SENATE BILL 20-207

SENATE SPONSORSHIP

Hansen and Winter, Bridges, Danielson, Pettersen, Fenberg, Fields, Moreno, Story

HOUSE SPONSORSHIP

Gray and Sullivan,

Senate Committees

Finance
Appropriations

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.

SENATE
3rd Reading Unamended
June 8, 2020

SENATE
Amended 2nd Reading
June 6, 2020

(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
3 **SECTION 1.** In Colorado Revised Statutes, 8-73-102, **amend** (4);
4 and **add** (8) as follows:

5 **8-73-102. Weekly benefit amount for total unemployment -**
6 **definitions. (4)(a)** There shall be deducted from the weekly benefit
7 amount that part of wages payable to ~~such~~ AN individual with respect to
8 ~~such~~ A week that is in excess of twenty-five percent of the weekly benefit
9 amount, and the weekly benefit amount resulting shall be computed to the
10 next lower multiple of one dollar.

11 (b) (I) NOTWITHSTANDING SUBSECTION (4)(a) OF THIS SECTION, ON
12 AND AFTER THE EFFECTIVE DATE OF THIS SECTION, AS AMENDED, AND FOR
13 TWO CALENDAR YEARS THEREAFTER, THERE SHALL BE DEDUCTED FROM
14 THE WEEKLY BENEFIT AMOUNT THAT PART OF WAGES PAYABLE TO AN
15 INDIVIDUAL WITH RESPECT TO A WEEK THAT IS IN EXCESS OF FIFTY
16 PERCENT OF THE WEEKLY BENEFIT AMOUNT, AND THE WEEKLY BENEFIT
17 AMOUNT RESULTING SHALL BE COMPUTED TO THE NEXT LOWEST MULTIPLE
18 OF ONE DOLLAR.

19 (II) THIS SUBSECTION (4)(b) IS REPEALED, EFFECTIVE SEPTEMBER
20 1, 2022.

21 (8) AS USED IN THIS SECTION:

22 (a) "ELECTION JUDGE" HAS THE SAME MEANING AS IN SECTION
23 1-6-101 (1).

24 (b) "WAGES" DOES NOT INCLUDE PAYMENT MADE TO AN ELECTION
25 JUDGE FOR SERVICES; EXCEPT THAT "WAGES" INCLUDES PAYMENT MADE

1 TO AN ELECTION JUDGE IF THE PAYMENT EXCEEDS THE MAXIMUM AMOUNT
2 PERMISSIBLE PURSUANT TO FEDERAL LAW.

3 **SECTION 2.** In Colorado Revised Statutes, 8-73-103, **amend** (1)
4 as follows:

5 **8-73-103. Benefits for partial unemployment.** (1)(a) Each
6 eligible individual who is partially unemployed shall be paid a partial
7 benefit. Partial benefits shall be in an amount equal to the eligible
8 individual's weekly benefit amount for total unemployment, minus that
9 part of wages payable to ~~such~~ THE individual with respect to ~~such~~ THE
10 week ~~which~~ THAT is in excess of twenty-five percent of ~~his~~ THE
11 INDIVIDUAL'S weekly benefit amount as computed in accordance with
12 section 8-73-102, and the benefit payment resulting shall be computed to
13 the next lower multiple of one dollar.

14 (b)(I) NOTWITHSTANDING SUBSECTION (1)(a) OF THIS SECTION, ON
15 AND AFTER THE EFFECTIVE DATE OF THIS SECTION, AS AMENDED, AND FOR
16 TWO CALENDAR YEARS THEREAFTER, PARTIAL BENEFITS SHALL BE IN AN
17 AMOUNT EQUAL TO THE ELIGIBLE INDIVIDUAL'S WEEKLY BENEFIT AMOUNT
18 FOR TOTAL UNEMPLOYMENT, MINUS THAT PART OF WAGES PAYABLE TO
19 THE INDIVIDUAL WITH RESPECT TO THE WEEK THAT IS IN EXCESS OF FIFTY
20 PERCENT OF THE INDIVIDUAL'S WEEKLY BENEFIT AMOUNT AS COMPUTED
21 IN ACCORDANCE WITH SECTION 8-73-102, AND THE BENEFIT PAYMENT
22 RESULTING SHALL BE COMPUTED TO THE NEXT LOWER MULTIPLE OF ONE
23 DOLLAR.

24 (II) THIS SUBSECTION (1)(b) IS REPEALED, EFFECTIVE SEPTEMBER
25 1, 2022.

26 **SECTION 3.** In Colorado Revised Statutes, 8-73-108, **amend**
27 (5)(b) introductory portion; and **add** (4)(w), (4)(x), (4)(y), (5)(b)(IV), _____

1 (5)(b)(V), and (5)(b)(VI) as follows:

2 **8-73-108. Benefit awards. (4) Full award.** An individual
3 separated from a job must be given a full award of benefits if the division
4 determines that any of the following reasons and pertinent related
5 conditions exist. The determination of whether or not the separation from
6 employment must result in a full award of benefits is the responsibility of
7 the division. The following reasons must be considered, along with any
8 other factors that may be pertinent to such determination:

9 (w) SEPARATING FROM EMPLOYMENT BECAUSE THE EMPLOYER
10 REQUIRES THE EMPLOYEE TO WORK IN AN ENVIRONMENT THAT IS NOT IN
11 COMPLIANCE WITH:

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

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

17 (III) AN EXECUTIVE ORDER ISSUED BY THE GOVERNOR REQUIRING
18 THE EMPLOYER TO CLOSE THE BUSINESS OR MODIFY THE OPERATION OF
19 THE BUSINESS; AND

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

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

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

27 (II) A FAMILY MEMBER OR HOUSEHOLD MEMBER WHO IS

1 QUARANTINED DUE TO AN ILLNESS DURING A PUBLIC HEALTH EMERGENCY;
2 (y) SEPARATING FROM EMPLOYMENT BECAUSE THE EMPLOYEE IS
3 IMMUNOCOMPROMISED AND MORE SUSCEPTIBLE TO ILLNESS OR DISEASE
4 DURING A PUBLIC HEALTH EMERGENCY AS EVIDENCED BY THE EMPLOYEE'S
5 HEALTH CARE PROVIDER.

6 (5) **Disqualification.** (b) The DIVISION SHALL CONSIDER THE
7 refusal of suitable work or refusal of referral to suitable work at any time
8 after the last separation from employment that occurred prior to the time
9 of filing the initial claim ~~shall be considered~~ in determining the direct and
10 proximate cause of the separation. In determining whether or not any
11 work is suitable for an individual, THE DIVISION SHALL CONSIDER the
12 degree of risk involved to ~~his~~ THE INDIVIDUAL'S health, safety, and
13 morals, ~~his~~ THE INDIVIDUAL'S physical fitness and prior training, ~~his~~ THE
14 INDIVIDUAL'S experience and prior earnings, ~~his~~ THE INDIVIDUAL'S length
15 of unemployment and prospects for securing work in ~~his~~ THE
16 INDIVIDUAL'S customary occupation, and the distance of the available
17 local work from ~~his~~ THE INDIVIDUAL'S residence. ~~shall be considered.~~
18 Notwithstanding any other provisions of articles 70 to 82 of this ~~title~~, ~~no~~
19 TITLE 8, THE DIVISION SHALL NOT DEEM work ~~shall be deemed~~ TO BE
20 suitable and SHALL NOT DENY benefits ~~shall not be denied~~ under articles
21 70 to 82 of this ~~title~~ TITLE 8 to any otherwise eligible individual for
22 refusing to accept new work under any of the following conditions:

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

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

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

3 (C) AN EXECUTIVE ORDER ISSUED BY THE GOVERNOR REQUIRING
4 THE EMPLOYER TO CLOSE THE BUSINESS OR MODIFY THE OPERATION OF
5 THE BUSINESS; AND

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

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

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

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

14 OR

15 (VI) THE EMPLOYEE IS IMMUNOCOMPROMISED AND MORE
16 SUSCEPTIBLE TO ILLNESS OR DISEASE DURING A PUBLIC HEALTH
17 EMERGENCY AS EVIDENCED BY THE EMPLOYEE'S HEALTH CARE PROVIDER.

18 **SECTION 4.** In Colorado Revised Statutes, 8-74-102, **amend** (1)
19 as follows:

20 **8-74-102. Deputy's decision - rules.** (1) Upon receipt of a claim,
21 the division shall notify any other interested parties of the claim by mail
22 or electronic means in accordance with such rules as the director of the
23 division may promulgate. ~~Such~~ THE interested parties ~~shall~~ MUST be
24 afforded ~~twelve~~ SEVEN calendar days after the date of ~~such~~ THE notice of
25 the claim to present any information pertinent to the claim by mail,
26 telephone, or electronic means in accordance with such rules as the
27 director of the division may promulgate. ~~Such~~ THE information ~~shall~~

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

22 **SECTION 5.** In Colorado Revised Statutes, 8-75-203, **amend**
23 (1)(b)(I) and (2)(c) as follows:

24 **8-75-203. Work share program - work share plan - eligibility**
25 **of employer - approval - denial - rules.** (1) (b) (I) The director shall
26 establish a voluntary work share program for the purpose of allowing the
27 payment of unemployment compensation benefits to employees whose

1 wages and hours have been reduced. In order to participate in the work
2 share program, an employer shall submit a work share plan in writing to
3 the director for approval. If the employer is subject to a collective
4 bargaining agreement, the collective bargaining unit must agree in writing
5 to the work share plan prior to implementation. An employer that is a
6 negative excess employer pursuant to section 8-76-102.5 (3) ~~is not~~ MAY
7 BE eligible to participate in the work share program IN ACCORDANCE WITH
8 RULES ADOPTED BY THE DIRECTOR CONCERNING ELIGIBILITY
9 REQUIREMENTS.

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

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

17 **SECTION 6.** In Colorado Revised Statutes, 8-75-204, **amend** (1)
18 introductory portion and (1)(b) as follows:

19 **8-75-204. Employee eligibility for unemployment benefits**
20 **under the work share plan - employee eligibility for job training.**

21 (1) Notwithstanding any other provision of this ~~title~~ TITLE 8, an employee
22 may be eligible for unemployment compensation benefits for a particular
23 week pursuant to this part 2 if:

24 (b) The employee's normal ~~weekly work hours have~~
25 REMUNERATION HAS been reduced by ~~at least ten percent but not more~~
26 ~~than forty percent and the employee has received a corresponding~~
27 ~~reduction in wages for that week~~ AN AMOUNT CONSISTENT WITH A

1 REDUCTION IN HOURS RULES AS ESTABLISHED IN AN APPROVED WORK
2 SHARE PLAN PURSUANT TO SECTION 8-75-203 (2)(c); and

3 **SECTION 7.** In Colorado Revised Statutes, 8-77-109, **amend**
4 (1)(b); and repeal (2)(a.7) and (2)(a.8) as follows:

5 **8-77-109. Employment support fund - employment and**
6 **training technology fund - created - uses.** (1) (b) ~~(f)~~ There is hereby
7 established the employment support fund. This fund consists of the first
8 0.0011 assessed as part of each employer's premium under section
9 8-76-102.5 (3)(a). or the amount expended from the employment support
10 fund in the year prior to July 1, 2011, adjusted by the same percentage
11 ~~change prescribed in section 8-70-103 (6.5), whichever is less. The~~
12 ~~division must transfer to the unemployment compensation fund amounts~~
13 ~~in excess of the amount expended from the employment support fund in~~
14 ~~the year prior to July 1, 2011, adjusted each year by the same percentage~~
15 ~~change prescribed in section 8-70-103 (6.5). In addition, revenues to pay~~
16 ~~nonprincipal-related bond costs for bonds issued under section~~
17 ~~29-4-710.7, C.R.S., or section 8-71-103 (2)(d) may be added to amounts~~
18 ~~assessed under this section. The division may transfer any moneys in the~~
19 ~~employment support fund to the unemployment bond repayment account~~
20 ~~created in section 8-77-103.5 to pay nonprincipal-related bond costs for~~
21 ~~bonds issued under section 29-4-710.7, C.R.S., or section 8-71-103 (2)(d).~~
22 ~~The employment support fund is not included in or administered by the~~
23 ~~enterprise established pursuant to section 8-71-103 (2).~~

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

25 (2) (a.7) Notwithstanding any provision of this subsection (2) to
26 the contrary, on March 5, 2003, the state treasurer shall deduct five
27 million four hundred thousand dollars from the employment support fund

1 and transfer such sum to the general fund.

2 (a.8) Notwithstanding any provision of this subsection (2) to the
3 contrary, on April 20, 2009, the state treasurer shall deduct five million
4 dollars from the employment support fund and transfer such sum to the
5 general fund.

6 **SECTION 8.** In Colorado Revised Statutes, **add** 8-77-110 as
7 follows:

8 **8-77-110. Office of future of work - study - report.** (1) THE
9 OFFICE OF FUTURE OF WORK IN THE DEPARTMENT OF LABOR AND
10 EMPLOYMENT, CREATED BY EXECUTIVE ORDER B 2019 009 SHALL, WITHIN
11 THE SCOPE OF THE EXECUTIVE ORDER, STUDY UNEMPLOYMENT
12 ASSISTANCE AS PART OF ITS STUDY ON THE MODERNIZATION OF WORKER
13 BENEFITS AND PROTECTIONS.

14 (2) ON OR BEFORE JANUARY 15, 2021, THE OFFICE OF THE FUTURE
15 OF WORK SHALL SUBMIT AN INITIAL REPORT AS DIRECTED BY THE
16 EXECUTIVE ORDER, TO THE GOVERNOR AND TO THE BUSINESS, LABOR, AND
17 TECHNOLOGY COMMITTEE OF THE SENATE AND THE BUSINESS AFFAIRS AND
18 LABOR COMMITTEE OF THE HOUSE OF REPRESENTATIVES, OR THEIR
19 SUCCESSOR COMMITTEES.

20 **SECTION 9. Safety clause.** The general assembly hereby finds,
21 determines, and declares that this act is necessary for the immediate
22 preservation of the public peace, health, or safety.