A BILL FOR AN ACT

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.

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

SECTION 1. In Colorado Revised Statutes, 8-70-103, amend the introductory portion and (6.5) as follows:

8-70-103. Definitions. As used in articles 70 to 82 of this title TITLE 8, unless the context otherwise requires:

(6.5) (a) "Chargeable wages" means those wages paid to an individual employee during a calendar year on which the employer of that employee is required to pay premiums as provided by article 76 of this title TITLE 8, including all wages subject to a tax under federal law, which imposes a tax against which credit may be taken for premiums required to be paid into a state THE unemployment COMPENSATION fund. For each calendar year, chargeable wages is the first ten thousand dollars paid to an individual; except that, effective January 1, 2012, chargeable wages for each calendar year is the first eleven thousand dollars paid to an individual and except that, after January 1, 2013, chargeable wages is the first eleven thousand dollars paid to an individual, adjusted by the change in the average weekly earnings prescribed in section 8-73-102, rounded to the nearest one hundred dollars AS FOLLOWS:

(I) FOR THE CALENDAR YEAR BEGINNING JANUARY 1, 2021, THE FIRST THIRTEEN THOUSAND SIX HUNDRED DOLLARS PAID TO AN INDIVIDUAL;

(II) FOR THE CALENDAR YEAR BEGINNING JANUARY 1, 2022, THE FIRST SEVENTEEN THOUSAND DOLLARS PAID TO AN INDIVIDUAL;

(III) FOR THE CALENDAR YEAR BEGINNING JANUARY 1, 2023, THE FIRST TWENTY THOUSAND FOUR HUNDRED DOLLARS PAID TO AN
INDIVIDUAL;

(IV) FOR THE CALENDAR YEAR BEGINNING JANUARY 1, 2024, THE
FIRST TWENTY-THREE THOUSAND EIGHT HUNDRED DOLLARS PAID TO AN
INDIVIDUAL;

(V) FOR THE CALENDAR YEAR BEGINNING JANUARY 1, 2025, THE
FIRST TWENTY-SEVEN THOUSAND TWO HUNDRED DOLLARS PAID TO AN
INDIVIDUAL; AND

(VI) FOR THE CALENDAR YEAR BEGINNING JANUARY 1, 2026, AND
EACH CALENDAR YEAR THEREAFTER, THE FIRST THIRTY THOUSAND SIX
HUNDRED DOLLARS PAID TO AN INDIVIDUAL, ADJUSTED BY THE CHANGE IN
THE AVERAGE WEEKLY EARNINGS PRESCRIBED IN SECTION 8-73-102,
ROUNDED TO THE NEAREST ONE HUNDRED DOLLARS.

(b) As used in articles 70 to 82 of this title TITLE 8, chargeable
wages paid includes chargeable wages constructively paid as well as
chargeable wages actually paid.

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)(a) 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.

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

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

(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; EXCEPT THAT "WAGES" INCLUDES PAYMENT MADE
TO AN ELECTION JUDGE IF THE PAYMENT EXCEEDS THE MAXIMUM AMOUNT
PERMISSIBLE PURSUANT TO FEDERAL LAW.

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

8-73-103. Benefits for partial unemployment. (1)(a) 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 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.

(b)(I) NOTWITHSTANDING SUBSECTION (1)(a) OF THIS SECTION, ON
AND AFTER THE EFFECTIVE DATE OF THIS SECTION, AS AMENDED, AND FOR
TWO CALENDAR YEARS THEREAFTER, 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 THE INDIVIDUAL WITH RESPECT TO THE WEEK THAT IS IN EXCESS OF FIFTY PERCENT OF 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.  

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

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), (5)(b)(V), and (5)(b)(VI) 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 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 TITLE 8, THE DIVISION SHALL NOT DEEM work shall be deemed TO BE suitable and SHALL NOT DENY benefits shall not be denied under articles 70 to 82 of this title TITLE 8 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;

OR

(VI) 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.

**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 interested parties shall be afforded twelve SEVEN calendar days after the date of such 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 information shall 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 date shall 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
BE 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 an amount consistent with a reduction in hours rules as established in an approved work share plan pursuant to section 8-75-203 (2)(c); and

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

8-77-109. Employment support fund - employment and training technology fund - created - uses. (1) (b) 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.

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

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

SECTION 9. In Colorado Revised Statutes, 8-76-102.5, add (3)(a.5) and (7)(c) as follows:

8-76-102.5. Rates effective upon fund solvency - repeal of prior rates - solvency surcharge - definitions - repeal.

(3) (a.5) NOTWITHSTANDING SUBSECTION (3)(a) OF THIS SECTION, IF THE RESERVE RATIO IS ONE AND FOUR-TENTHS PERCENT OR GREATER ON JUNE 30 OF ANY YEAR, THE DEPARTMENT SHALL REDUCE EMPLOYER PREMIUMS UP TO FIFTEEN PERCENT FOR THE FOLLOWING CALENDAR YEAR.

(7) (c)(I) NOTWITHSTANDING SUBSECTION (7)(a) OF THIS SECTION, FOR THE CALENDAR YEARS 2021 AND 2022, THE DIVISION SHALL NOT
ASSESS A SOLVENCY SURCHARGE ON ANY EMPLOYER.

(II) THIS SUBSECTION (7)(c) IS REPEALED, EFFECTIVE JANUARY 1, 2023.

SECTION 10. In Colorado Revised Statutes, add 8-77-101.5 as follows:

8-77-101.5. CARES act funds - administration - transfer - unemployment compensation fund - legislative declaration. (1) THE GENERAL ASSEMBLY FINDS THAT:

(a) ON MARCH 27, 2020, THE FEDERAL GOVERNMENT ENACTED THE "CORONAVIRUS AID, RELIEF, AND ECONOMIC SECURITY ACT" ("CARES ACT"), PUB.L. 116-136, PURSUANT TO WHICH COLORADO RECEIVED APPROXIMATELY ONE BILLION SIX HUNDRED SEVENTY-FOUR MILLION DOLLARS FROM THE FEDERAL CORONAVIRUS RELIEF FUND TO USE FOR NECESSARY EXPENDITURES INCURRED DUE TO THE CURRENT COVID-19 PUBLIC HEALTH EMERGENCY;

(b) THE PUBLIC HEALTH EMERGENCY CAUSED BY COVID-19 CAUSED AN HISTORIC INCREASE IN UNEMPLOYMENT IN THE STATE AND THIS HAS CAUSED A DRAMATIC INCREASE IN THE NUMBER OF CLAIMS FOR BENEFITS FROM THE UNEMPLOYMENT COMPENSATION FUND, CREATED IN SECTION 8-77-101;

(c) AS A RESULT, IT IS ESTIMATED THAT THE UNEMPLOYMENT COMPENSATION FUND, CREATED IN SECTION 8-77-101, WILL HAVE A DEFICIT OF APPROXIMATELY TWO BILLION DOLLARS BY THE END OF FISCAL YEAR 2020-21;

(d) THESE COSTS WILL NOT BE REIMBURSED BY THE FEDERAL GOVERNMENT, NOR ARE THEY ACCOUNTED FOR IN THE BUDGET APPROVED AS OF MARCH 27, 2020;
(e) The United States Department of Treasury has stated that payments to the state unemployment compensation fund, created in section 8-77-101, are an allowable use of the money from the federal coronavirus relief fund, under section 42 U.S.C. sec. 801(d); and

(f) The transfer of money from the "CARES Act" to the state unemployment compensation fund, created in section 8-77-101, is a necessary expenditure incurred due to the public health emergency with respect to COVID-19.

(2) If, as of December 30, 2020, there is any unexpended money that the state received through section 42 U.S.C. sec. 801(d) of the "CARES Act", then just prior to the close of business on December 30, 2020, the state treasurer shall transfer the unexpended amount of federal funds to the unemployment compensation fund created in section 8-77-101.

SECTION 11. In Colorado Revised Statutes, add 8-77-110 as follows:

8-77-110. Office of future of work - study - report. (1) The office of future of work in the Department of Labor and Employment, created by Executive Order B 2019 009 shall, within the scope of the executive order, study unemployment assistance as part of its study on the modernization of worker benefits and protections.

(2) On or before January 15, 2021, the office of the future of work shall submit an initial report as directed by the executive order, to the governor and 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 12. Effective date. This act takes effect upon passage; except that section 1 of this act takes effect January 1, 2021.

SECTION 13. 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.