

CHAPTER 112

LABOR AND INDUSTRY

SENATE BILL 95-072

BY SENATORS Schroeder, Ament, Blickensderfer, Johnson, Matsunaka, Mutzebaugh, L. Powers, Rizzuto, Schaffer, Tebedo, Wattenberg, and Weddig;
also REPRESENTATIVES Foster, Acquafresca, Dean, Entz, George, May, Musgrave, Paschall, Schauer, Schwarz, and Taylor.

AN ACT

CONCERNING THE DETERMINATION OF INDEPENDENT CONTRACTOR STATUS UNDER THE "WORKERS' COMPENSATION ACT OF COLORADO".

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

SECTION 1. 8-40-102 (2), Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

8-40-102. Legislative declaration. (2) The general assembly hereby finds that the determination of whether an individual is an employee for purposes of the "Workers' Compensation Act of Colorado" is subject to a great deal of speculation and litigation. It is the intent of the general assembly to provide an easily ascertainable standard for determining whether an individual is an employee. In order to further this objective, the test for determining whether an individual is an employee for the purposes of the "Workers' Compensation Act of Colorado" ~~is~~ SHALL BE based on the NINE criteria found in section 8-70-115. ~~It is the intent of the general assembly that when determining whether an individual is an employee only the factors specified in section 8-40-202 (2) and any case law which has construed the provisions of section 8-70-115 are to be considered. It is further the intent of the general assembly that the provisions set forth in section 8-40-202 (2) (b) (II) WHICH SHALL supersede the common law. THE FACT THAT AN INDIVIDUAL PERFORMS SERVICES EXCLUSIVELY OR PRIMARILY FOR ANOTHER SHALL NOT BE CONCLUSIVE EVIDENCE THAT THE INDIVIDUAL IS AN EMPLOYEE.~~

SECTION 2. The introductory portion to 8-40-202 (2) (b) (II) and 8-40-202 (2) (b) (III) and (2) (b) (IV), Colorado Revised Statutes, 1986 Repl. Vol., as amended, are amended to read:

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

8-40-202. Employee. (2) (b) (II) To prove independence ~~through a written document such document must have been signed by both parties and must show IT MUST BE SHOWN~~ that the person for whom services are performed does not:

(III) A document may satisfy the requirements of this paragraph (b) if such document demonstrates by a preponderance of the evidence the existence of the factors listed in subparagraph (II) of this paragraph (b) as are appropriate to the parties' situation. THE EXISTENCE OF ANY ONE OF THESE FACTORS IS NOT CONCLUSIVE EVIDENCE THAT THE INDIVIDUAL IS AN EMPLOYEE.

(IV) If the parties use a written document pursuant to this paragraph (b), such document MUST BE SIGNED BY BOTH PARTIES AND may be the contract for performance of service or a separate document. Such document shall ~~contain~~ 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 boldface or underlined type, that the independent contractor is not entitled to workers' compensation benefits and that the independent contractor is obligated to pay federal and state income tax on any moneys earned pursuant to the contract relationship. All signatures on any such document must be duly notarized.

SECTION 3. 8-41-401 (1) and (3), Colorado Revised Statutes, 1986 Repl. Vol., as amended, are amended to read:

8-41-401. Lessor contractor-out deemed employer - liability - recovery. (1) Any person, company, or corporation operating or engaged in or conducting any business by leasing or contracting out any part or all of the work thereof to any lessee, sublessee, contractor, or subcontractor, irrespective of the number of employees engaged in such work, shall be construed to be an employer as defined in articles 40 to 47 of this title and shall be liable as provided in said articles to pay compensation for injury or death resulting therefrom to said lessees, sublessees, contractors, and subcontractors and their employees or employees' dependents; EXCEPT THAT NO SUCH PERSON, COMPANY, OR CORPORATION SHALL BE CONSTRUED TO BE AN EMPLOYER AND IS NOT LIABLE UNDER ARTICLES 40 TO 47 OF THIS TITLE IF SUCH LESSEE, SUBLESSEE, CONTRACTOR, OR SUBCONTRACTOR HAS COMPLIED WITH SECTION 8-40-202 (2) (b) RELATIVE TO SUCH WORK. The employer, before commencing said work, shall insure and keep insured against all liability as provided in said articles, and such lessee, sublessee, contractor, or subcontractor, as well as any employee thereof, shall be deemed employees as defined in said articles. The employer shall be entitled to recover the cost of such insurance from said lessee, sublessee, contractor, or subcontractor and may withhold and deduct the same from the contract price or any royalties or other money due, owing, or to become due said lessee, sublessee, contractor, or subcontractor.

(3) NOTWITHSTANDING ANY PROVISION OF THIS SECTION TO THE CONTRARY, any individual who is excluded from the definition of "employee" pursuant to section 8-40-202 (2) or who does not obtain coverage under a policy of workers' compensation insurance pursuant to section 8-40-302 (5), 8-41-202, or 8-44-102 shall not have any cause of action of any kind under articles 40 to 47 of this title. Nothing in this section shall be construed to restrict the right of any such individual to elect to proceed against a third party in accordance with the provisions of section

8-41-203. The total amount of damages recoverable pursuant to any cause of action resulting from a work-related injury brought by such individual which would otherwise have been compensable under articles 40 to 47 of this title shall not exceed fifteen thousand dollars, except in any cause of action brought against another not in the same employ.

SECTION 4. Effective date. This act shall take effect July 1, 1995.

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

Approved: April 27, 1995