

CHAPTER 63

LABOR AND INDUSTRY

HOUSE BILL 98-1259

BY REPRESENTATIVES Tate, Chavez, Nichol, Reeser, Takis;
also SENATORS Chlouber, Tanner, Norton, and Perlmutter.

AN ACT

CONCERNING ALTERNATIVE PENALTIES FOR EMPLOYERS NOT MAINTAINING REQUIRED WORKERS' COMPENSATION COVERAGE.

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

SECTION 1. 8-43-409 (1), (2), and (4), Colorado Revised Statutes, are amended, and the said 8-43-409 is further amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS, to read:

8-43-409. Defaulting employers - penalties - enjoined from continuing business - fines - procedure. (1) Any employer subject to the terms and provisions of articles 40 to 47 of this title who fails to insure or to keep the insurance required by said articles in force or who allows the same to lapse or fails to effect a renewal thereof shall not continue any business operations while such default in effective insurance continues. Upon receiving information from any person or entity that an employer is in default of its insurance obligations, the director shall forthwith investigate and, if the information can be substantiated, the director shall notify the employer of the opportunity to request a prehearing conference on the issue of default. Thereafter, if necessary, the director shall set the issue of the employer's default for hearing in accordance with hearing time schedule and procedures set forth in articles 40 to 47 of this title and rules promulgated by the director. Upon a finding that the employer is in default of its insurance obligations, the director shall EITHER:

(a) Order the employer in default to cease and desist immediately from continuing its business operations during any period such default continues; OR

(b) (I) IMPOSE A FINE OF NOT MORE THAN FIVE HUNDRED DOLLARS FOR EVERY DAY THAT THE EMPLOYER FAILS OR HAS FAILED TO INSURE OR TO KEEP THE INSURANCE REQUIRED BY ARTICLES 40 TO 47 OF THIS TITLE IN FORCE, OR ALLOWS OR HAS ALLOWED THE INSURANCE TO LAPSE, OR FAILS OR HAS FAILED TO EFFECT A RENEWAL OF SUCH COVERAGE; EXCEPT THAT THE DIRECTOR SHALL NOT IMPOSE A FINE THAT EXCEEDS THE ANNUAL COST OF THE INSURANCE PREMIUM THAT WOULD HAVE BEEN CHARGED FOR SUCH EMPLOYER.

(II) ANY FINE IMPOSED PURSUANT TO SUBPARAGRAPH (I) OF THIS SUBSECTION (1) SHALL BE IMPOSED ONLY FOR THOSE DAYS THAT OCCUR AFTER THE EMPLOYER RECEIVES A NOTICE FROM THE DIRECTOR THAT THE EMPLOYER HAS FAILED TO INSURE OR TO KEEP IN FORCE THE INSURANCE REQUIRED BY ARTICLES 40 TO 47 OF THIS TITLE, OR HAS ALLOWED THE INSURANCE TO LAPSE, OR HAS FAILED TO EFFECT A RENEWAL OF SUCH COVERAGE.

(III) THE DIRECTOR SHALL SUSPEND ANY FINE IMPOSED PURSUANT TO THIS PARAGRAPH (b) IF THE EMPLOYER PROVIDES PROOF SUITABLE TO THE DIRECTOR THAT THE EMPLOYER HAS IN FORCE INSURANCE FOR SO LONG AS THE EMPLOYER HAS ANY OBLIGATION UNDER ARTICLES 40 TO 47 OF THIS TITLE, AND IS NOT OTHERWISE IN VIOLATION OF ARTICLES 40 TO 47.

(2) Any cease and desist order issued OR FINE IMPOSED by the director under subsection (1) of this section shall include specific findings of fact that are based upon evidence that:

(a) The employer received notice of the hearing;

(b) The employer employs employees for whom it must carry workers' compensation insurance under the provisions of articles 40 to 47 of this title;

(c) The employer does not have a policy of workers' compensation insurance in effect; and

(d) The employer continues to operate its business in the absence of such coverage.

(4) The issuance of an order to cease and desist, THE IMPOSITION OF A FINE PURSUANT TO SUBSECTION (1) OF THIS SECTION, or the issuance of an order for injunctive relief against an employer for failure to insure or to keep insurance in force as required by articles 40 to 47 of this title shall be the penalty for such failure within the meaning of section 8-43-304 (1) and such penalty shall be in addition to the increase in benefits that section 8-43-408 requires.

(5) THE DIRECTOR OR ADMINISTRATIVE LAW JUDGE SHALL REPORT TO THE DIVISION EACH TIME A FINE IS IMPOSED PURSUANT TO SUBSECTION (1) OF THIS SECTION. EACH SUCH REPORT SHALL INCLUDE THE AMOUNT OF THE FINE AND THE NAME OF THE OFFENDING PARTY.

(6) A CERTIFIED COPY OF ANY FINAL ORDER OF THE DIRECTOR ORDERING THE PAYMENT OF A FINE IMPOSED PURSUANT TO SUBSECTION (1) OF THIS SECTION MAY BE FILED WITH THE CLERK OF THE DISTRICT COURT OF ANY COUNTY IN THIS STATE AT ANY TIME AFTER THE PERIOD OF TIME PROVIDED BY ARTICLES 40 TO 47 OF THIS TITLE FOR APPEAL OR SEEKING REVIEW OF THE ORDER HAS PASSED WITHOUT APPEAL OR REVIEW BEING SOUGHT OR, IF APPEAL OR REVIEW IS SOUGHT, AFTER THE ORDER HAS BEEN FINALLY AFFIRMED AND ALL APPELLATE REMEDIES AND ALL OPPORTUNITIES FOR REVIEW HAVE BEEN EXHAUSTED. THE PARTY FILING THE ORDER SHALL AT THE SAME TIME FILE A CERTIFICATE TO THE EFFECT THAT THE TIME FOR APPEAL OR REVIEW HAS PASSED WITHOUT APPEAL OR REVIEW BEING UNDERTAKEN OR THAT THE ORDER HAS BEEN FINALLY AFFIRMED WITH ALL APPELLATE REMEDIES AND ALL OPPORTUNITIES FOR REVIEW HAVING BEEN EXHAUSTED. THE CLERK OF THE DISTRICT COURT SHALL RECORD THE ORDER AND THE FILING PARTY'S CERTIFICATE IN THE JUDGMENT BOOK OF THE COURT AND ENTRY THEREOF MADE IN THE JUDGMENT DOCKET, AND IT SHALL THEREAFTER HAVE ALL THE EFFECT OF AND CONSTITUTE A JUDGMENT OF THE DISTRICT COURT, AND EXECUTION MAY ISSUE THEREON FROM SAID COURT AS IN OTHER CASES. ANY SUCH ORDER MAY BE FILED BY AND IN THE NAME OF THE DIRECTOR.

(7) FINES COLLECTED PURSUANT TO THIS SECTION SHALL BE TRANSMITTED TO THE STATE TREASURER, WHO SHALL CREDIT SUCH FINE TO THE WORKERS' COMPENSATION CASH FUND, CREATED IN SECTION 8-44-112, WHICH SHALL BE USED TO OFFSET THE PREMIUM SURCHARGE.

SECTION 2. Effective date - applicability. This act shall take effect upon passage and shall apply to acts committed on or after said date.

SECTION 3. 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 6, 1998