

## CHAPTER 363

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**LABOR AND INDUSTRY**


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**HOUSE BILL 09-1363**

BY REPRESENTATIVE(S) Ferrandino, Pommer;  
also SENATOR(S) Veiga, Boyd, Gibbs, Hodge, Tochtrop, Williams.

**AN ACT**

**CONCERNING THE AUTHORITY FOR THE UNEMPLOYMENT COMPENSATION SECTION OF THE DIVISION OF EMPLOYMENT AND TRAINING IN THE DEPARTMENT OF LABOR AND EMPLOYMENT TO OPERATE AS AN ENTERPRISE FOR PURPOSES OF SECTION 20 OF ARTICLE X OF THE STATE CONSTITUTION.**

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

**SECTION 1.** 8-71-103, Colorado Revised Statutes, is amended to read:

**8-71-103. Organization of division.** (1) There shall be in the division the unemployment compensation section and the employment service section. The unemployment compensation and employment service sections shall be coordinate sections of the administrative organization.

(2) (a) THE UNEMPLOYMENT COMPENSATION SECTION OF THE DIVISION SHALL CONSTITUTE AN ENTERPRISE FOR PURPOSES OF SECTION 20 OF ARTICLE X OF THE STATE CONSTITUTION, AS LONG AS THE UNEMPLOYMENT COMPENSATION SECTION RETAINS AUTHORITY TO ISSUE REVENUE BONDS AND THE SECTION RECEIVES LESS THAN TEN PERCENT OF ITS TOTAL ANNUAL REVENUES IN GRANTS, AS DEFINED IN SECTION 24-77-102 (7), C.R.S., FROM ALL COLORADO STATE AND LOCAL GOVERNMENTS COMBINED. FOR AS LONG AS IT CONSTITUTES AN ENTERPRISE PURSUANT TO THIS SECTION, THE UNEMPLOYMENT COMPENSATION SECTION OF THE DIVISION SHALL NOT BE SUBJECT TO SECTION 20 OF ARTICLE X OF THE STATE CONSTITUTION.

(b) (I) EXCEPT AS PROVIDED IN SUBPARAGRAPH (II) OF THIS PARAGRAPH (b), THE ENTERPRISE ESTABLISHED PURSUANT TO THIS SUBSECTION (2) SHALL HAVE ALL THE POWERS AND DUTIES AUTHORIZED BY ARTICLES 70 TO 82 OF THIS TITLE PERTAINING TO UNEMPLOYMENT COMPENSATION. THE ENTERPRISE IS NOT AUTHORIZED TO PERFORM THOSE POWERS AND DUTIES GRANTED TO THE EMPLOYMENT SERVICE

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

SECTION OF THE DIVISION PURSUANT TO SECTION 8-71-106, AND THE DEPARTMENT'S POWERS AND DUTIES UNDER THE "COLORADO WORK FORCE INVESTMENT ACT", PART 2 OF THIS ARTICLE.

(II) THE EMPLOYMENT SUPPORT FUND ESTABLISHED IN SECTION 8-77-109 (1) SHALL NOT BE INCLUDED IN OR ADMINISTERED BY THE ENTERPRISE ESTABLISHED PURSUANT TO THIS SUBSECTION (2).

(c) NOTHING IN THIS SUBSECTION (2) SHALL BE CONSTRUED TO LIMIT OR RESTRICT THE AUTHORITY OF THE UNEMPLOYMENT COMPENSATION SECTION TO EXPEND ITS REVENUES CONSISTENT WITH THE PROVISIONS OF ARTICLES 70 TO 82 OF THIS TITLE.

(d) SUBJECT TO APPROVAL BY THE GENERAL ASSEMBLY, EITHER BY BILL OR BY JOINT RESOLUTION, AND AFTER APPROVAL BY THE GOVERNOR PURSUANT TO SECTION 39 OF ARTICLE V OF THE STATE CONSTITUTION, THE UNEMPLOYMENT COMPENSATION SECTION IS HEREBY AUTHORIZED TO ISSUE REVENUE BONDS FOR THE EXPENSES OF THE SECTION, SECURED BY ANY REVENUES OF THE SECTION.

**SECTION 2.** 8-70-103 (13), (17) (b), (20), (25), (26), and (27), Colorado Revised Statutes, are amended, and the said 8-70-103 is further amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS, to read:

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

(6.3) "CHARGEABLE PAYROLL" MEANS THE SUM OF CHARGEABLE WAGES.

(6.5) "CHARGEABLE WAGES" MEANS THOSE WAGES PAID 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, 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 UNEMPLOYMENT FUND. FOR EACH CALENDAR YEAR, THE CHARGEABLE WAGE IS THE FIRST TEN THOUSAND DOLLARS PAID AN INDIVIDUAL.

(13) "Fund" means the unemployment compensation fund established in section 8-77-101 (1) to which all ~~taxes~~ PREMIUMS required and from which all benefits under articles 70 to 82 of this title shall be paid.

(17) (b) "Interested party" to a ~~tax~~ PREMIUM liability determination means the division and the employer whose business has been issued a liability determination by the division.

(20) "Payments in lieu of ~~taxes~~ PREMIUMS" means the money payments made into the fund by an employer pursuant to the provisions of sections 8-76-108 to 8-76-110.

(23.5) "PREMIUMS" MEANS THE MONEY PAYMENTS TO THE UNEMPLOYMENT COMPENSATION FUND REQUIRED BY ARTICLES 70 TO 82 OF THIS TITLE.

(25) "~~Taxable payroll~~" means the sum of ~~taxable wages~~.

(26) "Taxable wages" means those wages paid an individual employee during a calendar year on which the employer of that employee is required to pay tax as provided by article 76 of this title, including all wages subject to a tax under federal law which imposes a tax against which credit may be taken for taxes required to be paid into a state unemployment fund. For the calendar year commencing January 1, 1983, the taxable wage is the first seven thousand dollars paid an individual. For the calendar years commencing January 1, 1984, 1985, and 1986, the taxable wage is the first eight thousand dollars paid an individual. For the calendar year commencing January 1, 1987, the taxable wage is the first nine thousand dollars paid an individual. For the calendar year commencing January 1, 1988, and each calendar year thereafter, the taxable wage is the first ten thousand dollars paid an individual.

(27) "Taxes" means the money payments to the unemployment compensation fund required by articles 70 to 82 of this title.

**SECTION 3.** 8-70-107, Colorado Revised Statutes, is amended to read:

**8-70-107. Disposition of funds in event of unconstitutionality.** (1) Articles 70 to 74 and 76 to 81 of this title are enacted for the purpose of participating in the advantages available to the state of Colorado under the federal "Social Security Act", as amended. In the event that Title IX of ~~said act~~ THE FEDERAL "SOCIAL SECURITY ACT" or any amendments ~~thereto~~ TO THE FEDERAL ACT are amended or repealed by congress or are held unconstitutional by the supreme court of the United States, with the result that no portion of the ~~taxes~~ PREMIUMS required under ~~said~~ articles 70 TO 74 AND 76 TO 81 OF THIS TITLE may be credited against the tax imposed by ~~said~~ Title IX OF THE FEDERAL "SOCIAL SECURITY ACT", the division shall ~~thereupon~~ requisition from the unemployment trust fund all moneys ~~therein~~ IN THE TRUST FUND standing to the credit of the state of Colorado, and such moneys, together with any other moneys in the unemployment compensation fund, shall be refunded to the contributors proportionate to their unexpended balances in the fund.

(2) In the event that the provisions of articles 70 to 74 and 76 to 81 of this title requiring the payment of ~~taxes~~ PREMIUMS and benefits are held invalid under the constitution of this state by the supreme court of this state or the supreme court of the United States or are held invalid under the United States constitution by the supreme court of the United States or the supreme court of this state, the division shall ~~thereupon~~ requisition from the unemployment trust fund all moneys ~~therein~~ IN THE TRUST FUND standing to the credit of the state of Colorado, and such moneys, together with any other moneys in the unemployment compensation fund, shall be held in custody by the state treasurer in the same manner as provided in section 8-77-105 until such time as the general assembly provides for the disposition ~~thereof~~ OF THE MONEYS; except that the general assembly shall not dispose of ~~such~~ THE moneys ~~otherwise~~ OTHER than for unemployment compensation purposes or for reimbursements to the contributors under the provisions of ~~said articles~~ ARTICLES 70 TO 74 AND 76 TO 81 OF THIS TITLE, proportionate to their unexpended balances in the fund.

**SECTION 4.** 8-70-113 (1) (g) and (1) (h), Colorado Revised Statutes, are amended to read:

**8-70-113. Employer - definition.** (1) "Employer" means:

(g) Any employing unit ~~which~~ THAT is not defined as an employer under this section but for which, within either the current or the preceding calendar year, service is or was performed with respect to which such employing unit is liable for any federal tax against which credit may be taken for ~~taxes~~ PREMIUMS required to be paid into a state unemployment fund;

(h) Any employing unit ~~which~~ THAT, as a condition for approval of articles 70 to 82 of this title for full ~~tax~~ credit against the tax imposed by the "Federal Unemployment Tax Act" FOR PREMIUMS PAID, is required, pursuant to such act, to be an employer under articles 70 to 82 of this title;

**SECTION 5.** 8-70-114 (2) (b) (VI) and (2) (b) (VII), the introductory portion to 8-70-114 (2) (g) (III), and 8-70-114 (2) (g) (III) (A), (3) (a), (3) (c), (6) (c), and (6) (e), Colorado Revised Statutes, are amended to read:

**8-70-114. Employing unit - definitions - rules - employee leasing company certification fund.** (2) (b) Notwithstanding the provisions of subsection (1) of this section, an employee leasing company shall be considered an employing unit or the coemployer of a work-site employer's employees if, pursuant to an employee leasing company contract with the work-site employer, it has the following rights and responsibilities:

(VI) The employee leasing company, as the employing unit or co-employer, has the responsibility for payment of wages to the workers pursuant to the employee leasing company contract. The employee leasing company, as the employing unit or co-employer, has responsibility for reporting, withholding, and paying any applicable taxes AND PREMIUMS with respect to the employee's wages or payment of sponsored employee benefit plans pursuant to the employee leasing company contract.

(VII) Each employee leasing company shall pay wages and collect, report, and pay all payroll-related taxes AND PREMIUMS from its own accounts for all covered employees. Each employee leasing company shall pay unemployment compensation insurance ~~taxes~~ PREMIUMS and provide, maintain, and secure all records and documents required of work-site employers under the unemployment insurance laws of this state for covered employees. For unemployment reporting purposes, each employee leasing company is the only employing unit for covered employees and shall have the responsibility for unemployment compensation insurance as required of an employer pursuant to the "Colorado Employment Security Act", articles 70 to 82 of this title.

(g) (III) Each employee leasing company shall annually certify and provide evidence to the department that it meets one of the following criteria to provide securitization of unemployment ~~taxes~~ PREMIUMS:

(A) Execute and file a surety bond or deposit with the division money or a letter of credit equivalent to fifty percent of the average annual amount of unemployment ~~tax~~ PREMIUM assessed within the previous calendar year. For a new employee leasing company, the initial bond amount will be the standard ~~tax~~ PREMIUM rate, AS

DETERMINED PURSUANT TO SECTION 8-76-103, multiplied by fifty percent of the estimated projected ~~taxable~~ CHARGEABLE payroll for the current calendar year as estimated by the employee leasing company.

(3) (a) The status of an employee leasing company as the employing unit or a co-employer of a work-site employer's employees shall be revoked by the division if such employee leasing company fails to file the required reports or pay the ~~taxes~~ PREMIUMS due under the provisions of articles 70 to 82 of this title. The effective date of ~~any such~~ A revocation shall be the first day of the quarter for which the reports and ~~taxes~~ PREMIUMS are due. In the event of ~~such~~ a revocation, the work-site employer shall become liable for the reports and ~~taxes~~ PREMIUMS due.

(c) The provisions of paragraph (a) of this subsection (3) shall not apply if an employee leasing company acts as an agent for a work-site employer pursuant to the provisions of subsection (1) of this section, files the required reports, and pays the ~~taxes~~ PREMIUMS due under an account established for the work-site employer.

(6) (c) **Tax or premium credits and other incentives.** For purposes of determination of employment-based tax OR PREMIUM credits, such as economic development, enterprise zone, development zone, and other such economic incentives provided by the state or any other governmental entity, work-site employees shall be deemed employees solely of the work-site employer. A work-site employer shall be entitled to the benefit of any tax OR PREMIUM credit, economic incentive, or other benefit arising as the result of the employment of work-site employees of the work-site employer. If the grant or amount of any credit, benefit, or other incentive is based on number of employees, then each work-site employer shall be treated as employing only those work-site employees coemployed by the work-site employer. Work-site employees working for other work-site employers of the employee leasing company shall not be counted. Upon request by a work-site employer or an agency or department of this state, each employee leasing company shall provide employment information reasonably required by any agency or department of this state responsible for administration of any tax OR PREMIUM credit or economic incentive and necessary to support any request, claim, application, or other action by a work-site employer seeking the tax OR PREMIUM credit or economic incentive.

(e) **Taxes, premiums, fees, other assessments.** (I) A tax, PREMIUM, fee, surcharge, penalty, or any other assessment on a work-site employer or employee leasing company on the basis of the number of employees shall be assessed:

(A) Against the work-site employer for the work-site employees under the employee leasing company contract with the employee leasing company; and

(B) Against the employee leasing company for the employees of the employee leasing company who are not work-site employees for any work-site employers in the state.

(II) For a tax OR PREMIUM imposed or calculated upon the basis of total payroll, an employee leasing company may apply any small business allowance or exemption available to the work-site employer for the work-site employees for purposes of computing the tax OR PREMIUM.

(III) The provisions of this paragraph (e) shall not apply to the reporting, withholding, and paying of taxes OR PREMIUMS pursuant to subparagraphs (VI) and (VII) of paragraph (b) of subsection (2) of this section.

**SECTION 6.** 8-70-124, Colorado Revised Statutes, is amended to read:

**8-70-124. Employment - credit - state unemployment fund.** Notwithstanding any other provisions of sections 8-70-115 to 8-70-125, "employment" means services with respect to which a tax is required to be paid under any federal law imposing a tax against which credit may be taken for ~~taxes~~ PREMIUMS required to be paid into a state unemployment fund or which, as a condition for full ~~tax~~ credit against the tax imposed by the "Federal Unemployment Tax Act", is required to be covered under articles 70 to 82 of this title.

**SECTION 7.** 8-70-130, Colorado Revised Statutes, is amended to read:

**8-70-130. Employment does not include - instrumentalities of United States.** "Employment" does not include services performed in the employ of the United States government, a national bank or state bank ~~which~~ THAT is a member of the federal reserve system, or a federal savings and loan association or a state building and loan association ~~which~~ THAT is a member of the federal home loan bank system, which institutions were, prior to January 1, 1972, exempt from articles 70 to 82 of this title, or any other instrumentality of the United States exempt under the constitution of the United States from the ~~taxes~~ PREMIUMS imposed by articles 70 to 82 of this title; except that, to the extent that the congress of the United States permits states to require any instrumentalities of the United States to make payments into an unemployment fund under a state unemployment compensation law, all of the provisions of articles 70 to 82 of this title shall be applicable to such instrumentalities and to services performed for such instrumentalities in the same manner, to the same extent, and on the same terms as to all other employers, employing units, individuals, and services. If this state is not certified for any year by the United States secretary of labor under section 3304 of the federal "Internal Revenue Code of 1986", as amended, the payments required of such instrumentalities with respect to such year shall be refunded by the division from the fund in the same manner and within the same period as is provided in section 8-79-108 with respect to ~~taxes~~ PREMIUMS erroneously collected.

**SECTION 8.** 8-72-107 (1), Colorado Revised Statutes, is amended to read:

**8-72-107. Records and reports - fee - violation - penalty.** (1) Each employing unit shall keep true and accurate work records, containing such information as the division may prescribe. Such records shall be retained for a period of not less than five years and shall be open to inspection and be subject to being copied by the division or its authorized representatives at any reasonable time and as often as may be necessary. The division or any referee may require from any employing unit any sworn or unsworn reports, with respect to persons employed by it, which it or the referee deems necessary for the effective administration of articles 70 to 82 of this title. Information thus obtained, or obtained from any individual pursuant to the administration of articles 70 to 82 of this title, except to the extent necessary for the proper presentation of a claim, or withholding tax OR UNEMPLOYMENT INSURANCE account numbers if such numbers are obtained from the department of revenue

pursuant to section 39-21-113, C.R.S., shall be held confidential and shall not be published or be open to public inspection (other than to public employees in the performance of their public duties, to an agent of a state or local child support enforcement agency pursuant to section 8-72-109 (9), or to an agent of the division designated as such in writing for the purpose of accomplishing certain of the division's functions) in any manner revealing the individual's or employing unit's identity. Any interested party or such party's authorized representative, in preparation for and prior to any hearing on a claim governed by articles 70 to 82 of this title, shall be entitled to examine and, upon the payment of a reasonable fee to the division, obtain a copy of any materials contained in such records to the extent necessary for proper presentation of the party's position at the hearing. Notwithstanding said provisions of this subsection (1), any applicant for work shall be entitled to examine and copy, or obtain a copy from the division upon payment of the costs of duplication, any letters of reference or other similar documents pertaining to the applicant ~~which~~ THAT are in possession of the division. Any employee or member of the division or any referee who violates any provision of this article is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than twenty dollars nor more than two hundred dollars, or by imprisonment in the county jail for not more than ninety days, or by both such fine and imprisonment.

**SECTION 9.** 8-72-110 (2) and (4), Colorado Revised Statutes, are amended to read:

**8-72-110. Reciprocal interstate agreements.** (2) The division is authorized to enter into reciprocal arrangements with appropriate and duly authorized agencies of other states or of the federal government, or both, whereby wages for insured work paid in another state or by the federal government shall be deemed to be wages for insured work under articles 70 to 82 of this title; and wages for insured work paid under the provisions of articles 70 to 82 of this title shall be deemed to be wages on the basis of which unemployment insurance is payable under such law of another state or of the federal government. No such arrangement shall be entered into unless it contains provision for reimbursement to the fund for such of the benefits paid under articles 70 to 82 of this title on the basis of such wages and provision for reimbursement from the fund for such benefits paid under such other law on the basis of wages for insured work as the division finds will be fair and reasonable to all affected interests. Reimbursements paid from the fund pursuant to this section shall be deemed to be benefits for the purposes of articles 70 to 82 of this title; except that no charge shall be made to a ~~taxpaying~~ PREMIUM-PAYING employer's account under sections 8-76-101 to 8-76-104. With the exception of benefit overpayments, such noncharging shall not apply to reimbursing employer accounts ~~which~~ THAT will be charged in accordance with section 8-76-103 in the same amount and to the same extent as if the reimbursement to another state had been benefits based solely on wages paid by an employer covered by articles 70 to 82 of this title.

(4) The division is further authorized to enter into arrangements with the appropriate agencies of other states or of the federal government for the determination, adjustment, collection, and assessment of ~~taxes~~ PREMIUMS by employers with respect to employment within and without this state.

**SECTION 10.** 8-73-107 (1) (h), Colorado Revised Statutes, is amended to read:

**8-73-107. Eligibility conditions - penalty.** (1) Any unemployed individual shall be eligible to receive benefits with respect to any week only if the division finds that:

(h) ~~He~~ THE INDIVIDUAL has furnished the division with separation and other reports containing ~~such~~ THE information deemed necessary by the division to determine ~~his~~ THE INDIVIDUAL'S eligibility for benefits, but this provision shall not apply if ~~he~~ THE INDIVIDUAL proves to the satisfaction of the division that he OR SHE had good cause for failing to furnish such reports. The eligibility of any individual shall not be affected by the refusal or failure of an employer to furnish reports concerning separation and employment as required by articles 70 to 82 of this title and the ~~regulations~~ RULES pursuant thereto, and the division shall determine the eligibility of such individual upon the basis of such information it may obtain; and any employer who fails or refuses to furnish reports concerning separation and employment shall cease to be an interested party to the separation issue directly related to determinations made in accordance with section 8-73-108 (4) and (5) (e). For each instance of failure to furnish the division with such reports, the employer, unless good cause to the contrary is shown to the satisfaction of the division, may be assessed a penalty of twenty-five dollars, which shall be collected in the same manner as ~~taxes~~ PREMIUMS due under articles 70 to 82 of this title.

**SECTION 11.** 8-76-101, Colorado Revised Statutes, is amended to read:

**8-76-101. Payment.** (1) ~~Taxes~~ PREMIUMS shall accrue and become payable by each employer for each calendar year in which ~~he~~ THE EMPLOYER is subject to articles 70 to 82 of this title with respect to wages for employment. The ~~taxes~~ PREMIUMS shall become due and be paid by each employer to the division for the fund in accordance with ~~such regulations as~~ RULES PRESCRIBED BY the director of the division ~~may prescribe~~ and shall not be deducted, in whole or in part, from the wages of individuals in ~~such~~ THE employer's employ.

(2) In the payment of any ~~taxes~~ PREMIUMS, a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to one cent.

(3) ~~On and after January 1, 2002,~~ When the quarterly amount of ~~taxes~~ PREMIUMS due is less than five dollars, payment of ~~such tax~~ THE PREMIUMS shall not be required.

**SECTION 12.** 8-76-102, Colorado Revised Statutes, is amended to read:

**8-76-102. Rate of premiums - surcharge.** (1) Each employer shall pay ~~taxes~~ PREMIUMS equal to two and seven-tenths percent of ~~taxable~~ CHARGEABLE wages paid by the employer during each calendar year, ~~with respect to employment occurring after June 30, 1941,~~ except as may be otherwise prescribed in section 8-76-103. As used in this section, "~~taxable~~ CHARGEABLE wages paid" shall include ~~taxable~~ CHARGEABLE wages constructively paid as well as ~~taxable~~ CHARGEABLE wages actually paid.



(2) Each employing unit becoming an employer under the new definition of employer contained in articles 70 to 82 of this title who would not be an employer under the old definition for employer shall be liable for ~~tax~~ PREMIUMS only on ~~taxable~~ CHARGEABLE wages paid ~~subsequent to June 30, 1941~~, with respect to employment.

(3) (a) ~~Notwithstanding any other provision of law to the contrary, if political subdivisions or their instrumentalities have elected singly, severally, or in toto to become taxpaying employers as permitted by section 8-76-108, such employing units shall pay taxes at the rate of three-tenths of one percent of total wages beginning with the calendar year 1978 and shall continue to pay such rate through December 31, 1979, unless sooner increased or decreased by the division based on benefit cost experience. A political subdivision or its instrumentality which~~ THAT has elected to become a ~~taxpaying~~ PREMIUM-PAYING employer shall have its account charged with the full amount of all regular and extended benefits that are attributable to service in its employ.

(b) (I) The ~~tax~~ PREMIUM rate for political subdivisions or their instrumentalities shall be examined ~~after July 1, 1978~~, ANNUALLY in conjunction with ~~such~~ THE employers' benefit experience and may be adjusted ~~for the calendar year 1979 and similarly adjusted for succeeding calendar years~~ on a year-by-year basis as prescribed by section 8-76-103 (3) (b) (I).

(II) The division shall notify all political subdivisions or their instrumentalities, as defined in paragraph (a) of this subsection (3), of the ~~tax~~ PREMIUM rate no later than January 1 of the year for which the rate applies.

(c) Repealed.

(4) (a) ~~Based on the amount of benefits paid and not chargeable to any active employer account prior to each July 1, beginning July 1, 1983, the division shall annually establish a tax, rounded to the nearest one-tenth of one percent. The total amount of benefits not effectively charged shall be divided by the total taxable payroll estimated to be paid by all employers in the ensuing calendar year. The resulting percentage, rounded to the nearest one-tenth of one percent, with fifty percent allocated to the unemployment compensation fund and fifty percent allocated to the employment support fund created under the provisions of section 8-77-109, shall be the surcharge tax rate beginning July 1, 1999. The surcharge tax rate shall then be added to the employer's standard or computed tax rate with eighty percent of the surcharge tax revenues considered as revenues for purposes of calculating the tax surcharge pursuant to this paragraph (a). This tax rate added to the employer tax rate shall also be identified separately on the employer tax rate notice as the tax surcharge for benefits not effectively charged. The combined rate shall be the employer's tax rate for the ensuing calendar year. The division shall use the four quarters most recently available for benefits not effectively charged prior to the computation date used for determinations under section 8-76-103. Since total taxable payroll is estimated and the tax rate rounded, any amount for the benefits not effectively charged and not fully recovered in one year shall be added to the following calendar year's identified amount. Any amount recovered over that amount shall be subtracted from the following calendar year's identified amount. The tax surcharge established by this subsection (4) shall not be assessed against~~

~~any employer whose benefit-charge account balance is zero, and the estimated taxable payrolls of such employers shall not be included in the calculation of the surcharge tax rate; except that, if the employer is still being rated under the provisions of section 8-76-103 (3) (a), such employer is subject to the surcharge tax rate.~~

(b) Effective July 1, 1999, and until such time as employers' federal unemployment taxes are returned to the state by the federal government at levels sufficient to permit the effective administration of ~~the provisions of~~ articles 70 to 82 of this title, fifty percent of the PREMIUM surcharge tax established by ~~paragraph (a) of this subsection (4)~~ shall be segregated and deposited in the employment support fund created in section 8-77-109.

(c) Effective January 1, 1998, the ~~tax~~ PREMIUM surcharge established by this subsection (4) shall not be assessed against any employer whose benefit-charge account balance for the last three fiscal years immediately preceding the computation date is less than one hundred dollars.

(d) Effective calendar year 2000, ~~the provisions of paragraph (a) of this subsection (4) regarding annual computation of the surcharge tax rate shall no longer apply and~~ the annual PREMIUM surcharge tax rate shall be established at 0.22 percent, with fifty percent of the PREMIUM surcharge tax rate allocated to the general fund and fifty percent of the PREMIUM surcharge tax rate allocated to the employment support fund created under the provisions of section 8-77-109; except that, beginning July 1, 2004, the amount allocated to the general fund shall be allocated to the unemployment compensation fund. The PREMIUM surcharge tax rate shall then be added to the employer's standard or computed ~~tax~~ PREMIUM rate. ~~This tax~~ THE PREMIUM SURCHARGE rate added to the employer ~~tax~~ PREMIUM rate shall also be identified separately on the employer ~~tax~~ PREMIUM rate notice as the ~~tax~~ PREMIUM surcharge for benefits not effectively charged. The combined rate shall be the employer's ~~tax~~ PREMIUM rate for the ensuing calendar year. The PREMIUM surcharge established by this subsection (4) shall not be assessed against any employer whose benefit-charge account balance is zero; except that, if the employer is still being rated under the provisions of section 8-76-103 (3) (a), such employer is subject to the PREMIUM surcharge ~~tax~~ rate.

(5) (a) (I) A solvency ~~tax~~ surcharge shall be assessed when the fund balance on any June 30 is equal to or less than nine-tenths of one percent of the total wages reported by ratable employers for the calendar year, or the most recent available four consecutive quarters prior to the last computation date. The solvency ~~tax~~ surcharge shall be assessed on all ratable employers beginning with the next calendar year, ~~which~~ AND THE SOLVENCY SURCHARGE shall then be added to the employer's standard or computed ~~tax~~ PREMIUM rate. ~~This tax~~ THE SOLVENCY SURCHARGE rate added to the employer's ~~tax~~ PREMIUM rate shall also be identified separately on the employer's ~~tax~~ PREMIUM rate notice as the solvency ~~tax~~ surcharge. The solvency ~~tax~~ surcharge shall be initially assessed and then increased in the yearly increments established by paragraph (b) of this subsection (5) until the June 30 fund balance is greater than the fund level established by this subsection (5) but in no case shall exceed the rate schedule in effect January 1, 1990.

(II) If, on June 30, 2005, the ratio of the fund balance to the total wages reported

by ratable employers equals or exceeds that ratio on June 30, 2004, the incremental increase in the solvency tax surcharge established in paragraph (b) of this subsection (5) shall be applied, and an amount equal to the amount of the increase in the surcharge shall be subtracted from the computation of the rated employer's standard or computed rate for the 2006 calendar year.

(III) The solvency ~~tax~~ surcharge shall not be assessed against:

- (A) The covered employers of state and local governments;
- (B) Nonprofit organizations that are ~~reimbursable~~ REIMBURSING employers; or
- (C) Political subdivisions electing the special rate.

**(b) Solvency surcharge rate schedule.**

Percent of excess	Solvency <del>tax</del> surcharge yearly increment	January 1, 1990, rate table limit on solvency <del>tax</del>	Percent of excess	Solvency <del>tax</del> surcharge yearly increment	January 1, 1990, rate table limit on solvency <del>tax</del>
+20 or more	.000	.002	-0	.006	.028
+19 through			-1	.006	.029
+11	.001	.003	-2	.006	.030
+10	.001	.004	-3	.006	.031
+9	.001	.005	-4	.006	.032
+8	.001	.006	-5	.007	.033
+7	.001	.007	-6	.007	.034
+6	.002	.008	-7	.007	.035
+5	.002	.009	-8	.007	.036
+4	.002	.010	-9	.007	.037
+3	.003	.013	-10	.008	.038
+2	.003	.016	-11	.008	.039
+1	.004	.020	-12	.008	.040
+0	.005	.024	-13	.008	.041
			-14	.008	.042

Unrated	.006	.027	-15	.009	.043
			-16	.009	.044
			-17	.009	.045
			-18	.009	.046
			-19	.009	.047
			-20	.010	.048
			-21	.010	.049
			-22	.010	.050
			-23	.010	.051
			-24	.010	.052
			-25	.011	.053
		more than			
			-25	.011	.054

**SECTION 13.** 8-76-102 (4) (d), Colorado Revised Statutes, as amended by Senate Bill 09-076, enacted at the First Regular Session of the Sixty-seventh General Assembly, is amended to read:

**8-76-102. Rate of tax - surcharge.** (4) (d) Effective calendar year 2009, the annual PREMIUM surcharge ~~tax~~ rate shall be established at 0.22 percent, with thirty percent of the PREMIUM surcharge ~~tax rate~~ allocated to the unemployment compensation fund created in section 8-77-101, fifty percent of the PREMIUM surcharge ~~tax rate~~ allocated to the employment support fund created under section 8-77-109, and twenty percent of the PREMIUM surcharge allocated to the employment and training technology fund created in ~~section 8-77-109~~ SECTION 8-77-109 (2) (a.9). Effective January 1, 2017, fifty percent of the PREMIUM surcharge ~~tax rate~~ shall be allocated to the unemployment compensation fund and fifty percent of the PREMIUM surcharge ~~tax rate~~ shall be allocated to the employment support fund. The PREMIUM surcharge ~~tax~~ rate shall then be added to the employer's standard or computed ~~tax~~ PREMIUM rate. ~~This tax~~ THE PREMIUM SURCHARGE rate added to the employer ~~tax~~ PREMIUM rate shall also be identified separately on the employer ~~tax~~ PREMIUM rate notice as the ~~tax~~ PREMIUM surcharge for benefits not effectively charged. The combined rate shall be the employer's ~~tax~~ PREMIUM rate for the ensuing calendar year. The PREMIUM surcharge established by this subsection (4) shall not be assessed against any employer whose benefit-charge account balance is zero; except that, if the employer is still being rated under the provisions of section 8-76-103 (3) (a), such employer is subject to the PREMIUM surcharge ~~tax~~ rate.

**SECTION 14.** 8-76-103 (1) (a), (3) (a) (I), (3) (a) (III) (E), (3) (a) (III) (G), (3)

(a) (IV), (3) (b) (II), (3) (b) (V), (3) (d), (3) (e), (5), (6), and (7), Colorado Revised Statutes, are amended to read:

**8-76-103. Future rates based on benefit experience.** (1) (a) The division shall maintain a separate account for each employer and shall credit ~~his~~ THE EMPLOYER'S account with all ~~taxes~~ PREMIUMS AND SURCHARGES paid on his OR HER own behalf. Nothing in articles 70 to 82 of this title shall be construed to grant any employer or individuals in his OR HER service prior claims or rights to the amounts paid by ~~him~~ THE EMPLOYER into the fund either on his OR HER own behalf or on behalf of such individuals. Benefits paid to an eligible individual shall be charged, in the amount provided in this section, against the accounts of his OR HER employers in the base period in the inverse chronological order in which the employment of such individual occurred. Benefits paid to a seasonal worker during the normal seasonal periods shall be charged against the account of his OR HER most recent seasonal employers in the corresponding normal seasonal period of his OR HER base period in the inverse chronological order in which the seasonal employment of ~~such~~ THE individual occurred and prior to the charging of benefits based on nonseasonal employment.

(3) (a) (I) The standard PREMIUM rate ~~of taxes~~ shall be one and seven tenths percent. Employer ~~tax~~ PREMIUM rates for employers newly subject to articles 70 to 82 of this title on or after July 1, 1997, shall be determined each year as of the computation date in accordance with the provisions of subparagraph (II) of paragraph (b) of this subsection (3). Such new employers shall pay ~~tax~~ PREMIUMS at the standard rate or at the computed rate, whichever is higher, unless and until there have been twelve consecutive calendar months immediately preceding the computation date ~~throughout~~ DURING which an employer's account has been chargeable with benefit payments.

(III) (E) On and after January 1, 2002, those employers newly subject to articles 70 to 82 of this title and assigned the three-digit North American industry classification codes 236, 237, or 238 for the construction industry, unless and until there have been thirty-six consecutive calendar months immediately preceding the computation date, shall pay ~~taxes~~ PREMIUMS at the standard rate, at the actual experience rate, or at a rate equal to the average industry ~~tax~~ PREMIUM rate as determined by the division, whichever is greater.

(G) On and after January 1, 2002, for purposes of this subsection (3), "average industry ~~tax~~ PREMIUM rate" means the average ~~tax~~ PREMIUM rate of all employers assigned the same three-digit North American industry classification code pursuant to sub-subparagraph (E) of this subparagraph (III). ~~Such~~ THE rate shall be computed annually by the division using the latest available data as of the computation date.

(IV) An "employer newly subject", as used in this article, means an employer who has never, at any time, been an employer under any provision of articles 70 to 82 of this title, ~~or~~ an employer who has lost his OR HER prior experience under subsection (6) of this section, or an employer who, under the provisions of section 8-76-110 (2) (e), terminates his OR HER election to make payments in lieu of ~~taxes~~ PREMIUMS or whose election to make payments in lieu of ~~taxes~~ PREMIUMS has been terminated by the division under the authority of section 8-76-110 (4) (e) or (4) (f).

(b) (II) (A) The total of all an employer's ~~taxes~~ PREMIUMS paid on his OR HER own behalf on or before thirty-one days immediately after the computation date and the total benefits ~~which~~ THAT were chargeable to ~~his~~ THE EMPLOYER'S account and were paid before the computation date, with respect to weeks, or any established payroll period of unemployment, beginning prior to the computation date, shall be used to compute his ~~tax~~ OR HER PREMIUM rate for the ensuing calendar year in accordance with the table set forth in either sub-subparagraph (B) or (C) of this subparagraph (II); except that, ~~for rate year 1984, the negative excess employer rate schedule shall be effective for a maximum of .045 for employers with a negative excess of minus seventeen percent or more, and for rate years 1985 and thereafter, the maximum rate for negative excess employers shall be .054 as shown in the table set forth in sub-subparagraph (C) of this subparagraph (II). "Percent of excess", in both said tables, means the percentage resulting from dividing the excess of ~~taxes~~ PREMIUMS paid over benefits charged by the average ~~taxable~~ CHARGEABLE payroll, computed to the nearest one percent. The word "to" in the column headings, which make reference to fund balances (resources available for benefits), means "not including".~~

(B)

**TAX PREMIUM RATE SCHEDULE - POSITIVE EXCESS EMPLOYERS**  
**Fund Level in Millions of Dollars**

Percent of Excess	450 Million Plus	396 to 450 Million	342 to 396 Million	306 to 342 Million	270 to 306 Million	234 to 270 Million	198 to 234 Million	162 to 198 Million	126 to 162 Million	90 to 126 Million	More than Zero to 90 Million	0 or Deficit
+20 or more	.000	.000	.000	.000	.001	.002	.003	.003	.003	.003	.003	.010
+19	.000	.000	.000	.001	.002	.003	.003	.003	.003	.003	.003	.010
+18	.000	.000	.000	.001	.002	.003	.003	.003	.003	.003	.003	.010
+17	.000	.000	.001	.001	.003	.003	.003	.003	.003	.003	.003	.010
+16	.000	.000	.001	.001	.003	.003	.003	.003	.003	.003	.004	.011
+15	.000	.001	.001	.001	.003	.003	.003	.003	.003	.003	.005	.012
+14	.000	.001	.001	.001	.003	.003	.003	.003	.003	.004	.006	.013
+13	.001	.001	.001	.001	.003	.003	.003	.003	.004	.005	.007	.014
+12	.001	.001	.001	.001	.003	.003	.003	.004	.005	.006	.008	.015
+11	.001	.001	.001	.001	.003	.003	.004	.005	.006	.007	.009	.016
+10	.001	.001	.001	.002	.003	.004	.005	.006	.007	.008	.010	.017

+9	.001	.001	.002	.003	.004	.005	.006	.007	.008	.009	.011	.018
+8	.001	.002	.003	.004	.005	.006	.007	.008	.009	.010	.012	.019
+7	.002	.003	.004	.005	.006	.007	.008	.009	.010	.011	.013	.020
+6	.002	.004	.005	.006	.007	.008	.009	.010	.011	.012	.014	.021
+5	.003	.005	.006	.007	.008	.009	.010	.011	.012	.013	.015	.022
+4	.004	.006	.007	.008	.009	.010	.011	.012	.013	.014	.016	.023
+3	.007	.009	.010	.011	.012	.013	.014	.015	.016	.017	.019	.024
+2	.011	.012	.013	.014	.015	.016	.017	.018	.019	.020	.022	.025
+1	.015	.016	.017	.018	.019	.020	.020	.021	.022	.023	.025	.026
+0	.020	.021	.022	.023	.023	.024	.024	.025	.025	.026	.027	.027
Unrated	.017	.017	.017	.017	.017	.017	.017	.017	.017	.017	.017	.017

(C)

**TAX PREMIUM RATE SCHEDULE - NEGATIVE EXCESS EMPLOYERS**  
**Fund Level in Millions of Dollars**





-13	.041	.041	.041	.041	.041	.041	.041	.041	.041	.041	.041	.043
-14	.042	.042	.042	.042	.042	.042	.042	.042	.042	.042	.042	.044
-15	.043	.043	.043	.043	.043	.043	.043	.043	.043	.043	.043	.045
-16	.044	.044	.044	.044	.044	.044	.044	.044	.044	.044	.044	.046
-17	.045	.045	.045	.045	.045	.045	.045	.045	.045	.045	.045	.047
-18	.046	.046	.046	.046	.046	.046	.046	.046	.046	.046	.046	.048
-19	.047	.047	.047	.047	.047	.047	.047	.047	.047	.047	.047	.049
-20	.048	.048	.048	.048	.048	.048	.048	.048	.048	.048	.048	.050
-21	.049	.049	.049	.049	.049	.049	.049	.049	.049	.049	.049	.051
-22	.050	.050	.050	.050	.050	.050	.050	.050	.050	.050	.050	.052
-23	.051	.051	.051	.051	.051	.051	.051	.051	.051	.051	.051	.053
-24	.052	.052	.052	.052	.052	.052	.052	.052	.052	.052	.052	.054
-25	.053	.053	.053	.053	.053	.053	.053	.053	.053	.053	.053	.054
More than -25	.054	.054	.054	.054	.054	.054	.054	.054	.054	.054	.054	.054

(V) When the fund level on July 1 of any year reaches one and six-tenths percent of the total wages, the director of the division of employment and training shall recommend to legislative council a proposed ~~tax~~ PREMIUM rate decrease.

(d) Notwithstanding any provisions to the contrary, any employer, at any time prior to March 15 of any year, may pay voluntary ~~taxes~~ PREMIUMS in addition to the ~~taxes~~ PREMIUMS AND SURCHARGES provided under articles 70 to 82 of this title. ~~which taxes~~ VOLUNTARY PREMIUMS shall be credited to the employer's account and be used in determining ~~said~~ THE employer's rate for the current calendar year and subsequent calendar years; except that, if an employer is delinquent in the payment of any ~~taxes~~ PREMIUMS OR SURCHARGES due, the voluntary ~~tax~~ PREMIUM payments shall be reduced by the total amount of delinquent ~~taxes~~ PREMIUMS AND SURCHARGES before such computation is made. No voluntary ~~taxes~~ PREMIUMS paid pursuant to this paragraph (d) shall be refunded or applied to future ~~tax~~ PREMIUM liability.

(e) As used in sections 8-76-101 to 8-76-104, for the purpose of computing the ~~tax~~ PREMIUM rate of any employer, the term "annual payroll" means the total amount of wages for employment paid by an employer during the twelve-month period ending on June 30. The term "average ~~taxable~~ CHARGEABLE payroll" means the average of the ~~taxable~~ CHARGEABLE payrolls for the last three fiscal years ending on June 30. For any employer who has not reported payrolls to the division for thirty-six consecutive months ending on June 30, the division shall compute the average ~~taxable~~ CHARGEABLE payroll by dividing the total ~~taxable~~ CHARGEABLE payrolls of the employer during the three fiscal years ending on June 30 by the total months during which such wages were paid and multiplying the amount so determined by twelve.

(5) The division shall notify each employer, as nearly as possible prior to the date upon which any ~~taxes~~ PREMIUMS for each calendar year become due, of ~~his~~ THE EMPLOYER'S PREMIUM rate ~~of tax~~ as determined for such calendar year pursuant to sections 8-76-101 to 8-76-104. The notification shall include the amount determined as the employer's average annual payroll, the total of all ~~his taxes~~ THE EMPLOYER'S PREMIUMS paid on his OR HER own behalf and credited to his OR HER account for all past years, and the total benefits charged to ~~his~~ THE EMPLOYER'S account for all such years.

(6) Whenever there has been a period of five consecutive calendar years during which there were no ~~taxable~~ CHARGEABLE wages paid for services considered employment under the provisions of articles 70 to 82 of this title, any balance shown in the employer's account will not be transferred nor be used for ~~tax~~ PREMIUM rating purposes if ~~such~~ THE employer again becomes liable under articles 70 to 82 of this title.

(7) (a) Subject to the conditions stated in paragraph (b) of this subsection (7), an employer shall be eligible for a credit of twenty percent against ~~taxes~~ PREMIUMS otherwise due under section 8-76-102 (3) and subsection (3) of this section. For purposes of computing an employer's future rates, any ~~tax~~ credit claimed by the employer under this subsection (7) shall be disregarded, and the ~~taxes~~ PREMIUMS that would otherwise have been due shall be deemed paid.

(b) An employer shall not receive ~~tax~~ credits under this subsection (7) unless all of the following conditions are met:

(I) As of the most recent computation date, the employer has filed all required reports and paid all ~~taxes~~ PREMIUMS AND SURCHARGES due under articles 70 to 82 of this title;

(II) The employer is not a negative excess employer assigned the maximum ~~tax~~ PREMIUM rate under sub-subparagraph (C) of subparagraph (II) of paragraph (b) of subsection (3) of this section;

(III) The employer has not elected to make reimbursement payments in lieu of ~~taxes~~ PREMIUMS; and

(IV) As of the computation date immediately preceding the calendar year for which the credit is to be taken, the unexpended and unencumbered balance in the unemployment compensation fund, created in section 8-77-101 (1), equaled or exceeded one and one-tenth percent of the total amount of insured wages paid in Colorado during the calendar year immediately preceding the computation date.

**SECTION 15.** 8-76-104 (1) (a), (2) (a), (3) (a), (3) (e), (3) (f), (3) (h), (9), (10) (a), and (10) (c), Colorado Revised Statutes, are amended to read:

**8-76-104. Transfer of experience - assignment of rates - definitions.**

(1) (a) An employing unit, as defined in section 8-70-113 (1) (f), that becomes an employer because it acquires all of the organization, trade, or business or substantially all of the assets of one or more employers subject to articles 70 to 82 of this title shall succeed to the entire experience rating record of the predecessor employer, and the entire separate account, including the actual ~~taxes~~ PREMIUMS, benefits, and payroll experience of the predecessor employer, shall pass to the successor for the purpose of determining the PREMIUM rate ~~of taxes~~ for the successor.

(2) (a) Notwithstanding any other provision of sections 8-76-101 to 8-76-104, if the successor employer was an employer subject to articles 70 to 82 of this title prior to the date of acquisition and, at the time of the transfer, there is no substantial common ownership, management, or control of the two employers, the successor's PREMIUM rate ~~of tax~~ for the remainder of the calendar year shall be the same as the successor's rate in the period immediately preceding the date of acquisition.

(3) (a) Whenever an employer in any manner transfers a clearly segregable unit of the employer's business for which the predecessor employer has maintained, in such form as to be separable, continuous records of wages, ~~taxes~~ PREMIUMS, and benefits paid on account of the segregable unit, the predecessor employer and successor employer may jointly request that the division transfer a proportionate share of ~~tax~~ PREMIUM, benefit, and payroll experience attributable to the unit based on the ratio of the ~~taxable~~ CHARGEABLE payrolls paid during the twelve calendar quarters immediately preceding the computation date of the segregable unit to the total employer account prior to the notice to the division of the transfer. A transfer of experience may not be made under this subsection (3) unless the segregable unit has fourteen consecutive quarters of payroll immediately preceding the computation

date. If, at the time of the transfer, there is substantially common ownership, management, or control of the two employers, the unemployment experience attributable to the predecessor employer shall be transferred to the successor employer. The rates of both employers shall be recalculated and made effective immediately upon the date of the transfer of the trade or business.

(e) If the successor was not an employer prior to the effective date of transfer and two or more segregable units are simultaneously transferred to the successor by a single employer, the successor's ~~tax~~ PREMIUM rate shall be computed from the combined ~~tax~~ PREMIUM, benefit, and payroll experience of the units.

(f) If the successor was not an employer prior to the effective date of transfer and two or more segregable units are simultaneously transferred to the successor by different employers, the successor's ~~tax~~ PREMIUM rate shall be the highest rate applicable to any of the units unless the rates with respect to the transferred units are identical.

(h) Whenever a predecessor employer and a successor employer jointly request that the division transfer the proportionate share of ~~tax~~ PREMIUM, benefit, and payroll experience attributable to a clearly segregable unit to the successor employer, the predecessor employer shall furnish to the division any information requested by the division for such purpose.

(9) When any part of the predecessor employer's trade or business utilizes the services of ninety percent or more of the total number of employees in covered employment on the payroll for each of the four pay periods immediately preceding the transfer to a successor employer, the entire separate account, including the actual ~~tax~~ PREMIUM, benefit, and payroll experience of the predecessor employer, shall pass to the successor employer for the purpose of the rate of computation of the successor.

(10) (a) If a person knowingly violates or attempts to violate any provision of this section in order to obtain a lower contribution rate, the person shall pay all owed ~~taxes~~ PREMIUMS with applicable penalties and interest and may be subject to the penalties set forth in paragraph (c) of this subsection (10).

(c) If the person who violates this section as described in paragraph (a) or (b) of this subsection (10) is an employer, the division may assign the employer the highest contribution rate assignable under this article for the rate year during which the violation or attempted violation occurred and the next three years. If, during the rate year in which a violation occurs, the subject employer was assigned the highest contribution rate, or the amount of the rate increase would be less than two and seven-tenths percent for the rate year, the division may impose a penalty contribution rate of two and seven-tenths percent of ~~taxable~~ CHARGEABLE wages for that rate year and the next three years. If the person is not an employer, the person may be subject to a civil fine of not more than five thousand dollars, which shall be deposited in the unemployment revenue fund created in section 8-77-106.

**SECTION 16.** 8-76-108 (1) (a), (1) (c), and (1) (e), Colorado Revised Statutes, are amended to read:

**8-76-108. Coverage by political subdivisions.** (1) (a) ~~After December 31, 1977,~~ Political subdivisions ~~shall become~~ ARE covered employers if employees employed by such political subdivisions perform services in employment as defined by section 8-70-119. Such political subdivisions may elect to pay ~~taxes~~ PREMIUMS in lieu of reimbursements. Any political subdivision ~~which~~ THAT makes reimbursement shall not be liable to make such payments with respect to the benefits paid to any individual whose base period wages include wages for previously uncovered services as defined in section 8-70-141 (1) (d) to the extent that the unemployment compensation fund is reimbursed for such benefits pursuant to section 121 of Public Law 94-566.

(c) The amounts required to be paid in lieu of ~~taxes~~ PREMIUMS by any political subdivision under this section shall be billed and payment made as provided in section 8-76-110 (3) with respect to similar payments by nonprofit organizations.

(e) Political subdivisions or their instrumentalities ~~which~~ THAT are liable for payments in lieu of ~~taxes~~ PREMIUMS shall pay to the division for the unemployment compensation fund ~~the amount of regular benefits plus the amount of one-half of extended benefits paid through December 31, 1978,~~ and the full amount of all regular and extended benefits paid ~~beginning January 1, 1979,~~ that are attributable to service in their employ. Political subdivisions or their instrumentalities ~~which~~ THAT have elected to pay ~~taxes~~ PREMIUMS as permitted by this section shall have their accounts charged with the full amount of all regular and extended benefits that are attributable to service in their employ.

**SECTION 17.** 8-76-109, Colorado Revised Statutes, is amended to read:

**8-76-109. Payments in lieu of premiums by state hospitals and state institutions of higher education.** State hospitals and state institutions of higher education as defined in section 8-70-103 (14) and (15) may elect to make reimbursements in lieu of ~~taxes~~ PREMIUMS as provided for nonprofit organizations in section 8-76-110 (1) to (3) and (5).

**SECTION 18.** 8-76-110 (2), (3) (a), (3) (b), (3) (f), (4), (5), and (6), Colorado Revised Statutes, are amended to read:

**8-76-110. Financing benefits paid to employees of nonprofit organizations.** (2) **Liability for premiums and election of reimbursement.** (a) Any nonprofit organization ~~which~~ THAT, pursuant to section 8-70-113 (1) (c), is or becomes subject to articles 70 to 82 of this title ~~on or after January 1, 1972,~~ shall pay ~~taxes~~ PREMIUMS under the provisions of section 8-76-101, unless it elects, in accordance with this subsection (2), to pay to the division for the unemployment compensation fund an amount equal to the amount of regular benefits and one-half of the extended benefits paid, that is attributable to service in the employ of such nonprofit organization, to individuals for weeks of unemployment ~~which~~ THAT begin during the effective period of such election.

(b) ~~Any nonprofit organization which is or becomes subject to articles 70 to 82 of this title on January 1, 1972, may elect to become liable for payments in lieu of taxes for a period of not less than one taxable year beginning with January 1, 1972, if it files with the division a written notice of its election within the thirty-day period~~

~~immediately following such date:~~

(c) Any nonprofit organization ~~which~~ THAT becomes subject to articles 70 to 82 of this title ~~after January 1, 1972~~; may elect to become liable for payments in lieu of ~~taxes~~ PREMIUMS for a period of not less than the ~~taxable~~ calendar year within which such subjection begins by filing a written notice of its election with the division not later than thirty days immediately following the date of the determination of such subjection. Any nonprofit organization ~~which~~ THAT elects to make payments in lieu of ~~taxes~~ PREMIUMS into the unemployment compensation fund as provided in this paragraph (c) shall not be liable to make such payments with respect to the benefits paid to any individual whose base period wages include wages for previously uncovered services as defined in section 8-70-141 (1) (d) to the extent that the unemployment compensation fund is reimbursed for such benefits pursuant to section 121 of Public Law 94-566.

~~(d) Any organization described in section 501 (c) (3) of the federal "Internal Revenue Code of 1986", as amended, which is exempt from income tax under section 501 (a) of such code and which was liable under the provisions of the "Colorado Employment Security Act", articles 70 to 82 of this title, prior to January 1, 1972, may elect to become liable for payments in lieu of taxes for a period of not less than eighteen calendar months beginning July 1, 1971, by filing a written notice of election with the division not later than thirty days immediately following July 1, 1971; otherwise, said employer may elect to become liable for payments in lieu of taxes for a period of not less than one calendar year beginning on or after January 1, 1972, if written notice of such election is filed with the division within thirty days after January 1, 1972:~~

(e) Any nonprofit organization ~~which~~ THAT makes an election in accordance with paragraph ~~(b); (c) or (d)~~ of this subsection (2) will continue to be liable for payments in lieu of ~~taxes~~ PREMIUMS until it files with the division a written notice terminating its election not later than thirty days prior to the beginning of the ~~taxable~~ CALENDAR year for which such termination is first effective.

(f) Any nonprofit organization ~~which has been paying taxes~~ THAT PAYS PREMIUMS under articles 70 to 82 of this title for a period subsequent to January 1, ~~1972~~; may change to a ~~reimbursable~~ REIMBURSING basis by filing with the division not later than thirty days prior to the beginning of any ~~taxable~~ CALENDAR year a written notice of election to become liable for payments in lieu of ~~taxes~~ PREMIUMS. Such election shall not be terminable by the organization for that and the next year. Any organization making such an election remains liable for the payment of all charges to its account and all ~~taxes~~ PREMIUMS AND SURCHARGES due the division, and past due ~~taxes~~ PREMIUMS AND SURCHARGES are subject to all interest and penalties as provided in articles 70 to 82 of this title.

(g) The division may for good cause extend the period within which a notice of election, or a notice of termination, must be filed and may permit an election to be retroactive. ~~but not with respect to benefits paid any earlier than January 1, 1970:~~

(h) The division, in accordance with such ~~regulations~~ RULES as it may prescribe, shall notify each nonprofit organization of any determination ~~which~~ THAT it may make of the status of the organization as an employer and of the effective date of

any election and of any termination of such election.

(i) Notwithstanding any other provisions of articles 70 to 82 of this title, any nonprofit organization ~~which~~ THAT, prior to January 1, 1969, paid ~~taxes~~ PREMIUMS required by articles 70 to 82 of this title and ~~which~~ THAT elects, pursuant to paragraph (d) of this subsection (2) AS IT EXISTED PRIOR TO ITS REPEAL IN 2009, to make payments in lieu of ~~taxes~~ PREMIUMS shall not be required to make any such payment on account of any regular or extended benefits paid and attributable to wages paid for service performed in its employ for weeks of unemployment ~~which~~ THAT begin on or after the effective date of such election until the total amount of such benefits equals the amount by which the ~~taxes~~ PREMIUMS paid by such organization with respect to a period before such election exceed benefits paid for the same period and charged to the experience rating account of such organization, as of the effective date of such election.

(3) **Reimbursement payments.** (a) Payments in lieu of ~~taxes~~ PREMIUMS shall be made in accordance with the provisions of this subsection (3).

(b) At the end of each calendar quarter, the division shall bill each nonprofit organization (or group of such organizations) ~~which~~ THAT has elected to make payments in lieu of ~~taxes~~ PREMIUMS for an amount equal to the full amount of regular benefits plus one-half of the amount of extended benefits paid during such quarter or other prescribed period that is attributable to service in the employ of such organization.

(f) Past-due payments of amounts in lieu of ~~taxes~~ PREMIUMS shall be subject to the same interest and penalties that, pursuant to sections 8-79-101 and 8-79-104, apply to past-due ~~taxes~~ PREMIUMS AND SURCHARGES.

(4) **Provision of bond or other security.** (a) In the discretion of the division, any nonprofit organization ~~which~~ THAT elects to become liable for payments in lieu of ~~taxes~~ PREMIUMS shall be required, within fifteen days after the effective date of its election, to execute and file with the division a surety bond approved by the division, or it may elect instead to deposit with the division money or securities. The amount of such bond or deposit shall be determined in accordance with the provisions of this subsection (4).

(b) The amount of bond or deposit required by this subsection (4) shall be equal to three times the sum of the amount of regular benefits plus one-half the extended benefits paid, if any, that are attributable to service in the employ of the nonprofit organization during the previous calendar year or the sum of said payments during the three previous calendar years, whichever is the greater, but shall not exceed three and six-tenths percent nor be less than one-tenth of one percent of the total covered payroll of such organization for the preceding calendar year. If the employer has not been subject to articles 70 to 82 of this title for a sufficient period of time to acquire ~~said~~ three calendar years' experience, then the bond shall be an amount computed by multiplying the total covered payroll for the previous calendar year, or the equivalent thereof, by two and seven-tenths percent. Any organization ~~which~~ THAT, under the provisions of paragraph (i) of subsection (2) of this section, is not required to make payments in lieu of ~~taxes~~ PREMIUMS will not be required to file a surety bond or make a surety deposit with the division as provided in this



paragraph (b) until such time as said organization is required to make payments in lieu of ~~taxes~~ PREMIUMS.

(c) Any bond deposited under this subsection (4) shall be in force for a period of not less than two ~~taxable~~ CALENDAR years and shall be renewed with the approval of the division, at such times as the division may prescribe, but not less frequently than at two-year intervals as long as the organization continues to be liable for payments in lieu of ~~taxes~~ PREMIUMS. The division shall require such adjustments to be made in a previously filed bond as it deems appropriate. If the bond is to be increased, the adjusted bond shall be filed by the organization within fifteen days ~~of~~ AFTER the date notice of the required adjustment was mailed or otherwise delivered to it. Failure by any organization covered by such bond to pay the full amount of payments in lieu of ~~taxes~~ PREMIUMS when due, together with any applicable interest and penalties provided for in PARAGRAPH (f) OF subsection (3) ~~(f)~~ of this section, shall render the surety liable on said bond to the extent of the bond, as though the surety were such organization.

(d) Any deposit of money or securities in accordance with this subsection (4) shall be retained by the division in an escrow account until liability under the election is terminated, at which time it shall be returned to the organization, less any deductions as provided in this subsection (4). The division may deduct from the money deposited under this paragraph (d) by a nonprofit organization or sell the securities a nonprofit organization has so deposited to the extent necessary to satisfy any due and unpaid payments in lieu of ~~taxes~~ PREMIUMS and any applicable interest and penalties provided for in PARAGRAPH (f) OF subsection (3) ~~(f)~~ of this section. The division shall require the organization, within fifteen days following any deduction from a money deposit or sale of deposited securities under the provisions of this paragraph (d), to deposit sufficient additional money or securities to make whole the organization's deposit at the prior level. Any cash remaining from the sale of such securities shall be a part of the organization's escrow account. The division may, at any time, review the adequacy of the deposit made by any organization. If, as a result of such review, the division determines that an adjustment is necessary, it shall require the organization to make AN additional deposit within fifteen days ~~of~~ AFTER written notice of its determination or shall return to it such portion of the deposit as it no longer considers necessary, whichever action is appropriate. Disposition of income from securities held in escrow shall be governed by the applicable provisions of the state law.

(e) If any nonprofit organization fails to file a bond or make a deposit, or to file a bond in an increased amount or to increase or make whole the amount of a previously made deposit, as provided under this subsection (4), the division may terminate ~~such~~ THE organization's election to make payments in lieu of ~~taxes~~ PREMIUMS, and ~~such~~ THE termination shall continue for not less than the four-consecutive-calendar-quarter period beginning with the quarter in which ~~such~~ THE termination becomes effective, but the division may, for good cause, extend the applicable filing, deposit, or adjustment period by not more than fifteen days.

(f) If any nonprofit organization is delinquent in making payments in lieu of ~~taxes~~ PREMIUMS as required under subsection (2) of this section, the division may terminate ~~such~~ THE organization's election to make payments in lieu of ~~taxes~~ PREMIUMS as of the beginning of the next ~~taxable~~ CALENDAR year, and ~~such~~ THE

termination shall be effective for that and the next ~~taxable~~ CALENDAR year.

(5) **Allocation of benefit costs.** (a) A political subdivision ~~which~~ THAT is liable for payments in lieu of ~~taxes~~ PREMIUMS shall pay to the division for the unemployment compensation fund the full amount of all regular and extended benefits paid that are attributable to service in the employ of such employer. A nonprofit organization liable for payments in lieu of ~~taxes~~ PREMIUMS shall pay to the division for the unemployment compensation fund the amount of regular benefits plus the amount of one-half of extended benefits paid that are attributable to service in the employ of such employer. If benefits paid to an individual are based on wages paid by more than one employer and one or more of such employers are liable for payments in lieu of ~~taxes~~ PREMIUMS, the amount payable to the fund by each employer that is liable for such payments shall be determined in accordance with the provisions of paragraph (b) or (c) of this subsection (5).

(b) If benefits paid to an individual are based on wages paid by one or more employers ~~who~~ THAT are liable for payments in lieu of ~~taxes~~ PREMIUMS and on wages paid by one or more employers ~~who~~ THAT are liable for ~~taxes~~ PREMIUMS, the amount of benefits payable by each employer ~~who~~ THAT is liable for payments in lieu of ~~taxes~~ PREMIUMS shall be an amount ~~which~~ THAT bears the same ratio to the total benefits paid to the individual as the total base period wages paid to the individual by such employer bear to the total base period wages paid to the individual by all of his OR HER base period employers.

(c) If benefits paid to an individual are based on wages paid by two or more employers ~~who~~ THAT are liable for payments in lieu of ~~taxes~~ PREMIUMS, the amount of benefits payable by each such employer shall be an amount ~~which~~ THAT bears the same ratio to the total benefits paid to the individual as the total base period wages paid to the individual by such employer bear to the total base period wages paid to the individual by all of his OR HER base period employers.

(6) **Group accounts.** Two or more employers ~~who~~ THAT are liable for payments in lieu of ~~taxes~~ PREMIUMS, in accordance with the provisions of subsection (2) of this section and sections 8-76-108 and 8-76-109, may file a joint application with the division for the establishment of a group account for the purpose of sharing the cost of benefits paid that are attributable to service in the employ of such employers. Each ~~such~~ application shall identify and authorize a group representative to act as the group's agent for the purposes of this subsection (6). Upon its approval of the application, the division shall establish a group account for ~~such~~ THE employers effective as of the beginning of the calendar quarter in which it receives the application and shall notify the group's representative of the effective date of the account. ~~Such~~ THE account shall remain in effect for not less than two years and thereafter until terminated at the discretion of the division or upon application by the group. Upon establishment of the account, each member of the group shall be liable for payments in lieu of ~~taxes~~ PREMIUMS with respect to each calendar quarter in the amount that bears the same ratio to the total benefits paid in ~~such~~ THAT quarter that are attributable to service performed in the employ of all members of the group as the total wages paid for service in employment by ~~such~~ THE member in ~~such~~ THAT quarter bear to the total wages paid during ~~such~~ THAT quarter for service performed in the employ of all members of the group. The division shall prescribe ~~such~~ ~~regulations~~ RULES as ~~it deems~~ necessary with respect to applications for

establishment, maintenance, and termination of group accounts that are authorized by this subsection (6) for addition of new members to, and withdrawal of active members from, such accounts and for the determination of the amounts that are payable under this subsection (6) by members of the group and the time and manner of such payments.

**SECTION 19.** 8-76-111 (4), Colorado Revised Statutes, is amended to read:

**8-76-111. Coverage of state employees.** (4) The amounts required to be paid in lieu of ~~taxes~~ PREMIUMS by the state under this section shall be billed and payment made as provided in section 8-76-110 (3) with respect to similar payments by nonprofit organizations.

**SECTION 20.** 8-76-112 (1) and (3), Colorado Revised Statutes, are amended to read:

**8-76-112. Political subdivisions - security for collection of premiums or reimbursable payments.** (1) In the event of default in payment of ~~taxes~~ PREMIUMS OR SURCHARGES due or reimbursements of benefit costs, the state treasurer, upon the request of the division, shall set aside state funds otherwise payable to the political subdivision as security to ~~insure~~ ENSURE payment of the funds due from the political subdivision to the unemployment trust fund.

(3) The division may not request the state treasurer to set aside funds to cover obligations of the political subdivision until at least six months have elapsed since the due date for payment of the ~~tax~~ PREMIUM OR SURCHARGE or reimbursable obligation.

**SECTION 21.** 8-76-113 (1) and (2), Colorado Revised Statutes, are amended to read:

**8-76-113. Protest - appeal - filed by an employer.** (1) Any employer who wishes to appeal a determination of liability for ~~taxes~~ PREMIUMS OR SURCHARGES, a determination of coverage under the provisions of articles 70 to 82 of this title, or a seasonality determination pursuant to section 8-73-106 may file a written notice of appeal with the division in such form and manner as the director of the division may prescribe by rule, including in person, by mail, or by electronic means. Except as otherwise provided by this section, proceedings on appeal shall be governed by the provisions of article 74 of this title. No appeal shall be heard unless the notice of appeal has been received by the division within twenty calendar days after the date the notice of such determination is mailed or transmitted by the division to the employer in accordance with such rules as the director of the division may promulgate.

(2) Any employer who wishes to protest an assessment of ~~taxes~~ PREMIUMS OR SURCHARGES, a notice of PREMIUM rate, ~~of tax~~, a recomputation of ~~tax~~ PREMIUM rate, or any notice of correction of any matter set forth in this subsection (2) shall file a request for redetermination with the division, in accordance with rules promulgated by the director of the division. The division shall thereafter promptly notify the employer of its redetermination decision. Any employer who wishes to appeal from a redetermination decision may file a written notice of appeal with the

division. Except as otherwise provided by this section, proceedings on appeal shall be governed by the provisions of article 74 of this title. No appeal shall be heard unless notice of appeal has been received by the division within twenty calendar days after the date the notice of such redetermination is mailed or transmitted by the division to the employer in accordance with such rules as the director of the division may promulgate.

**SECTION 22.** 8-76-115 (1), (2), (3), (4), (5) (a), (6), (7) (b), and (8) (b), Colorado Revised Statutes, are amended to read:

**8-76-115. Coverage of Indian tribes.** (1) Indian tribes or tribal units, including all subdivisions or subsidiaries of, and business enterprises wholly owned by, such Indian tribes, subject to the provisions of articles 70 to 82 of this title shall pay ~~taxes~~ PREMIUMS AND SURCHARGES under the same terms and conditions under sections 8-76-101 to 8-76-103 as apply to other ~~taxpaying~~ PREMIUM-PAYING employers unless an election is made, in the same manner provided in section 8-76-108 (1) (d), to make payments in lieu of ~~taxes~~ PREMIUMS into the unemployment compensation fund in amounts equal to the amount of benefits attributable to service in the employ of the Indian tribe.

(2) Indian tribes shall determine if payments in lieu of ~~taxes~~ PREMIUMS will be elected by the tribe as a whole, by individual tribal units, or by combinations of individual tribal units. Two or more individual tribal units may apply with the division for the establishment of a group account in the same manner and subject to the same terms as set forth in section 8-76-110 (6).

(3) Indian tribes or tribal units electing to make payments in lieu of ~~taxes~~ PREMIUMS shall be billed for the full amount of benefits attributable to service in the employ of said Indian tribes or tribal units, and payment shall be made with respect to said billings in the manner provided in section 8-76-108 (1) (c).

(4) The division may require any Indian tribe or tribal unit that elects to become liable for payments in lieu of ~~taxes~~ PREMIUMS to execute and file with the division a surety bond or to deposit money or securities in the manner provided in section 8-76-110 (4).

(5) (a) Failure of the Indian tribe or tribal unit to make required payments pursuant to subsection (3) of this section, to pay ~~taxes~~ PREMIUMS pursuant to sections 8-76-101 to 8-76-103, to pay assessments of interest and penalties pursuant to sections 8-79-101 and 8-79-104, or to execute and file a surety bond or deposit money or other security pursuant to section 8-76-110 (4) within ninety days ~~of~~ AFTER receipt of a delinquency notice by the division shall cause the Indian tribe to lose the option to make payments in lieu of ~~taxes~~ PREMIUMS effective with the beginning of the following calendar year unless a division-approved payment plan is established or payment in full is received within the ~~said~~ ninety-day period.

(6) Any Indian tribe that loses the option to make payments in lieu of ~~taxes~~ PREMIUMS due to late payment or nonpayment, as described in subsection (5) of this section, shall have such option reinstated effective with the beginning of the following calendar year if, by March 1 of said year, all contributions have been timely made and no ~~taxes~~ PREMIUMS OR SURCHARGES, payments in lieu of ~~taxes~~

PREMIUMS for benefits paid, penalties, or interest remain outstanding.

(7)(b) The division may determine that any Indian tribe that loses coverage under the provisions of this subsection (7) may have services performed for such tribe again included as "employment" for purposes of section 8-70-125.5 if all ~~taxes~~ PREMIUMS AND SURCHARGES, payments in lieu of ~~taxes~~ PREMIUMS, penalties and interest, or surety bond or payment of other money or security have been paid.

(8) Notices of payment and reporting delinquency to Indian tribes or their tribal units shall include information stating that failure to make full payment within the prescribed time period:

(b) Shall cause the Indian tribe to lose the option to make payments in lieu of ~~taxes~~ PREMIUMS; and

**SECTION 23.** 8-77-102 (1), Colorado Revised Statutes, is amended to read:

**8-77-102. Collection and transmittal of receipts - clearing account - refunds - transfers.** (1) The division or its agent shall collect or receive all ~~taxes~~ PREMIUMS, SURCHARGES, payments in lieu of ~~taxes~~ PREMIUMS, fines, and penalties provided for in articles 70 to 82 of this title, all interest on delinquent ~~taxes~~ PREMIUMS AND SURCHARGES provided for in section 8-79-101, and all other moneys accruing to the fund from the federal government or any other source whatsoever and shall transmit all such moneys to the state treasurer, who shall cause the same to be deposited in a clearing account in his OR HER name in a state or national bank doing business in this state.

**SECTION 24.** 8-77-106 (1), Colorado Revised Statutes, is amended to read:

**8-77-106. Unemployment revenue fund.** (1) There is hereby created the unemployment revenue fund, to which shall be credited all interest collected by the division on delinquent ~~taxes~~ PREMIUMS OR SURCHARGES pursuant to the provisions of section 8-79-101, all penalties collected by the division pursuant to sections 8-79-104 (1) (a) and (1) (c) and 8-81-101 (4) (a) (II), all remaining moneys in the federal advance interest repayment fund after all known interest charges and associated administrative costs pursuant to section 8-77-103 have been paid pursuant to section 8-77-108 (3), and all investigative costs collected by the division pursuant to section 8-81-101 (4) (a) (III).

**SECTION 25.** 8-77-109 (1), Colorado Revised Statutes, is amended to read:

**8-77-109. Employment support fund - created - uses.** (1) There is hereby established the employment support fund which shall be credited with fifty percent of the PREMIUM surcharge ~~tax~~ established by section 8-76-102 (4) (~~a~~) beginning July 1, 1999. THE EMPLOYMENT SUPPORT FUND SHALL NOT BE INCLUDED IN OR ADMINISTERED BY THE ENTERPRISE ESTABLISHED PURSUANT TO SECTION 8-71-103 (2).

**SECTION 26.** 8-77-109 (2) (a.9), Colorado Revised Statutes, as enacted by Senate Bill 09-076, enacted at the First Regular Session of the Sixty-seventh General Assembly, is amended to read:

**8-77-109. Employment support fund - employment and training technology fund - created - uses.** (2) (a.9) Notwithstanding any provision of this subsection (2) to the contrary, beginning July 1, 2009, through December 31, 2016, twenty percent of the PREMIUM surcharge ~~tax~~ established by section 8-76-102 (4) shall be credited to the employment and training technology fund, which is hereby created in the state treasury. Moneys in the employment and training technology fund shall be used for employment and training automation initiatives established by the director of the division. Moneys in the employment and training technology fund shall be subject to annual appropriation by the general assembly for the implementation of this paragraph (a.9) and shall not revert to the general fund or any other fund at the end of any fiscal year. The moneys in the employment and training technology fund shall be exempt from section 24-75-402, C.R.S. If the balance of the unemployment compensation fund, created in section 8-77-101, falls below twenty-five million dollars, the moneys in the employment and training technology fund shall be allocated to the unemployment compensation fund. At any other time, the moneys in the employment and training technology fund may be allocated to the unemployment compensation fund at the discretion of the executive director of the department of labor and employment.

**SECTION 27.** 8-79-101, Colorado Revised Statutes, is amended to read:

**8-79-101. Interest on past-due premiums and surcharges.** ~~Taxes unpaid on the date on which they are due and payable, as prescribed by the division, shall bear interest at the rate of nine percent per annum or three-fourths of one percent per month or any portion thereof on and after such date until payment plus accrued interest is received by the division. On and after October 1, 1983, taxes~~ PREMIUMS OR SURCHARGES unpaid on the date on which they are due and payable, as prescribed by the division, shall bear interest at the rate of eighteen percent per annum or one and one-half percent per month or any portion thereof on and after such date until payment plus accrued interest is received by the division. Interest collected pursuant to this section shall be paid into the unemployment revenue fund.

**SECTION 28.** 8-79-102 (1) and (3), Colorado Revised Statutes, are amended to read:

**8-79-102. Collection of premiums and surcharges, benefit overpayments, penalties, and interest.** (1) The division shall institute such practices and procedures as it deems necessary to collect any money due the division in the form of delinquent ~~taxes~~ PREMIUMS, SURCHARGES, or overpaid benefits, including all penalties and interest thereon. In the case of overpaid benefits, the division may, in addition to instituting collection procedures, withhold subsequent benefit payments to which the claimant is or becomes entitled and apply the amount withheld as an offset against the overpayment. However, any amount withheld shall not exceed twenty-five percent of a claimant's benefit payments except in those cases where overpayments have occurred on an established current claim or as a result of false representation or willful failure to disclose a material fact.

(3) If, after due notice, any employer or claimant defaults in any payment of ~~taxes~~ PREMIUMS or SURCHARGES, THE repayment of overpaid benefits, or the payment of any interest or penalties thereon, the amount due may be collected by civil action, which shall include the right of attachment in the name of the division. Court costs

shall not be charged to the division, but any employer or claimant against whom judgment is taken shall be ~~taxed~~ CHARGED with all costs of such action. All costs collected by the division shall be paid into the registry of the court.

**SECTION 29.** 8-79-103, Colorado Revised Statutes, is amended to read:

**8-79-103. Premiums, surcharges, and assessments a lien on property.**

(1) The ~~taxes~~ PREMIUMS AND SURCHARGES imposed by sections 8-76-101 to 8-76-104 and any assessments imposed pursuant to section 29-4-710.7, C.R.S., shall be a first and prior lien upon the real and personal property of any employer subject to articles 70 to 82 of this title, except as to the lien of general property taxes and except as to valid liens existing at the time of the filing of the notice provided for in section 8-79-105, and shall take precedence over all other liens or claims of whatsoever kind or nature. Any employer ~~who~~ THAT sells, assigns, transfers, conveys, loses by foreclosure of a subsequent lien, or otherwise disposes of ~~his~~ ITS business, or any part thereof, shall file with the division such reports as the director of the division, by ~~regulation~~ RULE, may prescribe within ten days after the date of any such transaction. The employer's successor shall be required to withhold FROM THE PURCHASE MONEY AN AMOUNT OF MONEY sufficient ~~of the purchase money~~ to cover the amount of ~~said tax~~ PREMIUMS OR SURCHARGES and ~~assessment~~ ASSESSMENTS due and unpaid until such time as the former owner produces a receipt from the division showing that ~~said taxes and~~ THE PREMIUMS, SURCHARGES, OR assessments have been paid or a certificate that no ~~taxes and~~ PREMIUMS, SURCHARGES, OR assessments are due. Any ~~such~~ successor ~~who~~ THAT fails to comply with ~~the above provisions~~ THIS SUBSECTION (1) shall be personally liable for the payment of any ~~taxes and~~ PREMIUMS, SURCHARGES, OR assessments due and unpaid.

(2) When the business or property of any employer is placed in receivership, seized under distraint for property taxes, or assigned for the benefit of creditors, all ~~taxes or~~ PREMIUMS, SURCHARGES, assessments, penalties, and interest imposed by articles 70 to 82 of this title and section 29-4-710.7, C.R.S., shall be a prior and preferred claim against all of the property of said employer, except as to the lien of general property taxes, and as to valid liens existing at the time of the filing of the notice provided for in section 8-79-105, and as to claims for wages of not more than two hundred fifty dollars to each claimant earned within six months ~~of~~ AFTER the commencement of the proceeding. No sheriff, receiver, assignee, or other officer shall sell the property of any employer under process or order of court in such cases without first ascertaining from the division the amount of any ~~taxes~~ PREMIUMS, SURCHARGES, or assessments due and payable under articles 70 to 82 of this title and section 29-4-710.7, C.R.S. If any ~~such taxes~~ PREMIUMS, SURCHARGES, or assessments are due, owing, and unpaid, it is the duty of such sheriff, receiver, assignee, or other officer to first pay the OUTSTANDING amount of ~~said taxes~~ PREMIUMS, SURCHARGES, or assessments out of the proceeds of ~~such~~ THE sale before making payment of any moneys to any judgment creditor or other claims of whatsoever kind or nature, except the costs of the proceedings. In the event of an employer's being subject to an order for relief, judicially confirmed extension proposal, or composition under the federal bankruptcy code of 1978, title 11 of the United States Code, ~~taxes~~ PREMIUMS, SURCHARGES, or assessments then or thereafter due shall be entitled to such priority as is provided in section 507 of that code for taxes due the state of Colorado.

**SECTION 30.** 8-79-104, Colorado Revised Statutes, is amended to read:

**8-79-104. Failure to file true report - penalty.** (1) (a) It is the responsibility of each employer subject to the provisions of articles 70 to 82 of this title to file true and accurate reports whether or not ~~taxes~~ PREMIUMS OR SURCHARGES are due and to pay all ~~taxes~~ PREMIUMS AND SURCHARGES when due. Whenever an employer fails to furnish ~~tax~~ PREMIUM reports required by the division by the due date, ~~such~~ THE employer shall be assessed a penalty of fifty dollars for each ~~such~~ occurrence; except that an "employer newly subject" as defined by section 8-76-103 (3) (a) (IV) shall be assessed a penalty of ten dollars for each such occurrence during the first four quarters of coverage. Each subsequent quarter in which the employer continues the failure to file such reports shall be considered a separate occurrence. Penalties collected by the division pursuant to this paragraph (a) shall be paid into the unemployment revenue fund.

(b) If any employer fails or neglects to make and file such reports, as required by articles 70 to 82 of this title or by the ~~regulations~~ RULES of the division pursuant thereto, or willfully makes a false or fraudulent report, the division may make an assessment of the ~~taxes~~ PREMIUMS OR SURCHARGES due from its own knowledge and from such information as it can obtain through testimony or otherwise.

(c) An employer who is delinquent in paying ~~taxes~~ PREMIUMS OR SURCHARGES on the computation date shall have a penalty assessed by the division. The amount of the penalty shall be the amount of delinquent ~~taxes~~ PREMIUMS OR SURCHARGES; except that the penalty shall not exceed an amount equal to one percent of the employer's ~~taxable~~ CHARGEABLE wages paid ~~which~~ THAT were subject to unemployment insurance in the preceding calendar year. ~~and, further,~~ The amount of the penalty for an employer ~~who~~ THAT was not subject to the provisions of articles 70 to 82 of this title in the preceding calendar year shall be the amount of delinquent ~~taxes~~ PREMIUMS OR SURCHARGES. Such penalty shall be in addition to any payments and interest due under articles 70 to 82 of this title. The penalty shall be payable in four quarterly installments during the current calendar year and shall be remitted to the division with the employer's quarterly report. Penalties collected by the division pursuant to this paragraph (c) shall be paid into the unemployment revenue fund.

(d) Any penalty imposed pursuant to this subsection (1) shall be waived if good cause is shown for failing to pay the ~~taxes~~ PREMIUMS OR SURCHARGES or to make ~~tax~~ PREMIUM reports, as prescribed by rule ~~or regulation~~ of the division. Penalties under this subsection (1) ~~which~~ THAT are unpaid on the date on which they are due shall bear interest at the same rate and in the same manner as unpaid ~~taxes~~ PREMIUMS AND SURCHARGES under articles 70 to 82 of this title. The provisions of section 13-80-108 (9), C.R.S., shall be used for determining when an offense is committed for the purposes of this subsection (1).

(2) Any assessment so made and certified by the division shall be prima facie good and sufficient for all legal purposes. Notice and demand for ~~such~~ ~~taxes~~ PREMIUMS OR SURCHARGES plus any interest and penalties imposed by articles 70 to 82 of this title shall be made upon ~~such~~ forms as PRESCRIBED BY the division, ~~may~~ ~~prescribe~~, and the notice and demand shall become final fourteen calendar days after the date of delivery of ~~said~~ THE notice and demand to the employer in person or



after the date of the transmittal by electronic means or by registered mail to the employer's last-known address or place of business. The employer may file a request for review or modification of ~~said~~ THE assessment with the division within the fourteen days in the manner and form prescribed by the division. The division, on the basis of evidence submitted by the employer disclosing the correct amount of ~~taxes~~ PREMIUMS OR SURCHARGES, may amend or otherwise modify its previous assessments.

**SECTION 31.** 8-79-105 (1) and (2), Colorado Revised Statutes, are amended to read:

**8-79-105. Levy on property - sale.** (1) If any ~~taxes~~ PREMIUMS, SURCHARGES, penalties, or interest imposed by articles 70 to 82 of this title, as shown by reports filed by the employer or as shown by assessment duly made as provided in section 8-79-104 or 8-79-107, are not paid within five days after ~~the same~~ THEY are due and demand IS made therefor, the division may issue a notice setting forth the name of the employer, the amount of the ~~taxes~~ PREMIUMS, SURCHARGES, penalties, and interest, the date of the accrual thereof, and a statement that the division claims a first and prior lien therefor, except as provided in this article. Such notice shall be on forms prepared by the division and shall be verified by any duly qualified representative of the division and may be filed or recorded in the office of the county clerk and recorder of any county in the state in which the employer owns property. After such notice has been filed or recorded, the division may issue a warrant under its official seal directed to the sheriff of any county of the state or any duly authorized agent of the division commanding him OR HER to levy upon, seize, and sell such of the real and personal property of the employer found within his OR HER county necessary for the payment of the amount due, together with interest and penalties, as provided by law.

(2) It is the duty of any county clerk and recorder to whom such notices are sent to file or record the same without cost. ~~Any~~ UPON THE PAYMENT OF ALL PREMIUMS, SURCHARGES, PENALTIES, AND INTEREST, A lien for ~~taxes~~ SUCH PREMIUMS, SURCHARGES, PENALTIES, AND INTEREST, as shown upon the records of the county clerk and recorder, ~~upon the payment of all taxes, penalties, and interest covered thereby;~~ shall be released by the division in the same manner as judgments are released.

**SECTION 32.** 8-79-107, Colorado Revised Statutes, is amended to read:

**8-79-107. Immediate assessment - when.** If the division believes that the collection of any ~~taxes~~ PREMIUMS, SURCHARGES, penalties, or interest under the provisions of articles 70 to 82 of this title will be jeopardized by delay, whether or not the time otherwise prescribed by articles 70 to 82 of this title or any ~~regulations~~ RULES issued pursuant thereto for making reports and paying such ~~taxes~~ PREMIUMS OR SURCHARGES has expired, it may immediately assess such ~~taxes~~ PREMIUMS AND SURCHARGES, together with all penalties and interest, the assessment of which is provided for by articles 70 to 82 of this title. Such ~~taxes~~ PREMIUMS, SURCHARGES, penalties, and interest shall thereupon become immediately due and payable, and immediate notice and demand shall be made by the division for the payment thereof.

**SECTION 33.** 8-79-108 (1) and (3), Colorado Revised Statutes, are amended to

read:

**8-79-108. Refunds.** (1) An employing unit may file an application for the refund of money paid erroneously in such form and manner as the director of the division may prescribe by rule, including in person, by mail, by telephone, or by electronic means. If the division determines that such payment, or any portion thereof, was paid erroneously, the division shall either issue to the employing unit a credit memo therefor, or make a refund thereof, in either event without interest thereon. Where no application is received, and the division determines that ~~taxes~~ PREMIUMS OR SURCHARGES have been paid erroneously, the division may, at its option, correct any erroneous payments. Any such correction, if it involves less than one hundred dollars, may be by credit memo. In no event may an employing unit recover money paid erroneously, or otherwise, that has been paid prior to January 1 of the first year of the five calendar years immediately preceding the date of the filing of the application for refund. If such application for refund is refused, or if no final action is taken thereon within six months, an employing unit may commence an action in the district court for the city and county of Denver for the collection thereof. In the event of court action, no recovery of any money paid prior to January 1 of the first year of the five calendar years immediately preceding the date of the filing of the application shall be allowed. For like cause and for the same period, a recovery, as above indicated, may be allowed on the division's own initiative.

(3) Refunds of interest ~~which were~~ THAT WAS paid into the unemployment compensation fund shall be paid from the unemployment compensation fund, and refunds of interest ~~which were~~ THAT WAS paid into the unemployment revenue fund shall be paid from the unemployment revenue fund. All refunds of ~~taxes~~ PREMIUMS AND SURCHARGES shall be made from the unemployment compensation fund.

**SECTION 34.** 8-80-101, Colorado Revised Statutes, is amended to read:

**8-80-101. Waiver of rights void.** Any agreement by an individual to waive, release, or commute his OR HER rights to benefits or any other rights under articles 70 to 82 of this title shall be void. Any agreement by any individual in the employ of any person or concern to pay all or any portion of an employer's ~~taxes~~ PREMIUMS OR SURCHARGES required under articles 70 to 82 of this title from the employer shall be void. No employer shall directly or indirectly make, require, or accept any deduction from wages to finance the employer's ~~taxes~~ PREMIUMS OR SURCHARGES required from him OR HER or require or accept any waiver of any rights under articles 70 to 82 of this title by any individual in his OR HER employ. Any employer or officer or agent of any employer who violates ~~any provision of~~ this section is guilty of a misdemeanor and, upon conviction thereof, for each offense, shall be punished by a fine of not less than one hundred dollars nor more than one thousand dollars, or by imprisonment in the county jail for not more than six months, or by both such fine and imprisonment.

**SECTION 35.** 8-81-101 (2), Colorado Revised Statutes, is amended to read:

**8-81-101. Penalties.** (2) Any employing unit, or any officer or agent of an employing unit, or any other person who makes a false statement or representation knowing it to be false or who knowingly fails to disclose a material fact either to

cause an individual to receive benefits to which such individual is otherwise not entitled or to defraud an individual by preventing or reducing the payment of benefits to which such individual would otherwise be entitled, or to avoid becoming or remaining a subject employer, or to avoid or reduce any ~~tax~~ PREMIUM, SURCHARGE, or other payment required from an employing unit under articles 70 to 82 of this title or under the employment security law of any other state, ~~or of the federal government, or of a foreign government or any such employing unit, officer or agent, or other person who willfully fails or refuses to pay any such taxes~~ PREMIUMS OR SURCHARGES or make any other payment, or to furnish any reports required under section 8-72-107, or to produce or permit the inspection or copying of records as required under section 8-72-107 is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than twenty-five dollars nor more than one thousand dollars, or by imprisonment in the county jail for not more than six months, or by both such fine and imprisonment. Each false statement or representation or failure to disclose a material fact and each day such failure or refusal continues shall constitute a separate offense.

**SECTION 36.** 29-4-710.7 (1) (b) (I) and (1) (b) (III), Colorado Revised Statutes, are amended to read:

**29-4-710.7. Powers of the board - issuance of bonds to maintain balances in the unemployment compensation fund.** (1) Upon receiving the certifications specified in subsection (2) of this section, the authority, in addition to the other powers granted by this part 7, shall have the following powers:

(b) To levy certain bond assessments as follows:

(I) All bonds and notes issued pursuant to this section shall be limited obligations of the authority, payable solely from revenues generated through the levy by the authority of a bond assessment against each employer, as defined in section 8-70-113, C.R.S., subject to experience rating under articles 70 to 82 of title 8, C.R.S., in an aggregate amount sufficient to satisfy subparagraph (II) of this paragraph (b). The division of employment and training shall collect and administer the bond assessment on behalf of the authority in substantially the same manner as other employer ~~taxes~~ PREMIUMS AND SURCHARGES required pursuant to the provisions of articles 70 to 82 of title 8, C.R.S. Subject to the provisions of articles 70 to 82 of title 8, C.R.S., the assessment shall not apply to the covered employers of state and local government, to those nonprofit organizations that are reimbursable employers, ~~nor~~ OR to political subdivisions electing the special rate.

(III) All bond assessments described in this paragraph (b) shall be submitted in the same manner as the employer's normal ~~taxes~~ PREMIUMS AND SURCHARGES paid pursuant to the provisions of articles 70 to 82 of title 8, C.R.S., shall be a lien upon the real and personal property of any such employer in the manner and to the extent set forth in section 8-79-103, C.R.S., shall be segregated by the division of employment and training in a special account under the control of the division, and shall, after offsetting the division's costs for collecting and administering the bond assessments, be used only for transfer from time to time to one or more special accounts created by and under the control of the authority. All moneys accruing in any such special account shall be used by the authority only to pay the costs described in subparagraph (II) of this paragraph (b), and any moneys remaining in

such ~~accounts~~ ACCOUNT and not required to pay such costs shall be transferred by the authority to the division of employment and training for deposit in the unemployment compensation fund.

**SECTION 37. Effective date.** (1) Except as provided in subsections (2) and (3) of this section, this act shall take effect July 1, 2009.

(2) Section 8-76-102 (4) (d), Colorado Revised Statutes, as amended in section 12 of this act, shall not take effect if Senate Bill 09-076 is enacted at the First Regular Session of the Sixty-seventh General Assembly and becomes law.

(3) Sections 13 and 26 of this act shall take effect on July 1, 2009, only if Senate Bill 09-076 is enacted at the First Regular Session of the Sixty-seventh General Assembly and becomes law.

**SECTION 38. 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: June 1, 2009