

CHAPTER 103

LABOR AND INDUSTRY

SENATE BILL 93-132

BY SENATORS Schroeder, Ament, Bishop, Cassidy, Feeley, Hopper, L. Powers, R. Powers, and Wattenberg;
also REPRESENTATIVES Foster, Acquafresca, Armstrong, Dyer, Fleming, Friednash, Hagedorn, Lawrence, Lyle, Nichol, Prinster,
and Reeser.

AN ACT

CONCERNING THE DETERMINATION OF WHETHER AN INDIVIDUAL IS AN EMPLOYEE PURSUANT TO THE WORKERS' COMPENSATION ACT.

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

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

8-40-102. Legislative declaration. (1) It is the intent of the general assembly that the "Workers' Compensation Act of Colorado" be interpreted so as to assure the quick and efficient delivery of disability and medical benefits to injured workers at a reasonable cost to employers, without the necessity of any litigation, recognizing that the workers' compensation system in Colorado is based on a mutual renunciation of common law rights and defenses by employers and employees alike.

(2) THE GENERAL ASSEMBLY HEREBY FINDS THAT THE DETERMINATION OF WHETHER AN INDIVIDUAL IS AN EMPLOYEE FOR PURPOSES OF THE "WORKERS' COMPENSATION ACT OF COLORADO" IS SUBJECT TO A GREAT DEAL OF SPECULATION AND LITIGATION. IT IS THE INTENT OF THE GENERAL ASSEMBLY TO PROVIDE AN EASILY ASCERTAINABLE STANDARD FOR DETERMINING WHETHER AN INDIVIDUAL IS AN EMPLOYEE. IN ORDER TO FURTHER THIS OBJECTIVE, THE TEST FOR DETERMINING WHETHER AN INDIVIDUAL IS AN EMPLOYEE FOR THE PURPOSES OF THE "WORKERS' COMPENSATION ACT OF COLORADO" IS BASED ON THE CRITERIA FOUND IN SECTION 8-70-115. IT IS THE INTENT OF THE GENERAL ASSEMBLY THAT WHEN DETERMINING WHETHER AN INDIVIDUAL IS AN EMPLOYEE ONLY THE FACTORS SPECIFIED IN SECTION 8-40-202 (2) AND ANY CASE LAW WHICH HAS CONSTRUED THE PROVISIONS OF SECTION 8-70-115 ARE TO BE CONSIDERED. IT IS FURTHER THE INTENT OF THE GENERAL ASSEMBLY THAT THE PROVISIONS SET FORTH IN SECTION 8-40-202 (2) SUPERSEDE THE COMMON LAW.

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 2. 8-40-202, Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

8-40-202. Employee. (2) (a) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION, ANY INDIVIDUAL WHO PERFORMS SERVICES FOR PAY FOR ANOTHER SHALL BE DEEMED TO BE AN EMPLOYEE, IRRESPECTIVE OF WHETHER THE COMMON-LAW RELATIONSHIP OF MASTER AND SERVANT EXISTS, UNLESS SUCH INDIVIDUAL IS FREE FROM CONTROL AND DIRECTION IN THE PERFORMANCE OF THE SERVICE, BOTH UNDER THE CONTRACT FOR PERFORMANCE OF SERVICE AND IN FACT AND SUCH INDIVIDUAL IS CUSTOMARILY ENGAGED IN AN INDEPENDENT TRADE, OCCUPATION, PROFESSION, OR BUSINESS RELATED TO THE SERVICE PERFORMED. FOR PURPOSES OF THIS SECTION, THE DEGREE OF CONTROL EXERCISED BY THE PERSON FOR WHOM THE SERVICE IS PERFORMED OVER THE PERFORMANCE OF THE SERVICE OR OVER THE INDIVIDUAL PERFORMING THE SERVICE SHALL NOT BE CONSIDERED IF SUCH CONTROL IS EXERCISED PURSUANT TO THE REQUIREMENTS OF ANY STATE OR FEDERAL STATUTE OR REGULATION.

(b) (I) TO PROVE THAT AN INDIVIDUAL IS ENGAGED IN AN INDEPENDENT TRADE, OCCUPATION, PROFESSION, OR BUSINESS AND IS FREE FROM CONTROL AND DIRECTION IN THE PERFORMANCE OF THE SERVICE, THE INDIVIDUAL AND THE PERSON FOR WHOM SERVICES ARE PERFORMED MAY SHOW BY A PREPONDERANCE OF THE EVIDENCE THAT THE CONDITIONS SET FORTH IN PARAGRAPH (a) OF THIS SUBSECTION (2) HAVE BEEN SATISFIED. THE PARTIES MAY ALSO PROVE INDEPENDENCE THROUGH A WRITTEN DOCUMENT.

(II) TO PROVE INDEPENDENCE THROUGH A WRITTEN DOCUMENT SUCH DOCUMENT MUST HAVE BEEN SIGNED BY BOTH PARTIES AND MUST SHOW THAT THE PERSON FOR WHOM SERVICES ARE PERFORMED DOES NOT:

(A) REQUIRE THE INDIVIDUAL TO WORK EXCLUSIVELY FOR THE PERSON FOR WHOM SERVICES ARE PERFORMED; EXCEPT THAT THE INDIVIDUAL MAY CHOOSE TO WORK EXCLUSIVELY FOR SUCH PERSON FOR A FINITE PERIOD OF TIME SPECIFIED IN THE DOCUMENT;

(B) ESTABLISH A QUALITY STANDARD FOR THE INDIVIDUAL; EXCEPT THAT THE PERSON MAY PROVIDE PLANS AND SPECIFICATIONS REGARDING THE WORK BUT CANNOT OVERSEE THE ACTUAL WORK OR INSTRUCT THE INDIVIDUAL AS TO HOW THE WORK WILL BE PERFORMED;

(C) PAY A SALARY OR AT AN HOURLY RATE INSTEAD OF AT A FIXED OR CONTRACT RATE;

(D) TERMINATE THE WORK OF THE SERVICE PROVIDER DURING THE CONTRACT PERIOD UNLESS SUCH SERVICE PROVIDER VIOLATES THE TERMS OF THE CONTRACT OR FAILS TO PRODUCE A RESULT THAT MEETS THE SPECIFICATIONS OF THE CONTRACT;

(E) PROVIDE MORE THAN MINIMAL TRAINING FOR THE INDIVIDUAL;

(F) PROVIDE TOOLS OR BENEFITS TO THE INDIVIDUAL; EXCEPT THAT MATERIALS AND EQUIPMENT MAY BE SUPPLIED;

(G) DICTATE THE TIME OF PERFORMANCE; EXCEPT THAT A COMPLETION SCHEDULE AND A RANGE OF NEGOTIATED AND MUTUALLY AGREEABLE WORK HOURS MAY BE ESTABLISHED;

(H) PAY THE SERVICE PROVIDER PERSONALLY INSTEAD OF MAKING CHECKS PAYABLE TO THE TRADE OR BUSINESS NAME OF SUCH SERVICE PROVIDER; AND

(I) COMBINE THE BUSINESS OPERATIONS OF THE PERSON FOR WHOM SERVICE IS PROVIDED IN ANY WAY WITH THE BUSINESS OPERATIONS OF THE SERVICE PROVIDER INSTEAD OF MAINTAINING ALL SUCH OPERATIONS SEPARATELY AND DISTINCTLY.

(III) A DOCUMENT MAY SATISFY THE REQUIREMENTS OF THIS PARAGRAPH (b) IF SUCH DOCUMENT DEMONSTRATES BY A PREPONDERANCE OF THE EVIDENCE THE EXISTENCE OF THE FACTORS LISTED IN SUBPARAGRAPH (II) OF THIS PARAGRAPH (b) AS ARE APPROPRIATE TO THE PARTIES' SITUATION.

(IV) IF THE PARTIES USE A WRITTEN DOCUMENT PURSUANT TO THIS PARAGRAPH (b), SUCH DOCUMENT MAY BE THE CONTRACT FOR PERFORMANCE OF SERVICE OR A SEPARATE DOCUMENT. SUCH DOCUMENT SHALL CONTAIN A DISCLOSURE, IN TYPE WHICH IS LARGER THAN THE OTHER PROVISIONS IN THE DOCUMENT OR IN BOLDFACE OR UNDERLINED TYPE, THAT THE INDEPENDENT CONTRACTOR IS NOT ENTITLED TO WORKERS' COMPENSATION BENEFITS AND THAT THE INDEPENDENT CONTRACTOR IS OBLIGATED TO PAY FEDERAL AND STATE INCOME TAX ON ANY MONEYS EARNED PURSUANT TO THE CONTRACT RELATIONSHIP. ALL SIGNATURES ON ANY SUCH DOCUMENT MUST BE DULY NOTARIZED.

(V) IF THE PARTIES USE A WRITTEN DOCUMENT PURSUANT TO THIS PARAGRAPH (b) AND ONE OF THE PARTIES IS A PROFESSIONAL WHOSE LICENSE TO PRACTICE A PARTICULAR OCCUPATION UNDER THE LAWS OF THE STATE OF COLORADO REQUIRES SUCH PROFESSIONAL TO EXERCISE A SUPERVISORY FUNCTION WITH REGARD TO AN ENTIRE PROJECT SUCH SUPERVISORY ROLE SHALL NOT AFFECT SUCH PROFESSIONAL'S STATUS AS PART OF THE INDEPENDENT CONTRACTOR RELATIONSHIP.

(c) NOTHING IN THIS SECTION SHALL BE CONSTRUED TO CONFLICT WITH SECTION 8-40-301 OR TO RELIEVE ANY OBLIGATIONS IMPOSED PURSUANT THERETO.

(d) NOTHING IN THIS SECTION SHALL BE CONSTRUED TO REMOVE THE CLAIMANT'S BURDEN OF PROVING THE EXISTENCE OF AN EMPLOYER-EMPLOYEE RELATIONSHIP FOR PURPOSES OF RECEIVING BENEFITS PURSUANT TO ARTICLES 40 TO 47 OF THIS TITLE.

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

8-41-401. Lessor or contractor-out deemed employer - liability - recovery.

(3) Any ~~independent contractor~~ INDIVIDUAL WHO IS EXCLUDED FROM THE DEFINITION OF "EMPLOYEE" PURSUANT TO SECTION 8-40-202 (2) OR who does not obtain coverage under a policy of workers' compensation insurance pursuant to section 8-40-302 (5), 8-41-202, or 8-44-102 shall not have any cause of action of any kind under articles 40 to 47 of this title. ~~For purposes of this subsection (3), an "independent contractor" means any person who owns the assets of a business, company, or service and who manages and controls such business, company, or~~

~~service and who has the ultimate responsibility for all decisions affecting such business, company, or service, and who is subject to realize any profit or loss from such business, company, or service.~~ Nothing in this section shall be construed to restrict the right of any such ~~claimant~~ INDIVIDUAL to elect to proceed against a third party in accordance with the provisions of section 8-41-203. The total amount of damages recoverable pursuant to any cause of action resulting from a work-related injury brought by such ~~independent contractor~~ INDIVIDUAL which would otherwise have been compensable under articles 40 to 47 of this title shall not exceed fifteen thousand dollars, except in any cause of action brought against another not in the same employ.

SECTION 4. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: April 12, 1993