

CHAPTER 245

**LABOR AND INDUSTRY**

**HOUSE BILL 93-1279**

BY REPRESENTATIVES Reeser, Armstrong, Dyer, Greenwood, Hagedorn, Nichol, and Wright;  
also SENATORS Rizzuto, Casey, Groff, Mendez, Peterson, and Tebedo.

**AN ACT**

**CONCERNING PROCEDURES FOR ORDERING AN EMPLOYER TO DISCONTINUE ITS BUSINESS OPERATIONS UPON A FINDING THAT THE WORKERS' COMPENSATION ACT HAS BEEN VIOLATED, AND PROVIDING GUIDANCE WITH RESPECT TO THE ISSUANCE OF CEASE AND DESIST ORDERS, TEMPORARY RESTRAINING ORDERS, AND INJUNCTIONS.**

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

**SECTION 1.** 8-43-409, Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

**8-43-409. Defaulting employer enjoined from continuing business - duty of attorney general to seek injunction - procedure.** (1) Any employer subject to the terms and provisions of articles 40 to 47 of this title who fails to insure or to keep the insurance required by said articles in force or who allows the same to lapse or fails to effect a renewal thereof shall not continue any business operations while such default in effective insurance continues. Upon receiving information from any person or entity that an employer is in default of its insurance obligations, the director shall forthwith investigate and, if the information can be substantiated, the director shall ~~institute the proper action to enjoin any such employer from continuing business operations during any such default~~ NOTIFY THE EMPLOYER OF THE OPPORTUNITY TO REQUEST A PREHEARING CONFERENCE ON THE ISSUE OF DEFAULT. THEREAFTER, IF NECESSARY, THE DIRECTOR SHALL SET THE ISSUE OF THE EMPLOYER'S DEFAULT FOR HEARING IN ACCORDANCE WITH HEARING TIME SCHEDULE AND PROCEDURES SET FORTH IN ARTICLES 40 TO 47 OF THIS TITLE AND RULES PROMULGATED BY THE DIRECTOR. UPON A FINDING THAT THE EMPLOYER IS IN DEFAULT OF ITS INSURANCE OBLIGATIONS, THE DIRECTOR SHALL ORDER THE EMPLOYER IN DEFAULT TO CEASE AND DESIST IMMEDIATELY FROM CONTINUING ITS BUSINESS OPERATIONS DURING ANY PERIOD SUCH DEFAULT CONTINUES.

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

(2) ANY CEASE AND DESIST ORDER ISSUED BY THE DIRECTOR UNDER SUBSECTION (1) OF THIS SECTION SHALL INCLUDE SPECIFIC FINDINGS OF FACT THAT ARE BASED UPON EVIDENCE THAT:

(a) THE EMPLOYER RECEIVED NOTICE OF THE HEARING;

(b) THE EMPLOYER EMPLOYS EMPLOYEES FOR WHOM IT MUST CARRY WORKERS' COMPENSATION INSURANCE UNDER THE PROVISIONS OF ARTICLES 40 TO 47 OF THIS TITLE;

(c) THE EMPLOYER DOES NOT HAVE A POLICY OF WORKERS' COMPENSATION INSURANCE IN EFFECT; AND

(d) THE EMPLOYER CONTINUES TO OPERATE ITS BUSINESS IN THE ABSENCE OF SUCH COVERAGE.

(3) NOTWITHSTANDING ANY OTHER PROVISION OF ARTICLES 40 TO 47 OF THIS TITLE, AFTER THE ENTRY OF A CEASE AND DESIST ORDER AND UPON THE REQUEST OF THE DIRECTOR, THE ATTORNEY GENERAL SHALL IMMEDIATELY INSTITUTE PROCEEDINGS FOR INJUNCTIVE RELIEF AGAINST THE EMPLOYER IN THE DISTRICT COURT OF ANY COUNTY IN THIS STATE WHERE SUCH EMPLOYER DOES BUSINESS. IN ANY SUCH DISTRICT COURT PROCEEDING, A CERTIFIED COPY OF ANY CEASE AND DESIST ORDER ENTERED BY THE DIRECTOR IN ACCORDANCE WITH THE PROVISIONS OF SUBSECTION (1) OF THIS SECTION BASED UPON EVIDENCE IN THE RECORD SHALL BE PRIMA FACIE EVIDENCE OF THE FACTS FOUND IN SUCH RECORD. SUCH INJUNCTIVE RELIEF MAY INCLUDE THE ISSUANCE OF A TEMPORARY RESTRAINING ORDER UNDER RULE 65 OF THE COLORADO RULES OF CIVIL PROCEDURE, WHICH ORDER SHALL ENJOIN THE EMPLOYER FROM CONTINUING ITS BUSINESS OPERATIONS UNTIL IT HAS PROCURED THE REQUIRED INSURANCE OR HAS POSTED ADEQUATE SECURITY WITH THE COURT PENDING THE PROCUREMENT OF SUCH INSURANCE. THE COURT, IN ITS DISCRETION, SHALL DETERMINE THE AMOUNT THAT SHALL CONSTITUTE ADEQUATE SECURITY.

(4) THE ISSUANCE OF AN ORDER TO CEASE AND DESIST OR THE ISSUANCE OF AN ORDER FOR INJUNCTIVE RELIEF AGAINST AN EMPLOYER FOR FAILURE TO INSURE OR TO KEEP INSURANCE IN FORCE AS REQUIRED BY ARTICLES 40 TO 47 OF THIS TITLE SHALL BE THE PENALTY FOR SUCH FAILURE WITHIN THE MEANING OF SECTION 8-43-304 (1) AND SUCH PENALTY SHALL BE IN ADDITION TO THE INCREASE IN BENEFITS THAT SECTION 8-43-408 REQUIRES.

**SECTION 2. 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 6, 1993