

CHAPTER 137

LABOR AND INDUSTRY

HOUSE BILL 96-1186

BY REPRESENTATIVES May and McElhany;
also SENATORS Alexander, Hopper, Perlmutter, and Tebedo.

AN ACT

CONCERNING WORKERS' COMPENSATION COVERAGE FOR BUSINESS OWNERS, AND, IN CONNECTION THEREWITH, PROCEDURES FOR A BUSINESS OWNER TO ELECT NOT TO BE COVERED UNDER WORKERS' COMPENSATION AND THE EFFECT OF A BUSINESS OWNER'S FAILURE TO OBTAIN SUCH COVERAGE.

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

SECTION 1. 8-41-202 (1) and (4), Colorado Revised Statutes, 1986 Repl. Vol., as amended, are amended to read:

8-41-202. Rejection of coverage by corporate officers and others.

(1) Notwithstanding any provisions of articles 40 to 47 of this title to the contrary, a corporate officer of a corporation or a member of a limited liability company may elect to reject the provisions of articles 40 to 47 of this title. If so elected, said corporate officer or member shall provide written notice ON A FORM APPROVED BY THE DIVISION THROUGH A RULE PROMULGATED BY THE DIRECTOR of such election to the WORKERS' COMPENSATION insurer of the employing corporation or company, IF ANY, by certified mail. IF THERE IS NO WORKERS' COMPENSATION INSURANCE COMPANY, THE NOTICE SHALL BE PROVIDED TO THE DIVISION BY CERTIFIED MAIL. Such notice shall become effective the day following receipt of said notice by the insurer OR THE DIVISION.

(4) For the purposes of this section:

(a) "Corporate officer" means the ~~chairman~~ CHAIRPERSON of the board, president, vice-president, secretary, or treasurer who is an owner of at least ten percent of the stock of the corporation AND WHO CONTROLS, SUPERVISES, OR MANAGES THE BUSINESS AFFAIRS OF THE CORPORATION, as attested to by the secretary of the

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

corporation at the time of the election.

(b) "Member" means an owner of at least ten percent of the membership interest of the limited liability company at all times AND WHO CONTROLS, SUPERVISES, OR MANAGES THE BUSINESS AFFAIRS OF THE LIMITED LIABILITY COMPANY.

SECTION 2. 8-41-401 (1) and (3), Colorado Revised Statutes, 1986 Repl. Vol., as amended, are amended to read:

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

(1) (a) Any person, company, or corporation operating or engaged in or conducting any business by leasing or contracting out any part or all of the work thereof to any lessee, sublessee, contractor, or subcontractor, irrespective of the number of employees engaged in such work, shall be construed to be an employer as defined in articles 40 to 47 of this title and shall be liable as provided in said articles to pay compensation for injury or death resulting therefrom to said lessees, sublessees, contractors, and subcontractors and their employees or employees' dependents; except that no such person, company, or corporation shall be construed to be an employer and is not liable under articles 40 to 47 of this title:

(I) If such lessee, sublessee, contractor, or subcontractor has complied with section 8-40-202 (2) (b) relative to such work;

(II) IF THE PERSON WORKING FOR SUCH LESSEE, SUBLESSEE, CONTRACTOR, OR SUBCONTRACTOR IS A WORKING GENERAL PARTNER OR THE SOLE PROPRIETOR OF SUCH LESSEE, SUBLESSEE, CONTRACTOR, OR SUBCONTRACTOR AND IS NOT COVERED UNDER A POLICY OF WORKERS' COMPENSATION INSURANCE; OR

(III) IF THE CORPORATE OFFICER AS DEFINED IN SECTION 8-41-202 (4) (a) OR A MEMBER AS DEFINED IN SECTION 8-41-202 (4) (b) WORKING FOR SUCH LESSEE, SUBLESSEE, CONTRACTOR, OR SUBCONTRACTOR HAS EXECUTED AND FILED AN ELECTION TO REJECT COVERAGE UNDER SECTION 8-41-202 (1).

(b) The employer, before commencing said work, shall insure and keep insured against all liability as provided in said articles, and such lessee, sublessee, contractor, or subcontractor, as well as any employee thereof, shall be deemed employees as defined in said articles. The employer shall be entitled to recover the cost of such insurance from said lessee, sublessee, contractor, or subcontractor and may withhold and deduct the same from the contract price or any royalties or other money due, owing, or to become due said lessee, sublessee, contractor, or subcontractor.

(3) Notwithstanding any provision of this section OR SECTION 8-41-402 to the contrary, any individual who is excluded from the definition of employee pursuant to section 8-40-202 (2), or ~~who does not obtain coverage~~ A WORKING GENERAL PARTNER OR SOLE PROPRIETOR WHO IS NOT COVERED under a policy of workers' compensation insurance, ~~pursuant to section 8-40-302 (5), or 8-44-102~~ OR A CORPORATE OFFICER OR MEMBER OF A LIMITED LIABILITY COMPANY WHO EXECUTES AND FILES AN ELECTION TO REJECT COVERAGE UNDER SECTION 8-41-202 (1) shall not have any cause of action of any kind under articles 40 to 47 of this title. Nothing in this section shall be construed to restrict the right of any such individual to elect to proceed against a third party in accordance with the provisions of section 8-41-203.

The total amount of damages recoverable pursuant to any cause of action resulting from a work-related injury brought by such individual ~~which~~ THAT 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 3. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: May 1, 1996