

CHAPTER 45

LABOR AND INDUSTRY

HOUSE BILL 97-1128

BY REPRESENTATIVES G. Berry, May, Schauer, Arrington, Dean, Lamborn, Lawrence, Musgrave, T. Williams, and Young;
also SENATORS Ament and Mutzebaugh.

AN ACT

CONCERNING THE RECOVERY FROM CLAIMANTS OF WORKERS' COMPENSATION BENEFITS TO WHICH SUCH
CLAIMANTS ARE NOT ENTITLED.

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

SECTION 1. 8-40-201, Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS to read:

8-40-201. Definitions - repeal. As used in articles 40 to 47 of this title, unless the context otherwise requires:

(3.6) "CLAIMANT" MEANS A PERSON WHO EITHER:

(a) RECEIVES BENEFITS UNDER ARTICLES 40 TO 47 OF THIS TITLE; OR

(b) HAS OR ASSERTS, IN ANY ADMINISTRATIVE OR JUDICIAL FORUM OR IN ANY COMMUNICATION WITH THE DIRECTOR, THE DIVISION, OR AN EMPLOYER, INSURER, OR SELF-INSURED EMPLOYER, A RIGHT TO RECEIVE SUCH BENEFITS.

(15.5) "OVERPAYMENT" MEANS MONEY RECEIVED BY A CLAIMANT THAT EXCEEDS THE AMOUNT THAT SHOULD HAVE BEEN PAID, OR WHICH THE CLAIMANT WAS NOT ENTITLED TO RECEIVE, OR WHICH RESULTS IN DUPLICATE BENEFITS BECAUSE OF OFFSETS THAT REDUCE DISABILITY OR DEATH BENEFITS PAYABLE UNDER SAID ARTICLES. FOR AN OVERPAYMENT TO RESULT, IT IS NOT NECESSARY THAT THE OVERPAYMENT EXIST AT THE TIME THE CLAIMANT RECEIVED DISABILITY OR DEATH BENEFITS UNDER SAID ARTICLES.

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. Article 42 of title 8, Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW SECTION to read:

8-42-113.5. Recovery of overpayments - notice required. (1) IF A CLAIMANT HAS RECEIVED AN AWARD FOR THE PAYMENT OF DISABILITY BENEFITS OR A DEATH BENEFIT UNDER ARTICLES 40 TO 47 OF THIS TITLE AND ALSO RECEIVES ANY PAYMENT, AWARD, OR ENTITLEMENT TO BENEFITS UNDER THE FEDERAL OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE ACT, AN EMPLOYER-PAID RETIREMENT BENEFIT PLAN, OR ANY OTHER PLAN, PROGRAM, OR SOURCE FOR WHICH THE ORIGINAL DISABILITY BENEFITS OR DEATH BENEFIT IS REQUIRED TO BE REDUCED PURSUANT TO SAID ARTICLES, BUT WHICH WERE NOT REFLECTED IN THE CALCULATION OF SUCH DISABILITY BENEFITS OR DEATH BENEFIT:

(a) WITHIN TWENTY CALENDAR DAYS AFTER LEARNING OF SUCH PAYMENT, AWARD, OR ENTITLEMENT, THE CLAIMANT, OR THE LEGAL REPRESENTATIVE OF A CLAIMANT WHO IS A MINOR, SHALL GIVE WRITTEN NOTICE OF THE PAYMENT, AWARD, OR ENTITLEMENT TO THE EMPLOYER OR, IF THE EMPLOYER IS INSURED, TO THE EMPLOYER'S INSURER. IF THE CLAIMANT OR LEGAL REPRESENTATIVE GIVES SUCH NOTICE, ANY OVERPAYMENT THAT RESULTED FROM THE FAILURE TO MAKE THE APPROPRIATE REDUCTION IN THE ORIGINAL CALCULATION OF SUCH DISABILITY BENEFITS OR DEATH BENEFIT SHALL BE RECOVERED BY THE EMPLOYER OR INSURER IN INSTALLMENTS AT THE SAME RATE AS, OR A LOWER RATE THAN, THE RATE AT WHICH THE OVERPAYMENTS WERE MADE. SUCH RECOVERY SHALL REDUCE THE DISABILITY BENEFITS OR DEATH BENEFIT PAYABLE AFTER ALL OTHER APPLICABLE REDUCTIONS HAVE BEEN MADE.

(b) IF THE CLAIMANT OR LEGAL REPRESENTATIVE OF A CLAIMANT WHO IS A MINOR WAS RECEIVING BENEFITS IN EXCESS OF THE AMOUNTS THAT SHOULD HAVE BEEN PAID UNDER ARTICLES 40 TO 47 OF THIS TITLE AND FAILED TO GIVE THE NOTICE REQUIRED BY PARAGRAPH (a) OF THIS SUBSECTION (1), THE EMPLOYER OR INSURER IS AUTHORIZED TO CEASE ALL DISABILITY OR DEATH BENEFIT PAYMENTS IMMEDIATELY UNTIL THE OVERPAYMENTS HAVE BEEN RECOVERED IN FULL.

(c) IF FOR ANY REASON RECOVERY OF OVERPAYMENTS AS CONTEMPLATED IN PARAGRAPH (a) OR (b) OF THIS SUBSECTION (1) IS NOT PRACTICABLE, THE EMPLOYER OR INSURER IS AUTHORIZED TO SEEK AN ORDER FOR REPAYMENT.

(d) WHEN AN OVERPAYMENT IS REPAID TO THE INSURER, THE INSURER SHALL CREDIT THE LOSSES ON THE CLAIM AND REPORT THE CORRECTED LOSSES TO THE INSURANCE RATING ORGANIZATION ON THE NEXT SCHEDULED REPORT FOR PURPOSES OF THE EMPLOYER'S EXPERIENCE MODIFICATION.

SECTION 3. 8-43-203 (1), Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

8-43-203. Notice concerning liability - notice to claimant. (1) (a) The employer or, if insured, the employer's insurance carrier shall notify in writing the division and the injured employee or, if deceased, the decedent's dependents within twenty days after notice or knowledge of an injury to an employee which disables said employee for more than three shifts or three calendar days or results in

permanent physical impairment or death of said employee, whether liability is admitted or contested; but, for the purpose of this section, any knowledge on the part of the employer, if insured, is not knowledge on the part of the insurance carrier. If the insurance carrier or self-insured employer denies liability for the claim, the claimant may request an expedited hearing on the issue of compensability if the application therefor is filed within forty-five days of the date of mailing of the notice of contest. The director shall set any such expedited matter for hearing within forty days of the date of the application, when the issue is liability for the disease or injury. The time schedule for such an expedited hearing is subject to the extensions set forth in section 8-43-209. If a claimant elects not to request an expedited hearing pursuant to this subsection (1), the time schedule for hearing the matter shall be as set forth in section 8-43-209. Where the employer's report of injury shows that the employee is temporarily disabled for three days or less and medical attention as provided by section 8-42-101, if required, has been afforded at the expense of the employer or the insurance carrier, then no admission or denial of liability need be filed until the employer or, if insured, the employer's insurance carrier has knowledge of or notice of claim for compensation benefits and then within twenty days from the date of such knowledge or notice.

(b) THE WRITTEN NOTICE GIVEN PURSUANT TO THIS SUBSECTION (1) SHALL INCLUDE A SPECIFIC REFERENCE TO THE CLAIMANT'S OBLIGATIONS UNDER SECTION 8-42-113.5.

SECTION 4. 8-43-207 (1), Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

8-43-207. Hearings. (1) Hearings shall be held to determine any controversy concerning any issue arising under articles 40 to 47 of this title. In connection with hearings, the director and administrative law judges are empowered to:

(q) REQUIRE REPAYMENT OF OVERPAYMENTS.

SECTION 5. 8-43-303 (1) and (2) (a), Colorado Revised Statutes, 1986 Repl. Vol., as amended, are amended to read:

8-43-303. Reopening. (1) At any time within six years ~~from~~ AFTER the date of injury, the director or an administrative law judge may, after notice to all parties, review and reopen any award on the ground of FRAUD, AN OVERPAYMENT, an error, a mistake, or a change in condition, except for those settlements entered into pursuant to section 8-43-204 in which the claimant waived all right to reopen an award; but a settlement may be reopened at any time on the ground of fraud or mutual mistake of material fact. UPON A PRIMA FACIE SHOWING THAT THE CLAIMANT RECEIVED OVERPAYMENTS, THE AWARD SHALL BE REOPENED SOLELY AS TO OVERPAYMENTS AND REPAYMENT SHALL BE ORDERED. IN CASES INVOLVING THE CIRCUMSTANCES DESCRIBED IN SECTION 8-42-113.5, RECOVERY OF OVERPAYMENTS SHALL BE ORDERED IN ACCORDANCE WITH SAID SECTION. If an award is reopened ON GROUNDS OF AN ERROR, A MISTAKE, OR A CHANGE IN CONDITION, compensation and medical benefits previously ordered may be ended, diminished, maintained, or increased. No such reopening shall affect the earlier award as to moneys already paid EXCEPT IN CASES OF FRAUD OR OVERPAYMENT. Any order entered under this subsection (1) shall be subject to review in the same manner as other orders.

(2) (a) At any time within two years after the date the last temporary or permanent disability benefits or dependent benefits excluding medical benefits become due or payable, the director or an administrative law judge may, after notice to all parties, review and reopen an award on the ground of FRAUD, AN OVERPAYMENT, an error, a mistake, or a change in condition, except for those settlements entered into pursuant to section 8-43-204 in which the claimant waived all right to reopen an award; but a settlement may be reopened at any time on the ground of fraud or mutual mistake of material fact. UPON A PRIMA FACIE SHOWING THAT THE CLAIMANT RECEIVED OVERPAYMENTS, THE AWARD SHALL BE REOPENED SOLELY AS TO OVERPAYMENTS AND REPAYMENT SHALL BE ORDERED. IN CASES INVOLVING THE CIRCUMSTANCES DESCRIBED IN SECTION 8-42-113.5, RECOVERY OF OVERPAYMENTS SHALL BE ORDERED IN ACCORDANCE WITH SAID SECTION. If an award is reopened under this paragraph (a) ON GROUNDS OF AN ERROR, A MISTAKE, OR A CHANGE IN CONDITION, compensation and medical benefits previously ordered may be ended, diminished, maintained, or increased. No such reopening shall affect the earlier award as to moneys already paid EXCEPT IN CASES OF FRAUD OR OVERPAYMENT. Any order entered under this paragraph (a) shall be subject to review in the same manner as other orders.

SECTION 6. 8-43-306 (1), Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

8-43-306. Collection of fines, penalties, and overpayments. (1) A certified copy of any final order of the director or an administrative law judge ordering the payment of any penalty OR REPAYMENT OF OVERPAYMENTS pursuant to articles 40 to 47 of this title may be filed with the clerk of the district court of any county in this state at any time after the period of time provided by articles 40 to 47 of this title for appeal or seeking review of the order has passed without appeal or review being sought or, if appeal or review is sought, after the order has been finally affirmed and all appellate remedies and all opportunities for review have been exhausted. The party filing the order shall at the same time file a certificate to the effect that the time for appeal or review has passed without appeal or review being undertaken or that the order has been finally affirmed with all appellate remedies and all opportunities for review having been exhausted. The clerk of the district court shall record the order and the filing party's certificate in the judgment book of said court and entry thereof made in the judgment docket, and it shall thenceforth have all the effect of a judgment of the district court, and execution may issue thereon out of said court as in other cases. Any such order may be filed by and in the name of the director or by and in the name of the party in the worker's compensation action who was injured by the violation of any provision of articles 40 to 47 of this title OR WHO WAS FOUND TO BE ENTITLED TO REPAYMENT OF OVERPAYMENTS UNDER SAID ARTICLES.

SECTION 7. Effective date - applicability. This act shall take effect July 1, 1997, and shall apply to cases in which the injuries occurred on or after said date.

SECTION 8. 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: March 24, 1997