

## CHAPTER 49

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**LABOR AND INDUSTRY**


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**HOUSE BILL 05-1139**

BY REPRESENTATIVE(S) Coleman, Vigil, Schultheis, White, Carroll M., Frangas, Madden, Marshall, Merrifield, Ragsdale, and Soper;  
also SENATOR(S) Takis, Anderson, Taylor, and Tupa.

**AN ACT****CONCERNING INCREASED ENFORCEMENT OF THE WORKERS' COMPENSATION LAWS.**

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

**SECTION 1.** 8-43-409 (1), the introductory portion to 8-43-409 (2), and 8-43-409 (2) (c), (2) (d), and (7), Colorado Revised Statutes, are amended to read:

**8-43-409. Defaulting employers - penalties - enjoined from continuing business - fines - procedure - definition.** (1) ~~Any~~ AN 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~~ SUCH articles in force, ~~or who~~ allows the ~~same~~ INSURANCE to lapse, or fails to effect a renewal ~~thereof~~ OF THE INSURANCE 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 notify the employer of the opportunity to request a prehearing conference on the issue of default. As part of the director's investigation, the director may verify that all employees of that employer are insured through the employer's workers' compensation plan. The director may forward any workers' compensation coverage issue to the employer's workers' compensation carrier for further investigation by ~~such~~ THE carrier. Thereafter, if necessary, the director ~~shall~~ MAY 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 TAKE either OR BOTH OF THE FOLLOWING ACTIONS:

- (a) Order the employer in default to cease and desist immediately from continuing

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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.*

its business operations during ~~any~~ THE period such default continues; ~~or~~

(b) ~~(f) Impose a fine of not more than five hundred dollars~~ For every day that the employer fails or has failed to insure or to keep the insurance required by articles 40 to 47 of this title in force, ~~or allows or has allowed the insurance to lapse, or fails or has failed to effect a renewal of such coverage,~~ IMPOSE A FINE OF: ~~except that the director shall not impose a fine that exceeds the annual cost of the insurance premium that would have been charged for such employer;~~

(I) NOT MORE THAN TWO HUNDRED FIFTY DOLLARS FOR AN INITIAL VIOLATION; OR

~~(II) Any fine imposed pursuant to subparagraph (I) of this paragraph (b) shall be imposed only for those days that occur after the employer receives a notice from the director that the employer has failed to insure or to keep in force the insurance required by articles 40 to 47 of this title, or has allowed the insurance to lapse, or has failed to effect a renewal of such coverage.~~ NOT LESS THAN TWO HUNDRED FIFTY DOLLARS OR MORE THAN FIVE HUNDRED DOLLARS FOR A SECOND AND ANY SUBSEQUENT VIOLATION. FOR PURPOSES OF THIS SUBPARAGRAPH (II) ONLY, IF AN EMPLOYER HAS BEEN FINED PURSUANT TO SUBPARAGRAPH (I) OF THIS PARAGRAPH (b) AND THE DIRECTOR DETERMINES THAT SUBSTANTIALLY THE SAME PEOPLE OR ENTITIES WERE INVOLVED IN FORMING A SUBSEQUENT EMPLOYER, THE INITIAL VIOLATION REFERRED TO IN SUBPARAGRAPH (I) OF THIS PARAGRAPH (b) SHALL BE DEEMED TO HAVE ALREADY OCCURRED WITH REGARD TO VIOLATIONS COMMITTED BY THE SUBSEQUENT EMPLOYER.

~~(III) The director shall suspend any fine imposed pursuant to this paragraph (b) if the employer provides proof suitable to the director that the employer has in force insurance for so long as the employer has any obligation under articles 40 to 47 of this title, and is not otherwise in violation of articles 40 to 47.~~

(2) ~~Any~~ A cease and desist order issued or fine imposed by the director under subsection (1) of this section shall include specific findings of fact that are based upon evidence that:

(c) The employer does not OR DID NOT have a policy of workers' compensation insurance in effect; and

(d) The employer continues OR CONTINUED to operate its business in the absence of such coverage.

(7) Fines collected pursuant to this section shall be transmitted to the state treasurer, who shall credit TWENTY-FIVE PERCENT OF such fine to the workers' compensation cash fund, created in section 8-44-112, which shall be used to offset the premium surcharge. THE STATE TREASURER SHALL CREDIT THE REMAINDER OF THE FINE TO THE GENERAL FUND.

**SECTION 2.** 8-43-304, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

**8-43-304. Violations - penalty - offset for benefits obtained through fraud - rules.** (1.5) (a) AN INSURER WHO KNOWINGLY OR REPEATEDLY VIOLATES ANY

PROVISION OF ARTICLES 40 TO 47 OF THIS TITLE SHALL BE SUBJECT TO A FINE AS DETERMINED BY THE DIRECTOR. IF NECESSARY, THE DIRECTOR MAY CONDUCT A HEARING OR MAY REFER THE MATTER TO THE DIVISION OF ADMINISTRATIVE HEARINGS FOR THE ENTRY OF FINDINGS OF FACT. THE DIRECTOR SHALL PROMULGATE RULES THAT SPECIFY, WITH RESPECT TO AN INSURER'S WILLFUL OR REPEATED VIOLATIONS THAT ARE SUBJECT TO THIS SUBSECTION (1.5):

(I) THE CIRCUMSTANCES PURSUANT TO WHICH THE DIRECTOR MAY ISSUE AN ORDER IMPOSING A FINE; AND

(II) CRITERIA FOR DETERMINING THE AMOUNT OF THE FINE.

(b) FINES IMPOSED PURSUANT TO THIS SUBSECTION (1.5) SHALL BE TRANSMITTED TO THE STATE TREASURER, WHO SHALL CREDIT SEVENTY-FIVE PERCENT OF SUCH FINES TO THE GENERAL FUND AND TWENTY-FIVE PERCENT TO THE WORKERS' COMPENSATION CASH FUND, CREATED IN SECTION 8-44-112.

**SECTION 3.** 8-43-101, Colorado Revised Statutes, is amended to read:

**8-43-101. Record of injuries - occupational disease - reported to division - rules.** (1) Every employer shall keep a record of all injuries ~~which~~ THAT result in fatality to, or permanent physical impairment of, or lost time from work for the injured employee in excess of three shifts or calendar days AND THE CONTRACTION BY AN EMPLOYEE OF AN OCCUPATIONAL DISEASE THAT HAS BEEN LISTED BY THE DIRECTOR BY RULE. Within ten days after notice or knowledge that an employee has contracted SUCH an occupational disease, or the occurrence of a permanently physically impairing injury, or lost-time injury to an employee, or immediately in the case of a fatality, the employer shall, ~~in writing~~, upon forms prescribed by the division for that purpose, report said occupational disease, ~~disability~~, permanently physically impairing injury, lost-time injury, or fatality to the division. The report shall contain such information as shall be required by the director.

(2) UNLESS EXEMPTED BY THE DIRECTOR PURSUANT TO RULE BECAUSE OF A SMALL NUMBER OF FILINGS OR A SHOWING OF FINANCIAL HARDSHIP, BEGINNING JULY 1, 2006, REPORTS SUBMITTED PURSUANT TO THIS SECTION SHALL BE SUBMITTED IN AN ELECTRONIC FORMAT AS DETERMINED BY THE DIRECTOR. EXPOSURE TO AN INJURIOUS SUBSTANCE AS DEFINED BY THE DIRECTOR BY RULE AND injuries to employees ~~which~~ THAT result in ~~fewer~~ NO MORE than three days' or three shifts' loss of time from work, or no permanent physical impairment, or no fatality to the employee shall be reported by the employer only to the insurer of said employer's workers' compensation insurance liability, which injuries ~~said~~ AND EXPOSURE THE insurer shall report only by monthly summary form to OR AS OTHERWISE REQUESTED BY the division.

**SECTION 4.** 8-43-203 (1) (a), Colorado Revised Statutes, is amended to read:

**8-43-203. Notice concerning liability - notice to claimant - rules.** (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 that disables said employee for more than three shifts or three calendar days or results in permanent physical impairment or death of said employee~~ A REPORT IS, OR SHOULD HAVE BEEN,

FILED WITH THE DIVISION PURSUANT TO SECTION 8-43-101, whether liability is admitted or contested; ~~but~~ EXCEPT THAT, 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. The employer or the employer's insurance carrier may notify the division electronically. UNLESS EXEMPTED BY THE DIRECTOR PURSUANT TO RULE BECAUSE OF A SMALL NUMBER OF FILINGS OR A SHOWING OF FINANCIAL HARDSHIP, BEGINNING JULY 1, 2006, ALL NOTICES OF CONTEST SHALL BE FILED ELECTRONICALLY. The rejection of an electronically filed notice by the division for a technical error shall not affect the validity of the notice to the claimant. 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 after the date of mailing of the notice of contest. The director shall set any such expedited matter for hearing within forty days after 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 after the date of such knowledge or notice.~~

**SECTION 5. Effective date - applicability.** This act shall take effect July 1, 2005, and shall apply to acts occurring on or after said date.

**SECTION 6. 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 7, 2005