

CHAPTER 429

LABOR AND INDUSTRY

HOUSE BILL 07-1366

BY REPRESENTATIVE(S) Soper, Benefield, Carroll M., Casso, Cerbo, Gagliardi, Green, Kefalas, Levy, Primavera, Solano, Carroll T., Frangas, Kerr A., Labuda, Madden, Marshall, and Peniston;
also SENATOR(S) Tochtrop, and Boyd.

AN ACT**CONCERNING WORKERS' COMPENSATION COVERAGE FOR WORKERS IN THE CONSTRUCTION INDUSTRY.**

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

SECTION 1. Part 4 of article 41 of title 8, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

8-41-404. Construction work - proof of coverage required - violation - penalty - definitions. (1) (a) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (4) OF THIS SECTION, EVERY PERSON PERFORMING CONSTRUCTION WORK ON A CONSTRUCTION SITE SHALL BE COVERED BY WORKERS' COMPENSATION INSURANCE, AND A PERSON WHO CONTRACTS FOR THE PERFORMANCE OF CONSTRUCTION WORK ON A CONSTRUCTION SITE SHALL EITHER PROVIDE, PURSUANT TO ARTICLES 40 TO 47 OF THIS TITLE, WORKERS' COMPENSATION COVERAGE FOR, OR REQUIRE PROOF OF WORKERS' COMPENSATION COVERAGE FROM, EVERY PERSON WITH WHOM HE OR SHE HAS A DIRECT CONTRACT TO PERFORM CONSTRUCTION WORK ON THE CONSTRUCTION SITE.

(b) A SITE OWNER, GENERAL CONTRACTOR, OR OTHER PERSON WHO IS NOT A DIRECT PARTY TO A CONTRACT FOR CONSTRUCTION WORK SHALL NOT BE HELD LIABLE UNDER SUBSECTION (3) OF THIS SECTION SOLELY AS A RESULT OF THE PERSON'S OWNERSHIP INTEREST OR GENERAL SUPERVISORY ROLE IN A CONSTRUCTION PROJECT.

(c) ANY PERSON WHO CONTRACTS FOR THE PERFORMANCE OF CONSTRUCTION WORK ON A CONSTRUCTION SITE AND WHO EXERCISES DUE DILIGENCE BY EITHER PROVIDING WORKERS' COMPENSATION COVERAGE AS REQUIRED BY THIS SECTION OR REQUIRING PROOF OF WORKERS' COMPENSATION COVERAGE AS REQUIRED BY THIS

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 FROM EVERY PERSON WITH WHOM HE OR SHE HAS A DIRECT CONTRACT TO PERFORM CONSTRUCTION WORK ON THE CONSTRUCTION SITE SHALL NOT BE LIABLE UNDER SUBSECTION (3) OF THIS SECTION.

(2) IF THE PARTIES TO A CONTRACT THAT INCLUDES CONSTRUCTION WORK AGREE THAT PART OF THE CONTRACT PRICE SHALL BE WITHHELD TO COVER WORKERS' COMPENSATION PREMIUMS FOR COVERAGE REQUIRED UNDER THIS SECTION, THE PREMIUMS SHALL BE CALCULATED BASED ONLY ON THAT PORTION OF THE CONTRACT PRICE THAT REPRESENTS THE LABOR PORTION OF THE CONTRACT.

(3) A VIOLATION OF SUBSECTION (1) OF THIS SECTION IS PUNISHABLE BY AN ADMINISTRATIVE FINE IMPOSED PURSUANT TO SECTION 8-43-409 (1) (b). THE DIVISION SHALL TRANSMIT REVENUES COLLECTED THROUGH THE IMPOSITION OF FINES PURSUANT TO THIS SECTION TO THE STATE TREASURER, WHO SHALL CREDIT THEM TO THE WORKERS' COMPENSATION CASH FUND CREATED IN SECTION 8-44-112 (7). SUCH REVENUES SHALL BE APPROPRIATED TO THE DIVISION FOR THE PURPOSE OF ENFORCING THIS SECTION.

(4) (a) THIS SECTION SHALL NOT APPLY TO:

(I) AN OWNER OR OCCUPANT, OR BOTH, OF RESIDENTIAL REAL PROPERTY THAT MEETS THE DEFINITION OF A "QUALIFIED RESIDENCE" UNDER SECTION 163 (h) (4) (A) OF THE FEDERAL "INTERNAL REVENUE CODE OF 1986", AS AMENDED, WHO CONTRACTS OUT ANY WORK DONE TO THE REAL PROPERTY, UNLESS THE PERSON PERFORMING THE WORK IS OTHERWISE AN EMPLOYEE OF THE OWNER OR OCCUPANT, OR BOTH, OF THE REAL PROPERTY;

(II) AN OWNER OR OCCUPANT OF REAL PROPERTY WHO HIRES A PERSON OR PERSONS SPECIFICALLY TO DO ROUTINE REPAIR AND MAINTENANCE ON THE REAL PROPERTY OF SUCH OWNER OR OCCUPANT;

(III) AN INDEPENDENT CONTRACTOR, WHO IS A NATURAL PERSON, WHO HAS FORMED A CORPORATION PURSUANT TO SECTION 7-102-103, C.R.S., OR A LIMITED LIABILITY COMPANY PURSUANT TO SECTION 7-80-203, C.R.S., AND WHO HAS REJECTED WORKERS' COMPENSATION COVERAGE PURSUANT TO SECTION 8-41-202;

(IV) CORPORATE OFFICERS AND MEMBERS OF A LIMITED LIABILITY COMPANY WHO HAVE REJECTED WORKERS' COMPENSATION COVERAGE PURSUANT TO SECTION 8-41-202;

(V) A PARTNER IN A PARTNERSHIP WHO HAS FILED A CERTIFICATE OF LIMITED PARTNERSHIP PURSUANT TO SECTION 7-62-201, C.R.S., A PARTNERSHIP REGISTRATION STATEMENT PURSUANT TO SECTION 7-60-144 OR 7-64-1002, C.R.S., OR A STATEMENT OF TRADE NAME PURSUANT TO SECTION 7-71-103, C.R.S., AND HAS FILED WITH THE DIVISION A FORM, APPROVED BY THE DIRECTOR, REJECTING WORKERS' COMPENSATION; OR

(VI) A SOLE PROPRIETOR WHO HAS FILED A STATEMENT OF TRADE NAME PURSUANT TO SECTION 7-71-103, C.R.S., AND HAS FILED WITH THE DIVISION A FORM, APPROVED BY THE DIRECTOR, REJECTING WORKERS' COMPENSATION.

(b) NOTHING IN THIS SECTION SHALL BE CONSTRUED TO LIMIT THE RESPONSIBILITY OF CORPORATIONS, LIMITED LIABILITY COMPANIES, PARTNERSHIPS, OR SOLE PROPRIETORSHIPS TO PROVIDE COVERAGE FOR THEIR EMPLOYEES AS REQUIRED UNDER ARTICLES 40 TO 47 OF THIS TITLE.

(5) AS USED IN THIS SECTION:

(a) "CONSTRUCTION SITE" MEANS A LOCATION WHERE A STRUCTURE THAT IS ATTACHED OR WILL BE ATTACHED TO REAL PROPERTY IS CONSTRUCTED, ALTERED, OR REMODELED.

(b) "CONSTRUCTION WORK" INCLUDES ALL OR ANY PART OF THE CONSTRUCTION, ALTERATION, OR REMODELING OF A STRUCTURE. "CONSTRUCTION WORK" DOES NOT INCLUDE SURVEYING, ENGINEERING, EXAMINATION, OR INSPECTION OF A CONSTRUCTION SITE OR THE DELIVERY OF MATERIALS TO A CONSTRUCTION SITE.

(c) "PROOF OF WORKERS' COMPENSATION COVERAGE" INCLUDES A CERTIFICATE OR OTHER WRITTEN CONFIRMATION, ISSUED BY THE INSURER OR AUTHORIZED AGENT OF THE INSURER, OF THE EXISTENCE OF WORKERS' COMPENSATION COVERAGE IN FORCE DURING THE PERIOD OF THE PERFORMANCE OF CONSTRUCTION WORK ON THE CONSTRUCTION SITE.

SECTION 2. Effective date - applicability. This act shall take effect upon passage and shall apply to acts occurring on or after October 1, 2007.

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: June 1, 2007