Colorado Revised Statutes 2020

TITLE 8

LABOR AND INDUSTRY

LABOR I - DEPARTMENT OF LABOR AND EMPLOYMENT

Division of Labor - Industrial Claim Appeals Office

Cross references: For the duty of the department of labor and employment with respect to the Colorado customized training program, see § 23-60-306.

ARTICLE 1

Division of Labor -
Industrial Claim Appeals Office

8-1-101. Definitions. As used in this article, unless the context otherwise requires:

(1) "Commission" means the industrial commission of Colorado, as said commission existed prior to July 1, 1986.

(2) "Commissioner" means one of the members of the commission.

(2.5) "Department" means the department of labor and employment.

(3) "Deputy" means any person employed by the division designated as such deputy by the director, and who may be engaged in the performance of duties under the direction of the director.

(4) "Director" means the director of the division of labor standards and statistics.

(5) "Division" means the division of labor standards and statistics in the department of labor and employment.

(6) "Employee" means every person in the service of an employer, under any contract of hire, express or implied, not including an elective official of the state, or of any county, city, town, irrigation, drainage, or school district thereof, and not including any officers or enlisted men of the National Guard of the state of Colorado.

(7) (a) "Employer" means:

(I) The state, and each county, city, town, irrigation, and school district therein, and all public institutions and administrative boards thereof having four or more employees;

(II) Every person, association of persons, firm, and private corporation, including any public service corporation, manager, personal representative, assignee, trustee, and receiver, who has four or more persons regularly engaged in the same business or employment, except as otherwise expressly provided in this article, in service under any contract of hire, expressed or implied.

(b) This article is not intended to apply to employers of private domestic servants or farm and ranch labor; nor to employers who employ less than four employees regularly in the same business, or in or about the same place of employment.

(8) "Employment" means any trade, occupation, job, position, or process of manufacture or any method of carrying on any such trade, occupation, job, position, or process of manufacture in which any person is engaged, except as otherwise expressly provided in this article.

(8.5) "Executive director" means the executive director of the department of labor and employment.

(9) "General order" means an order of the director applying generally throughout the state to all persons, employments, or places of employment under the jurisdiction of the division. All other orders of the director shall be considered special orders.

(10) "Local order" means any ordinance, order, rule, or determination of any common council, board of aldermen, board of supervisors, board of trustees, or board of commissioners of any county, town, city, or city and county operating under any general or special law of this state or of the board of health of the state or any municipality therein or any order or direction of any official of the state or municipality therein.

(11) "Order" means any decision, rule, regulation, requirement, or standard promulgated by the director.

(12) "Place of employment" means every place, whether indoors or outdoors or underground, and the premises, work places, works, and plants appertaining thereto or used in connection therewith where either temporarily or permanently any industry, trade, or business is carried on, or where any process or operation directly or indirectly relating to any industry, trade, or business is carried on, or where any person is directly or indirectly employed by another for direct or indirect gain or profit, except as otherwise expressly provided in this article.

(13) "Safe" or "safety", as applied to an employment or place of employment, means such freedom from danger to the life, health, and safety of employees and such reasonable means of notification, egress, and escape in case of catastrophe as the nature of the employment reasonably permits.

(14) "State personnel system" means the personnel system of the state as described in section 13 of article XII of the state constitution and the state personnel system as described in article 50 of title 24, C.R.S.

Source: L. 15: pp. 562, 563, §§ 1, 2, 4. **L. 21:** p. 828, § 2. **C.L.** §§ 4325, 4326, 4328. **CSA:** C. 97, §§ 1, 2, 4. **CRS 53:** §§ 80-1-1 to 80-1-3. **C.R.S. 1963:** §§ 80-1-1 to 80-1-3. **L. 69:** p. 573, §§ 18-20. **L. 72:** p. 601, §§ 94-96. **L. 86:** (1) and (11) amended and (2.5) and (8.5) added, p. 464, § 3, effective July 1. **L. 2008:** (14) added, p. 292, § 1, effective April 3. **L. 2016:** (4) and (5) amended, (HB 16-1323), ch. 131, p. 375, § 1, effective August 10.

8-1-102. Industrial claim appeals office - creation - powers and duties. (1) There is hereby created in the office of the executive director of the department of labor and employment the industrial claim appeals office, which may consist of five industrial claim appeals examiners, who shall be appointed to serve on the industrial claim appeals panel by the executive director pursuant to section 13 of article XII of the state constitution and the laws and rules governing the state personnel system. Each industrial claim appeals examiner shall exercise such examiner's

powers and perform such examiner's duties and functions in the industrial claim appeals office within the office of the executive director of the department as if transferred thereto by a **type 2** transfer as such transfer is defined in the "Administrative Organization Act of 1968", article 1 of title 24, C.R.S. Decisions and orders of the industrial claim appeals panel may be made by two appeals examiners. In the event of a disagreement between such two appeals examiners, a third appeals examiner shall review the case, and the decision and final order of the appeals panel shall reflect the collective decision of all three appeals examiners.

(2) The industrial claim appeals panel has the duty and the power to conduct administrative appellate review of any order entered pursuant to articles 43 and 74 of this title and to make a decision on said appeal.

Source: L. 15: p. 564, § 5. **C.L.** § 4329. **CSA:** C. 97, § 5. **CRS 53:** § 80-1-4. **C.R.S. 1963:** § 80-1-4. **L. 69:** p. 574, § 21. **L. 83:** (1) amended, p. 401, § 1, effective July 1. **L. 84:** (1) amended, p. 298, § 1, effective July 1. **L. 86:** Entire section R&RE, p. 463, § 3, effective July 1. **L. 89:** (1) amended, p. 371, § 1, effective July 1. **L. 91:** (2) amended, p. 1291, § 1, effective July 1. **L. 92:** (1) amended, p. 1811, § 1, effective March 19.

Cross references: For the powers, duties, and functions of the industrial claim appeals office, see articles 43 and 74 of this title.

8-1-103. Division of labor standards and statistics - director - employees - qualifications - compensation - expenses. (1) There is hereby created a division of labor standards and statistics in the department of labor and employment. Pursuant to section 13 of article XII of the state constitution, the executive director of the department of labor and employment shall appoint the director of the division, and the director shall appoint such deputies, experts, statisticians, accountants, inspectors, clerks, and other employees as are necessary to carry out the provisions of law and to perform the duties and exercise the powers conferred by law upon the division and the director. The director shall be the chief administrative officer of the division with such powers, duties, and functions as prescribed by law.

(2) All employees, except experts, shall have been for one year prior to such employment or appointment bona fide residents of this state and, while in the employ of the division, shall receive such compensation as is fixed by the state personnel system laws of this state, such compensation to be paid monthly from funds appropriated for the use of the division. All expenses incurred by the division and its employees pursuant to the provisions of law shall be paid from funds appropriated for its use upon the approval of the director. The traveling expenses of the director or of any employee of the division incurred while on business of the division outside this state shall be paid in the manner prescribed in this subsection (2), but only when such expenses are authorized in advance.

(3) The powers, duties, and functions of the director prescribed under this article, including rule-making, regulation, licensing, promulgation of rules, rates, regulations, and standards, and the rendering of findings, orders, and adjudications, shall be performed under the direction and supervision of the executive director of the department of labor and employment, as prescribed by section 24-1-105 (4), C.R.S.

Source: L. 15: p. 566, § 6. **L. 21:** p. 830, § 3. **C.L.** § 4330. **CSA:** C. 97, § 6. **CRS 53:** § 80-1-5. **C.R.S. 1963:** § 80-1-5. **L. 69:** p. 574, § 22. **L. 71:** p. 106, § 18. **L. 83:** (3) added, p. 403, § 1, effective May 25. **L. 2016:** (1) amended, (HB 16-1323), ch. 131, p. 375, § 2, effective August 10.

8-1-104. Director - seal.

(1) Repealed.

(2) The director shall have a seal upon which shall be inscribed the words "Director - Division of Labor Standards and Statistics - Department of Labor and Employment - Colorado - Seal". The director's seal shall be affixed to all orders, awards, and copies thereof of the division and to such other instruments as the director shall direct.

(3) All courts of the state shall take judicial notice of said seal. Any copy of an order, award, or record of the director under his seal shall be received in all courts as evidence as if such copy were the original thereof.

Source: L. 15: p. 567, § 7. **C.L.** § 4331. **CSA:** C. 97, § 7. **CRS 53:** § 80-1-6. **C.R.S. 1963:** § 80-1-6. **L. 69:** p. 575, § 23. **L. 86:** (1) repealed and (3) amended, pp. 502, 464, §§ 125, 5, effective July 1. **L. 2016:** (2) amended, (HB 16-1323), ch. 131, p. 376, § 3, effective August 10.

8-1-105. Offices and supplies. The division shall have offices in the city and county of Denver and at such other places in the state as the executive director of the department may direct. The division shall be provided with suitable office space by the office of state planning and budgeting. The division is authorized to procure all necessary office furniture, stationery, books, periodicals, maps, instruments, apparatus, appliances, and other supplies and incur such other expenses as necessary, and the same shall be paid for in the same manner as other expenses authorized by law. The director or any deputy or referee of the division may hold sessions at any place other than the city and county of Denver when the convenience of the director, deputy, referee, or parties interested requires.

Source: L. 15: p. 567, § 8. **C.L.** § 4332. **CSA:** C. 97, § 8. **CRS 53:** § 80-1-7. **C.R.S. 1963:** § 80-1-7. **L. 69:** p. 575, § 24. **L. 75:** Entire section amended, p. 818, § 5, effective July 18. **L. 86:** Entire section amended, p. 464, § 6, effective July 1.

8-1-106. Records - sessions.

(1) Repealed.

(2) The division shall keep a full and accurate record of all proceedings of the division and issue all necessary processes, writs, warrants, orders, awards, and notices as the director or any deputy or referee may require. The director shall supervise the collection of data and information concerning matters within the jurisdiction of the division and shall make such reports thereon as the executive director of the department of labor and employment may require.

(3) The sessions of the director or any deputy or referee of the division shall be open to the public and shall stand and be adjourned without further notice thereof on the record. All proceedings of the division shall be shown on its records, which shall be public records.

Source: L. 15: p. 567, § 9. **C.L.** § 4333. **CSA:** C. 97, § 9. **CRS 53:** § 80-1-8. **C.R.S. 1963:** § 80-1-8. **L. 69:** p. 575, § 25. **L. 86:** (3) amended and (1) repealed, pp. 464, 502, §§ 7, 125, effective July 1.

8-1-107. Powers and duties of director - rules.

(1) Repealed.

(2) In addition to any other duties prescribed by law, the director has the duty and the power to:

(a) Appoint advisors who, without compensation, shall advise the director relative to the duties imposed upon the director by articles 1 to 18 of this title and part 3 of article 34 of title 24, C.R.S.;

(b) Inquire into and supervise the enforcement, with respect to relations between employer and employee, of the laws relating to child labor, laundries, stores, factory inspection, employment offices and bureaus, and fire escapes and means of egress from places of employment and all other laws protecting the life, health, and safety of employees in employments and places of employment;

(c) to (h) Repealed.

(i) Accept, use, disburse, and administer all federal aid or other property, services, and moneys allotted to the division as part of any grant-in-aid safety program authorized by an act of congress and to make such agreements, not inconsistent with any act of congress and the laws of this state, as may be required as a condition precedent to receiving such funds or other assistance. Such acceptance, conditions, and agreement shall not be effective unless and until the director has recommended to and received the written approval of the governor and the executive director of the department. The state treasurer is designated custodian of all funds received pursuant to this paragraph (i) from the federal government, and he shall hold such funds separate and distinct from state funds and is authorized to make disbursements from such funds for the designated purpose or administrative costs which may be provided in such grants-in-aid, upon warrants issued by the controller and upon the voucher of the director.

(j) Repealed.

(k) Collect and collate statistical and other information relating to the work under his jurisdiction. All materials of the division circulated in quantity outside the executive branch shall be issued in accordance with the provisions of section 24-1-136, C.R.S. The director shall cause to be printed and, upon application, furnished free of charge to any employer or employee such blank forms as he shall deem required for the proper and efficient administration of articles 1 to 18 of this title and part 3 of article 34 of title 24, C.R.S., all such records to be kept in the offices of the division. Copies of orders, regulations, and rules of procedure shall be made for distribution in a manner to constitute sufficient publication as required by law.

(l) to (o) Repealed.

(p) Adopt reasonable and proper rules and regulations relative to the exercise of his powers and proper rules and regulations to govern the proceedings of the division and to regulate the manner of investigations and hearings and to amend said rules and regulations from time to time in his discretion. Such rules and regulations, and amendments thereto, shall be made in accordance with section 24-4-103, C.R.S.

(q) Repealed.

(r) Promulgate rules to implement the provisions of section 26-2-716 (3)(b), C.R.S.

Source: L. 15: p. 568, § 11. **L. 21:** p. 831, § 4. **C.L.** § 4335. **CSA:** C. 97, § 11. **CRS 53:** § 80-1-9. **L. 56:** p. 158, § 1. **C.R.S. 1963:** § 80-1-9. **L. 64:** p. 147, § 80. **L. 69:** p. 576, § 26. **L. 73:** p. 917, § 2. **L. 75:** (1)(f), (2)(c), (2)(d), and (2)(l) amended, (1)(g) and (2)(m) added, and (1)(b), (1)(c), and (1)(d) repealed, pp. 274, 286, §§ 1, 2, 22, effective July 25. **L. 77:** (2)(a) and (2)(k) amended, p. 414, § 1, effective June 1; (2)(n) added, p. 418, § 1, effective June 1; (2)(b) amended, p. 416, § 1, effective June 9; (2)(b) amended, p. 428, § 1, effective July 1. **L. 80:** (2)(d) amended and (2)(c), (2)(e), (2)(l), and (2)(m) repealed, pp. 449, 451, §§ 1, 6, effective April 13. **L. 81:** (1)(d) R&RE, p. 457, § 1, effective March 27; (1)(h) added, p. 509, § 1, effective July 1. **L. 83:** (2)(a) and (2)(k) amended, p. 700, § 2, effective June 10; (2)(j) and (2)(k) amended, p. 825, § 2, effective July 1. **L. 84:** (2)(f) and (2)(g) repealed, p. 1116, § 2, effective June 7. **L. 85:** (1)(g) amended, p. 337, § 2, effective July 1. **L. 86:** (2)(a), (2)(d), (2)(i), and (2)(k) amended and (2)(o) and (2)(p) added, p. 465, § 8, effective July 1; (1) repealed, p. 502, § 125, effective July 1. **L. 91:** (2)(h) repealed, p. 1291, § 2, effective July 1. **L. 95:** (2)(q) added, p. 418, § 3, effective July 1. **L. 97:** (2)(j) repealed, p.1473, § 5, effective June 3; (2)(r) added, p. 1239, § 34, effective July 1. **L. 2001:** (2)(d), (2)(n), (2)(o), and (2)(q) repealed, p. 1139, § 67, effective June 5.

8-1-108. Orders effective - when - validity presumed. (1) All general orders shall be effective ten days after they are adopted by the director and posted upon the bulletin board of the division in its offices in the city and county of Denver. Special orders shall take effect as therein directed.

(2) The director, upon application of any person, may grant such time as may be reasonably necessary for compliance with any order. Any person may petition the director for an extension of time, which the director shall grant if he finds such an extension of time necessary.

(3) All orders of the division shall be valid and in force and prima facie reasonable and lawful until they are found otherwise in an action brought for that purpose, pursuant to the provisions of this article, or until altered or revoked by the director.

(4) Substantial compliance with the requirements of this article shall be sufficient to give effect to the orders or awards of the director, and they shall not be declared inoperative, illegal, or void for any omission of a technical nature with respect thereto.

Source: L. 15: p. 570, § 12. **L. 21:** p. 834, § 5. **C.L.** § 4336. **CSA:** C. 97, § 12. **CRS 53:** § 80-1-10. **C.R.S. 1963:** § 80-1-10. **L. 69:** p. 577, § 27. **L. 72:** p. 602, § 97. **L. 86:** (1) and (3) amended, p. 1223, § 39, effective July 1; (4) amended, p. 466, § 9, effective July 1.

Cross references: For the nonapplicability of this section to the "Labor Peace Act", see § 8-3-123.

8-1-109. Employer to furnish safe place to work. (Repealed)

Source: L. 15: p. 570, § 13. **C.L.** § 4337. **CSA:** C. 97, § 13. **CRS 53:** § 80-1-11. **C.R.S. 1963:** § 80-1-11. **L. 73:** p. 919, § 3. **L. 75:** Entire section repealed, p. 286, § 22, effective July 25.

8-1-110. Unsafe places - investigation - report - order. (Repealed)

Source: L. 15: p. 571, § 14. **C.L.** § 4338. **CSA:** C. 97. **CRS 53:** § 80-1-12. **C.R.S. 1963:**, § 80-1-12. **L. 69:** p. 578, § 28. **L. 72:** p. 602, § 98. **L. 73:** p. 919, § 4. **L. 75:** Entire section repealed, p. 286, § 22, effective July 25.

8-1-111. Jurisdiction over employer and employee relation. The director is vested with the power and jurisdiction to have such supervision of every employment and place of employment in this state as may be necessary adequately to ascertain and determine the conditions under which the employees labor, and the manner and extent of the obedience by the employer to all laws and all lawful orders requiring such employment and places of employment to be safe, and requiring the protection of the life, health, and safety of every employee in such employment or place of employment, and to enforce all provisions of law relating thereto. The director is also vested with power and jurisdiction to administer all provisions of this article with respect to the relations between employer and employee and to do all other acts and things convenient and necessary to accomplish the purposes of this article including entering into reciprocal agreements with other states and governmental entities.

Source: L. 15: p. 571, § 15. **C.L.** § 4339. **CSA:** C. 97, § 17. **CRS 53:** § 80-1-15. **C.R.S. 1963:** § 80-1-15. **L. 69:** p. 578, § 29. **L. 72:** p. 602, § 99. **L. 93:** Entire section amended, p. 867, § 1, effective May 6.

8-1-112. Officers to assist in enforcing orders. It is the duty of all officers and employees of the state, counties, and municipalities, upon request of the director, to enforce in their respective departments all lawful orders of the director, insofar as the same may be applicable and consistent with the general duties of such officers and employees. It is also their duty to make such reports as the director may require concerning matters within their knowledge pertaining to the purposes of this article and to furnish to the division such facts, data, statistics, and information as may from time to time come to them pertaining to the purposes of this article and the duties of the division thereunder, and particularly all information coming to their knowledge respecting the condition of all places of employment subject to the provisions of this article as regards the health, protection, and safety of employees and the conditions under which they labor. It is the duty of the division to collect and compile such data, facts, and information as shall come to it concerning the relations between employer and employee and relating in any way to the provisions of this article.

Source: L. 15: p. 571, § 16. **C.L.** § 4340. **CSA:** C. 97, § 18. **CRS 53:** § 80-1-16. **C.R.S. 1963:** § 80-1-16. **L. 69:** p. 578, § 30. **L. 72:** p. 603, § 100.

Cross references: For the duty of governmental officers and employees to enforce orders and furnish information pursuant to the "Workers' Compensation Act of Colorado", see § 8-47-110.

8-1-113. Agents of division and director - powers. (1) For the purpose of making any investigation with regard to any employment or place of employment or other matter contemplated by the provisions of this article, the director, with the approval of the executive director of the department of labor and employment, has the power to appoint temporarily, by an

order in writing, any deputy or any other competent person as an agent, whose duties shall be prescribed in such order.

(2) In the discharge of his duties such agent has every power whatsoever for obtaining information granted in this article to the director and the division, and all powers granted by law to officers authorized to take depositions are granted to such agent.

(3) The director may conduct any number of investigations contemporaneously through different agents and may delegate to such agents the taking of all testimony bearing upon any investigation or hearing. The decision of the director shall be based upon his examination of all testimony and records. The recommendations made by such agent shall be advisory only and shall not preclude any further investigation or the taking of further testimony if the director so orders.

Source: L. 15: p. 572, § 17. **C.L.** § 4341. **CSA:** C. 97, § 19. **CRS 53:** § 80-1-17. **C.R.S. 1963:** § 80-1-17. **L. 69:** p. 579, § 31. **L. 72:** p. 603, § 101.

8-1-114. Employers and employees to furnish information - penalty. (1) Upon request, every employer and employee shall furnish the division all information required by it to accomplish the purposes of this article, which information shall be furnished on blanks to be prepared by the division. It is the duty of the division to furnish such blanks to the employer free of charge upon request therefor. Every employer receiving from the division any blanks, with directions to fill out same, shall answer fully and correctly all questions therein propounded and give all the information therein sought, or, if unable to do so, he shall give in writing good and sufficient reasons for the failure. The director may require that the information required to be furnished be verified under oath and returned to the division within the period fixed by him or by law. The director, or any person employed by the division for that purpose, has the right to examine, under oath, any employee or employer, or the officer, agent, or employee thereof, for the purpose of ascertaining any information which such employer or employee is required by this article to furnish to the division.

(2) Any employer or employee who fails or refuses to furnish such information as may be required by the division under authority of this article is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of two hundred dollars if an employer and twenty-five dollars if an employee.

Source: L. 15: p. 572, § 18. **C.L.** § 4342. **CSA:** C. 97, § 20. **CRS 53:** § 80-1-18. **C.R.S. 1963:** § 80-1-18. **L. 69:** p. 579, § 32. **L. 72:** p. 603, § 102.

8-1-115. Information not public - penalty for divulging. (1) (a) The information contained in the reports lawfully required to be furnished by the employer in section 8-1-114, other information furnished to the division by employers and employees in pursuance of this article 1, and information obtained through inspections or other proceedings under this article 1 that reveals a trade secret is for the exclusive use and information of the division in the discharge of its official duties. An employer may designate information submitted to the division as proprietary, a trade secret, or privileged information in accordance with section 24-72-204 (3), as long as the director is not bound by the employer's designation. The director may treat and file the information or any part of the information as confidential, and, when so treated or filed by

the director, the information is confidential, for the sole use of the division, and not open to the public nor to be used in any court in any action or proceeding pending therein unless the division is a party to the action or proceeding. The court shall issue orders as appropriate to protect the confidentiality of trade secrets. The information contained in a report may be tabulated and published by the division in statistical form for the use and information of other state departments and the public.

(b) Notwithstanding subsection (1)(a) of this section, the division shall treat any notice of citation or notice of assessment issued to an employer for violation of a wage law, including a violation of section 8-4-111 (2)(c), after all remedies have been exhausted pursuant to section 8-4-111.5, as a public record and shall release the information to the public upon request pursuant to the "Colorado Open Records Act", part 2 of article 72 of title 24, unless the director makes a determination that the information is a trade secret. Before releasing any information relating to the violation of a wage law, the director shall notify the employer of the potential release of the information. The employer then has twenty days to provide the director with further documentation demonstrating that the information, or specific matters included in the information, is a trade secret. If the director, in the director's discretion, determines that the information, or any portion of the information, is a trade secret, the director shall treat the information as confidential under this subsection (1). For purposes of this subsection (1)(b), "trade secret" has the same meaning as set forth in section 7-74-102 (4).

(2) Any person in the employ of the division who divulges any confidential information to any person other than the director shall be punished by a fine of not more than one thousand dollars and shall thereafter be disqualified from holding any appointment or employment with any department under the state.

(3) Pursuant to this section, the director shall provide a physical environment and establish policies and procedures to ensure confidentiality for all information regarding any employer, employee, or person pertaining to any action pursuant to articles 1 to 13 of this title; except that such information may be released if there exists an overriding need for access to such information arising pursuant to articles 1 to 13 of this title in connection with:

(a) A dispute resolution, a mediation, or an administrative or judicial proceeding; or

(b) A cooperative effort with another subdivision of government.

Source: L. 15: p. 573, § 19. **L. 21:** p. 835, § 6. **C.L.** § 4343. **CSA:** C. 97, § 21. **CRS 53:** § 80-1-19. **C.R.S. 1963:** § 80-1-19. **L. 69:** p. 580, § 33. **L. 72:** p. 604, § 103. **L. 73:** p. 919, § 5. **L. 75:** (1) amended, p. 275, § 3, effective July 25. **L. 80:** (1) amended, p. 449, § 2, effective April 13. **L. 86:** (2) amended, p. 466, § 10, effective July 1. **L. 93:** (3) added, p. 867, § 2, effective May 6. **L. 2017:** (1) amended, (HB 17-1021), ch. 126, p. 433, § 1, effective April 13.

Cross references: For the "Uniform Trade Secrets Act", see article 74 of title 7.

8-1-116. Investigators to have access to premises. (1) The director and any other person authorized in writing by the director at any reasonable time may enter any building, surface construction and demolition, factory, workshop, place, or premises of any kind wherein, or in respect of which, any industry except mining is carried on, any work is being or has been done or commenced, or any matter or thing is taking place which has been made the subject of any investigation, hearing, or arbitration by the division; inspect any work, material, machinery,

appliance, or article therein; and interrogate any persons in or upon any such building, factory, workshop, place, or premises, except mines, mine workings, and ore milling operations, with respect to any matter or thing mentioned in this article.

(2) Any person who hinders or obstructs the director or any such person authorized by the director in the exercise of any power conferred by this article, or any employer who in bad faith refuses reasonable access to his premises, or any person who gives advance notice of any inspection to be conducted under this article without authority from the director or his designee is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than one thousand dollars, or by imprisonment in the county jail for not more than six months, or by both such fine and imprisonment.

Source: L. 15: p. 574, § 20. **C.L.** § 4344. **CSA:** C. 97, § 22. **CRS 53:** § 80-1-20. **C.R.S. 1963:** § 80-1-20. **L. 69:** p. 580, § 34. **L. 73:** p. 920, § 6. **L. 75:** Entire section amended, p. 275, § 4, effective July 25. **L. 77:** (1) amended, p. 416, § 2, effective June 9. **L. 80:** Entire section amended, p. 450, § 3, effective April 13.

8-1-117. Director to have access to books - penalty. (1) All books, records, and payrolls of employers, showing or reflecting in any way upon the amount of wage expenditure of such employers, and other data, facts, and statistics appertaining to the purposes of this article shall always be open for inspection by the director or any of his deputies or agents for the purpose of ascertaining the conditions of employment and such other information as may be necessary for the uses and purposes of the director in his administration of the law.

(2) Any employer who refuses to exhibit and furnish said director or any agents of the division an inspection of any books, records, and payrolls of such employer, showing or reflecting in any way upon the amount of wage expenditure of such employers, and other data, facts, and statistics appertaining to the purposes of this article or who refuses to admit such director or any agent of the division to any place of employment shall pay a penalty of not less than fifty dollars for each day that such failure, neglect, or refusal continues.

Source: L. 15: p. 574, § 21. **L. 21:** p. 835, § 7. **C.L.** § 4345. **CSA:** C. 97, § 23. **CRS 53:** § 80-1-21. **C.R.S. 1963:** § 80-1-21. **L. 69:** p. 580, § 35. **L. 72:** p. 604, § 104.

Cross references: For the right of the director to have access to books of employers under the "Workers' Compensation Act of Colorado", see § 8-47-208.

8-1-118. Rules of evidence - procedure. The director, or persons designated by him, shall not be bound by the usual common law or statutory rules of evidence or by any technical or formal rules of procedure, other than as provided in this article or by the rules of the division, but he may make such investigations in such manner as in his judgment are best calculated to ascertain the substantial rights of the parties and to carry out justly the spirit of this article.

Source: L. 15: p. 574, § 22. **C.L.** § 4346. **CSA:** C. 97, § 24. **CRS 53:** § 80-1-22. **C.R.S. 1963:** § 80-1-22. **L. 69:** p. 581, § 36. **L. 72:** p. 604, § 105. **L. 86:** Entire section amended, p. 466, § 11, effective July 1.

8-1-119. Record of proceedings. (1) A full and complete record shall be kept of all proceedings had before or under the order of the director on any investigation, and all testimony shall be taken down by a shorthand reporter appointed by the director.

(2) A transcribed copy of the evidence and proceedings, or any specific part thereof, of any investigation or hearing taken by a shorthand reporter appointed by the director, being certified by such shorthand reporter to be a true and correct transcript of the testimony, or a specific part thereof, on the investigation or hearing of a particular witness, carefully compared by him with his original notes, and to be a correct statement of the evidence and proceedings had on such investigation or hearing so purporting to be taken and subscribed, may be received as evidence by the director or any agent of the division and by any court with the same effect as if such shorthand reporter were present and testified to the facts so certified. A copy of such transcript shall be furnished on demand to any party upon the payment of fifty cents per folio.

Source: L. 15: p. 575, § 23. **L. 21:** p. 836, § 8. **C.L.** § 4347. **CSA:** C. 97, § 25. **CRS 53:** § 80-1-23. **C.R.S. 1963:** § 80-1-23. **L. 69:** p. 581, § 37. **L. 75:** (2) amended, p. 291, § 1, effective July 25. **L. 82:** Entire section amended, p. 620, § 5, effective April 2. **L. 86:** (2) amended, p. 466, § 12, effective July 1.

8-1-120. Depositions. In any investigation, the director or any other party may cause the depositions of witnesses residing within or without the state to be taken in the manner prescribed by law for like depositions in civil actions in district courts. All such depositions shall be taken upon commission issued by the director and shall be taken in accordance with the laws and rules of court covering depositions in civil cases in the district courts of this state.

Source: L. 15: p. 575, § 24. **C.L.** § 4348. **CSA:** C. 97, § 26. **CRS 53:** § 80-1-24. **C.R.S. 1963:** § 80-1-24. **L. 69:** p. 581, § 38.

Cross references: For depositions in general, see C.R.C.P. 26-37; for the nonapplicability of this section to the "Labor Peace Act", see § 8-3-123.

8-1-121. Contempt - punishment - fees. (1) In case of failure or refusal of any person to comply with an order of the director or subpoena issued by him or his agents, or refusal of a witness to testify to any matter regarding which he may be lawfully interrogated, or refusal to permit an inspection as provided in this article, the judge of the district court for the county in which the person resides or of the county in which said person has been ordered to appear and testify before said director, on application of the director or any person appointed by him, shall compel obedience by attachment proceedings as in the case of disobedience of the requirements of a subpoena issued from such district court or on a refusal to testify therein.

(2) Any person serving a subpoena or order shall receive the same fees as a sheriff for like service. Such subpoena or order may be served by any officer duly authorized to subpoena witnesses, or by any person designated by the director for such purpose, and proof of the serving of such subpoena or order shall be by the return of such person or officer endorsed thereon or attached thereto. Each witness who appears in answer to a subpoena before the director or his agent, if so ordered by the director, shall receive for his attendance the fees and mileage

provided for in civil cases in the district court in the county where such witness attends which shall be paid in the same manner as other expenses of the division are paid.

(3) No witness subpoenaed at the instance of a party other than the director or his agent shall be entitled to compensation unless the director in his discretion shall so order.

Source: L. 15: p. 575, § 25. **L. 21:** p. 837, § 9. **C.L.** § 4349. **CSA:** C. 97, § 27. **CRS 53:** § 80-1-25. **C.R.S. 1963:** § 80-1-25. **L. 69:** p. 581, § 39. **L. 72:** p. 605, § 106.

Cross references: For contempt proceedings, see C.R.C.P. 107; for sheriff's fees, see § 30-1-104; for witness fees and mileage fees, see §§ 13-33-102 and 13-33-103.

8-1-122. Inquiries - scope - report. (1) The director shall inquire into the general condition of labor in the principal industries in the state of Colorado and especially in those which are carried on in corporate forms; into existing relations between employers and employees; into the effect of industrial conditions on public welfare and into the rights and powers of the community to deal therewith; into the conditions of sanitation and safety of employees and the provisions for protecting the life, limb, and health of the employees; into relations existing between lessees of state lands and the state as to production and royalties or rentals paid and the relations between said lessees and their employees with respect to wages paid and conditions of labor; into the growth of associations of employers and wage earners and the effect of such associations upon the relations between employers and employees; into the extent and results of methods of collective bargaining; into any methods which have been tried in any state or in foreign countries for maintaining mutually satisfactory relations between employees and employers; into methods of avoiding or adjusting labor disputes through peaceable and conciliatory mediation and negotiations; and into the scope, methods, and resources of existing bureaus of labor and possible ways of increasing their efficiency and usefulness.

(2) The director shall seek to discover the underlying causes of dissatisfaction in the industrial situation, take all necessary means and methods within the powers of such director as provided by law, to alleviate the same, and report such remedial legislation as in the judgment of the director may be advisable, with his recommendations thereon. Such report shall accompany the annual report required in section 8-1-107 (2)(j).

Source: L. 15: p. 576, § 26. **C.L.** § 4350. **CSA:** C. 97, § 28. **CRS 53:** § 80-1-26. **C.R.S. 1963:** § 80-1-26. **L. 64:** p. 147, § 81. **L. 69:** p. 582, § 40.

8-1-123. Arbitration. The director shall do all in his power to promote the voluntary arbitration, mediation, and conciliation of disputes arising under an existing written agreement between employers and employees and to avoid the necessity of resorting to strikes, lockouts, boycotts, blacklists, discriminations, and legal proceedings in matters of employment. Arbitration undertaken pursuant to this section shall employ the procedures provided in part 2 of article 22 of title 13, C.R.S.

Source: L. 15: p. 577, § 27. **C.L.** § 4351. **CSA:** C. 97, § 29. **CRS 53:** § 80-1-27. **C.R.S. 1963:** § 80-1-27. **L. 69:** p. 582, § 41. **L. 75:** Entire section R&RE, p. 578, § 2, effective July 14.

Cross references: For the illegality of blacklists and boycotts, see §§ 8-2-110 and 8-2-112; for the nonapplicability of this section to the "Labor Peace Act", see § 8-3-123.

8-1-124. Witnesses - rules of evidence. (Repealed)

Source: L. 15: p. 577, § 28. **C.L.** § 4352. **CSA:** C. 97, § 30. **CRS 53:** § 80-1-28. **C.R.S. 1963:** § 80-1-128. **L. 69:** p. 583, § 42. **L. 75:** Entire section repealed, p. 578, § 3, effective July 14.

8-1-125. Disputes - jurisdiction - request for intervention - penalty. (1) The director may exercise jurisdiction over any dispute between employer and employee affecting conditions of employment, or with respect to wages or hours, only when the employer and the employee request such intervention or when the dispute, as determined by the executive director, affects the public interest, and such jurisdiction shall continue until after the final hearing of such dispute and the entry of the final award therein or until said director shall enter an order disposing of or terminating such jurisdiction. The relation of the employer and employee shall continue uninterrupted by the dispute or anything arising out of the dispute until the final determination thereof by said director; and neither the employer nor any employee affected by any such dispute shall alter the conditions of employment with respect to wages or hours or any other condition of said employment; neither shall they, on account of such dispute, do or be concerned in doing directly or indirectly anything in the nature of a lockout or strike or suspension or discontinuance of work or employment.

(2) A request for intervention shall be submitted to the director by both the employer and the employee and shall set forth the facts, issues, or demands involved in the controversy or dispute, and each party to such dispute shall furnish the director such information within the time and as may be requested by the director.

(3) If either party uses this or any other provision of articles 1 to 18 of this title and part 3 of article 34 of title 24, C.R.S., for the purpose of unjustly maintaining a given condition of affairs through delay, such party is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than one hundred dollars.

(4) The director shall proceed with reasonable diligence in hearing all disputes and shall render a final award or decision therein without unnecessary delay.

Source: L. 15: p. 578, § 29. **L. 21:** p. 838, § 10. **C.L.** § 4353. **CSA:** C. 97, § 31. **CRS 53:** § 80-1-29. **C.R.S. 1963:** § 80-1-29. **L. 69:** p. 583, § 43. **L. 77:** (7) amended, p. 414, § 2, effective June 1. **L. 83:** (7) amended, p. 700, § 3, effective June 10. **L. 86:** (7) amended, p. 466, § 13, effective July 1. **L. 90:** Entire section R&RE, p. 461, § 1, effective May 24.

8-1-126. Lockouts and strikes unlawful - when. (1) It is unlawful for any employee in the state personnel system or for any labor organization, through formal action or through its agents, to incite, encourage, aid, or participate in a strike, stoppage of work, slowdown, or interruption of operations by employees in the state personnel system.

(2) It is unlawful for any employer to declare or cause a lockout, or for any employee to go on strike, on account of any dispute prior to or during an investigation, hearing, or arbitration of such dispute by the director, or the board, under the provisions of this article. Nothing in this

article shall prohibit the suspension or discontinuance of any industry or of the working of any persons therein for any cause not constituting a lockout or strike, or to prohibit the suspension or discontinuance of any industry or of the working of any person therein, which industry is not affected with a public interest. Nothing in this article shall be held to restrain any employer from declaring a lockout, or any employee, except an employee who is in the state personnel system, from going on strike in respect to any dispute after the same has been duly investigated, heard, or arbitrated, under the provisions of this article.

Source: L. 15: p. 578, § 30. **L. 21:** p. 840, § 11. **C.L.** § 4354. **L. 23:** p. 721, § 2. **CSA:** C. 97, § 32. **L. 41:** p. 531, § 1. **CRS 53:** § 80-1-30. **C.R.S. 1963:** § 80-1-30. **L. 69:** p. 584, § 44. **L. 72:** p. 605, § 107. **L. 2008:** Entire section amended, p. 292, § 2, effective April 3.

8-1-127. When findings or awards are binding. (Repealed)

Source: L. 15: p. 579, § 31. **L. 21:** p. 840, § 12. **C.L.** § 4355. **CSA:** C. 97, § 33. **CRS 53:** § 80-1-31. **C.R.S. 1963:** § 80-1-31. **L. 69:** p. 584, § 45. **L. 72:** p. 605, § 108. **L. 75:** Entire section repealed, p. 578, § 3, effective July 14.

8-1-128. Petition - writ - dissolution. The director of the division, as petitioner, may file in the district court of the city and county of Denver, or of any county in which the place of employment or any part thereof is situated, a verified petition against any employers or employees, or both, as respondents, and setting forth any violation or threatened or attempted violation of any provisions of section 8-1-125 or 8-1-126, and, thereupon, without bond and without notice, the district court shall issue its mandatory writ enjoining the alleged violations, or attempted or threatened violations of this article, and ordering and requiring the respondents to maintain all the conditions of employment in status quo and without change until after the dispute or controversy has been investigated and heard by the director and the final findings, decision, order, or award of the director made and entered. Any respondent may move the court to dissolve the mandatory writ as to that respondent, and, upon at least five days' notice to the director, the motion shall be set down for hearing, but the mandatory writ shall not be dissolved without proof of full compliance by the respondent with all the provisions of this article and orders of the director and that the continuance in effect of the mandatory writ is causing or will cause the respondent great and irreparable injury. The court may require such security of the respondent as the court determines adequate to enforce obedience to the provisions of this article on the part of the respondent before the mandatory writ is dissolved.

Source: L. 15: p. 579, § 32. **L. 21:** p. 841, § 13. **C.L.** § 4356. **CSA:** C. 97, § 34. **L. 41:** p. 532, § 2. **CRS 53:** § 80-1-32. **C.R.S. 1963:** § 80-1-32. **L. 69:** p. 584, § 46. **L. 72:** p. 605, § 109. **L. 2016:** Entire section amended, (HB 16-1323), ch. 131, p. 376, § 4, effective August 10.

8-1-129. Strikes and lockouts - penalties. (1) Any employer declaring or causing a lockout contrary to the provisions of this article is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than one thousand dollars, or by imprisonment in the county jail for a term of not more than six months, or by both such fine and imprisonment.

Each day or part of a day that such lockout exists shall constitute a separate offense under this section.

(2) Any employee who goes on strike contrary to the provisions of this article is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than fifty dollars, or by imprisonment in the county jail for a term of not more than six months, or by both such fine and imprisonment. Each day or part of a day that the employee is on strike shall constitute a separate offense under this section.

(3) Any person who incites, encourages, or aids in any manner any employer to declare or continue a lockout, or any employee to go or continue on strike contrary to the provisions of this article, is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than one thousand dollars, or by imprisonment in the county jail for a term of not more than six months, or by both such fine and imprisonment.

Source: L. 15: p. 580, § 33. **L. 21:** p. 842, § 14. **C.L.** § 4357. **CSA:** C. 97, § 35. **CRS 53:** § 80-1-33. **C.R.S. 1963:** § 80-1-33. **L. 72:** p. 606, § 110.

8-1-130. Judicial review. The director has full power to hear and determine all questions within his jurisdiction, and his findings, award, and order issued thereon shall be final agency action. Any person affected by any finding, order, or award of the director may seek judicial review as provided in section 24-4-106, C.R.S.

Source: L. 15: p. 580, § 34. **C.L.** § 4358. **CSA:** C. 97, § 36. **CRS 53:** § 80-1-34. **C.R.S. 1963:** § 80-1-34. **L. 69:** p. 585, § 47. **L. 72:** p. 606, § 111. **L. 86:** Entire section amended, p. 467, § 14, effective July 1.

8-1-131. Review - notice - evidence - order. (Repealed)

Source: L. 15: p. 580, § 34. **C.L.** § 4358. **CSA:** C. 97, § 36. **CRS 53:** § 80-1-34. **C.R.S. 1963:** § 80-1-34. **L. 69:** p. 585, § 47. **L. 72:** p. 606, § 111. **L. 86:** Entire section repealed, p. 502, § 125, effective July 1.

8-1-132. Final findings and awards - interlocutory orders - modification. (Repealed)

Source: L. 15: p. 581, § 36. **C.L.** § 4360. **CSA:** C. 97, § 37. **CRS 53:** § 80-1-36. **L. 86:** Entire section repealed, p. 502, § 125, effective July 1.

8-1-132.5. Fact-finding by commission - workmen's compensation. (Repealed)

Source: L. 81: Entire section added, p. 476, § 1, effective May 26. **L. 86:** Entire section repealed, p. 1223, § 40, effective July 1.

8-1-133. Court to modify or vacate - venue. (Repealed)

Source: L. 15: p. 581, § 37. **C.L.** § 4361. **CSA:** C. 97, § 39. **CRS 53:** § 80-1-137. **C.R.S. 1963:** § 80-1-37. **L. 86:** Entire section repealed, p. 502, § 125, effective July 1.

8-1-134. Review - complaint - answer - hearing. (Repealed)

Source: L. 15: p. 582, § 38. **C.L.** § 4362. **CSA:** C. 97, § 40. **CRS 53:** § 80-1-38. **C.R.S. 1963:** § 80-1-38. **L. 69:** p. 586, § 50. **L. 86:** Entire section repealed, p. 502, § 125, effective July 1.

8-1-135. Cause referred back to director and commission - procedure. (Repealed)

Source: L. 15: p. 582, § 39. **C.L.** § 4363. **CSA:** C. 97, § 41. **CRS 53:** § 80-1-39. **C.R.S. 1963:** § 80-1-39. **L. 69:** p. 587, § 51. **L. 86:** Entire section repealed, p. 502, § 125, effective July 1.

8-1-136. Setting aside order of director or commission. (Repealed)

Source: L. 15: p. 583, § 40. **C.L.** § 4364. **CSA:** C. 97, § 42. **CRS 53:** § 80-1-40. **C.R.S. 1963:** § 80-1-40. **L. 69:** p. 587, § 52. **L. 86:** Entire section repealed, p. 502, § 125, effective July 1.

8-1-137. Appellate review. (Repealed)

Source: L. 15: p. 584, § 41. **C.L.** § 4365. **CSA:** C. 97, § 43. **CRS 53:** § 80-1-41. **C.R.S. 1963:** § 80-1-41. **L. 69:** p. 588, § 53. **L. 86:** Entire section repealed, p. 502, § 125, effective July 1.

8-1-138. Fees - costs - counsel for director or commission. (Repealed)

Source: L. 15: p. 584, § 42. **C.L.** § 4366. **CSA:** C. 97, § 44. **CRS 53:** § 80-1-42. **C.R.S. 1963:** § 80-1-42. **L. 69:** p. 588, § 54. **L. 72:** p. 607, § 113. **L. 86:** Entire section repealed, p. 502, § 125, effective July 1.

8-1-139. Failure of witness to appear or testify - penalty. (1) Any person who fails, refuses, or neglects to appear and testify, or to produce books, papers, and records as required by the subpoena duly served upon him, or as ordered by the director, is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than one hundred dollars or by imprisonment in the county jail for not more than thirty days for each day or part of day that the person is in default.

(2) The district court of the county wherein such person resides or of the city and county of Denver, or of the county wherein said person has been ordered to appear and testify or to produce such books, papers, and records, upon application of the director or his agent, may issue an order compelling the attendance and testimony of witnesses and the production of books, papers, and records before such director or his agent.

Source: L. 15: p. 585, § 43. **L. 21:** p. 843, § 15. **C.L.** § 4367. **CSA:** C. 97, § 45. **CRS 53:** § 80-1-43. **C.R.S. 1963:** § 80-1-43. **L. 69:** p. 588, § 55. **L. 86:** Entire section amended, p. 467, § 15, effective July 1.

8-1-140. Violation - penalty. (1) If an employer, employee, or any other person violates any provision of this article, or does any act prohibited thereby, or fails or refuses to perform any duty lawfully enjoined for which no penalty has been specifically provided, such employer, employee, or any other person is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than one hundred dollars, or by imprisonment in the county jail for not longer than sixty days, or by both such fine and imprisonment for each such offense.

(2) If any employer, employee, or any other person fails, refuses, or neglects to perform any duty lawfully enjoined within the time prescribed by the director or fails, neglects, or refuses to obey any lawful order made by the director or any judgment or decree made by any court as provided in this article, for each such violation, such employer, employee, or any other person shall pay a penalty of not less than one hundred dollars for each day such violation, failure, neglect, or refusal continues.

(3) In the case of a corporation, the violation of any of the provisions of this article, including any violation fixed as a misdemeanor or other crime, is considered a violation of the provisions of this article by all officers, agents, and representatives of said corporation aiding, abetting, advising, encouraging, participating, inciting, or acquiescing in such violation, and they are individually guilty of such violation and subject to the fines, penalties, and punishments provided in this article.

Source: L. 15: p. 585, § 44. **L. 21:** p. 843, § 16. **C.L.** § 4368. **CSA:** C. 97, § 46. **CRS 53:** § 80-1-44. **C.R.S. 1963:** § 80-1-44. **L. 69:** p. 589, § 56. **L. 72:** p. 607, § 114. **L. 86:** (2) amended, p. 467, § 16, effective July 1.

8-1-141. Each day separate offense. Every day during which any employer or officer or agent thereof or any employee fails to comply with any lawful order of the director or to perform any duty imposed by this article constitutes a separate and distinct violation thereof.

Source: L. 15: p. 585, § 45. **C.L.** § 4369. **CSA:** C. 97, § 47. **CRS 53:** § 80-1-45. **C.R.S. 1963:** § 80-1-45. **L. 69:** p. 589, § 57. **L. 72:** p. 608, § 115. **L. 86:** Entire section amended, p. 467, § 17, effective July 1.

8-1-142. Collection of penalties. All penalties provided for in this article shall be collected in a civil action brought against the employer or employee in the name of the director. Any fine provided in this article is considered a penalty and recoverable in a civil action as provided in this section unless the violation of this article, for the punishment of which said fine is provided, is designated as a misdemeanor or other crime.

Source: L. 15: p. 585, § 46. **L. 21:** p. 844, § 17. **C.L.** § 4370. **CSA:** C. 97, § 48. **CRS 53:** § 80-1-46. **C.R.S. 1963:** § 80-1-46. **L. 69:** p. 589, § 58. **L. 72:** p. 608, § 116.

8-1-143. Costs - counsel for director - attorney general and district attorney to enforce. (1) In proceedings to review any finding, order, or award, costs as between the parties shall be allowed in the discretion of the court, but no costs may be taxed against the director or the division.

(2) In any action for the review of any finding, order, or award and upon appellate review thereof, it is the duty of the district attorney of the county wherein said action is pending, or the attorney general if requested by the director, to appear on behalf of the division, whether any other party defendants should have appeared or been represented in the action or not. Upon request of the director, the attorney general or the district attorney of any district or county shall institute and prosecute the necessary proceedings for the enforcement of any of the provisions of this article, or for the recovery of any money due the division, or any penalty provided for in this article, and shall defend in like manner all suits, actions, or proceedings brought against the director. No district attorney or any assistant or deputy district attorney, nor the attorney general or deputy or assistant attorney general within this state, shall appear in any proceedings, hearing, investigation, arbitration, award, or compensation matter, except as attorney for and on behalf of said director and employees of the division.

Source: L. 15: p. 586, § 47. **L. 21:** p. 845, § 18. **C.L.** § 4371. **CSA:** C. 97, § 49. **CRS 53:** § 80-1-47. **C.R.S. 1963:** § 80-1-47. **L. 69:** p. 589, § 59. **L. 72:** p. 608, § 117. **L. 86:** Entire section R&RE, p. 467, § 18, effective July 1.

8-1-144. Penalty for false statements. If, for the purpose of obtaining any order, benefit, or award under the provisions of this article, either for himself or herself or for any other person, anyone willfully makes a false statement or representation, he or she commits a class 5 felony, as defined in section 18-1.3-401, C.R.S.

Source: L. 15: p. 586, § 48. **C.L.** § 4372. **CSA:** C. 97, § 50. **CRS 53:** § 80-1-48. **C.R.S. 1963:** § 80-1-48. **L. 72:** pp. 561, 608, §§ 26, 118. **L. 89:** Entire section amended, p. 821, § 4, effective July 1. **L. 2002:** Entire section amended, p. 1466, § 16, effective October 1.

Cross references: For the legislative declaration contained in the 2002 act amending this section, see section 1 of chapter 318, Session Laws of Colorado 2002.

8-1-145. Authority of department of public health and environment not affected. Nothing in this article shall be construed to affect the authority of the department of public health and environment relative to the public health.

Source: L. 15: p. 586, § 50. **C.L.** § 4373. **CSA:** C. 97, § 51. **CRS 53:** § 80-1-49. **C.R.S. 1963:** § 80-1-49. **L. 69:** p. 589, § 60. **L. 72:** p. 609, § 119. **L. 94:** Entire section amended, p. 2721, § 311, effective July 1.

8-1-146. Effect of transfer of powers, duties, and functions.

(1) Repealed.

(2) The division of labor standards and statistics, the division of employment and training, the division of unemployment insurance, the state board of pharmacy, and the industrial claim appeals panel in the industrial claim appeals office, which perform any of the powers, duties, and functions performed by the industrial commission prior to its abolishment on July 1, 1986, are the successors in every way with respect to those powers, duties, and functions, except as otherwise provided in this article or by law. Every act performed in the exercise of those

powers, duties, and functions has the same force and effect as if performed by the commission prior to July 1, 1986. Whenever the commission is referred to or designated by any law, contract, insurance policy, bond, or other document, the reference or designation applies to the division of labor standards and statistics, the division of employment and training, the division of unemployment insurance, the state board of pharmacy, or the industrial claim appeals panel in the industrial claim appeals office, as the case may be.

Source: L. 69: p. 662, § 252. **C.R.S. 1963:** § 80-1-50. **L. 86:** Entire section amended, p. 468, § 19, effective July 1; entire section amended, p. 531, § 26, effective July 1, 1987. **L. 91:** (1) amended, p. 1907, § 5, effective June 1. **L. 2002:** (1) repealed, p. 1880, § 22, effective July 1. **L. 2012:** (2) amended, (HB 12-1120), ch. 27, p. 104, § 9, effective June 1. **L. 2016:** (2) amended, (HB 16-1323), ch. 131, p. 376, § 5, effective August 10.

Editor's note: The effective date for amendments to this section by House Bill 12-1120 (chapter 27, Session Laws of Colorado 2012) was changed from August 8, 2012, to June 1, 2012, by House Bill 12S-1002 (First Extraordinary Session, chapter 2, p. 2432, Session Laws of Colorado 2012).

8-1-147. Actions, suits, or proceedings not to abate by reorganization - maintenance by or against successors. (Repealed)

Source: L. 69: p. 662, § 253. **C.R.S. 1963:** § 80-1-51. **L. 86:** Entire section amended, p. 469, § 20, effective July 1; entire section amended, p. 531, § 27, effective July 1, 1987. **L. 91:** (1) amended, p. 1908, § 6, effective June 1. **L. 2002:** (1) amended, p. 1880, § 23, effective July 1. **L. 2012:** Entire section repealed, (HB 12-1120), ch. 27, p. 104, § 10, effective June 1.

Editor's note: The effective date for the repeal of this section by House Bill 12-1120 (chapter 27, Session Laws of Colorado 2012) was changed from August 8, 2012, to June 1, 2012, by House Bill 12S-1002 (First Extraordinary Session, chapter 2, p. 2432, Session Laws of Colorado 2012).

8-1-148. Rules, regulations, rates, and orders adopted prior to article - abolishment of commission - continued. (1) All rules, regulations, rates, orders, and awards of the commission lawfully adopted prior to July 1, 1969, shall continue to be effective until revised, amended, repealed, or nullified pursuant to law.

(2) All rules, regulations, rates, orders, and awards of the commission lawfully adopted prior to July 1, 1986, shall continue to be effective until revised, amended, repealed, or nullified pursuant to law.

Source: L. 69: p. 662, § 254. **C.R.S. 1963:** § 80-1-52. **L. 86:** Entire section amended, p. 469, § 21, effective July 1.

8-1-149. Transfer of officers, employees, and property. (Repealed)

Source: L. 69: p. 662, § 255. **C.R.S. 1963:** § 80-1-53. **L. 86:** Entire section amended, p. 469, § 22, effective July 1; entire section amended, p. 531, § 28, effective July 1, 1987. **L. 91:** (1) amended, p. 1908, § 7, effective June 1. **L. 2002:** (1) amended, p. 1880, § 24, effective July 1. **L. 2012:** Entire section repealed, (HB 12-1120), ch. 27, p. 104, § 10, effective June 1.

Editor's note: The effective date for the repeal of this section by House Bill 12-1120 (chapter 27, Session Laws of Colorado 2012) was changed from August 8, 2012, to June 1, 2012, by House Bill 12S-1002 (First Extraordinary Session, chapter 2, p. 2432, Session Laws of Colorado 2012).

8-1-150. Licensing functions subject to periodic review. (Repealed)

Source: L. 79: Entire section added, p. 1609, § 1, effective June 7. **L. 83:** Entire section repealed, p. 701, § 5, effective June 10.

8-1-151. Public safety inspection fund created. There is hereby created in the state treasury a fund, to be known as the public safety inspection fund, which shall consist of moneys credited thereto pursuant to sections 8-20-104, 8-20-1002, and 9-7-108.5, C.R.S. All moneys in the public safety inspection fund shall be subject to annual appropriation by the general assembly for the public safety inspection activities of the division of oil and public safety. The moneys in the public safety inspection fund shall not be credited or transferred to the general fund or any other fund of the state.

Source: L. 85: Entire section added, p. 337, § 1, effective July 1. **L. 86:** Entire section amended, p. 470, § 23, effective July 1. **L. 2001:** Entire section amended, p. 1140, § 68, effective June 5. **L. 2008:** Entire section amended, p. 984, § 1, effective May 21; entire section amended, p. 1020, § 1, effective May 21. **L. 2009:** Entire section amended, (HB 09-1151), ch. 230, p. 1060, § 13, effective January 1, 2010.

Editor's note: Amendments to this section by Senate Bill 08-051 and House Bill 08-1103 were harmonized.

8-1-152. Applications for licenses - authority to suspend licenses - rules. (1) Every application by an individual for a license issued by the department or any authorized agent of the department shall require the applicant's name, address, and social security number.

(2) The department or any authorized agent of the department shall deny, suspend, or revoke any license pursuant to the provisions of section 26-13-126, C.R.S., and any rules promulgated in furtherance thereof, if the department or agent thereof receives a notice to deny, suspend, or revoke from the state child support enforcement agency because the licensee or applicant is out of compliance with a court or administrative order for current child support, child support debt, retroactive child support, child support arrearages, or child support when combined with maintenance or because the licensee or applicant has failed to comply with a properly issued subpoena or warrant relating to a paternity or child support proceeding. Any such denial, suspension, or revocation shall be in accordance with the procedures specified by rule of the department, rules promulgated by the state board of human services, and any

memorandum of understanding entered into between the department or an authorized agent thereof and the state child support enforcement agency for the implementation of this section and section 26-13-126, C.R.S.

(3) (a) The department shall enter into a memorandum of understanding with the state child support enforcement agency, which memorandum shall identify the relative responsibilities of the department and the state child support enforcement agency in the department of human services with respect to the implementation of this section and section 26-13-126, C.R.S.

(b) The appropriate rule-making body of the department is authorized to promulgate rules to implement the provisions of this section.

(4) For purposes of this section, "license" means any recognition, authority, or permission that the department or any authorized agent of the department is authorized by law to issue for an individual to practice a profession or occupation or for an individual to participate in any recreational activity. "License" may include, but is not necessarily limited to, any license, certificate, certification, letter of authorization, or registration issued for an individual to practice a profession or occupation or for an individual to participate in any recreational activity.

Source: L. 97: Entire section added, p. 1262, § 2, effective July 1.

Cross references: For the legislative declaration contained in the 1997 act enacting this section, see section 1 of chapter 236, Session Laws of Colorado 1997.

Labor Relations

ARTICLE 2

Labor Relations, Generally

Cross references: For employment practices generally, see part 4 of article 34 of title 24.

Law reviews. For article, "Labor Law", which discusses Tenth Circuit decisions dealing with labor law, see 61 Den. L.J. 343 (1984); for article, "Labor Law", which discusses Tenth Circuit decisions dealing with labor law, see 62 Den. U. L. Rev. 253 (1985); for article, "Federal Preemption Under the NLRA: A Rule in Search of Reason", see 62 Den. U.L. Rev. 531 (1985); for article, "Labor and Employment Law", which discusses Tenth Circuit decisions dealing with labor law, see 63 Den. U. L. Rev. 395 (1986); for article, "Labor and Employment Law", which discusses Tenth Circuit decisions dealing with labor law, see 64 Den. U. L. Rev. 271 (1987); for article, "Labor and Employment Law", which discusses Tenth Circuit decisions dealing with labor law, see 65 Den. U. L. Rev. 565 (1988); for article, "Retaliatory Discharge and the Economics of Deterrence", see 60 U. Colo. L. Rev. 91 (1989); for comment, "Continental Air Lines v. Keenan: Employee Handbooks as a Modification to Employment at Will", see 60 U. Colo. L. Rev. 169 (1989); for a discussion of Tenth Circuit decisions dealing with questions of labor law, see 67 Den. U. L. Rev. 751 (1990); for article, "A Guide to the Lesser-Known Work Laws in Colorado", see 43 Colo. Law. 49 (May 2014).

PART 1

8-2-101. Combination of employees for peaceable objects lawful. It is not unlawful for any two or more persons to unite, combine, or agree in any manner, to advise or encourage, by peaceable means, any persons to enter into any combination in relation to entering into or remaining in the employment of any person or corporation, or in relation to the amount of wages or compensation to be paid for labor, or for the purpose of regulating the hours of labor, or for the procuring of fair and just treatment from employers, or for the purpose of aiding and protecting their welfare and interests in any other manner not in violation of the constitution of this state or the laws made in pursuance thereof. This section shall not be so construed as to permit two or more persons, by threats of either bodily or financial injury, or by any display of force, to prevent or intimidate any other person from continuing in such employment as he may see fit, or to boycott or intimidate any employer of labor.

Source: L. 1889: p. 92, § 1. **R.S. 08:** § 3924. **C.L.** § 4150. **CSA:** C. 97, § 64. **CRS 53:** § 80-4-1. **C.R.S. 1963:** § 80-11-1.

Cross references: For unfair labor practices, see § 8-3-108.

8-2-102. Coercion of employees unlawful. It is unlawful for any individual, company, or corporation or any member of any firm, or an agent, officer, or employee of any company or corporation to prevent employees from forming, joining, or belonging to any lawful labor organization, union, society, or political party, or to coerce or attempt to coerce employees by discharging or threatening to discharge them from their employ or the employ of any firm, company, or corporation because of their connection with such lawful labor organization, union, society, or political party.

Source: L. 1897: p. 156, § 1. **R.S. 08:** § 3925. **C.L.** § 4151. **CSA:** C. 97, § 65. **CRS 53:** § 80-4-2. **C.R.S. 1963:** § 80-11-2.

8-2-103. Penalty for coercing employees. Any person or any member of any firm or an agent, officer, or employee of any such company or corporation, violating the provisions of section 8-2-102 is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, or by imprisonment in the county jail for not less than six months nor more than one year, or by both such fine and imprisonment.

Source: L. 1897: p. 156, § 2. **R.S. 08:** § 3926. **C.L.** § 4152. **CSA:** C. 97, § 66. **CRS 53:** § 80-4-3. **C.R.S. 1963:** § 80-11-3.

8-2-104. Obtaining workmen by misrepresentation unlawful. It is unlawful for any person, company, corporation, society, association, or organization of any kind doing business in this state, by itself or its agents or attorneys, to induce, influence, persuade, or engage workmen to change from one place of employment to another in this state, or to bring workmen of any class or calling into this state to work in any of the departments of labor in this state, through or

by means of false or deceptive representations, false advertising, or false pretenses concerning the kind and character of the work to be done, or amount and character of the compensation to be paid for such work, or the sanitary or other conditions of the employment, or as to the existence or nonexistence of a strike or lockout pending between employer and employees, or failure to state in any advertisement, proposal, or contract for the employment that there is a strike, lockout, or other labor trouble at the place of the proposed employment, when in fact such strike, lockout, or other labor trouble then actually exists at such place, and it is deemed false advertisement and misrepresentation for the purposes of sections 8-2-104 to 8-2-107.

Source: L. 11: p. 486, § 1. **C.L.** § 4156. **CSA:** C. 97, § 71. **CRS 53:** § 80-4-4. **C.R.S. 1963:** § 80-11-4.

8-2-105. Penalty. Any person, company, corporation, society, association, or organization of any kind doing business in this state, as well as its agents, attorneys, servants, or associates, found guilty of violating section 8-2-104 or any part thereof, is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than two thousand dollars or by imprisonment in the county jail for not more than one year, or by both such fine and imprisonment, where the defendants are natural persons.

Source: L. 11: p. 487, § 2. **C.L.** § 4157. **CSA:** C. 97, § 72. **CRS 53:** § 80-4-5. **C.R.S. 1963:** § 80-11-5.

8-2-106. Armed guards - when lawful. Any person who hires, aids, abets, or assists in hiring, through agencies or otherwise, persons to guard with arms or deadly weapons of any kind other persons or property in this state, or any person who enters this state armed with deadly weapons of any kind for any such purpose, without a permit in writing from the governor of this state commits a class 6 felony and shall be punished as provided in section 18-1.3-401, C.R.S. Nothing in sections 8-2-104 to 8-2-107 shall be construed to interfere with the right of any person, company, corporation, society, association, or organization to guard or protect its private property or private interests as is now provided by law. Sections 8-2-104 to 8-2-107 shall be construed only to apply in cases where workmen are brought into this state, or induced to go from one place to another in this state by any false pretenses, false advertising, or deceptive representations, or brought into this state under arms, or removed from one place to another in this state under arms.

Source: L. 11: p. 487, § 3. **C.L.** § 4158. **CSA:** C. 97, § 73. **CRS 53:** § 80-4-6. **C.R.S. 1963:** § 80-11-6. **L. 77:** Entire section amended, p. 869, § 19, effective July 1, 1979. **L. 89:** Entire section amended, p. 821, § 5, effective July 1. **L. 2002:** Entire section amended, p. 1466, § 17, effective October 1.

Editor's note: The effective date for amendments made to this section by chapter 216, L. 77, was changed from July 1, 1978, to April 1, 1979, by chapter 1, First Extraordinary Session, L. 78, and was subsequently changed to July 1, 1979, by chapter 157, § 23, L. 79. See People v. McKenna, 199 Colo. 452, 611 P.2d 574 (1980).

Cross references: For the legislative declaration contained in the 2002 act amending this section, see section 1 of chapter 318, Session Laws of Colorado 2002.

8-2-107. Workman engaged by false representations to recover damages. Any workman of this state, or any workman of another state who is influenced, induced, or persuaded to engage with any persons mentioned in section 8-2-104, through or by means of any of the things therein prohibited has a right of action for recovery of all damages that each such workman has sustained in consequence of the false or deceptive representations, false advertising, and false pretenses used to induce him to change his place of employment against any person, corporation, company, or association, directly or indirectly, causing such damages. In addition to all actual damages such workmen may have sustained, they shall be entitled to recover such reasonable attorney fees as the court shall fix, to be taxed as costs in any judgment recovered.

Source: L. 11: p. 487, § 4. **C.L.** § 4159. **CSA:** C. 97, § 74. **CRS 53:** § 80-4-7. **C.R.S. 1963:** § 80-11-7.

8-2-108. Unlawful for employer to prevent employees participating in politics. (1) It is unlawful for any corporation, company, partnership, association, individual, or any employer of labor, or for any agent thereof to make, adopt, or enforce any rule, regulation, or policy forbidding or preventing any of his employees from engaging or participating in politics or from becoming a candidate for public office or being elected to and entering upon the duties of any public office. Any person violating any of the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than two thousand dollars, or by imprisonment in the county jail for not more than one year, or by both such fine and imprisonment.

(2) Nothing in this section shall be construed to prevent the injured employee from recovering damages from his employer for injury suffered through a violation of this section.

Source: L. 29: p. 429, §§ 1-3. **CSA:** C. 97, § 75. **L. 37:** p. 795, § 1. **CRS 53:** § 80-4-8. **C.R.S. 1963:** § 80-11-8.

8-2-109. Rights of person charged with contempt. (1) In all cases where a person is charged with indirect criminal contempt for violation of a protection order or injunction issued by a court, the accused shall enjoy:

(a) The right as to admission to bail that is accorded to persons accused of crime;

(b) The right to be notified of the accusation and a reasonable time to make a defense, if the alleged contempt is not committed in the immediate view or presence of the court;

(c) Upon demand, the right to a speedy and public trial by an impartial jury of the judicial district wherein the contempt has been committed. This requirement shall not be construed to apply to contempts committed in the presence of the court or so near thereto as to interfere directly with the administration of justice or to apply to the misbehavior, misconduct, or disobedience of any officer of the court in respect to the writs, order, or process of the court.

(d) The right to file with the court a demand for the retirement of the judge sitting in the proceeding, if the contempt arises from an attack upon the character or conduct of such judge

and if the attack occurred otherwise than in open court. Upon the filing of any such demand, the judge shall proceed no further, but another judge shall be designated by the presiding judge of said court. The demand shall be filed prior to the hearing in the contempt proceeding.

Source: L. 33: p. 412, § 10. **CSA:** C. 97, § 85. **CRS 53:** § 80-4-9. **C.R.S. 1963:** § 80-11-9. **L. 2003:** IP(1) amended, p. 1009, § 9, effective July 1.

8-2-110. Unlawful to publish blacklist. No corporation, company, or individual shall blacklist, or publish, or cause to be blacklisted or published any employee, mechanic, or laborer discharged by such corporation, company, or individual, with the intent and for the purpose of preventing such employee, mechanic, or laborer from engaging in or securing similar or other employment from any other corporation, company, or individual.

Source: L. 1887: p. 58, § 1. **R.S. 08:** § 396. **C.L.** § 4160. **CSA:** C. 97, § 88. **CRS 53:** § 80-4-10. **C.R.S. 1963:** § 80-11-10.

Cross references: For arbitration to avoid necessity of blacklist, see § 8-1-123.

8-2-111. Penalty for blacklisting. If any officer or agent of any corporation, company, individual, or other person blacklists, publishes, or causes to be blacklisted or published any employee, mechanic, or laborer discharged by such corporation, company, or individual with the intent and for the purpose of preventing such employee, mechanic, or laborer from engaging in or securing similar or other employment from any other corporation, company, or individual, or in any manner conspires or contrives by correspondence, or otherwise, to prevent such discharged employee from securing employment, is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than fifty dollars nor more than two hundred fifty dollars, or by imprisonment in the county jail for not less than thirty days nor more than ninety days, or by both such fine and imprisonment.

Source: L. 1887: p. 58, § 2. **R.S. 08:** § 397. **C.L.** § 4161. **CSA:** C. 97, § 89. **CRS 53:** § 80-4-11. **C.R.S. 1963:** § 80-11-11.

8-2-111.5. Certain employment references - exception to blacklisting prohibition. (1) The general assembly hereby finds, determines, and declares that the intent and purpose of the provisions of sections 8-2-110 and 8-2-111 which prohibit the maintenance or use of blacklists were enacted to protect employees from retribution and harassment in the pursuit of their lawful activities. The general assembly further finds, determines, and declares that these prohibitions against blacklisting have in some instances been abused and have been used as a shield for persons responsible for thefts and other misappropriations of funds from financial institutions regulated under title 11, C.R.S., or under federal law in securing employment from other such financial institutions. These abuses of the antiblacklisting provisions have resulted in pattern and serial criminal activities at great expense and harm to such financial institutions and their customers.

(2) In response to a request by another bank, savings and loan association, credit card or travel and entertainment card company, trust company, credit union, or other state or federally

chartered lending institution operating in Colorado, it is not unlawful or a violation of the prohibitions against blacklisting specified in sections 8-2-110 and 8-2-111 for a bank, savings and loan association, credit card or travel and entertainment card company, trust company, credit union, or other state or federally chartered lending institution operating in Colorado, when acting in good faith, to disclose any information about any involvement in a theft, embezzlement, misappropriation, or other defalcation by an employee or former employee.

(3) No bank, savings and loan association, credit card or travel and entertainment card company, trust company, credit union, or other state or federally chartered lending institution operating in Colorado or any officer, director, or employee thereof is civilly liable for providing an employment reference described in subsection (2) of this section upon request if the information is provided in good faith.

(4) The provision of such employment information shall not constitute a violation of the prohibition against blacklisting as provided in sections 8-2-110 and 8-2-111, nor shall it constitute an unfair labor practice in violation of any provision of article 3 of this title.

(5) A bank, savings and loan association, credit card or travel and entertainment card company, trust company, credit union, or other state or federally chartered lending institution operating in Colorado or any officer, director, or employee thereof who discloses information under this section is presumed to be acting in good faith unless it is shown by a preponderance of the evidence that the institution, officer, director, or employee intentionally or recklessly disclosed false information about the employee or former employee.

Source: L. 89: Entire section added, p. 373, § 1, effective April 1, 1990. **L. 97:** (2), (3), and (5) amended, p. 352, § 1, effective April 19. **L. 2013:** (2), (3), and (5) amended, (SB13-154), ch. 282, p. 1470, § 26, effective July 1.

8-2-111.6. Health care employers - immunity from civil liability - requirements - exception to blacklisting prohibition - legislative declaration. (1) The general assembly hereby finds, determines, and declares that the intent and purpose of sections 8-2-110 and 8-2-111, which prohibit the maintenance or use of blacklists, is to protect employees from retribution and harassment in the pursuit of their lawful activities. The general assembly further finds, determines, and declares that, in the area of health care, these prohibitions against blacklisting have in some instances been abused and have been used as a shield by persons responsible for drug violations or for patient endangerment.

(2) In response to a request by a prospective or current employer of a health care worker, it is neither unlawful nor a violation of the prohibitions against blacklisting specified in sections 8-2-110 and 8-2-111 for an employer, when acting in good faith, to disclose information known about any involvement in drug diversion, drug tampering, patient abuse, violation of drug or alcohol policies of the employer, or crimes of violence as listed in section 18-1.3-406 (2)(a), C.R.S., by the health care worker who is an employee or a former employee of the responding employer.

(3) (a) (I) An employer who provides information in accordance with subsection (2) of this section is immune from civil liability for providing the information or for any consequences that result from the disclosure of the information unless the health care worker shows by a preponderance of the evidence that the information is false and the employer providing the information knew or reasonably should have known that the information is false.

(II) The provision of employment information in accordance with subsection (2) of this section does not constitute blacklisting under section 8-2-110 or 8-2-111, nor does it constitute an unfair labor practice in violation of article 3 of this title.

(b) This subsection (3) applies to any employee, agent, or other representative of the responding employer who is authorized to provide and provides information to an employer in accordance with subsection (2) of this section.

(4) An employer or any officer, director, employee, or representative of the employer who discloses information under this section shall be presumed to be acting in good faith unless it is shown by a preponderance of the evidence that the facility, officer, director, employee, or representative of the employer intentionally or recklessly disclosed false information about the employee or former employee.

(5) For the purposes of this section, "health care worker" means any person registered, certified, or licensed pursuant to articles 200 to 225, 235 to 300, and 310 of title 12 or article 3.5 of title 25, or any person who interacts directly with a patient or assists with the patient care process, who is currently employed by, or is a prospective employee of, the employer making the inquiry.

Source: L. 2011: Entire section added, (HB 11-1148), ch. 36, p. 99, § 1, effective July 1. **L. 2012:** (5) amended, (HB 12-1311), ch. 281, p. 1608, § 6, effective July 1. **L. 2019:** (5) amended, (HB 19-1172), ch. 136, p. 1646, § 17, effective October 1.

8-2-111.7. Employees working with persons with intellectual and developmental disabilities - immunity from civil liability - requirements - exception to blacklisting prohibition - legislative declaration - definitions. (1) The general assembly hereby finds, determines, and declares that the intent and purpose of sections 8-2-110 and 8-2-111, which prohibit the maintenance or use of blacklists, is to protect employees from retribution and harassment in the pursuit of their lawful activities. The general assembly further finds, determines, and declares that these prohibitions against blacklisting have in some instances been abused and have been used as a shield by caregivers responsible for mistreatment, exploitation, neglect, or abuse of persons with developmental disabilities.

(2) In response to a request by a current or prospective employer of a caregiver, it is neither unlawful nor a violation of the prohibitions against blacklisting specified in sections 8-2-110 and 8-2-111 for an employer, when acting in good faith, to disclose information known about any involvement in the mistreatment, exploitation, neglect, or abuse of persons with intellectual and developmental disabilities as prohibited by section 25.5-10-221, C.R.S., by a caregiver.

(3) (a) (I) An employer who provides information in accordance with subsection (2) of this section is immune from civil liability for providing the information or for any consequences that result from the disclosure of the information unless the caregiver shows by a preponderance of the evidence that the information is false and the employer providing the information knew or reasonably should have known that the information is false.

(II) The provision of employment information in accordance with subsection (2) of this section does not constitute blacklisting under section 8-2-110 or 8-2-111, nor does it constitute an unfair labor practice in violation of article 3 of this title.

(b) This subsection (3) applies to any employee, agent, or other representative of the responding employer who is authorized to provide and provides information to a current or prospective employer in accordance with subsection (2) of this section.

(4) An employer or any officer, director, employee, or representative of the employer who discloses information under this section is presumed to be acting in good faith unless it is shown by a preponderance of the evidence that the facility, officer, director, employee, or representative of the employer intentionally or recklessly disclosed false information about the caregiver.

(5) For the purposes of this section:

(a) "Caregiver" means a person currently or formerly employed to work with a person with an intellectual and developmental disability or a person who provides host home services by contract as part of residential services and supports as described in section 25.5-10-206 (1)(e), C.R.S. "Caregiver" does not mean a person who is employed by or who has contracted to work with a school district.

(b) "Person with an intellectual and developmental disability" has the same meaning as defined in section 25.5-10-202, C.R.S.

Source: L. 2011: Entire section added, (SB 11-193), ch. 280, p. 1252, § 1, effective July 1. **L. 2013:** (2), (5)(a), and (5)(b) amended, (HB 13-1314), ch. 323, p. 1800, § 16, effective March 1, 2014.

8-2-112. Unlawful to publish notice of boycott. It is unlawful to print or circulate any notice of boycott, boycott card, sticker, banner, sign, or dodger publishing or declaring that a boycott or ban exists, or has existed or is contemplated against any person, firm, or corporation doing a lawful business, or publish the name of any judicial officer or other public officer upon any notice of boycott, boycott card, sticker, banner, sign, or other similar list because of any lawful act or decision of such official.

Source: L. 05: p. 160, § 2. **R.S. 08:** § 399. **C.L.** § 4163. **CSA:** C. 97, § 91. **CRS 53:** § 80-4-12. **C.R.S. 1963:** § 80-11-12.

Cross references: For arbitration to avoid necessity of boycott, see § 8-1-123.

8-2-113. Unlawful to intimidate worker - agreement not to compete. (1) It shall be unlawful to use force, threats, or other means of intimidation to prevent any person from engaging in any lawful occupation at any place he sees fit.

(2) Any covenant not to compete which restricts the right of any person to receive compensation for performance of skilled or unskilled labor for any employer shall be void, but this subsection (2) shall not apply to:

(a) Any contract for the purchase and sale of a business or the assets of a business;

(b) Any contract for the protection of trade secrets;

(c) Any contractual provision providing for recovery of the expense of educating and training an employee who has served an employer for a period of less than two years;

(d) Executive and management personnel and officers and employees who constitute professional staff to executive and management personnel.

(3) (a) Any covenant not to compete provision of an employment, partnership, or corporate agreement between physicians that restricts the right of a physician to practice medicine, as defined in section 12-240-107, upon termination of the agreement, is void; except that all other provisions of the agreement enforceable at law, including provisions that require the payment of damages in an amount that is reasonably related to the injury suffered by reason of termination of the agreement, are enforceable. Provisions of a covenant not to compete that require the payment of damages upon termination of the agreement may include damages related to competition.

(b) Notwithstanding subsection (3)(a) of this section, after termination of an agreement described in subsection (3)(a) of this section, a physician may disclose his or her continuing practice of medicine and new professional contact information to any patient with a rare disorder, as defined in accordance with criteria developed by the National Organization for Rare Disorders, Inc., or a successor organization, to whom the physician was providing consultation or treatment before termination of the agreement. Neither the physician nor the physician's employer, if any, is liable to any party to the prior agreement for damages alleged to have resulted from the disclosure or from the physician's treatment of the patient after termination of the prior agreement.

Source: L. 05: p. 161, § 3. **R.S. 08:** § 400. **C.L.** § 4164. **CSA:** C. 97, § 92. **CRS 53:** § 80-4-13. **C.R.S. 1963:** § 80-11-13. **L. 73:** p. 940, § 1. **L. 82:** (3) added, p. 232, § 1, effective April 6. **L. 2018:** (3) amended, (SB 18-082), ch. 87, p. 689, § 1, effective April 2. **L. 2019:** (3)(a) amended, (HB 19-1172), ch. 136, p. 1646, § 18, effective October 1.

Cross references: For the "Uniform Trade Secrets Act", see article 74 of title 7.

8-2-114. Immunity from civil liability for employer disclosing information - employer shall not maintain blacklist - credit lists excepted. (1) For purposes of this section, "job performance" means:

(a) The suitability of the employee for reemployment;

(b) The employee's work-related skills, abilities, and habits as they may relate to suitability for future employment; and

(c) In the case of a former employee, the reason for the employee's separation.

(2) It is unlawful for any employer to maintain a blacklist, or to notify any other employer that any current or former employee has been blacklisted by such employer, for the purpose of preventing such employee from receiving employment. Sections 8-2-112 to 8-2-115 shall not be construed to prevent any merchant or professional person, or any association thereof, from maintaining or publishing a list concerning the credit or financial responsibility of any person dealing with them on credit.

(3) Any employer who provides information about a current or former employee's job history or job performance to a prospective employer of the current or former employee upon request of the prospective employer or the current or former employee is immune from civil liability and is not liable in civil damages for the disclosure or any consequences of the disclosure. This immunity shall not apply when such employee shows by a preponderance of the evidence both of the following:

(a) The information disclosed by the current or former employer was false; and

(b) The employer providing the information knew or reasonably should have known that the information was false.

(4) This section applies to any employee, agent, or other representative of the current or former employer who is authorized to provide and who provides information in accordance with this section.

(5) Any employer that provides written information to a prospective employer about a current or a former employee shall send, upon the request of such current or former employee, a copy of the information provided to the last-known address of the person who is the subject of the reference. Any person who is the subject of such a reference may obtain a copy of the reference information by appearing at the employer's or former employer's place of business during normal business hours. The employer or former employer may charge a fair and reasonable amount for reproduction costs if multiple copies are requested.

(6) Nothing in this section shall be construed to abrogate or contradict the provisions of part 4 of article 34 of title 24, C.R.S.

Source: L. 05: p. 161, § 4. **R.S. 08:** § 401. **C.L.** § 4165. **CSA:** C. 97, § 93. **CRS 53:** § 80-4-14. **C.R.S. 1963:** § 80-11-14. **L. 92:** Entire section amended, p. 1806, § 1, effective April 29. **L. 99:** Entire section R&RE, p. 210, § 1, effective March 31.

8-2-115. Violation of sections - misdemeanor. Any person, firm, or corporation violating any provisions of sections 8-2-112 to 8-2-115 is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than ten dollars nor more than two hundred fifty dollars, or by imprisonment in the county jail for not more than sixty days, or by both such fine and imprisonment.

Source: L. 05: p. 161, § 5. **R.S. 08:** § 402. **C.L.** § 4166. **CSA:** C. 97, § 94. **CRS 53:** § 80-4-15. **C.R.S. 1963:** § 80-11-15.

8-2-116. Age of employee not ground for discharge. (Repealed)

Source: L. 03: p. 307, § 1. **R.S. 08:** § 3927. **C.L.** § 4191. **CSA:** C. 97, § 112. **CRS 53:** § 80-4-16. **C.R.S. 1963:** § 80-11-16. **L. 86:** Entire section repealed, p. 933, § 5, effective May 8.

Cross references: For present provisions concerning age discrimination in employment, see part 4 of article 34 of title 24.

8-2-117. Penalty for violation. (Repealed)

Source: L. 03: p. 308, § 2. **R.S. 08:** § 3928. **C.L.** § 4192. **CSA:** C. 97, § 123. **CRS 53:** § 80-4-17. **C.R.S. 1963:** § 80-11-17. **L. 86:** Entire section repealed, p. 933, § 5, effective May 8.

8-2-118. Cost of medical examination - employer and employee defined. (1) It is unlawful for any employer, as defined in subsection (2) of this section, to require any employee or applicant for employment to pay the cost of a medical examination or the cost of furnishing

any records required by the employer as a condition of employment, except those records necessary to support the applicant's statements in the application for employment.

(2) "Employer", as used in this section, means an individual, a partnership, an association, a corporation, a legal representative, trustee, receiver, trustee in bankruptcy, and any common carrier by rail, motor, water, air, or express company doing business in or operating within the state.

(3) "Employee", as used in this section, means every person who may be permitted, required, or directed by any employer, as defined in subsection (2) of this section, in consideration of direct or indirect gain or profit, to engage in any employment.

(4) Any employer who violates the provisions of this section is liable to a penalty of not more than one hundred dollars for each violation. It is the duty of the director of the division of labor standards and statistics to enforce this section.

(5) (a) The director of the division of labor standards and statistics shall enforce this section as it applies to an individual, a partnership, an association, a corporation, or a legal representative, trustee, receiver, or trustee in bankruptcy doing business in or operating within the state.

(b) The public utilities commission shall enforce this section as it applies to any common carrier by rail, motor, water, air, or express company doing business in or operating within the state.

(c) Nothing in this subsection (5) shall be construed as applying to irrigation ditch and water companies.

Source: L. 57: p. 491, §§ 1-4. **CRS 53:** § 80-4-18. **L. 59:** p. 536, § 1. **C.R.S. 1963:** § 80-11-18. **L. 69:** p. 615, § 123. **L. 2016:** (4) and (5)(a) amended, (HB 16-1323), ch. 131, p. 377, § 6, effective August 10.

8-2-119. Awards of back pay - deduction of unemployment compensation. (1) In any proceeding in this state in which an award of back pay is made, the employer shall pay any such award in full, subject to the provisions of subsection (3) of this section.

(2) The person ordering an award of back pay shall notify the director of the division of unemployment insurance of the award within five days after the date of the order.

(3) If, during the period for which back pay is awarded, the recipient of the award has been receiving unemployment benefits pursuant to the provisions of articles 70 to 82 of this title, the entity ordering the award shall reduce the amount of the award by the amount of benefits the person received, and the employer shall withhold that amount from the award. The employer shall remit the amount withheld from the back pay award to the division of unemployment insurance, and the division shall credit the amount to the unemployment compensation fund. The employer shall remit the withheld amount within ten days after the award of back pay becomes final.

Source: L. 69: p. 666, § 1. **C.R.S. 1963:** § 80-11-19. **L. 76:** (2) amended, p. 335, § 1, effective May 10. **L. 2012:** (2) and (3) amended, (HB 12-1120), ch. 27, p. 104, § 11, effective June 1.

Editor's note: The effective date for amendments to this section by House Bill 12-1120 (chapter 27, Session Laws of Colorado 2012) was changed from August 8, 2012, to June 1, 2012, by House Bill 12S-1002 (First Extraordinary Session, chapter 2, p. 2432, Session Laws of Colorado 2012).

8-2-120. Residency requirements prohibited for public employment - legislative declaration - definitions. (1) The general assembly hereby finds, determines, and declares that the imposition of residency requirements by public employers works to the detriment of the public health, welfare, and morale as well as to the detriment of the economic well-being of the state. The general assembly further finds, determines, and declares that the right of the individual to work in or for any local government is a matter of statewide concern and accordingly the provisions of this section preempt any provisions of any such local government to the contrary. The general assembly declares that the problem and hardships to the citizens of this state occasioned by the imposition of employee residency requirements far outweigh any gain devolving to the public employer from the imposition of said requirements.

(2) As used in this section, unless the context otherwise requires:

(a) "Employee" means any person who works for a salary or for hourly wages, whether full-time or part-time and whether temporary or permanent. Such term does not include a local government's elected officials or its key appointed officials such as cabinet members, director of public safety, superintendent of schools, fire chief, or police chief and does not include members of a local government's boards or committees if residency requirements are set forth by any ordinance, charter, resolution, or statute of the local government.

(b) "Local government" means a county, city and county, city, municipality, town, school district, local college district, a local improvement and service district, special district, or any other independent local entity having the authority under the general laws of this state to levy taxes or impose assessments.

(3) On and after July 1, 1988, any employee of any local government may at his sole option reside and dwell anywhere such employee chooses, whether within or without the territorial boundaries of the local government, except as provided in paragraph (b) of subsection (4) of this section.

(4) (a) On and after July 1, 1988, no residency requirement may be imposed on any employee by any local government. To the extent that any local government ordinance, charter, resolution, or statute conflicts with this provision, it is hereby preempted by this provision.

(b) Key employees with duties which clearly and demonstrably require them to be close to their place of employment may be subject to reasonable requirements as to the maximum distance the employee's residence may be from the place of work. Such condition may be imposed, after hearing, by ordinance or resolution.

Source: L. 88: Entire section added, p. 365, § 1, effective April 11.

8-2-121. Document fraud - penalties. (Repealed)

Source: L. 2006: Entire section added, p. 1305, § 1, effective May 30. **L. 2008:** (2) amended, p. 2145, § 16, effective June 4. **L. 2011:** Entire section repealed, (SB 11-243), ch. 282, p. 1256, § 1, effective June 2.

8-2-122. Employment verification requirements - audits - fine for fraudulent documents - cash fund created - definitions - repeal. (1) As used in this section, unless the context otherwise requires:

(a) "Director" means the director of the division.

(b) (Deleted by amendment, L. 2016.)

(c) "Employer" means a person or entity that:

(I) Transacts business in Colorado;

(II) At any time, employs another person to perform services of any nature; and

(III) Has control of the payment of wages for such services or is the officer, agent, or employee of the person or entity having control of the payment of wages.

(d) (Deleted by amendment, L. 2016.)

(2) (Deleted by amendment, L. 2016.)

(3) Upon the request of the director, an employer shall submit documentation to the director that demonstrates that the employer is in compliance with the employment verification requirements specified in 8 U.S.C. sec. 1324a (b). The director or the director's designee may conduct random audits of employers in Colorado to obtain the documentation. When the director has reason to believe that an employer has not complied with the employment verification and examination requirements, the director shall request the employer to submit the documentation.

(4) (Deleted by amendment, L. 2016.)

(5) It is the public policy of Colorado that this section shall be enforced without regard to race, religion, gender, ethnicity, national origin, or disability.

(6) (a) On June 30, 2020, the state treasurer shall transfer three thousand one hundred seventy-six dollars from the employment verification fund, as it existed prior to its repeal in 2016, to the general fund.

(b) This subsection (6) is repealed, effective July 1, 2020.

Source: L. 2006, 1st Ex. Sess.: Entire section added, p. 37, § 1, effective July 31. **L. 2016:** (1)(b) amended, (HB 16-1323), ch. 131, p. 377, § 7, effective August 10; entire section amended, (HB 16-1114), ch. 266, p. 1102, § 2, effective August 10. **L. 2020:** (6) added, (HB 20-1381), ch. 171, p. 785, § 1, effective June 29.

Cross references: For the legislative declaration in HB 16-1114, see section 1 of chapter 266, Session Laws of Colorado 2016.

8-2-123. Health care workers - retaliation prohibited - definitions. (1) As used in this section:

(a) "Disciplinary action" means any direct or indirect form of discipline or penalty, including, but not limited to, dismissal, demotion, transfer, reassignment, suspension, corrective action, reprimand, admonishment, unsatisfactory or below-standard performance evaluation, reduction in force, withholding of work, changes in work hours, negative reference, creating or tolerating a hostile work environment, or the threat of any such discipline or penalty. "Disciplinary action" shall not include action taken that is related to staffing or patient care needs.

(b) "Good faith report or disclosure" means a report regarding patient safety information or quality of patient care that is made without malice or consideration of personal benefit and

that the health care worker making the report has reasonable cause to believe is true. "Good faith report or disclosure" also includes, with respect to patient care, a report regarding any practice, procedure, action, or failure to act with regard to patient safety that concerns information regarding a generally accepted standard of care; a law, rule, regulation, or declaratory ruling adopted pursuant to law; or compliance with a professional licensure requirement, which report is made without malice or consideration of personal benefit and that the health care worker making the report has reasonable cause to believe is true.

(c) "Health care provider" means any health care facility licensed under section 25-3-101, C.R.S., or any individual who is authorized to practice some component of the healing arts by license, certificate, or registration.

(d) "Health care worker" means any person certified, registered, or licensed pursuant to article 200, 215, 220, 225, 240, 245, or 255 to 300 of title 12 or certified or licensed pursuant to section 25-3.5-203.

(2) (a) A health care provider shall not take disciplinary action against a health care worker in retaliation for making a good faith report or disclosure.

(b) Paragraph (a) of this subsection (2) shall not apply to a health care worker who discloses information that the worker knows to be false, who discloses information with disregard for the truth or falsity thereof, or who discloses information without fully complying with subsection (3) of this section.

(c) Nothing in this section shall be construed to grant immunity to a health care worker for his or her own acts of medical negligence, for unprofessional conduct subject to professional review activities authorized by state or federal law, for a breach of a professional licensure requirement, or for a violation of any state or federal law requiring confidentiality of patient information.

(3) When making a good faith report or disclosure regarding patient safety or quality of patient care, a health care worker shall follow the internal reporting procedures of the health care provider, to the extent such procedures exist and are provided to the health care worker in writing, and shall exhaust such procedures prior to pursuing any further reporting or disclosure activity.

(4) Nothing in this section shall prevent a health care provider from taking disciplinary action against a health care worker for reasons other than those specified in subsection (2) of this section.

(5) Nothing in this section shall be construed to preempt existing laws, regulations, or rules pertaining to patient care, including professional review proceedings for health professionals or for physicians pursuant to part 2 of article 30 of title 12, or quality and safety standards for a health care facility licensed pursuant to section 25-3-101.

Source: L. 2007: Entire section added, p. 284, § 2, effective March 29. **L. 2019:** (1)(d) amended, (SB 19-242), ch. 396, p. 3524, § 4, effective May 31; (1)(d) and (5) amended, (HB 19-1172), ch. 136, p. 1647, § 19, effective October 1.

Editor's note: Amendments to subsection (1)(d) by SB 19-242 and HB 19-1172 were harmonized.

Cross references: For the legislative declaration contained in the 2007 act enacting this section, see section 1 of chapter 67, Session Laws of Colorado 2007.

8-2-124. Electronic verification program - availability - notice to employers - definitions. (1) As used in this section:

(a) "Department" means the department of labor and employment.

(b) "Electronic verification program" or "e-verify program" means the electronic employment verification program that is authorized in 8 U.S.C. sec. 1324a and jointly administered by the United States department of homeland security and the social security administration, or its successor program.

(c) "Employer" means a person transacting business in Colorado who, at any time, employs another person to perform services of any nature and who has control of the payment of wages for such services or is the officer, agent, or employee of the person having control of the payment of wages.

(d) "Employment eligibility verification form I-9" means the form developed by the United States citizenship and immigration services in the department of homeland security pursuant to 8 U.S.C. sec. 1324a (b).

(e) "Unauthorized alien" has the same meaning as set forth in 8 U.S.C. sec. 1324a (h)(3).

(2) (a) (I) As part of its quarterly electronic publication distributed to employers, the department shall, at a minimum, notify every employer of the federal law against hiring or continuing to employ an unauthorized alien and of the availability of the optional electronic verification program to verify the work eligibility status of new employees.

(II) (A) In notifying employers of the e-verify program pursuant to subparagraph (I) of this paragraph (a), the department shall include language similar to the following:

As with all current employee verification programs, the e-verify program is not one hundred percent accurate, and an employee has recourse available if the employee is legally documented to work in the United States but the employer receives a final notice of nonconfirmation of work eligibility regarding the employee through the e-verify program.

(B) Additionally, the department shall provide employers information about when, during the hiring process, an employer may lawfully use the e-verify program, specifying that the e-verify program can only be used after an employee is hired and cannot be used to verify the work eligibility status of existing employees. The notice shall also restate the requirements of section 24-34-402, C.R.S., which prohibits employers from engaging in discriminatory or unfair employment practices.

(III) Immediately following the notice required by subparagraph (I) of this paragraph (a), the department shall include in the quarterly electronic publication a link to the portion of the department's website where an employer can access additional information about the federal law, the e-verify program and the requirements for participation in the e-verify program, and the following statement, in bold-faced type in a conspicuous location:

It is unlawful for an employer to:

Hire, recruit, or refer for a fee, for employment in the United States, an alien, knowing the alien is an unauthorized alien;

Hire, recruit, or refer for a fee, for employment in the United States, an individual without verifying the employment eligibility status of the individual through completion of the Employment Eligibility Verification Form I-9, or its successor form;

Continue to employ an alien in the United States, knowing that the alien is or has become an unauthorized alien; or

While using the e-verify program, refuse to hire, discharge, promote, or demote a person, harass a person during the course of employment, or discriminate against a person in matters of compensation, on the basis of the person's disability, race, creed, color, sex, sexual orientation, religion, age, national origin, or ancestry, pursuant to section 24-34-402, C.R.S.

For more specific information regarding the e-verify program and its requirements and use, employers should consult 8 U.S.C. sec. 1324a.

(IV) The department shall include the notice and website link required by this paragraph (a) in each quarterly electronic publication distributed to employers on and after August 5, 2008.

(b) The department shall permanently post on its website the statement and information described in subparagraph (III) of paragraph (a) of this subsection (2), as well as a link to the e-verify website available through the internet portal for the United States citizenship and immigration services, or its successor agency.

Source: L. 2008: Entire section added, p. 894, § 1, effective August 5.

8-2-125. Identification of workers engaged in off-site work - permissible forms of identification - exceptions - definitions. (1) (a) When an employer dispatches an employee to an off-site premises to perform work on behalf of the employer for a customer located at the off-site premises, the employee may provide an employer-issued identification card to the custodian of the off-site premises in lieu of a government-issued identification card for purposes of verifying the identity of the employee. Except as provided in paragraph (c) of this subsection (1), the custodian of the off-site premises shall not require the employee to surrender his or her government-issued identification card to the custodian or retain the employee's government-issued identification card while the employee is physically present on the off-site premises engaged in the performance of work on behalf of the employer.

(b) If the employee has an employer-issued identification card, the custodian may require the employee to surrender his or her employer-issued identification card for purposes of verifying the employee's identity, and the custodian may hold the employer-issued identification card at all times while the employee is present on the off-site premises.

(c) Notwithstanding the prohibition in paragraph (a) of this subsection (1), if the employee does not surrender an employer-issued identification card, the custodian may require the employee to surrender the employee's government-issued identification card to verify the

employee's identity, and the custodian may hold the government-issued identification card at all times while the employee is present on the off-site premises.

(d) If the employee provides his or her employer-issued identification card to the custodian pursuant to paragraph (b) of this subsection (1), the custodian may require the employee to allow the custodian to examine a secondary form of identification containing the employee's photograph, including a government-issued identification card.

(2) This section does not apply to a person who enters into a defense contract with the federal government pursuant to the national industrial security program, or its successor program, under which the person is contractually obligated to verify identification using a government-issued identification card.

(3) As used in this section, unless the context otherwise requires:

(a) "Custodian" means the person who is authorized to provide or restrict access to the off-site premises, including security personnel for a commercial building or multi-residential property.

(b) "Employer-issued identification card" means an identification card issued by an employer to an employee that contains, at a minimum, the name of the employer and the employee's name and photograph.

(c) "Government-issued identification card" means a state-issued driver's license or identification card containing the person's photograph, an identification card or passport issued by the federal government containing the person's photograph, a Native American tribal document identifying the person and containing the person's photograph, or any other form of identification issued by the federal or a state government that contains the person's photograph and identifying information.

(d) "Off-site premises" means a building or property that is not owned, leased, operated, or otherwise under the control of the employer of the employee who is dispatched to the premises, including:

(I) A commercial building, other than a federal, state, or local government building; or

(II) A multi-residential property.

Source: L. 2011: Entire section added, (SB 11-179), ch. 185, p. 709, § 1, effective July 1.

8-2-126. Employer use of consumer credit information - violation - short title - definitions. (1) This section shall be known and may be cited as the "Employment Opportunity Act".

(2) As used in this section:

(a) "Adverse action" means:

(I) For an applicant for employment, denial of employment; and

(II) For an employee, demotion, reassignment to a lower-ranked position or to a position with a lower level of compensation, decrease in compensation level, denial of promotion, or termination of employment; or

(III) Any other decision for employment purposes that adversely affects an employee or applicant.

(b) "Consumer credit information" means a written, oral, or other communication of information bearing on a consumer's creditworthiness, credit standing, credit capacity, or credit

history. "Consumer credit information" includes a credit score but does not include the address, name, or date of birth of an employee associated with a social security number.

(c) "Credit score" means an attempted numerical quantification of a person's creditworthiness or credit history.

(d) "Employee" means every person who may be permitted, required, or directed by any employer in consideration of direct or indirect gain or profit, to engage in any employment and includes an applicant for employment.

(e) "Employer" has the meaning set forth in section 8-1-101 and includes a prospective employer; except that "employer" does not include any state or local law enforcement agency.

(f) "Employment purposes" means evaluating a person for employment, hiring, promotion, demotion, reassignment, adjustment in compensation level, or retention as an employee.

(g) "Substantially related to the employee's current or potential job" means the information contained in a credit report is related to the position for which the employee who is the subject of the report is being evaluated because the position:

(I) Constitutes executive or management personnel or officers or employees who constitute professional staff to executive and management personnel, and the position involves one or more of the following:

(A) Setting the direction or control of a business, division, unit, or an agency of a business;

(B) A fiduciary responsibility to the employer;

(C) Access to customers', employees', or the employer's personal or financial information other than information customarily provided in a retail transaction; or

(D) The authority to issue payments, collect debts, or enter into contracts;

(II) Involves contracts with defense, intelligence, national security, or space agencies of the federal government; or

(III) Is with a bank or financial institution.

(3) (a) An employer shall not use consumer credit information for employment purposes unless the information is substantially related to the employee's current or potential job. An employer or employer's agent, representative, or designee shall not require an employee to consent to a request for a credit report that contains information about the employee's credit score, credit account balances, payment history, savings or checking account balances, or savings or checking account numbers as a condition of employment unless:

(I) The employer is a bank or financial institution;

(II) The report is required by law; or

(III) The report is substantially related to the employee's current or potential job and the employer has a bona fide purpose for requesting or using information in the credit report that is substantially related to the employee's current or potential job and is disclosed in writing to the employee.

(b) When consumer credit information is substantially related to the employee's current or potential job, an employer may inquire further of the employee to give him or her the opportunity to explain any unusual or mitigating circumstances where the consumer credit information may not reflect money management skills but is rather attributable to some other factor, including a layoff, error in the credit information, act of identity theft, medical expense,

military separation, death, divorce, or separation in the employee's family, student debt, or a lack of credit history.

(4) If an employer relies, in whole or in part, on consumer credit information to take adverse action regarding the employee whose information was obtained, the employer shall disclose that fact, and the particular information upon which the employer relies, to the employee. The employer shall make the disclosure required under this subsection (4) to an employee in writing or to an applicant using the same medium in which the application was made.

(5) A person who is injured by a violation of this section may file a complaint with the division of labor standards and statistics, upon which the division of labor standards and statistics shall promptly investigate and issue findings within thirty days after a hearing and may award civil penalties not to exceed two thousand five hundred dollars to a prevailing party in an action brought under this subsection (5).

(6) The director of the division of labor standards and statistics in the department of labor and employment shall enforce this section.

(7) Nothing in this section imposes any liability on a person, including a consumer reporting agency, as that term is defined in section 5-18-103 (4), for providing an employer with consumer credit information.

Source: L. 2013: Entire section added (SB 13-018), ch. 125, p. 420, § 1, effective July 1. **L. 2014:** (2)(g)(I)(D) and (2)(g)(II) amended and (2)(g)(III) added, (SB 14-102), ch. 92, p. 342, § 1, effective March 27. **L. 2016:** (5) and (6) amended, (HB 16-1323), ch. 131, p. 377, § 8, effective August 10. **L. 2017:** (7) amended, (HB 17-1238), ch. 260, p. 1172, § 14, effective August 9.

8-2-127. Prohibitions of employer - requiring access to personal electronic communication devices - definitions - rules. (1) As used in this section:

(a) "Applicant" means an applicant for employment.

(b) "Electronic communications device" means a device that uses electronic signals to create, transmit, and receive information, including computers, telephones, personal digital assistants, and other similar devices.

(c) "Employer" means a person engaged in a business, industry, profession, trade, or other enterprise in the state or a unit of state or local government. "Employer" includes an agent, a representative, or a designee of the employer. "Employer" does not include the department of corrections, county corrections departments, or any state or local law enforcement agency.

(2) (a) An employer may not suggest, request, or require that an employee or applicant disclose, or cause an employee or applicant to disclose, any username, password, or other means for accessing the employee's or applicant's personal account or service through the employee's or applicant's personal electronic communications device. An employer shall not compel an employee or applicant to add anyone, including the employer or his or her agent, to the employee's or applicant's list of contacts associated with a social media account or require, request, suggest, or cause an employee or applicant to change privacy settings associated with a social networking account.

(b) Paragraph (a) of this subsection (2) does not prohibit an employer from requiring an employee to disclose any username, password, or other means for accessing nonpersonal

accounts or services that provide access to the employer's internal computer or information systems.

(3) An employer shall not:

(a) Discharge, discipline, or otherwise penalize or threaten to discharge, discipline, or otherwise penalize an employee for an employee's refusal to disclose any information specified in paragraph (a) of subsection (2) of this section or refusal to add the employer to the list of the employee's contacts or to change the privacy settings associated with a social media account; or

(b) Fail or refuse to hire an applicant because the applicant refuses to disclose any information specified in paragraph (a) of subsection (2) of this section or refuses to add the employer to the applicant's list of contacts or to change the privacy settings associated with a social media account.

(4) This section does not prevent an employer from:

(a) Conducting an investigation to ensure compliance with applicable securities or financial law or regulatory requirements based on the receipt of information about the use of a personal website, internet website, web-based account, or similar account by an employee for business purposes; or

(b) Investigating an employee's electronic communications based on the receipt of information about the unauthorized downloading of an employer's proprietary information or financial data to a personal website, internet website, web-based account, or similar account by an employee.

(5) A person who is injured by a violation of this section may file a complaint with the department of labor and employment. The department shall investigate the complaint and issue findings thirty days after a hearing. The department may promulgate rules regarding penalties that include a fine of up to one thousand dollars for the first offense and a fine not to exceed five thousand dollars for each subsequent offense.

(6) Nothing in this section prohibits an employer from enforcing existing personnel policies that do not conflict with this section.

(7) Nothing in this section permits an employee to disclose information that is confidential under federal or state law or pursuant to a contract agreement between the employer and the employee.

Source: L. 2013: Entire section added, (HB 13-1046), ch. 195, p. 795, § 1, effective May 11.

8-2-128. Prohibitions of employer - requiring social security number - exceptions. (1) (a) An entity with a board of directors, including any advisory board, shall not require a member of the board of directors who is not paid for serving on the board, except for occasional reimbursement of incidental expenses of serving on the board, to disclose the member's social security number to the entity in order to serve as a member of the board.

(b) Notwithstanding paragraph (a) of this subsection (1), a current or prospective board member may be required to disclose his or her social security number:

(I) To an entity that is required by law, rule, or a government or accreditation organization's recommended program of legal compliance to require a member of its board of directors to provide a social security number to use to check any governmental background

check database or to reimburse a member for expenses incurred in the actual performance of his or her duties;

(II) If the board member would directly serve a clientele that includes minors, the elderly, victims of abuse, persons with developmental disabilities, or other vulnerable individuals and that has an established policy of using a professional employment screening service to conduct background checks, utilizing social security numbers, to screen its personnel, board members, or volunteers; or

(III) If the board member would be authorized to sign checks or engage in other transactions involving the entity's assets or accounts and the financial institution holding those assets or accounts requires a social security number to verify the identity of persons so authorized.

(c) An entity that requires an individual to provide his or her social security number for one of the reasons listed in paragraph (b) of this subsection (1) shall state the reason and specify what uses will be made of the individual's social security number.

(2) It is unlawful for the state or any local government to deny an individual any right, benefit, or privilege provided by law that would violate the federal "Privacy Act of 1974", Pub.L. 93-579, sec. 7, because of the individual's refusal to disclose his or her social security number unless federal law, state law or rule, or a rule, order, or directive of a court requires such disclosure. The state or any local government that requests an individual to disclose his or her social security number when the disclosure is not required by federal or state law shall inform the individual whether that disclosure is mandatory or voluntary, by what statutory or other authority the social security number is solicited, and what uses will be made of the individual's social security number.

Source: L. 2014: Entire section added, (HB 14-1141), ch. 127, p. 450, § 1, effective August 6.

8-2-129. Access to personnel files and records - definitions - exemptions. (1) Every employer shall, at least annually, upon the request of an employee, permit that employee to inspect and obtain a copy of any part of his or her own personnel file or files at the employer's office and at a time convenient to both the employer and the employee. A former employee may make one inspection of his or her personnel file after termination of employment. An employer may restrict the employee's or former employee's access to his or her files to be only in the presence of a person responsible for managing personnel data on behalf of the employer or another employee designated by the employer. The employer may require the employee or former employee to pay the reasonable cost of duplication of documents.

(2) As used in this section, unless the context otherwise requires:

(a) "Employee" does not include a person employed by an entity subject to the "Colorado Open Records Act", part 2 of article 72 of title 24, C.R.S.

(b) "Employer" does not include any entity subject to the "Colorado Open Records Act", part 2 of article 72 of title 24, C.R.S.

(c) "Personnel file" means the personnel records of an employee, in the manner maintained by the employer and using reasonable efforts by the employer to collect, that are used or have been used to determine the employee's qualifications for employment, promotion, additional compensation, or employment termination or other disciplinary action. "Personnel

file" does not include documents or records required to be placed or maintained in a separate file from the regular personnel file by federal or state law or rule; documents or records pertaining to confidential reports from previous employers of the employee; or an active criminal investigation, an active disciplinary investigation by the employer, or an active investigation by a regulatory agency. "Personnel file" also does not include any information in a document or record that identifies any person who made a confidential accusation, as determined by the employer, against the employee who makes a request under subsection (1) of this section.

(3) Nothing in this section:

(a) Creates or authorizes a private cause of action by a person aggrieved by a violation of this section;

(b) Requires an employer to create, maintain, or retain a personnel file on an employee or former employee; or

(c) Requires an employer to retain any documents that are or were contained in an employee's or former employee's personnel file for any specified period of time.

(4) This section does not apply to a financial institution chartered and supervised under state or federal law, including without limitation:

(a) A bank;

(b) A trust company;

(c) A savings institution; and

(d) A credit union.

Source: L. 2016: Entire section added, (HB 16-1432), ch. 311, p. 1253, § 2, effective January 1, 2017.

Cross references: For the legislative declaration in HB 16-1432, see section 1 of chapter 311, Session Laws of Colorado 2016.

8-2-130. Criminal history - limits on advertisements and applications - exceptions - enforcement - rules - short title - definitions. (1) **Short title.** The short title of this section is the "Colorado Chance to Compete Act".

(2) **Definitions.** As used in this section:

(a) "Criminal history" means the record of arrests, charges, pleas, or convictions for any misdemeanor or felony at the federal, state, or local level.

(b) "Department" means the department of labor and employment.

(c) (I) "Employer" means a person that regularly engages the services of individuals to perform services of any nature. "Employer" includes:

(A) An agent, representative, or designee of an employer; and

(B) An employment agency, as defined in section 24-34-401 (4).

(II) "Employer" does not include the state, a local government, or a quasi-governmental entity or political subdivision of the state.

(3) **Criminal history information - limits on advertisements and applications - permissible uses.** (a) On and after September 1, 2019, an employer with eleven or more employees, and on and after September 1, 2021, all employers, shall not:

(I) State in an advertisement for an employment position that a person with a criminal history may not apply for the position;

(II) State on any form of application, including electronic applications, for an employment position that a person with a criminal history may not apply for the position; or

(III) Inquire into, or require disclosure of, an applicant's criminal history on an initial written or electronic application form.

(b) An employer may obtain the publicly available criminal background report of an applicant at any time.

(4) **Exceptions.** This section does not apply to a position being offered or advertised if:

(a) Federal, state, or local law or regulation prohibits employing for that position a person with a specific criminal history;

(b) The position is designated by the employer to participate in a federal, state, or local government program to encourage the employment of people with criminal histories; or

(c) The employer is required by federal, state, or local law or regulation to conduct a criminal history record check for that position, regardless of whether the position is for an employee or an independent contractor.

(5) **Enforcement - notice and records retention rules.** (a) This section does not create or authorize a private cause of action by a person aggrieved by a violation of this section and does not create a protected class under section 24-34-402. The penalties set forth in this subsection (5) are the sole remedy for a violation of this section. The issuance of a warning, order, or penalty for a violation of this section is not evidence of a violation of part 4 of article 34 of title 24.

(b) A person who is aggrieved by a violation of this section may file a complaint with the department. If the department receives a complaint within twelve months after the act that is alleged to violate this section occurred, the department shall investigate the complaint unless the department determines that the complaint is without merit.

(c) An employer that violates this section is liable for one of the following penalties:

(I) For the first violation, a warning and an order requiring compliance within thirty days;

(II) For the second violation, an order requiring compliance within thirty days and a civil penalty not to exceed one thousand dollars; or

(III) For a third or subsequent violation, an order requiring compliance within thirty days and a civil penalty not to exceed two thousand five hundred dollars.

(d) An employer is not subject to penalties for a second or subsequent violation under subsection (5)(c) of this section unless the employer:

(I) Failed to comply with an order requiring compliance within thirty days after the date of the order; or

(II) Complied with an order requiring compliance within thirty days but then committed a violation of this section more than thirty days after the issuance of the order.

(e) The department shall adopt rules regarding procedures for handling complaints filed against employers alleging a violation of this section, including:

(I) Requirements for providing notice to an employer alleged to have violated this section; and

(II) Requirements for retaining and maintaining relevant employment records during a pending investigation.

Source: L. 2019: Entire section added, (HB 19-1025), ch. 284, p. 2647, § 2, effective August 2.

Cross references: For the legislative declaration in HB 19-1025, see section 1 of chapter 284, Session Laws of Colorado 2019.

PART 2

EMPLOYER'S LIABILITY

Editor's note: In the original Volume 3, Colorado Revised Statutes 1973, this part 2 was included under article 42 of the "Workmen's Compensation Act of Colorado". It was moved to this article in 1976 for correct location since it was not enacted by the General Assembly as a part of the "Workmen's Compensation Act of Colorado" (see chapter 113, p. 294, Session Laws of Colorado 1911, and chapter 210, p. 700, Session Laws of Colorado 1919, and article 5 of chapter 80 and article 1 of chapter 81, C.R.S. 1963, prior to the recodification of the statutes in 1973).

8-2-201. Damages - fellow servant rule abolished - limitation on admission of criminal history. (1) Every corporation or individual who employs agents, servants, or employees, such agents, servants, or employees being in the exercise of due care, shall be liable to respond in damages for injuries or death sustained by any such agent, servant, or employee resulting from the carelessness, omission of duty, or negligence of such employer, or which may have resulted from the carelessness, omission of duty, or negligence of any other agent, servant, or employee of the employer, in the same manner and to the same extent as if the carelessness, omission of duty, or negligence causing the injury or death was that of the employer.

(2) (a) Information regarding the criminal history of an employee or former employee may not be introduced as evidence in a civil action against an employer or its employees or agents that is based on the conduct of the employee or former employee if:

(I) The nature of the criminal history does not bear a direct relationship to the facts underlying the cause of action; or

(II) Before the occurrence of the act giving rise to the civil action, a court order sealed any record of the criminal case or the employee or former employee received a pardon; or

(III) The record is of an arrest or charge that did not result in a criminal conviction; or

(IV) The employee or former employee received a deferred judgment at sentence and the deferred judgment was not revoked.

(b) This subsection (2) does not supersede any statutory requirement to conduct a criminal history background investigation or consider criminal history records in hiring for particular types of employment.

Source: L. 11: p. 294, § 1. **C.L.** § 4167. **CSA:** C. 97, § 95. **CRS 53:** § 80-6-1. **C.R.S. 1963:** § 80-5-1. **L. 2010:** Entire section amended, (HB 10-1023), ch. 42, p. 167, § 2, effective August 11.

Cross references: (1) For negligence of a fellow servant being no defense under the "Workers' Compensation Act of Colorado", see § 8-41-101; for damages for wrongful death, see article 21 of title 13.

(2) For the legislative declaration in the 2010 act amending this section, see section 1 of chapter 42, Session Laws of Colorado 2010.

8-2-202. Damages in case of death - limit. If the death of a person is caused by an act of carelessness, omission of duty, or negligence as provided in section 8-2-201, the corporation or individual who would have been liable if the death had not ensued shall be liable to an action for damages regardless of the death of the party injured. In each such case the jury may award such damages as it deems fair and just, with reference to the necessary injury resulting from such death, to the parties who may be entitled to sue under this part 2; except that, if the decedent left neither a widow, widower, or minor children nor a dependent father or mother, the damages recoverable in any such action shall not exceed forty-five thousand dollars.

Source: L. 11: p. 295, § 2. **C.L.** § 4168. **L. 33:** p. 475, § 1. **CSA:** C. 97, § 96. **CRS 53:** § 80-6-2. **L. 61:** p. 488, § 1. **C.R.S. 1963:** § 80-5-2. **L. 67:** p. 481, § 2. **L. 69:** p. 329, § 2.

Cross references: For damages in general, see article 21 of title 13.

8-2-203. Who may sue - consolidation of actions. (1) Every such action shall in case of death be maintained:

(a) By the husband or wife of the deceased;

(b) If there is no husband or wife or if he or she fails to sue within one year after such death, by the children of the deceased or their descendants;

(c) If such deceased is a minor or unmarried, without issue, by the father or mother or by both jointly; or

(d) If there is no such person entitled to sue, by such other next of kin of the deceased as may be dependent upon the deceased for support.

(2) Every such action, in case of death, may be maintained by any person entitled to sue for the use and benefit of the others so entitled to sue as well as for the plaintiff so suing, and the verdict of the jury and the judgment of the court shall specify the amount of damages awarded to each person, and, if any such actions are separately brought, the same shall be consolidated with the action first commenced in the court which has jurisdiction of said actions when so consolidated.

Source: L. 11: p. 295, § 3. **C.L.** § 4169. **CSA:** C. 97, § 97. **CRS 53:** § 80-6-3. **C.R.S. 1963:** § 80-5-3.

8-2-204. Limitation of actions - limit of damages. All actions provided for by this part 2 shall be brought within the time period prescribed in section 13-80-102, C.R.S. The amount of damages recoverable under this part 2 in case of personal injury resulting solely from negligence of a coemployee shall not exceed the sum of twenty-five thousand dollars.

Source: L. 11: p. 296, § 4. **C.L.** § 4170. **L. 33:** p. 476, § 2. **CSA:** C. 97, § 98. **CRS 53:** § 80-6-4. **L. 61:** p. 488, § 2. **C.R.S. 1963:** § 80-5-4. **L. 86:** Entire section amended, p. 702, § 7, effective May 23.

8-2-205. Assumption of risk abolished. If any agent, servant, or employee, while in the performance of his duty for his employer, is injured or killed in the employer's service on account of the employer's negligence or any defect or peril connected with ways, works, machinery, or instrumentalities used in the business of the employer which could have been remedied or made safer by the use of ordinary diligence, a recovery for such injury or death may be had. The fact that such employee had knowledge of the defect or peril shall not be a bar to a recovery unless the repairing or remedying of such defect or peril was his principal duty. All stipulations, contracts, or agreements between an employee and his employer or between other persons contrary to the provisions of this section shall be null and void.

Source: L. 15: p. 197, § 1. **C.L.** § 4171. **CSA:** C. 97, § 99. **CRS 53:** § 80-6-5. **C.R.S. 1963:** § 80-5-5.

Cross references: For assumption of risk under the "Workers' Compensation Act of Colorado", see § 8-41-101.

ARTICLE 2.5

Freedom of Legislative and Judicial Access Act

8-2.5-101. Preventing legislative and judicial access to employees - intimidation of legislative witnesses - penalty. (1) (a) It is unlawful for any person to adopt or enforce any rule, regulation, or policy forbidding or preventing any of its employees, franchisees, or agents or entities under its control or oversight from, or to take any action against its employees, franchisees, or agents or entities under its control or oversight solely for, testifying before a committee of the general assembly or a court of law or speaking to a member of the general assembly at the request of such committee, court, or member regarding any action, policy, rule, regulation, practice, or procedure of any person or regarding any grievance relating thereto. Any person violating any provision of this section is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than one thousand dollars.

(b) The prohibition in paragraph (a) of this subsection (1) shall not apply to testimony before a committee of the general assembly or a court of law that discloses confidential, proprietary, or otherwise privileged information of any person.

(1.5) (a) It is unlawful for any person:

(I) To intimidate a legislative witness, by use of a threat, in order to intentionally influence or induce a legislative witness:

(A) To appear or not appear before a committee of the general assembly;

(B) To give or refrain from giving testimony to a committee of the general assembly;

(C) To testify falsely before a committee of the general assembly; or

(D) To avoid legal process summoning the legislative witness to attend and testify before a committee of the general assembly; or

(II) To take any action against a legislative witness for testifying before a committee of the general assembly.

(b) For the purposes of this subsection (1.5):

(I) "Legislative witness" means any individual that intends to testify or testifies before a committee of the general assembly either voluntarily or pursuant to a subpoena issued by any committee of the general assembly or of either house thereof.

(II) "Threat" means to communicate directly the intent to do any act that is intended to harm the health, safety, property, business, or financial condition of the legislative witness.

(c) Any person violating any provision of this subsection (1.5) is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than one thousand dollars.

(2) (a) An employee, a franchisee, an agent or an entity under the control of any person, or a legislative witness may recover damages, including reasonable attorney fees, from any person for injuries suffered through a violation of this section.

(b) Nothing in this section shall be construed to prohibit an employee, a franchisee, an agent or an entity under the control of any person, or a legislative witness from pursuing any other right of action permitted pursuant to law for injuries suffered through a violation of this section.

(3) Nothing in this section shall obligate any person to compensate an employee or agent for time spent testifying before a committee of the general assembly or a court of law or speaking to a member of the general assembly at the request or invitation of such committee, court, or member regarding any action, policy, rule, regulation, practice, or procedure of any person or regarding any grievance relating thereto.

(4) For purposes of this section, "person" means a corporation, a limited liability company, a partnership, an association, a firm, a state agency as defined in section 24-50.5-102 (4), C.R.S., a county, a city and county, a municipality, a federal agency, an individual, or any officer or agent thereof.

Source: L. 97: Entire article added, p. 1611, § 1, effective June 4. **L. 98:** (1.5) added and (2) amended, p. 693, § 1, effective August 5.

Cross references: For interference with the legislative process, see part 4 of article 2 of title 2; for attempt to influence a public servant, see § 18-8-306; for perjury and related offenses pertaining to governmental operations, see part 5 of article 8 of title 18; for attendance of witnesses before the general assembly, see § 2-2-313.

ARTICLE 3

Labor Peace Act

Law reviews: For article, "Labor and Employment Law", which discusses Tenth Circuit decisions dealing with labor law, see 63 Den. U. L. Rev. 395 (1986); for article, "Labor and Employment Law", which discusses Tenth Circuit decisions dealing with labor law, see 64 Den. U. L. Rev. 271 (1987); for article, "Labor and Employment Law", which discusses Tenth Circuit decisions dealing with labor law, see 65 Den. U. L. 565 (1988); for a discussion of Tenth Circuit

decisions dealing with labor law, see 67 Den. U. L. Rev. 751 (1990); for article, "The Law, Economics, and Politics of Right to Work: Colorado's Labor Peace Act and its Implications for Public Policy", see 70 U. Colo. L. Rev. 871 (1999).

8-3-101. Short title. This article shall be known and may be cited as the "Labor Peace Act".

Source: L. 43: p. 417, § 24. **CSA:** C. 97, § 94(24). **CRS 53:** § 80-5-21. **C.R.S. 1963:** § 80-4-21.

8-3-102. Legislative declaration. (1) The public policy of the state as to employment relations and collective bargaining, in the furtherance of which this article 3 is enacted, is declared to be as follows:

(a) It recognizes that there are three major interests involved, namely: That of the public, the employee, and the employer. These three interests are to a considerable extent interrelated. It is the policy of the state to protect and promote each of these interests with due regard to the situation and to the rights of the others.

(b) Industrial peace, regular and adequate income for the employee, and uninterrupted production of goods and services are promotive of all of these interests. They are largely dependent upon the maintenance of fair, friendly, and mutually satisfactory employment relations and the availability of suitable machinery for the peaceful adjustment of whatever legitimate controversies may arise. It is recognized that certain employers, including farmers and farmer cooperatives, in addition to their general employer problems, face special problems arising from perishable commodities and seasonal production which require adequate consideration. It is also recognized that whatever may be the rights of disputants with respect to each other in any controversy regarding employment relations, they should not be permitted in the conduct of their controversy to intrude directly or indirectly into the primary rights of third parties to earn a livelihood, transact business, and engage in the ordinary affairs of life by any lawful means and free from molestation, interference, intimidation, restraint, or coercion.

(c) Negotiations of terms and conditions of work should result from voluntary agreement between employer and employee. For the purpose of such negotiation, an employee has the right, if he desires, to associate with others in organizing and bargaining collectively through representatives of his own free choosing without intimidation or coercion from any source.

(d) All rights of persons to join labor organizations or unions and their rights and privileges as members thereof should be recognized, safeguarded, and protected. No person shall be denied membership in a labor organization or union on account of race, creed, color, religion, sex, sexual orientation, marital status, disability, national origin, ancestry, or by any unfair or unjust discrimination. Arbitrary or excessive initiation fees and dues shall not be required, nor shall excessive, unwarranted, arbitrary, or oppressive fines, penalties, or forfeitures be imposed. The members are entitled to full and detailed reports from their officers, agents, or representatives of all financial transactions and shall have the right to elect officers by secret ballot and to determine and vote upon the question of striking, not striking, and other questions of policy affecting the entire membership.

(e) In order to preserve and promote the interests of the public, the employee, and the employer alike, the state shall establish standards of fair conduct in employment relations and

provide a convenient, expeditious, and impartial tribunal by which these interests may have their respective rights and obligations adjudicated, without limiting the jurisdiction of the courts to protect property, and to prevent and punish the commission of unlawful acts. While limiting individual and group rights of aggression and defense, the state substitutes processes of justice for the more primitive methods of trial by combat.

(f) It is declared to be the common law of the state that no act which if done by one person would constitute a crime under the common law or statutes of this state is any less a crime if committed by two or more persons or corporations acting in concert, and no act which under the common law or statutes of this state is a wrongful act for which any person has a remedy against the wrongdoer if done by one person is any less a remedial wrong if done by two or more persons or corporations in concert, nor shall the injured person be denied relief in the courts of this state in law or equity except as such relief may be expressly limited by statute.

(g) (I) The general assembly hereby finds and determines that the matters contained in this article have important statewide ramifications for the labor force in this state. The general assembly, therefore, declares that the matters contained in this article are of statewide concern.

(II) to (III) Repealed.

Source: L. 43: p. 392, § 1. **CSA:** C. 97, § 94(1). **CRS 53:** § 80-5-1. **C.R.S. 1963:** § 80-4-1. **L. 99:** (1)(g) added, p. 288, § 1, effective April 14. **L. 2008:** (1)(d) amended, p. 1598, § 11, effective May 29. **L. 2019:** IP(1) amended and (1)(g)(II), (I)(g)(II.5), and (1)(g)(III) repealed, (HB 19-1210), ch. 320, p. 2971, § 3, effective January 1, 2020.

Cross references: For the legislative declaration contained in the 2008 act amending subsection (1)(d), see section 1 of chapter 341, Session Laws of Colorado 2008. For the legislative declaration in HB 19-1210, see section 1 of chapter 320, Session Laws of Colorado 2019.

8-3-103. Construction. Except as specifically provided in this article, nothing in this article shall be construed so as to interfere with or impede or diminish in any way the right to strike or the right of individuals to work, nor shall anything in this article be so construed as unlawfully to invade the right to freedom of speech. Nothing in this article shall be so construed or applied as to deprive any employee of any unemployment benefit which he might otherwise be entitled to receive under any other laws of the state of Colorado. The fact that any provisions of this article have been adopted from other states, or the language of the statutes of other states has been used in the preparation of this article shall not be taken to adopt as the construction of such provisions the decisions of other states construing such statutes of other states. It is not the intention of the legislature in adopting this article necessarily to adopt the construction that may have been placed upon similar provisions by the courts of other states.

Source: L. 43: p. 417, § 24. **CSA:** C. 97, § 94(24). **CRS 53:** § 80-5-21. **C.R.S. 1963:** § 80-4-21.

8-3-104. Definitions. As used in this article, unless the context otherwise requires:

(1) "All-union agreement" means a contractual provision between an employer or group of employers and a collective bargaining unit representing some or all of the employees of the

employer or group of employers providing for any type of union security and compelling an employee's financial support or allegiance to a labor organization. "All-union agreement" includes, but is not limited to, contractual provision for a union shop, a modified union shop, an agency shop (meaning a contractual provision which provides for periodic payment of a sum in lieu of union dues but does not require union membership), a modified agency shop, a prehire agreement, maintenance of dues, or maintenance of membership.

(2) "Authority" means the state of Colorado; any board, commission, agency, or instrumentality thereof; or any district, municipality, city and county, county, or combination thereof, which acquires or operates a mass transportation system.

(3) "Collective bargaining" means negotiation by an employer and the representative of a majority of his employees who are in a collective bargaining unit or their representatives concerning representation or terms and conditions of employment of such employees in a mutually genuine effort to reach an agreement with reference to the subject under negotiation.

(4) "Collective bargaining unit" means an organization selected by secret ballot, as provided in section 8-3-107, by a majority vote of the employees of one employer employed within the state who vote at an election for the selection of such unit; except that, where a majority of such employees engaged in a single craft, division, department, or plant have voted by secret ballot that the employees of such single craft, division, department, or plant shall constitute their collective bargaining unit, it shall be so considered. Two or more collective bargaining units may bargain collectively through the same representative or where a majority of the employees in each separate unit have voted to do so by secret ballot, as provided in section 8-3-107.

(5) and (6) Repealed.

(7) "Company union" means an organization of employees, the members of which are the employees of only one employer.

(8) "Director" means the director of the division of labor standards and statistics.

(9) "Division" means the division of labor standards and statistics in the department of labor and employment.

(10) "Election" means a proceeding in which the employees authorized by this article cast a secret ballot to select a collective bargaining unit or for any other purpose specified in this article, including elections conducted by the division of labor standards and statistics or by any tribunal having competent jurisdiction or whose jurisdiction has been accepted by the parties.

(11) (a) "Employee" includes any person, other than an independent contractor, domestic servants employed in and about private homes, and farm and ranch labor, working for another for hire in the state of Colorado in a nonexecutive or nonsupervisory capacity, and shall not be limited to the employees of a particular employer and shall include any individual whose work has ceased solely as a consequence of or in connection with any current labor dispute or because of any unfair labor practice on the part of an employer; and

(b) Who has not refused or failed to return to work upon the final disposition of a labor dispute or a charge of an unfair labor practice by a tribunal having competent jurisdiction of the same or whose jurisdiction was accepted by the employee or his representative;

(c) Who has not been found to have committed or to have been a party to any unfair labor practice under this article;

(d) Who has not obtained regular and substantially equivalent employment elsewhere; or

(e) Who has not been absent from his employment for a substantial period of time during which reasonable expectancy of settlement has ceased, except by an employer's unlawful refusal to bargain, and whose place has been filled by another engaged in the regular manner for an indefinite or protracted period and not merely for the duration of a strike or lockout; but shall not include any individual employed in the domestic service of a family or person at his home or any individual employed by his parent or spouse or any employee who is subject to the federal "Railway Labor Act".

(f) For purposes of this subsection (11), "farm" means stock, dairy, poultry, fur-bearing animal, and truck farms, plantations, ranches, nurseries, ranges, greenhouses, orchards, and other structures used for the raising of agricultural or horticultural commodities, provided such structures are utilized for at least fifty percent of the total output produced.

(12) "Employer" means a person who regularly engages the services of eight or more employees, other than persons within the classes expressly exempted under the terms of subsection (11) of this section, and includes any person acting on behalf of any such employer within the scope of his authority, express or implied. The term does not include the state or any political subdivision thereof, except where the state or any political subdivision thereof acquires or operates a mass transportation system, or any carrier by railroad, express company, or sleeping car company subject to the federal "Railway Labor Act", 45 U.S.C. sec. 151 et seq., or any labor organization or anyone acting in behalf of such organization other than when he is acting as an employer-in-fact.

(13) (a) "Labor dispute" means any controversy between an employer and such of his employees as are organized in a collective bargaining unit concerning the rights or process or details of collective bargaining. The entering into of a contract for an all-union agreement or the refusal of an employer to enter into an all-union agreement shall not constitute a labor dispute. It shall not be a labor dispute where the disputants do not stand in the proximate relation of employer and employee. No jurisdictional dispute or controversy between two or more unions as to which of them has or shall have jurisdiction over certain kinds of work; or as to which of two or more bargaining units constitutes the collective bargaining unit as to which the employer stands impartial or ready to negotiate or bargain with whichever is legally determined to be such bargaining unit, shall constitute a labor dispute.

(b) The general right of an employer to select his own employees is recognized and shall be fully protected. It shall not constitute a labor dispute if an employer discharges or refuses to employ an employee on account of incompetence, neglect of work, unsatisfactory service, or dishonesty; but the discharge of an employee or the refusal to employ an employee shall constitute a labor dispute only when such discharge or refusal to employ is founded upon membership in a union or labor organization or activity therein or when such discharge or failure to employ is in violation of a contract.

(c) No controversy between an employer and his employee shall constitute a labor dispute until after a bargaining unit in accordance with this article is created and a dispute arises between the bargaining unit and the employer.

(d) No labor dispute shall arise from the refusal of an employer to join a union or to cease work in his own business.

(14) "Local union" means an organization of employees employed in this state, the membership of which includes employees of one or more employers, whether or not they are affiliated with an organization of employees employed in one or more other states.

(15) "Mass transportation system" means any system which transports the general public by bus, rail, or any other means of conveyance moving along prescribed routes, except any railroad subject to the federal "Railway Labor Act", 45 U.S.C. sec. 151 et seq.

(16) "Person" includes one or more individuals, partnerships, associations, corporations, legal representatives, trustees, or receivers.

(17) "Representative" includes any person who is the duly authorized agent of a collective bargaining unit.

(18) "Secondary boycott" includes causing or threatening to cause, and combining or conspiring to cause or threaten to cause, injury to one not a party to the particular labor dispute, to aid which such boycott is initiated or continued, whether by:

(a) Withholding patronage, labor, or other beneficial business intercourse;

(b) Picketing;

(c) Refusing to handle, install, use, or work on particular materials, equipment, or supplies; or

(d) Any other unlawful means in order to bring him against his will into a concerted plan to coerce or inflict damage upon another or to compel the party with whom the labor dispute exists to comply with any particular demands.

Source: L. 43: p. 394, § 2. **CSA:** C. 97, § 94(2). **CRS 53:** § 80-5-2. **C.R.S. 1963:** § 80-4-2. **L. 65:** p. 810, § 1. **L. 69:** pp. 594, 731, §§ 72, 2. **L. 77:** (1) R&RE, p. 419, § 1, effective June 29. **L. 86:** (5) and (6) repealed, p. 502, § 125, effective July 1. **L. 96:** (11)(f) added, p. 293, § 1, effective April 12. **L. 2016:** (8), (9), and (10) amended, (HB 16-1323), ch. 131, p. 377, § 9, effective August 10.

8-3-105. Director to administer - adopt rules and regulations. The director shall enforce and administer the provisions of this article and may adopt reasonable rules and regulations relative to its administration and to the conduct of all elections and hearings pertaining to mass transportation as defined in section 8-3-104 (15). Such rules and regulations shall not be effective until ten days after the date thereof.

Source: L. 43: p. 397, § 3. **CSA:** C. 97, § 94(3). **CRS 53:** § 80-5-3. **C.R.S. 1963:** § 80-4-3. **L. 64:** p. 148, § 82. **L. 65:** p. 811, § 2. **L. 69:** p. 594, § 73. **L. 86:** Entire section R&RE, p. 470, § 24, effective July 1.

Cross references: For rule-making by state agencies in general, see article 4 of title 24.

8-3-106. Rights of employees. In accordance with the provisions of this article, employees have the right of self-organization and the right to form, join, or assist labor organizations, to bargain collectively through representatives of their own free choosing, and to engage in lawful, concerted activities for the purpose of collective bargaining or other mutual aid or protection. Each employee also has the right to refrain from any of such activities. The rights of each employee are essential rights, and nothing contained in this article shall be so construed as to infringe upon or have any operation against or in conflict with such rights.

Source: L. 43: p. 397, § 4. **CSA:** C. 97, § 94(4). **CRS 53:** § 80-5-4. **C.R.S. 1963:** § 80-4-4.

8-3-107. Representatives and elections. (1) A unit chosen for the purpose of collective bargaining shall be the exclusive representative of all of the employees in such unit, if the majority of the employees of one employer, or the majority of the employees of one employer in a craft, vote at an election. But employees individually have the right at any time to present grievances to their employer in person or through representatives of their own free choosing, and the employer shall confer with them in relation thereto.

(2) When a question arises concerning the selection of a collective bargaining unit, it shall be determined by secret ballot, and the director, upon request, shall cause the ballot to be taken in such manner as to show separately the wishes of the employees in any craft, division, department, or plant as to the selection of the collective bargaining unit.

(3) When a question arises concerning the selection of a collective bargaining unit, the director shall determine the question thereof by taking a secret ballot of employees and certifying in writing the results thereof to the bargaining units involved and to their employer. There shall be included on any ballot for the selection of a bargaining unit the names or suitable description of each bargaining unit submitted to the director and claimed to be the appropriate unit by an employee or group of employees participating in the election; except that the director, in his discretion, may exclude from the ballot any bargaining unit which, at the time of the election, stands deprived of its rights under this article by reason of a prior adjudication of its having engaged in an unfair labor practice. The ballot shall be so prepared as to permit a vote against representation by any unit named on the ballot. The director's certification of the results of any election shall be conclusive as to the findings included therein, unless reviewed in the manner provided by section 8-3-110 (8), for review of orders of the director.

(4) Questions concerning the selection of collective bargaining units may be raised by petition of any employee or his employer or the representative of either of them. Where it appears by the petition that any emergency exists requiring prompt action, the director shall act upon said petition forthwith and hold the election requested within such time as will meet the requirements of the emergency presented. The fact that one election has been held shall not prevent the holding of another election among the same group of employees, if it appears to the director that sufficient reason therefor exists.

(5) The director shall investigate and determine which persons shall be qualified and entitled to vote at any election held by him and shall prepare and certify a poll list of such qualified voters and shall file the same in the office of the director not later than twenty-four nor earlier than forty-eight hours preceding the time of such balloting. The list shall be available to the collective bargaining units whose interests are involved in the election. On request of any employee, the list shall be prepared so as to show separately which employees are entitled to vote for general representation of the employees and which employees are entitled to vote separately for craft representation or representation of any one of several plants of a common employer. No person whose name is not so certified shall be entitled to vote at such election. The director shall protect the secrecy of the ballot and shall take all proper measures for the accurate counting thereof and shall certify the result thereof and immediately file such certificate in the records of the division and make the same available for the inspection of any person interested. The bargaining units so elected and certified shall be the respective representatives of the

employees so electing them and recognized as such under this article. The names of all persons voting at the election for the selection of a bargaining unit shall be certified to the division and filed in its records and shall constitute the voting roll for said bargaining unit for all purposes under this article. The name of any person leaving such employment shall be removed from the roll; except that any employee whose name appears on said voting roll may have his name withdrawn from said roll by notice in writing to the division.

Source: L. 43: p. 398, § 5. **CSA:** C. 97, § 94(5). **CRS 53:** § 80-5-5. **C.R.S. 1963:** § 80-4-5. **L. 69:** p. 595, § 74. **L. 86:** (3) amended, p. 470, § 25, effective July 1.

8-3-108. What are unfair labor practices. (1) It is an unfair labor practice for an employer, individually or in concert with others, to:

(a) Interfere with, restrain, or coerce his employees in the exercise of the rights guaranteed in section 8-3-106;

(b) Initiate, create, dominate, or interfere with the formation or administration of any labor organization or contribute financial support to it; except that an employer shall not be prohibited from reimbursing employees at their prevailing wage rate for time spent conferring with him, nor from cooperating with representatives of at least a majority of his employees in a collective bargaining unit, at their request, by permitting employee organizational activities on employer premises or the use of employer facilities where such activities or use create no additional expense to the employer;

(c) (I) Encourage or discourage membership in any labor organization, employee agency, committee, association, or representation plan by discrimination in regard to hiring, tenure, or other terms or conditions of employment; except that an employer shall not be prohibited from entering into an all-union agreement with the representatives of his employees in a collective bargaining unit if such all-union agreement is approved by the affirmative vote of at least a majority of all the employees eligible to vote or three-quarters or more of the employees who actually voted, whichever is greater, by secret ballot in favor of such all-union agreement in an election provided for in this paragraph (c) conducted under the supervision of the director. Where the collective bargaining unit involved is currently recognized under sections 8 or 9 of the "National Labor Relations Act", as amended, (49 Stat. 449; 61 Stat. 136), or where the collective bargaining unit involved is currently recognized by reason of certification by the director or the national labor relations board, or where such units were so recognized at the time of an election provided for in this paragraph (c), there is and shall be deemed to have been no need for a certification election as a precedent to an election provided for in this paragraph (c) in such collective bargaining unit on the issue of an all-union agreement. The employees in such a recognized or certified unit within this state shall be the only employees eligible to vote in an election provided for in this paragraph (c) held in such unit.

(II) (A) Any agreement as defined in section 8-3-104 (1) between an employer and a labor organization in existence on June 29, 1977, which has not been voted upon by the employees covered by it may, by written mutual agreement of such employer and labor organization, be ratified and upon such ratification shall be filed with the director. Any agreement as defined in section 8-3-104 (1) between an employer and a labor organization in existence on June 29, 1977, which has not been ratified and filed, as provided in this subparagraph (II), shall not be legal, valid, or enforceable during the remaining term of that labor

contract unless and until either the employer, the labor organization, or at least twenty percent of the employees covered by such agreement file a petition upon forms provided by the division, demanding an election submitting the question of the all-union agreement to the employees covered by such agreement and said agreement is approved by the affirmative vote of at least a majority of all the employees eligible to vote or three-quarters or more of the employees who actually voted, whichever is greater, by secret ballot in favor of such all-union agreement in an election provided for in this paragraph (c) conducted under the supervision of the director.

(B) Upon filing of such instrument of ratification with the director, the director shall certify that such agreement complies with the provisions of section 8-3-104 (1) notwithstanding the absence of any other election requirements of this article, and by virtue of such ratification and certification, such agreement shall be deemed legal, valid, and enforceable to the extent permitted under the provisions of this article, subject to the provisions of sub-subparagraph (D) of this subparagraph (II).

(C) Within two weeks after the certification by the director provided for in sub-subparagraph (B) of this subparagraph (II), the employer which is a party to such agreement shall post or give written notice to all employees covered by such agreement on the date of ratification of the fact that the agreement has been ratified and certified pursuant to the provisions of this subparagraph (II) and of the right of such employees to file a petition demanding an election as provided in sub-subparagraph (D) of this subparagraph (II). Proof of giving of notice shall be filed with the director within twenty days after the certification by the director provided for in sub-subparagraph (B) of this subparagraph (II).

(D) Within forty-five days after the certification by the director provided for in sub-subparagraph (B) of this subparagraph (II) twenty percent of the employees covered by such agreement may file a petition, upon forms provided by the division, demanding an election submitting the question of ratification of such agreement to the employees covered by such agreement. If ratification of the agreement is approved by the affirmative vote of at least a majority of all the employees eligible to vote or three-quarters or more of the employees who actually voted, whichever is greater, in said election, the agreement shall be conclusively deemed ratified. Such election shall be held as promptly as possible following the filing of the petition. In the event that a certified contract expires or is terminated prior to the conducting of such an election, such certification shall be applicable to any subsequent agreement between the same parties until such election may be held.

(III) The director shall declare any such all-union agreement terminated whenever:

(A) He finds that the labor organization involved unreasonably has refused to receive as a member any employee of such employer, and any person interested may come before the director, as provided in section 8-3-110, and ask the performance of this duty; or

(B) The employer or twenty percent of the employees covered by such agreement file a petition with the director on forms provided by the division seeking to revoke such all-union agreement and, in an election conducted under the supervision of the director, there is not an affirmative vote of at least a majority of all the employees eligible to vote or three-quarters or more of the employees who actually voted, whichever is greater, in such election by secret ballot in favor of such all-union agreement. Such petition may only be filed within a time period between one hundred twenty and one hundred five days prior to the end of the collective bargaining agreement or prior to a triennial anniversary of the date of such agreement, and the division must complete said election within sixty days prior to the termination or triennial

anniversary of said collective bargaining agreement. The director may conduct an election within a collective bargaining unit no more often than once during the term of any collective bargaining agreement or once every three years in the case of agreements for a period longer than three years.

(IV) The director shall provide a means by which employees may submit confidential petitions for an election under this paragraph (c), a means for verifying the employment, status, and eligibility of petitioners, and a means for determining the sufficiency of such petitions with respect to the twenty percent signature requirement, all of which shall be accomplished without disclosing the identification of such petitioners, except as allowed under subparagraph (V) of this paragraph (c). This duty shall apply to petitions filed pursuant to subparagraph (II)(A), (II)(D), or (III)(B) of this paragraph (c).

(V) No officer or employee of the division shall disclose the names of any signers to a petition or disclose how any person voted in an election to any person outside the division except pursuant to a court order or subpoena issued by a governmental authority or a court, and any such officer or employee who violates such nondisclosure provisions or who refuses to call an election pursuant to this paragraph (c) or prevents or conspires to prevent such call of an election commits a class 2 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.

(d) Refuse to bargain collectively with the representatives of his employees in any collective bargaining unit; except that where an employer with reasonable cause files with the division a petition requesting a determination as to bargaining unit representation, he shall not be deemed to have refused to bargain until an election has been held and the result thereof has been certified to him by the director;

(e) Enter into an all-union agreement except in the manner provided in paragraph (c) of this subsection (1);

(f) Violate the terms of a collective bargaining agreement, including an agreement to accept an arbitration award;

(g) Refuse or fail to recognize or accept as conclusive of any issue in any controversy as to employment relations the final determination, after appeal, if any, of any tribunal having competent jurisdiction of the same or whose jurisdiction the employer has accepted;

(h) Discharge or otherwise discriminate against an employee because he has filed charges or given information or testimony in good faith under the provisions of this article;

(i) Deduct labor organization dues or assessments from an employee's earnings, unless the employer has been presented with an individual order therefor, signed by the employee personally and terminable at any time by the employee's giving at least thirty days' written notice of such termination;

(j) Employ any person to spy upon employees or their representatives respecting their exercise of any right created or approved by this article;

(k) Make, circulate, or cause to be circulated a blacklist as described in section 8-2-110;

(l) Commit any crime or misdemeanor in connection with any controversy as to employment relations;

(m) Require a potential employee to furnish preemployment application information regarding said applicant's record of civil or military disobedience, unless any such matters resulted in a plea of guilty or a conviction by a court of competent jurisdiction.

(2) It is an unfair labor practice for an employee, individually or in concert with others, to:

(a) Coerce or intimidate an employee in the enjoyment of his legal rights, including those guaranteed in section 8-3-106, or to intimidate his family or any member thereof, picket his domicile, or injure the person or property of such employee or his family or of any member thereof;

(b) Coerce, intimidate, or induce any employer to interfere with any of his employees in the enjoyment of their legal rights, including those guaranteed in section 8-3-106, or to engage in any practice with regard to his employees which would constitute an unfair labor practice if undertaken by him on his own initiative;

(c) Violate the terms of a collective bargaining agreement, including an agreement to accept an arbitration award;

(d) Refuse or fail to recognize or accept as conclusive of any issue in any controversy as to employment relations the final determination, after appeal, if any, of any tribunal having competent jurisdiction of the same or whose jurisdiction the employees or their representatives accepted;

(e) Cooperate in engaging in, promoting, or inducing picketing, boycotting, or any other overt concomitant of a strike unless a majority in a collective bargaining unit of the employees of an employer against whom such acts are primarily directed have voted by secret ballot to call a strike;

(f) Hinder or prevent, by mass picketing, threats, intimidation, force, or coercion of any kind, the pursuit of any lawful work or employment; or to obstruct or interfere with entrance to or egress from any place of employment; or to obstruct or interfere with free and uninterrupted use of public roads, streets, highways, railways, airports, or other ways of travel or conveyance;

(g) Engage in a secondary boycott, or to hinder or prevent, by threats, intimidation, force, coercion, or sabotage, the obtaining, use, or disposition of materials, equipment, or services, or to combine or conspire to hinder or prevent, by any means whatsoever, the obtaining, use, or disposition of materials, equipment, or services;

(h) Take, retain, or remain in unauthorized possession of property or any part thereof of the employer, or to engage in any concerted effort to interfere with production, except by leaving the premises in an orderly manner for the purpose of going on strike;

(i) Engage in a sit-down strike on the premises or property of the employer;

(j) Fail to give the notice of intention to strike provided in section 8-3-113;

(k) Commit any crime or misdemeanor in connection with any controversy as to employment relations;

(l) Demand or require any stand-in employee to be hired or employed by an employer, or to demand or require that the employer employ or pay for an employee to stand by or stand in for work being done by other employees, or to require the employer to employ or pay for any employee not required by the employer or necessary for the work of the employer;

(m) Do or cause to be done, on behalf of or in the interest of employers or employees, or in connection with or to influence the outcome of any controversy as to employment relations, any act prohibited by subsections (1) and (2) of this section.

(3) It is an unfair labor practice for an employee, individually or in concert with others, or for a labor organization or any of its agents to:

(a) Induce or encourage the employees of an employer to engage in a strike or concerted refusal in the course of their employment, or by any means to force or require an employer or

any one or more employees to refrain from or prevent the use of any material, device, tool, or equipment intended or calculated to reduce the cost of the work;

(b) Require or force an employer to use any materials or do any work or render any service in connection with any task, job, work, or service as a condition of using any labor-saving device, equipment, tool, or instrument in the performance of such task, job, work, or service;

(c) Impose on any employee any fine, penalty, or forfeiture because such employee has used, is using, or has attempted to use a labor-saving device;

(d) (I) Engage in or induce or encourage employees of any employer to engage in a strike or concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any service where an object thereof is forcing or requiring any employer to assign particular work to employees in a particular trade, craft, or class rather than to employees in another labor organization or in another trade, craft, or class unless such employer is failing to conform to an order of the director or certification determining the bargaining representative for employees performing such work; but nothing contained in this subsection (3) shall be construed to make unlawful a refusal by any person to enter upon the premises of any employer (other than his own employer). Whenever a complaint is filed charging that any person or labor organization is engaged in the unfair labor practice defined in this paragraph (d), the director shall hear and determine the dispute concerning the assignment of work out of which such complaint arises, unless within ten days the parties to the dispute provide evidence to the director that the dispute is properly adjusted, in which case the complaint shall be dismissed by the director.

(II) Upon the filing of a complaint under this paragraph (d), the director shall make a preliminary investigation, and, if he finds that there is reasonable cause that the complaint is true, he may issue an order directing that the employees or labor organization cease and desist from striking, picketing, or refusing to handle or work on goods pending a resolution by the director of the dispute out of which the complaint arises.

(III) Upon the failure or refusal of any person or labor organization against whom such order is issued to comply with this order or direction, the district court of the district wherein the strike, picketing, or refusal to handle or work on goods takes place may, upon application of the director, issue injunctive relief in the manner provided in the Colorado rules of civil procedure for courts of record in Colorado.

(e) With regard to the entirety of this subsection (3), the following shall apply: Such material, device, tool, or equipment is germane to the employees' craft and not injurious to the employees' health and safety or the public generally, and nothing in this subsection (3) shall negate the rights of an employer and a labor organization to bargain collectively pursuant to subsection (1)(d) of this section.

(4) It is an unfair labor practice to do or cause to be done, on behalf of or in the interest of employers or employees, or in connection with or to influence the outcome of any controversy as to employment relations, any act prohibited by subsections (1), (2), and (3) of this section.

Source: L. 43: p. 400, § 6. **CSA:** C. 97, § 94(6). **CRS 53:** § 80-5-6. **L. 63:** p. 619, § 1. **C.R.S. 1963:** § 80-4-6. **L. 69:** p. 596, § 75. **L. 71:** p. 887, § 1. **L. 77:** (1)(c) amended, p. 419, § 2, effective June 29. **L. 2002:** (1)(c)(V) amended, p. 1466, § 18, effective October 1.

Cross references: For the legislative declaration contained in the 2002 act amending subsection (1)(c)(V), see section 1 of chapter 318, Session Laws of Colorado 2002.

8-3-109. What are not unfair labor practices. (1) It is not an unfair labor practice for any employer to refuse to grant a closed shop or all-union agreement or to accede to any proposal therefor as provided in this article.

(2) The right of both employer and employee freely to express, declare, and publish their respective views and proposals concerning any labor relationship shall not be abrogated or limited by this article, nor shall the exercise of such right constitute an unfair labor practice. No strike shall be lawful unless it is authorized by a majority vote of the employees in the union involved taken by secret ballot such as is provided in this article.

(3) It shall not be an unfair labor practice for an employer engaged primarily in the building and construction industry to enter into an all-union agreement, except an agreement providing for an agency shop or modified agency shop, with a labor organization, which agreement is limited in its coverage to employees who, upon their employment, will be engaged in the building and construction industry, if a copy of such agreement is filed with the director and certified by him as provided in section 8-3-108 (1)(c)(II)(B). Such agreement may be ratified as provided in section 8-3-108 (1)(c)(II)(C) or terminated by the director as provided in section 8-3-108 (1)(c)(III).

Source: L. 43: p. 403, § 7. **CSA:** C. 97, § 94(7). **CRS 53:** § 80-5-7. **C.R.S. 1963:** § 80-4-7. **L. 77:** (3) added, p. 422, § 3, effective June 29.

8-3-110. Prevention of unfair labor practices. (1) Any controversy concerning unfair labor practices may be submitted to the division in the manner and with the effect provided in this article; but nothing in this article shall prevent the pursuit of equitable or legal relief in courts of competent jurisdiction, nor shall it be any ground for refusal of such relief that all of the administrative remedies provided in this article before the division have not been exhausted.

(2) Upon the filing with the division by any party in interest of a complaint in writing on a form provided by the division charging any person with having engaged in any specific unfair labor practice, the division shall mail a copy of such complaint to all persons so charged. Any other person claiming interest in the dispute or controversy, as an employer, an employee, or representative thereof, shall be made a party upon application. The director may bring in additional parties by service of a copy of the complaint. Only one such complaint shall issue against a person with respect to a single controversy, but any such complaint may be amended in the discretion of the director at any time prior to the issuance of a final order based thereon. The persons so complained of have the right to file an answer to the original or amended complaint and to appear in person or otherwise and give testimony at the place and time fixed in the notice of hearing. The director shall fix a time for the hearing on such complaint, which shall not be less than ten nor more than forty days after the filing of such complaint. Notice shall be given to the complainant and to each party named in the pleadings by service on him personally or by mailing a copy thereof to him at his last known post office address at least ten days before such hearing. In case a party in interest is located without the state and has no known post office address within this state, a copy of the complaint and copies of all notices shall be filed in the office of the secretary of state and shall also be sent by registered mail to the last known post

office address of such party. Such filing and mailing shall constitute sufficient service with the same force and effect as if served upon the party located within this state. Such hearing may be adjourned from time to time in the discretion of the director and hearings may be held at such places as the director designates. The director may initiate and file any such complaint of his own motion or at the request of any interested person. Should the director file such a complaint on request, he shall not disclose the name or interest of the person upon whose request the complaint is filed, if in his judgment such disclosure would tend to prejudice the interest of any person who may be affected by any order that the director may enter upon such complaint.

(3) The director has the power to issue subpoenas and administer oaths. Depositions may be taken in the manner prescribed by the Colorado rules of civil procedure, and all such depositions shall be taken upon commissions issued by the director. No person shall be excused from attending and testifying or from producing books, records, correspondence, documents, or other evidence in obedience to the subpoena of the director on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture under the laws of the state of Colorado. No individual shall be prosecuted or subjected to any penalty or forfeiture for any transaction, matter, or thing concerning which he may testify or produce evidence, documentary or otherwise, before the director in obedience to a subpoena issued by him. An individual so testifying shall not be exempt from prosecution and punishment for perjury in the first degree committed in so testifying.

(4) Any person who willfully and unlawfully fails or neglects to appear or testify or to produce books, papers, and records as required, upon application to a district court, shall be ordered to appear before the director to testify or produce evidence if so ordered, and failure to obey such order of the court may be punished by the court as a contempt thereof.

(5) Each witness who appears before the director by his order or subpoena shall receive for his attendance the fees and mileage provided for witnesses in civil cases in courts of record, which shall be audited and paid by the state in the same manner as other expenses are audited and paid, upon presentation of properly verified vouchers approved by the director and charged to the proper appropriation for the division.

(6) A complete record shall be kept of all proceedings had before the director, and all testimony and proceedings shall be taken down by the reporter appointed by the director. Such proceedings shall not be governed by the technical rules of evidence, but by such rules as are prescribed by the director for administrative hearings.

(7) After the final hearing the director shall promptly make and file his findings of fact upon all of the issues involved in the controversy and his order which shall state his determination as to the rights of the parties. Pending the final determination of any controversy before him, the director, after hearing, may make interlocutory findings and orders, which may be enforced in the same manner as final orders. Final orders may dismiss the charges or require the person complained of to cease and desist from the unfair labor practices found to have been committed; suspend his rights, immunities, privileges, or remedies granted or afforded by this article as the director may specify, but not more than one year; and require an employer to take such affirmative action, including reinstatement of employees with or without pay, as the director may deem proper. Any order may further require such person to make reports from time to time showing the extent to which he has complied with the order.

(8) The director may authorize a deputy, referee, or administrative law judge appointed pursuant to part 10 of article 30 of title 24, C.R.S., to take evidence and to make findings and

report them to the director. Any party in interest who is dissatisfied with the findings or order of the director may seek judicial review pursuant to section 24-4-106, C.R.S.

(9) The director, on his own motion, may set aside, modify, or change any of his findings or orders at any time within twenty days from the date thereof if he discovers any mistake therein or upon the ground of newly discovered evidence.

(10) If any party fails or neglects to obey an order of the director while the same is in effect, the director may file a complaint in the district court of the county wherein such person resides or usually transacts business for the enforcement of such order for appropriate temporary relief or restraining order, and shall certify and file in the court the record in the proceedings, including all documents and papers on file in the matter, and pleadings and testimony upon which such order was entered, and the findings and order of the director. Upon the filing the director shall cause notice thereof to be served upon such party by mailing a copy to his last known post office address, and thereupon the court has jurisdiction of the proceedings and of the question determined therein. Said action may thereupon be brought on for hearing upon such order by the director serving ten days' written notice upon the respondent, subject, however, to the Colorado rules of civil procedure for a change of the place of trial or the calling in of another judge. Upon such hearing the court may confirm, modify, or set aside the order of the director and enter an appropriate decree. No objection that was not urged before the director shall be considered by the court unless the failure or neglect to urge such objection is excused because of extraordinary circumstances. The findings of fact made by the director, if supported by credible and competent evidence in the record, shall be conclusive. The court in its discretion may grant leave to adduce additional evidence before the court where such evidence appears to be material and reasonable cause is shown for failure to have adduced such evidence in the hearing before the director. The director may modify his findings as to facts, or make new findings by reason of such additional evidence, and he shall file such modified or new findings with the same effect as his original findings and shall file his recommendations, if any, for the modification or setting aside of his original order. The court's judgment and decree shall be final; except that the same shall be subject to appellate review as provided by law.

(11) to (14) Repealed.

(15) Substantial compliance with the procedures of this article is sufficient to give effect to the orders of the director, and they shall not be declared inoperative, illegal, or void for any omission of a technical nature in respect thereto.

(16) The right of any person to proceed under this section and section 8-3-121 shall not extend beyond six months from the date of the specific act or unfair labor practice alleged.

(17) The director also has the power by himself and on his own motion to initiate proceedings in the manner provided in this section. It is likewise the duty of the director to so initiate a proceeding in his own name whenever complaint is made to him by any party in interest if it appears to the director that the disclosure of the name of the complainant, either as an employee or group of employees or as an employer or agent or representative of the employer, would jeopardize the rights or interests or standing of any party in interest. The proceedings so initiated by the director shall be conducted in the same manner and have the same effect as provided for in this section.

(18) (a) The director has the power and it is his duty in carrying out the public policy of the state, either upon his own initiative or upon the complaint of any party in interest or any organization or persons representing any public interests, if there is picketing which in the

opinion of the director might tend to lead to riots, disturbances, or assaults or disturb public peace or injure the property or persons of individuals, to limit the number of pickets that may be permitted; and to prescribe the distance from any plant, entrance, or exit where such picketing may be permitted; and to otherwise prescribe limits to such picketing, including not only the number of persons picketing but also the manner or method thereof; and to prevent the use of weapons of any kind or threats or intimidation.

(b) Upon the failure or refusal of any person against whom any such order or direction is issued to comply with such order or direction, the district court of the district wherein the picketing takes place or the violation occurs, upon application of the director, may issue injunctive relief in the manner provided in the Colorado rules of civil procedure for courts of record in Colorado.

Source: L. 43: p. 403, § 8. **CSA:** C. 97, § 94(8). **CRS 53:** § 80-5-8. **C.R.S. 1963:** § 80-4-8. **L. 69:** p. 596, § 76. **L. 72:** p. 561, § 27. **L. 77:** (8) amended, p. 305, § 1, effective June 10; (16) amended, p. 423, § 4, effective June 29. **L. 86:** (6), (8), and (15) amended, p. 471, § 26, effective July 1; (11), (12), (13), and (14) repealed, p. 502, § 125, effective July 1. **L. 87:** (8) amended, p. 937, § 6, effective March 13.

Cross references: For fees and mileage of witnesses, see §§ 13-33-102 and 13-33-103; for the taking of depositions, see C.R.C.P. 26-37; for punishment of contempt, see C.R.C.P. 107; for issuance of injunctions, see C.R.C.P. 65.

8-3-111. Protection of employees when authority acquires certain operations. (1) Before any authority may acquire and operate any property of a privately or publicly owned mass transportation system, fair and equitable protective arrangements, as determined by the director, shall be made to insure certain rights of employees. Such protective arrangements shall include, without being limited to, such provisions as may be necessary to accomplish the following objectives:

(a) The preservation of existing rights, privileges, and benefits of employees under existing collective bargaining agreements between the mass transportation system and the employees thereof, including the continuation of all pension rights and benefits of the employees and their beneficiaries;

(b) The continuation of all collective bargaining in any situation existing at the time of such acquisition and the assurance of employment of all the employees of such mass transportation system so acquired;

(c) The protection of all individual employees with respect to their employment, including priorities, seniorities, and right of advancement when in agreement with any existing collective bargaining agreement;

(d) Training and retraining programs of employees and managing personnel.

(2) The contract whereby an authority acquires any property of a privately or publicly owned mass transportation system shall specify with particularity, the terms and conditions of all the protective arrangements set forth in this section, including all other protective arrangements which may be added through collective bargaining or by direction of the director.

(3) The determination of the sufficiency of protective arrangements shall be made by the director in accordance with such rules and regulations as the commission may from time to time establish.

Source: L. 43: p. 409, § 9. **CSA:** C. 97, § 94 (9). **CRS 53:** § 80-5-9. **L. 65:** p. 811, § 3. **C.R.S. 1963:** § 80-4-9. **L. 69:** p. 600, § 77.

8-3-112. Arbitration. (1) Parties to a labor dispute may agree in writing to have the director act as arbitrator or to name arbitrators to arbitrate all or any part of such dispute, and thereupon the director shall have the power so to act. The director shall appoint as arbitrators only competent, impartial, and disinterested persons. Proceedings in any such arbitration shall be as provided by the rules of arbitration under the Colorado rules of civil procedure.

(2) All parties to any labor dispute when the employer is an authority shall submit to arbitration upon written order of the director when such written order is the result of the procedure set forth in section 8-3-113 (3). Any order so given shall be subject to appeal within five days of the receipt of such order by either the employee's representative or the authority, who are parties in interest. Appeal of the order shall be made to the district court in the judicial district where the most substantial number of the employees concerned are employed. Such court shall either confirm, deny, amend, or continue the order within sixty days following the application for appeal. The results of any arbitration conducted in accordance with the procedure set forth in this article shall be binding upon all parties in interest with the right of appeal to any court of competent jurisdiction on the grounds that the director or arbitration board has been unfair, capricious, or unjust in its conduct, determinations, or award.

Source: L. 43: p. 409, § 10. **CSA:** C. 97, § 94(10). **CRS 53:** § 80-5-10. **C.R.S. 1963:** § 80-4-10. **L. 65:** p. 812, § 4. **L. 69:** p. 600, § 78.

Cross references: For director's duty in relation to arbitration, see § 8-1-123.

8-3-113. Mediation. (1) The director has power to appoint any competent, impartial, disinterested person to act as mediator in any labor dispute either upon his own initiative or upon the request of one of the parties to the dispute. It is the function of such mediator to bring the parties together voluntarily under such favorable auspices as will tend to effectuate settlement of the dispute, but neither the mediator nor the director has any power of compulsion in mediation proceedings. The director shall provide necessary expenses and order reasonable compensation for such mediators as he may appoint.

(2) Where, as provided by this article, the exercise of the right to strike by the employees of any employer engaged in the state of Colorado in the production, harvesting, or initial processing, the latter after leaving the farm, of any farm or dairy product produced in this state would tend to cause the destruction or serious deterioration of such product, the employees shall give to the division at least thirty days' notice of their intention to strike, and, in the case of employees in all other industries or occupations, at least twenty days' notice of their intention to strike. The division shall immediately notify the employer of the receipt of such notice. Upon receipt of such notice, the director shall take immediate steps to effect mediation, if possible. In the event of the failure of the efforts to mediate, the director shall endeavor to induce the parties

to arbitrate the controversy. Any strike called or made effective before the expiration of twenty days from the date of such notice shall constitute an unfair labor practice.

(3) Where the exercise of the right to strike is desired by the employees of any authority, the employees or their representatives shall file with the division written notice of intent to strike not less than forty calendar days prior to the date contemplated for such strike. Within twenty days of the filing of the notice, the director shall enter an order allowing or denying the strike based on the grounds of whether or not such strike would interfere with the preservation of the public peace, health, and safety in accordance with rules and regulations of the division. Any order denying a strike under this section shall include an order to arbitrate in accordance with section 8-3-112. Such arbitration shall be entered into not later than one hundred days from the filing of the notice of intent to strike. Immediately upon receipt of a notice of intent to strike, the director shall take steps to effect mediation, if possible. In the event of failure to mediate, the director shall endeavor to induce the parties to arbitrate the controversy. Any strike before the expiration of forty days from the giving of notice of intent to strike or in violation of an order of the director, unless such order is changed on appeal or otherwise, shall constitute an unfair labor practice.

(4) The division shall prescribe reasonable rules of procedure for mediation under this section.

Source: L. 43: p. 410, § 11. **CSA:** C. 97, § 94(11). **CRS 53:** § 80-5-11. **C.R.S. 1963:** § 80-4-11. **L. 65:** p. 813, § 5. **L. 69:** p. 601, § 79. **L. 86:** (3) and (4) amended, p. 471, § 27, effective July 1.

8-3-114. Duties of attorney general and district attorneys. Upon the request of the director, the attorney general or the district attorney of the county in which a proceeding is brought before the district court for the purpose of enforcing or reviewing an order of the director shall appear and act as counsel for the director in such proceeding and in any proceeding to review the action of the district court affirming, modifying, or reversing such order.

Source: L. 43: p. 410, § 12. **CSA:** C. 97, § 94(12). **CRS 53:** § 80-5-12. **C.R.S. 1963:** § 80-4-12. **L. 69:** p. 602, § 80. **L. 86:** Entire section amended, p. 471, § 28, effective July 1.

8-3-115. Employer and employee committees. The director, from time to time, may appoint joint, standing, or special committees composed in equal numbers of representatives of employees and employers. The director may refer to any such committee for its study and advice any matters concerning the relations of employers and employees or the operation of this article.

Source: L. 43: p. 410, § 13. **CSA:** C. 97, § 94(13). **CRS 53:** § 80-5-13. **C.R.S. 1963:** § 80-4-13. **L. 69:** p. 602, § 81.

8-3-116. Interference with director - officer of division. Any person who willfully assaults, resists, prevents, impedes, or interferes with the director or any officer, deputy, agent, or employee of the division or any of its agencies in the performance of duties pursuant to this article is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of

not more than five hundred dollars, or by imprisonment in the county jail for not more than one year, or by both such fine and imprisonment.

Source: L. 43: p. 411, § 14. **CSA:** C. 97, § 94(14). **CRS 53:** § 80-5-14. **C.R.S. 1963:** § 80-4-14. **L. 69:** p. 602, § 82. **L. 86:** Entire section amended, p. 472, § 29, effective July 1.

8-3-117. Existing contracts unaffected. Nothing in this article shall operate to abrogate, annul, or modify any valid agreement respecting employment relations existing on or before April 1, 1943.

Source: L. 43: p. 411, § 15. **CSA:** C. 97, § 94(15). **CRS 53:** § 80-5-15. **C.R.S. 1963:** § 80-4-15.

8-3-118. Jurisdiction to issue restraining orders or injunctions. (1) Except as otherwise provided in this article, no court has jurisdiction to issue in any case involving or growing out of a labor dispute any restraining order or temporary or permanent injunction which in specific or general terms prohibits any person from doing, whether singly or in concert, any of the following acts:

(a) Ceasing or refusing to perform any work or to remain in any relation of employment, regardless of any promise, undertaking, contract, or agreement to do such work or to remain in such employment;

(b) Becoming or remaining a member of any labor organization or of any employer organization, regardless of any undertaking or promise as is described in section 8-3-119;

(c) Paying or giving to or withholding from any person any strike or unemployment benefits or insurance or other moneys or things of value;

(d) Aiding, by all lawful means, any person who is being proceeded against in, or is prosecuting any action or suit in, any court of this state;

(e) Giving publicity to and obtaining or communicating information regarding the existence of or the facts involved in any dispute, whether by advertising, speaking, without intimidation or coercion, or by any other method not involving fraud, violence, breach of the peace, or threat thereof;

(f) Ceasing as an organization to patronize any person with whom the organization has a labor dispute or requiring it to employ any person;

(g) Assembling peaceably to do or to organize to do any of the acts specified in this section or to promote lawful interests;

(h) Advising or notifying any person of an intention to do any of the acts specified in this section;

(i) Agreeing with other persons to do or not to do any of the acts specified in this section;

(j) Advising, urging, or inducing, without fraud, violence, or threat thereof, others to do the acts specified in this section, regardless of any such undertaking or promise as is described in section 8-3-119;

(k) Doing in concert any acts specified in this section on the ground that the persons engaged therein constitute an unlawful combination or conspiracy.

Source: L. 43: p. 411, § 16. **CSA:** C. 97, § 94(16). **CRS 53:** § 80-5-16. **C.R.S. 1963:** § 80-4-16.

8-3-119. Relations contrary to public policy. (1) The following is declared to be contrary to public policy and shall not afford any basis for the granting of legal or equitable relief by any court against a party to such undertaking or promise or against any other persons who may advise, urge, or induce, without fraud, violence, or threat thereof, either party thereto to act in disregard of the undertaking or promise: Every undertaking or promise made on or after April 1, 1943, whether written or oral, express or implied, between any employee or prospective employee and his employer, prospective employer, or any other individual, firm, company, association, or corporation, whereby:

(a) Either party thereto undertakes or promises to join or to remain a member of some specific labor organization or to join or remain a member of some specific employer organization or any employer organization; or

(b) Either party thereto undertakes or promises not to join or not to remain a member of some specific labor organization or of some specific employer organization or any employer organizations; or

(c) Either party thereto undertakes or promises that he will withdraw from an employment relation in the event that he joins or remains a member of some specific labor organization or any labor organization or of some specific employer organization or any employer organization.

Source: L. 43: p. 412, § 17. **CSA:** C. 97, § 94(17). **CRS 53:** § 80-5-17. **C.R.S. 1963:** § 80-4-17.

8-3-120. Conflict of provisions. Wherever the application of the provisions of other statutes or laws conflict with the application of the provisions of this article, this article shall prevail; except that, in any situation where the provisions of this article cannot be validly enforced, the provisions of such other statutes or laws shall apply.

Source: L. 43: p. 413, § 18. **CSA:** C. 97, § 94(18). **CRS 53:** § 80-5-18. **C.R.S. 1963:** § 80-4-18.

8-3-121. Civil liability for damages. (1) Any person who suffers injury because of an unfair labor practice has a right of action, jointly and severally, against all persons participating in said practice for damages caused to the injured person thereby.

(2) If, in accordance with this article or otherwise, persons otherwise unwilling to do so are induced to violate contracts of employment or for services or materials, any person injured thereby shall be entitled to recover and have judgment therefor at law against the persons, jointly and severally, so inducing the violation of such obligations.

Source: L. 43: p. 416, § 22. **CSA:** C. 97, § 94(22). **CRS 53:** § 80-5-19. **C.R.S. 1963:** § 80-4-19.

8-3-122. Penalty for violation. Any person, firm, or corporation who violates any of the provisions of this article is guilty of a misdemeanor and, upon conviction thereof, shall be fined for the first offense not less than fifty dollars nor more than one hundred dollars and for the second and subsequent offenses not less than one hundred dollars nor more than five hundred dollars, together with costs.

Source: L. 43: p. 417, § 23. **CSA:** C. 97, § 94(23). **CRS 53:** § 80-5-20. **C.R.S. 1963:** § 80-4-20. **L. 64:** p. 389, § 25.

8-3-123. Nonapplicability of other statutes. The provisions of sections 8-1-108, 8-1-120, and 8-1-123 shall not apply to this article, but this article and the administration thereof are governed and controlled as to all matters contained in sections 8-1-108, 8-1-120, and 8-1-123 by the special provisions of this article.

Source: L. 43: p. 417, § 25. **CSA:** C. 97, § 94(25). **CRS 53:** § 80-5-22. **C.R.S. 1963:** § 80-4-22. **L. 76:** Entire section amended, p. 297, § 12, effective May 20.

ARTICLE 3.5

Nonimmigrant Agricultural Seasonal
Worker Pilot Program

8-3.5-101 to 8-3.5-114. (Repealed)

Editor's note: (1) This article was added in 2008 and was not amended prior to its repeal in 2014. For the text of this article prior to 2014, consult the 2013 Colorado Revised Statutes and the Colorado statutory research explanatory note beginning on page vii in the front of this volume.

(2) Section 8-3.5-114 provided for the repeal of this article, effective January 1, 2014. (See L. 2008, p. 2304.)

Wages

ARTICLE 4

Wages

Editor's note: This article was numbered as article 8 of chapter 80, C.R.S. 1963. The substantive provisions of this article were amended with relocations in 2003, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this article prior to 2003, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume. Former C.R.S. section numbers are shown in editors' notes following those sections that were relocated.

Law reviews: For article, "An Overview of Federal and State Wage-Hour Laws -- Part II", see 14 Colo. Law. 781 (1985); for article, "State Laws: A Growing Minefield for Employers", see 23 Colo. Law. 1089 (1994); for article, "Civil Actions Under the Colorado Wage Claim Act", see 28 Colo. Law. 65 (Feb. 1999); for article, "New Age Employee Compensation Issues: Or, It Used To Be So Simple . . .", see 29 Colo. Law. 5 (June 2000); for article, "New Developments in Colorado Wage Law", see 33 Colo. Law. 67 (Jan. 2004); for article, "The Colorado Wage Act, Employee Status, and Terms of Compensation", see 36 Colo. Law. 63 (May 2007); for article, "2007 Amendments to the Colorado Wage Claim Act", see 36 Colo. Law. 47 (Dec. 2007); for article, "'Use-It-or-Lose-It' Benefit Policies and the Colorado Wage Claim Act", see 41 Colo. Law. 39 (June 2012).

8-4-101. Definitions. As used in this article 4, unless the context otherwise requires:

(1) "Citation" means a written determination by the division that a wage payment requirement has been violated.

(2) "Credit" means an arrangement or understanding with the bank or other drawee for the payment of an order, check, draft, note, memorandum, or other acknowledgment of indebtedness.

(3) "Director" means the director of the division of labor standards and statistics or his or her designee.

(4) "Division" means the division of labor standards and statistics in the department of labor and employment.

(5) "Employee" means any person, including a migratory laborer, performing labor or services for the benefit of an employer. For the purpose of this article 4, relevant factors in determining whether a person is an employee include the degree of control the employer may or does exercise over the person and the degree to which the person performs work that is the primary work of the employer; except that an individual primarily free from control and direction in the performance of the service, both under his or her contract for the performance of service and in fact, and who is customarily engaged in an independent trade, occupation, profession, or business related to the service performed is not an "employee".

(6) "Employer" has the same meaning as set forth in the federal "Fair Labor Standards Act", 29 U.S.C. sec. 203 (d), and includes a foreign labor contractor and a migratory field labor contractor or crew leader; except that the provisions of this article 4 do not apply to the state or its agencies or entities, counties, cities and counties, municipal corporations, quasi-municipal corporations, school districts, and irrigation, reservoir, or drainage conservation companies or districts organized and existing under the laws of Colorado.

(7) "Field labor contractor" means anyone who contracts with an employer to recruit, solicit, hire, or furnish migratory labor for agricultural purposes to do any one or more of the following activities in this state: Hoeing, thinning, topping, sacking, hauling, harvesting, cleaning, cutting, sorting, and other direct manual labor affecting beets, onions, lettuce, potatoes, tomatoes, and other products, fruits, or crops in which labor is seasonal in this state. Such term shall not include a farmer or grower, packinghouse operator, ginner, or warehouseman or any full-time regular and year-round employee of the farmer or grower, packinghouse operator, ginner, or warehouseman who engages in such activities, nor shall it include any migratory laborer who engages in such activities with regard to such migratory laborer's own children, spouse, parents, siblings, or grandparents.

(8) "Fine" means any monetary amount assessed against an employer and payable to the division.

(8.5) "Foreign labor contractor" means any person who recruits or solicits for compensation a foreign worker who resides outside of the United States in furtherance of that worker's employment in Colorado; except that "foreign labor contractor" does not include any entity of the federal, state, or local government.

(9) "Migratory laborer" means any person from within or without the limits of the state of Colorado who offers his or her services to a field labor contractor, whether from within or from without the limits of the state of Colorado, so that said field labor contractor may enter into a contract with any employer to furnish the services of said migratory laborers in seasonal employment.

(10) "Notice of assessment" means a written notice by the division, based on a citation, that the employer must pay the amount of wages, penalties, or fines assessed.

(11) "Notice of complaint" means the letter sent by the division as described in section 8-4-111 (2)(a).

(12) "Penalty" means any monetary amount assessed against an employer and payable to an employee.

(13) "Wage complaint" means a complaint filed with the division from an employee for unpaid wages alleging that an employer has violated section 15 of article XVIII of the Colorado constitution, this article, article 6 of this title, or any rule adopted by the director pursuant to this article or article 6 of this title.

(14) (a) "Wages" or "compensation" means:

(I) All amounts for labor or service performed by employees, whether the amount is fixed or ascertained by the standard of time, task, piece, commission basis, or other method of calculating the same or whether the labor or service is performed under contract, subcontract, partnership, subpartnership, station plan, or other agreement for the performance of labor or service if the labor or service to be paid for is performed personally by the person demanding payment. No amount is considered to be wages or compensation until such amount is earned, vested, and determinable, at which time such amount shall be payable to the employee pursuant to this article.

(II) Bonuses or commissions earned for labor or services performed in accordance with the terms of any agreement between an employer and employee;

(III) Vacation pay earned in accordance with the terms of any agreement. If an employer provides paid vacation for an employee, the employer shall pay upon separation from employment all vacation pay earned and determinable in accordance with the terms of any agreement between the employer and the employee.

(IV) "Paid sick leave" as provided in part 4 of article 13.3 of this title 8.

(b) "Wages" or "compensation" does not include severance pay.

(15) "Written demand" means any written demand for wages or compensation from or on behalf of an employee, including a notice of complaint, mailed or delivered to the employer's correct address.

Source: L. 2003: Entire article amended with relocations, p. 1850, § 1, effective August 6. **L. 2014:** Entire section amended, (SB 14-005), ch. 276, p. 1110, § 2, effective January 1, 2015. **L. 2016:** (3) and (4) amended, (HB 16-1323), ch. 131, p. 378, § 10, effective August 10.

L. 2019: IP, (5), and (6) amended and (8.5) added, (HB 19-1267), ch. 182, p. 2058, § 2, effective January 1, 2020. **L. 2020:** (14)(a)(IV) added, (SB 20-205), ch. 294, p. 1457, § 2, effective July 14.

Editor's note: Section 4 of chapter 294 (SB 20-205), Session Laws of Colorado 2020, provides that the act changing this section applies to conduct occurring on or after July 14, 2020.

Cross references: (1) For the short title ("Wage Protection Act of 2014") in SB 14-005, see section 1 of chapter 276, Session Laws of Colorado 2014.

(2) For the legislative declaration in HB 19-1267, see section 1 of chapter 182, Session Laws of Colorado 2019.

8-4-102. Proper payment - record of wages. (1) **Negotiable instrument required.** No employer or agent or officer thereof shall issue, in payment of or as an evidence of indebtedness for wages due an employee, any order, check, draft, note, memorandum, or other acknowledgment of indebtedness unless the same is negotiable and payable upon demand without discount in cash at a bank organized and existing under the general banking laws of the state of Colorado or the United States or at some established place of business in the state. The name and address of the drawee shall appear upon the face of the order, check, draft, note, memorandum, or other acknowledgment of indebtedness; except that such provisions shall not apply to a public utility engaged in interstate commerce and otherwise subject to the power of the public utilities commission. At the time of the issuance of same, the maker or drawer shall have sufficient funds in or credit with the bank or other drawee for the payment of same. Where such order, check, draft, note, memorandum, or other acknowledgment of indebtedness is protested or dishonored on the ground of insufficiency of funds or credit, the notice of memorandum of protest or dishonor thereof shall be admissible as proof of presentation, nonpayment, and protest.

(2) **Direct deposit.** Nothing in this article shall prohibit an employer from depositing wages due or to become due or an advance on wages to be earned in an account in any bank, savings and loan association, credit union, or other financial institution authorized by the United States or one of the several states to receive deposits in the United States if the employee has voluntarily authorized such deposit in the financial institution of the employee's choice.

(2.5) **Paycard.** (a) Nothing in this article shall prohibit an employer from depositing an employee's wages on a paycard, so long as the employee:

(I) Is provided free means of access to the entire amount of net pay at least once per pay period; or

(II) May choose to use other means for payment of wages as authorized in subsections (1) and (2) of this section.

(b) As used in this section, "paycard" means an access device that an employee uses to receive his or her payroll funds from his or her employer.

(3) **Scrip prohibited.** No employer or agent or officer thereof shall issue in payment of wages due, or wages to become due an employee, or as an advance on wages to be earned by an employee any scrip, coupons, cards, or other things redeemable in merchandise unless such scrip, coupons, cards, or other things may be redeemed in cash when due, but nothing contained in this section shall be construed to prohibit an employer from guaranteeing the payment of bills

incurred by an employee for the necessities of life or for the tools and implements used by such employee in the performance of his or her duties.

Source: L. 2003: Entire article amended with relocations, p. 1852, § 1, effective August 6. **L. 2008:** (2.5) added, p. 150, § 1, effective August 5.

Cross references: For wage equality, see article 5 of this title; for minimum wages of workers, see article 6 of this title.

8-4-103. Payment of wages - insufficient funds - pay statement - record retention - gratuity notification - penalties. (1) (a) All wages or compensation, other than those mentioned in section 8-4-109, earned by any employee in any employment, other than those specified in subsection (3) of this section, shall be due and payable for regular pay periods of no greater duration than one calendar month or thirty days, whichever is longer, and on regular paydays no later than ten days following the close of each pay period unless the employer and the employee shall mutually agree on any other alternative period of wage or salary payments.

(b) An employer is subject to the penalties specified in section 8-4-113 (1) if, two or more times within any twenty-four-month period, the employer causes an employee's check, draft, or order to not be paid because the employer's bank does not honor an employee's paycheck upon presentment. The director may investigate complaints regarding alleged violations of this paragraph (b).

(2) (a) In agricultural, horticultural, and floricultural pursuits and in stock or poultry raising, when the employee in such employments is boarded and lodged by the employer, all wages or compensation earned by any employee in such employment shall be due and payable for regular periods of no greater duration than one month and on paydays no later than ten days following the close of each pay period.

(b) Nothing in paragraph (a) of this subsection (2), as amended by House Bill 05-1180, as enacted at the first regular session of the sixty-fifth general assembly, shall be construed as changing the property tax classification of property owned by a floricultural operation.

(3) Nothing in this article shall apply to compensation payments due an employee under a profit-sharing plan, a pension plan, or other similar deferred compensation programs.

(4) Every employer shall at least monthly, or at the time of each payment of wages or compensation, furnish to each employee an itemized pay statement in writing showing the following:

(a) Gross wages earned;

(b) All withholdings and deductions;

(c) Net wages earned;

(d) The inclusive dates of the pay period;

(e) The name of the employee or the employee's social security number; and

(f) The name and address of the employer.

(4.5) An employer shall retain records reflecting the information contained in an employee's itemized pay statement as described in subsection (4) of this section for a period of at least three years after the wages or compensation were due. The records shall be available for inspection by the division, and the employer shall provide copies of the records upon request by the division or the employee. The director may impose a fine of up to two hundred fifty dollars

per employee per month on an employer who violates this subsection (4.5) up to a maximum fine of seven thousand five hundred dollars.

(5) Each field labor contractor shall keep, for a period of three years on each migratory laborer, records of wage rates offered, wages earned, number of hours worked, or, in the case of contractual or piecework where a field labor contractor pays the employee, the aggregate amount earned and all withholdings from wages on a form furnished by and in the manner prescribed by the division. In addition, in each pay period, each field labor contractor shall provide to each migratory laborer engaged in agricultural employment a statement of the gross earnings of the laborer for the period and all deductions and withholdings therefrom. The director may prescribe appropriate forms for use pursuant to this subsection (5). All such payroll records shall be filed with the division quarterly or at any time said labor contractor leaves this state or terminates his or her contract. The director is charged with the responsibility of making periodic reports to the governor's committee on migrant labor.

(6) It is unlawful for an employer engaged in a business where the custom prevails of the giving of gratuities by patrons to an employee of the business to assert a claim to, or right of ownership in, or control over gratuities. These gratuities are the sole property of the employee unless the employer notifies each patron in writing, including by a notice on a menu, table tent, or receipt, that gratuities are shared by employees. Nothing in this section prevents an employer from requiring employees to share or allocate gratuities on a preestablished basis among the employees of the business.

Source: L. 2003: Entire article amended with relocations, p. 1853, § 1, effective August 6. **L. 2005:** (2) amended, p. 347, § 1, effective August 8. **L. 2009:** (1) amended, (HB 09-1108), ch. 161, p. 696, § 1, effective August 5. **L. 2014:** (4.5) added, (SB 14-005), ch. 276, p. 1112, § 3, effective January 1, 2015. **L. 2019:** (6) amended, (HB 19-1254), ch. 168, p. 1969, § 2, effective August 2.

Editor's note: This section is similar to former §§ 8-4-102 (3), 8-4-105, and 8-4-115, as they existed prior to 2003, and the former § 8-4-103 was relocated to § 8-4-104.

Cross references: (1) For the short title ("Wage Protection Act of 2014") in SB 14-005, see section 1 of chapter 276, Session Laws of Colorado 2014.

(2) For the legislative declaration in HB 19-1254, see section 1 of chapter 168, Session Laws of Colorado 2019.

8-4-104. Funds available to pay wages - mining industry. Every person, firm, association, corporation, or agent, manager, superintendent, or officer thereof engaged in the business of extracting or of extracting and refining or reducing metals or minerals other than petroleum, or other than parties having a free unencumbered title to the fee simple of the property being worked, and also other than mining partnerships in respect to the members of the partnerships, shall, before commencing work in any period for which a single payment of wages is to be made, have on hand, either physically or by deposit with a bank or trust company in the county where such property is located or, if there is no bank or trust company in the county, in the bank or trust company nearest the property, cash or readily salable securities of a market value equivalent to such cash, or accounts receivable payable in the normal course of business

prior to the next payday, in a sufficient amount to make the payment of wages without discount or loss to any person employed on the mining property for such period.

Source: L. 2003: Entire article amended with relocations, p. 1854, § 1, effective August 6.

Editor's note: This section is similar to former § 8-4-103 as it existed prior to 2003, and the former § 8-4-104 was relocated to § 8-4-109.

8-4-105. Payroll deductions permitted. (1) No employer shall make a deduction from the wages or compensation of an employee except as follows:

(a) Deductions mandated by or in accordance with local, state, or federal law including, but not limited to, deductions for taxes, "Federal Insurance Contributions Act" ("FICA") requirements, garnishments, or any other court-ordered deduction;

(a.5) Deductions for contributions attributable to automatic enrollment in an employee retirement plan, as defined in section 8-4-105.5, regardless of whether the plan is subject to the federal "Employee Retirement Income Security Act of 1974", as amended;

(b) Deductions for loans, advances, goods or services, and equipment or property provided by an employer to an employee pursuant to a written agreement between such employer and employee, so long as it is enforceable and not in violation of law;

(c) Any deduction necessary to cover the replacement cost of a shortage due to theft by an employee if a report has been filed with the proper law enforcement agency in connection with such theft pending a final adjudication by a court of competent jurisdiction; except that, if the accused employee is found not guilty in a court action or if criminal charges related to such theft are not filed against the accused employee within ninety days after the filing of the report with the proper law enforcement agency, or such charges are dismissed, the accused employee shall be entitled to recover any amount wrongfully withheld plus interest. In the event an employer acts without good faith, in addition to the amount wrongfully withheld and legally proven to be due, the accused employee may be awarded an amount not to exceed treble the amount wrongfully withheld. In any such action the prevailing party shall be entitled to reasonable costs related to the recovery of such amount including attorney fees and court costs.

(d) Any deduction, not listed in paragraph (a), (a.5), (b), or (c) of this subsection (1), that is authorized by an employee if the authorization is revocable, including deductions for hospitalization and medical insurance, other insurance, savings plans, stock purchases, supplemental retirement plans, charities, and deposits to financial institutions;

(e) A deduction for the amount of money or the value of property that the employee failed to properly pay or return to the employer in the case where a terminated employee was entrusted during his or her employment with the collection, disbursement, or handling of such money or property. The employer shall have ten calendar days after the termination of employment to audit and adjust the accounts and property value of any items entrusted to the employee before the employee's wages or compensation shall be paid as provided in section 8-4-109. This is an exception to the pay requirements in section 8-4-109. The penalty provided in section 8-4-109 shall apply only from the date of demand made after the expiration of the ten-day period allowed for payment of the employee's wages or compensation. If, upon such audit and adjustment of the accounts and property value of any items entrusted to the employee, it is

found that any money or property entrusted to the employee by the employer has not been properly paid or returned the employer as provided by the terms of any agreement between the employer and the employee, the employee shall not be entitled to the benefit of payment pursuant to section 8-4-109, but the claim for unpaid wages or compensation of such employee shall be disposed of as provided for by this article.

(2) Nothing in this section authorizes a deduction below the minimum wage applicable under the "Fair Labor Standards Act of 1938", 29 U.S.C. sec. 201 et seq.

Source: L. 2003: Entire article amended with relocations, p. 1855, § 1, effective August 6. **L. 2010:** (1)(a.5) added and (1)(d) amended, (SB 10-035), ch. 3, p. 33, § 1, effective January 1, 2011.

Editor's note: This section is similar to former § 8-4-101 (7.5) as it existed prior to 2003, and the former § 8-4-105 was relocated to § 8-4-103.

8-4-105.5. Automatic enrollment in retirement plans - relief from liability - conditions - definitions. (1) (a) (I) An employer that provides automatic enrollment in an employee retirement plan is not liable for the investment decisions made by the employer on behalf of any participating employee with respect to the default investment of contributions made for that employee to the plan if:

(A) The plan provides the participating employee at least quarterly opportunities to select investments for the employee's contributions among investment alternatives available under the plan;

(B) The participating employee is given notice of the investment decisions that will be made in the absence of direction from the employee, a description of all the investment alternatives available for employee investment direction under the plan, and a brief description of procedures available for the employee to change investments; and

(C) The employee is given at least annual notice of the actual default investments made of contributions attributable to the employee.

(II) The relief from liability of the employer under this subsection (1) extends to any employee retirement plan official who makes the actual default investment decisions on behalf of participating employees.

(b) Nothing in this subsection (1) modifies any existing responsibility of employers or other plan officials for the selection of investment funds for participating employees.

(2) As used in this section:

(a) "Automatic enrollment" means an employee retirement plan provision under which an employee will have a specified contribution made to the plan, equal to a compensation reduction, that will be made for the employee unless the employee affirmatively elects, in accordance with the federal "Pension Protection Act of 2006", Pub.L. 109-280, either not to have any compensation reduction contributions or a compensation reduction contribution in an alternative amount.

(b) "Employee retirement plan" means a plan described in sections 401(k) or 403(b) of the federal "Internal Revenue Code of 1986", as amended; a governmental deferred compensation plan described in section 457 of the federal "Internal Revenue Code of 1986", as

amended; or a payroll deduction individual retirement account plan described in sections 408 or 408A of the federal "Internal Revenue Code of 1986", as amended.

Source: L. 2010: Entire section added, (SB 10-035), ch. 3, p. 33, § 2, effective January 1, 2011.

Cross references: For the federal "Internal Revenue Code of 1986" referenced in subsection (2)(b), see title 26 of the United States Code.

8-4-106. Early payment of wages permitted. Nothing contained in this article shall in any way limit or prohibit the payment of wages or compensation at earlier dates, or at more frequent intervals, or in greater amounts, or in full when or before due.

Source: L. 2003: Entire article amended with relocations, p. 1856, § 1, effective August 6.

8-4-107. Post notice of paydays. Every employer shall post and keep posted conspicuously at the place of work if practicable, or otherwise where it can be seen as employees come or go to their places of work, or at the office or nearest agency for payment kept by the employer a notice specifying the regular paydays and the time and place of payment, in accordance with the provisions of section 8-4-103, and also any changes concerning them that may occur from time to time.

Source: L. 2003: Entire article amended with relocations, p. 1856, § 1, effective August 6.

8-4-108. Payment in the event of strike. (1) In the event of a strike, every employee who is discharged shall be paid at the place of discharge, and every employee who quits or resigns shall be paid at the office or agency of the employer in the county or city and county where such employee has been performing the labor or service for the employer. All payments of money or compensation shall be made in the manner provided by law.

(2) In the event of any strike, the unpaid wages or compensation earned by such striking employee shall become due and payable on the employer's next regular payday, and the payment or settlement shall include all amounts due such striking employee without abatement or reduction. The employer shall return to each striking employee, upon request, any deposit or money or other guaranty required by the employer from the employee for the faithful performance of the duties of his or her employment.

Source: L. 2003: Entire article amended with relocations, p. 1856, § 1, effective August 6.

8-4-109. Termination of employment - payments required - civil penalties - payments to surviving spouse or heir. (1) (a) When an interruption in the employer-employee relationship by volition of the employer occurs, the wages or compensation for labor or service earned, vested, determinable, and unpaid at the time of such discharge is due and payable

immediately. If at such time the employer's accounting unit, responsible for the drawing of payroll checks, is not regularly scheduled to be operational, then the wages due the separated employee shall be made available to the employee no later than six hours after the start of such employer's accounting unit's next regular workday; except that, if the accounting unit is located off the work site, the employer shall deliver the check for wages due the separated employee no later than twenty-four hours after the start of such employer's accounting unit's next regular workday to one of the following locations selected by the employer:

(I) The work site;

(II) The employer's local office; or

(III) The employee's last-known mailing address.

(b) When an employee quits or resigns such employee's employment, the wages or compensation shall become due and payable upon the next regular payday. When a separation of employment occurs, the employer shall make the separated employee's check for wages due available at one of the following locations selected by the employer:

(I) The work site;

(II) The employer's local office; or

(III) The employee's last-known mailing address.

(c) If an employer has made the employee's wages or compensation available at the work site or at the employer's local office under paragraph (a) or (b) of this subsection (1), and the employee has not received the wages or compensation within sixty days after the wages or compensation were due, the employer shall mail the employee's check for wages or compensation due to the employee's last-known mailing address.

(2) Nothing in subsection (1) of this section shall limit the right of an employer to set off any deductions pursuant to section 8-4-105 owing by the employee to the employer or require the payment at the time employment is severed of compensation not yet fully earned under the compensation agreement between the employee and employer, whether written or oral.

(3) (a) If an employer refuses to pay wages or compensation in accordance with subsection (1) of this section, the employee, his or her designated agent, or the division may send a written demand for the payment.

(a.5) If the employer disputes the amount of wages or compensation claimed by an employee under this article and if, within fourteen days after the written demand is sent, the employer makes a legal tender of the amount that the employer in good faith believes is due, the employer shall not be liable for any penalty unless, in a legal proceeding, including a civil action or an administrative procedure under sections 8-4-111 and 8-4-111.5, the employee recovers a greater sum than the amount so tendered.

(b) If an employee's earned, vested, and determinable wages or compensation is not paid within fourteen days after the written demand is sent in the manner set forth in paragraph (d) of this subsection (3), the employer shall be liable to the employee for the wages or compensation, and a penalty of the sum of the following amounts of wages or compensation due or, if greater, the employee's average daily earnings for each day, not to exceed ten days, until such payment or other settlement satisfactory to the employee is made:

(I) One hundred twenty-five percent of that amount of such wages or compensation up to and including seven thousand five hundred dollars; and

(II) Fifty percent of that amount of such wages or compensation that exceed seven thousand five hundred dollars.

(c) If the employee can show that the employer's failure to pay is willful, the penalty required under paragraph (b) of this subsection (3) shall increase by fifty percent. Evidence that a judgment has, within the previous five years, been entered against the employer for failure to pay wages or compensation is admissible as evidence of willful conduct.

(d) (I) The employer shall send or deliver payment, by check, draft, or voucher in the employee's name, to the employee at the address contained in the written demand; or make the payment by direct deposit authorized under section 8-4-102 (2) if the employee has not revoked the authorization. The employer may, but is not required to, make the payment by direct deposit to an account specified by the employee in the demand, even if the employee has not previously authorized direct deposit of the employee's compensation, or make the payment by another method requested by the employee in the demand, if applicable. If the employee has not previously authorized direct deposit of compensation and the demand does not state an address to which the payment should be mailed, the employer shall make the payment as follows:

(A) To the employee's last-known address according to the records of the employer; or

(B) If applicable and if the employer so elects, as otherwise requested by the employee in the demand.

(II) The employee or his or her designated agent may commence a civil action to recover the penalty set forth in this subsection (3). For an action filed in a small claims court, established pursuant to part 4 of article 6 of title 13, C.R.S., if the employer has not received a written demand at least fourteen days before the employer is served with the complaint or other document commencing the action, service of the complaint or other document serves as the written demand under this subsection (3). If an employer makes a legal tender of the full amount claimed in the action within fourteen days after service of the complaint or other document commencing the action, the employee shall dismiss the action.

(4) If, at the time of the death of any employee, an employer is indebted to the employee for wages or compensation, and no personal representative of the employee's estate has been appointed, such employer shall pay the amount earned, vested, and determinable to the deceased employee's surviving spouse. If there is no surviving spouse, the employer shall pay the amount due to the deceased employee's next legal heir upon the request of such heir. If a personal representative for the employee has been appointed and is known to the employer prior to payment of the amount due to the spouse or other legal heir, the employer shall pay the amount due to such personal representative upon the request of such representative. The employer shall require proof of a claimant's relationship to the deceased employee by affidavit and require such claimant to acknowledge the receipt of any payment in writing. Any payments made by the employer pursuant to the provisions of this section shall operate as a full and complete discharge of the employer's indebtedness to the extent of the payment, and no employer shall thereafter be liable to the deceased employee's estate or to the deceased employee's personal representative. Any amounts received by a surviving spouse or legal heir shall be considered in diminution of the allowance to the spouse or legal heir pursuant to the "Colorado Probate Code", articles 10 to 17 of title 15, C.R.S. Nothing in this section shall create a substantive right that does not exist in any agreement between the employer and the employee.

Source: L. 2003: Entire article amended with relocations, p. 1856, § 1, effective August 6. **L. 2007:** (3) amended, p. 1677, § 2, effective May 31. **L. 2014:** (1)(c) added and (3) amended, (SB 14-005), ch. 276, p. 1112, § 4, effective January 1, 2015.

Editor's note: This section is similar to former § 8-4-104 as it existed prior to 2003, and the former § 8-4-109 was relocated to § 8-4-113.

Cross references: (1) For the legislative declaration contained in the 2007 act amending subsection (3), see section 1 of chapter 381, Session Laws of Colorado 2007.

(2) For the short title ("Wage Protection Act of 2014") in SB 14-005, see section 1 of chapter 276, Session Laws of Colorado 2014.

8-4-110. Disputes - fees. (1) If, in any action, the employee fails to recover a greater sum than the amount tendered by the employer, the court may award the employer reasonable costs and attorney fees incurred in such action when, in any pleading or other court filing, the employee claims wages or compensation that exceed the greater of seven thousand five hundred dollars in wages or compensation or the jurisdictional limit for the small claims court, whether or not the case was filed in small claims court or whether or not the total amount sought in the action was within small claims court jurisdictional limits. If, in any such action in which the employee seeks to recover any amount of wages or compensation, the employee recovers a sum greater than the amount tendered by the employer, the court may award the employee reasonable costs and attorney fees incurred in such action. If an employer fails or refuses to make a tender within fourteen days after the demand, then such failure or refusal shall be treated as a tender of no money for any purpose under this article.

(1.5) This section shall not apply to a claimant who is found to be an independent contractor and not an employee.

(2) Any person claiming to be aggrieved by violation of any provisions of this article or regulations prescribed pursuant to this article may file suit in any court having jurisdiction over the parties without regard to exhaustion of any administrative remedies.

Source: L. 2003: Entire article amended with relocations, p. 1858, § 1, effective August 6. **L. 2007:** (1) amended and (1.5) added, p. 1678, § 3, effective May 31.

Editor's note: Subsection (2) is similar to former § 8-4-123 as it existed prior to 2003.

Cross references: For the legislative declaration contained in the 2007 act amending subsection (1) and enacting subsection (1.5), see section 1 of chapter 381, Session Laws of Colorado 2007.

8-4-111. Enforcement - duty of director - duties of district or city attorneys - rules. (1) (a) It is the duty of the director to inquire diligently for any violation of this article, and to institute the actions for penalties or fines provided for in this article in such cases as he or she may deem proper, and to enforce generally the provisions of this article. For wages and compensation earned on and after January 1, 2015, the director may establish an administrative procedure to receive complaints and adjudicate claims for nonpayment of wages or compensation of seven thousand five hundred dollars or less. The procedures may include claims of employees where no interruption of the employer-employee relationship has occurred. The penalties established by section 8-4-109 (3) apply to actions instituted by the director under this article when no interruption of the employer-employee relationship has occurred.

(b) The director shall promulgate rules providing for notice to employees of an employee's rights under this section and section 8-4-111.5, of the limitations on the amount of wages, compensation, and penalties available under the administrative remedy, and of the employee's option to bring a claim for wages and compensation in court without pursuing the administrative remedy unless the employee has accepted payment pursuant to paragraph (e) of subsection (2) of this section.

(2) (a) (I) If one or more employees files a wage complaint with the division claiming unpaid wages or compensation of seven thousand five hundred dollars or less per employee, exclusive of penalties and fines, the division shall investigate the wage complaint. The division shall initiate the administrative procedure by sending a notice of complaint to the employer by mail or electronic means in accordance with rules as the director may promulgate when the complaint states a claim for relief. The notice of the complaint must include:

(A) The name of the complainant;

(B) The nature of the complaint; and

(C) The amount for which the employer may be liable, including any potential fines or penalties.

(II) An employer must respond within fourteen days after the complaint is sent.

(III) The division shall issue a determination within ninety days after the notice of complaint is sent unless the division extends the time period by providing advance written notice to the employee and employer stating good cause for the extension of time.

(b) If the division does not find a violation based on the wage complaint and any response, including the failure by the employee to pursue the wage complaint, the division shall issue a notice of the dismissal of the complaint and send the notice to all interested parties. The notice must set forth the employee's right to any other relief available under this section or section 8-4-111.5.

(c) If the division determines that an employer has violated this article for nonpayment of wages or compensation, the division shall issue a citation and notice of assessment for the amount determined that is owed, which amount must include all wages and compensation owed, penalties pursuant to section 8-4-109, and any fines pursuant to section 8-4-113.

(d) To encourage compliance by the employer, if the employer pays the employee all wages and compensation owed within fourteen days after the citation and notice of assessment is sent to the employer, the division may waive or reduce any fines imposed pursuant to section 8-4-113 (1) and reduce by up to fifty percent penalties imposed pursuant to section 8-4-109.

(e) Upon payment by an employer, and acceptance by an employee, of all wages, compensation, and penalties assessed by the division in a citation and notice of assessment issued to the employer, the payment shall constitute a full and complete satisfaction by the employer and bar the employee from initiating or pursuing any civil action or other administrative proceeding based on the wage complaint addressed by the citation and notice of assessment.

(3) An employee who has filed a wage complaint with the division pursuant to subsection (2) of this section may elect to terminate the division's administrative procedure within thirty-five days after the issuance of the determination of compliance or citation and notice of assessment by providing a notice to the division. An employee who terminates the division's administrative procedure preserves any private right of action the employee may have.

Upon receipt of the notice, the division shall immediately discontinue its action against the employer and revoke any citation and notice of assessment sent.

(4) Except for an appeal pursuant to section 8-4-111.5 (5) or as stated in a citation, notice of assessment, or order filed with the court pursuant to section 8-4-113 (2), any determination made by the division pursuant to this article, or any offer of payment by the employer of the wages made during or in conjunction with a proceeding of the division, is not admissible in any court action.

(5) The division's notice to the employer of a complaint filed pursuant to subsection (2) of this section satisfies the requirement of a written demand as described in section 8-4-109 (3)(a).

(6) Nothing in this section shall be construed to limit the right of the division to pursue any action available with respect to an employee that is identified as a result of a wage complaint or with respect to an employer in the absence of a wage complaint.

(7) Nothing in this section shall be construed to limit the right of the employee to pursue any civil action or administrative proceeding for any claims other than those considered by the division in the employee's wage complaint. The claims considered by the division in the employee's wage complaint are subject to the limitations set forth in paragraph (e) of subsection (2) of this section and subsection (3) of this section.

(8) Nothing in this article shall be construed to limit the authority of the district attorney of any county or city and county or the city attorney of any city to prosecute actions for such violations of this article as may come to his or her knowledge, or to enforce the provisions of this article independently and without specific direction of the director, or to limit the right of any wage claimant to sue directly or through an assignee for any wages or penalty due him or her under the provisions of this article.

Source: L. 2003: Entire article amended with relocations, p. 1858, § 1, effective August 6. **L. 2014:** Entire section amended, (SB 14-005), ch. 276, p. 1114, § 5, effective May 29.

Editor's note: Subsection (2) is similar to former § 8-4-112 as it existed prior to 2003.

Cross references: For the short title ("Wage Protection Act of 2014") in SB 14-005, see section 1 of chapter 276, Session Laws of Colorado 2014.

8-4-111.5. Hearing officer review and appeals of administrative actions. (1) Pursuant to policies established by the director by rule, any interested party who is dissatisfied with the division's decision on a wage complaint filed pursuant to section 8-4-111 (2) may file a request for a hearing within thirty-five days after the division's decision is sent. If no request is filed within the thirty-five-day period, the division's decision is final.

(2) (a) If a request is filed pursuant to subsection (1) of this section, the director shall designate a hearing officer. The hearing officer shall have the power and authority to call, preside at, and conduct hearings. In the discharge of the duties imposed by this article, the hearing officer has the power to administer oaths and affirmations, take depositions, certify to official acts, permit parties to participate by telephone, and issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda, and

other records deemed necessary as evidence in connection with a disputed claim pursuant to this article.

(b) (I) In case of a failure to obey a subpoena issued to any person by the hearing officer, upon application by the division or its duly authorized representative, any court of this state has jurisdiction to issue to the person an order requiring him or her to appear before the hearing officer to produce evidence or give testimony touching the matter under investigation or in question. The court may issue an order of contempt to a person who fails to obey the order.

(II) It is a misdemeanor for a person who, without just cause, fails or refuses to attend and testify or to answer any lawful inquiry or to produce books, papers, correspondence, memoranda, and other records in obedience to a subpoena of the hearing officer, and, upon conviction thereof, the person shall be punished by a fine of not more than two hundred dollars, or by imprisonment in the county jail for not more than sixty days, or by both such fine and imprisonment. Each day the failure or refusal continues is a separate offense.

(c) A person may not be excused from attending and testifying or from producing books, papers, correspondence, memoranda, and other records before a hearing officer or in obedience to the subpoena of the hearing officer on the ground that the testimony or evidence, documentary or otherwise, required of him or her may tend to incriminate the person or subject the person to a penalty or forfeiture. But a person shall not be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he or she is compelled, after having claimed his or her privilege against self-incrimination, to testify or produce evidence, documentary or otherwise; except that the individual testifying is not exempt from prosecution and punishment for perjury in the first degree committed in so testifying.

(3) (a) The hearing officer, after affording all interested parties a reasonable opportunity for a fair hearing pursuant to the provisions of this article and the administrative procedures of the division, shall make a decision on each relevant issue raised, including findings of fact, conclusions of law, and an order.

(b) Evidence and requirements of proof in a hearing conducted pursuant to this section must conform, to the extent practicable, with those in civil nonjury cases in the district courts of this state. However, when necessary to do so in order to ascertain facts affecting the substantial rights of the parties to the proceeding, the person conducting the hearing may receive and consider evidence not admissible under such rules if the evidence possesses probative value commonly accepted by reasonable and prudent persons in the conduct of their affairs. Objections to evidentiary offers may be made and must be noted in the record. The hearing officer shall give effect to the rules of privilege recognized by law. He or she shall exclude incompetent and unduly repetitious evidence. The hearing officer may accept documentary evidence in the form of a copy or excerpt if the original is not readily available; except that, upon request, the party shall be given an opportunity to compare the copy with the original. The division may utilize its experience, technical competence, and specialized knowledge in the evaluation of the evidence presented. The provisions of the "State Administrative Procedure Act", article 4 of title 24, C.R.S., and particularly section 24-4-105, C.R.S., do not apply to hearings under this article. However, the rule-making provisions of section 24-4-103, C.R.S., shall apply to this article.

(c) When the same or substantially similar evidence is relevant and material to the matters at issue in claims by more than one individual or in claims by a single individual with respect to two or more claimed violations, if, in the judgment of the hearing officer,

consolidation of one or more proceedings would not prejudice any interested party, the hearing officer may:

(I) Conduct hearings at the same time and place;

(II) Conduct joint hearings;

(III) Make a single record of the proceedings; and

(IV) Consider evidence introduced with respect to one proceeding as if introduced in the others.

(d) The division shall keep a full and complete record of all proceedings in connection with the wage complaint. All testimony at any hearing upon a wage complaint must be recorded but need not be transcribed unless the wage complaint is presented for further review. The division shall promptly provide all interested parties with copies of the hearing officer's decision.

(4) For the convenience or necessity of the employee or the employer, the division shall permit parties to participate in hearings by telephone, including in situations in which the parties would otherwise be required to travel to locations of the division from outside the general vicinity of such locations.

(5) Any party to the administrative proceeding may appeal the hearing officer's decision only by commencing an action for judicial review in the district court of competent jurisdiction within thirty-five days after the date of mailing of the decision by the division. The hearing officer's decision constitutes a final agency action pursuant to section 24-4-106, C.R.S. Judicial review is limited to appeal briefs and the record designated on appeal.

Source: L. 2014: Entire section added, (SB 14-005), ch. 276, p. 1116, § 6, effective May 29.

Cross references: For the short title ("Wage Protection Act of 2014") in SB 14-005, see section 1 of chapter 276, Session Laws of Colorado 2014.

8-4-112. Enforcement of director subpoenas. All courts shall take judicial notice of the seal of the director. Obedience to subpoenas issued by the director or his or her duly authorized representative shall be enforced by the courts in any county or city and county, as provided in section 24-4-105 (5), C.R.S., if said subpoenas do not call for any appearance at a distance greater than one hundred miles.

Source: L. 2003: Entire article amended with relocations, p. 1859, § 1, effective August 6.

Editor's note: This section is similar to former § 8-4-113 as it existed prior to 2003, and the former § 8-4-112 was relocated to § 8-4-111 (2).

8-4-113. Fines pursuant to enforcement - wage theft enforcement fund - created. (1) (a) If a case against an employer is enforced pursuant to section 8-4-111, any employer who without good faith legal justification fails to pay the wages of each of his or her employees shall forfeit to the people of the state of Colorado a fine in an amount determined by the director or hearing officer but no more than the sum of fifty dollars per day for each such failure to pay each employee, commencing from the date that such wages first became due and payable. The

division may collect the fine through its citation and notice of assessment issued pursuant to section 8-4-111 (2) or after a hearing conducted pursuant to section 8-4-111.5.

(b) The director or hearing officer shall impose a fine of two hundred fifty dollars on an employer who fails to respond to a notice of complaint or to any other notice from the division to which a response is required. The director or hearing officer may waive or reduce the fine only if he or she finds good cause for an extension of the time for the employer to file the response.

(2) A certified copy of any citation, notice of assessment, or order imposing wages due, fines, or penalties pursuant to this article may be filed with the clerk of any court having jurisdiction over the parties at any time after the entry of the order. The certified copy shall be recorded by the clerk of the district court 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.

(3) (a) The division shall transmit all fines collected pursuant to this section to the state treasurer, who shall credit the same to the wage theft enforcement fund, which fund is created and referred to in this section as the "fund". The moneys in the fund are subject to annual appropriation by the general assembly to the division for the direct and indirect costs associated with implementing this article.

(b) The state treasurer may invest any moneys in the fund not expended for the purpose of this article as provided by law. The state treasurer shall credit all interest and income derived from the investment and deposit of moneys in the fund to the fund. Any unexpended and unencumbered moneys remaining in the fund at the end of a fiscal year remain in the fund and must not be credited or transferred to the general fund or another fund.

Source: L. 2003: Entire article amended with relocations, p. 1859, § 1, effective August 6. **L. 2014:** Entire section amended, (SB 14-005), ch. 276, p. 1119, § 7, effective January 1, 2015.

Editor's note: This section is similar to former § 8-4-109 as it existed prior to 2003, and the former § 8-4-113 was relocated to § 8-4-112.

Cross references: For the short title ("Wage Protection Act of 2014") in SB 14-005, see section 1 of chapter 276, Session Laws of Colorado 2014.

8-4-114. Criminal penalties. (1) Any employer who violates the provisions of section 8-4-103 (6) is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than three hundred dollars, or by imprisonment in the county jail for not more than thirty days, or by both such fine and imprisonment.

(2) In addition to any other penalty imposed by this article 4, any employer or agent of an employer who willfully refuses to pay wages or compensation as provided in this article 4, or falsely denies the amount of a wage claim, or the validity thereof, or that the same is due, with intent to secure for himself, herself, or another person any discount upon such indebtedness or any underpayment of such indebtedness or with intent to annoy, harass, oppress, hinder, coerce, delay, or defraud the person to whom such indebtedness is due, commits theft as defined in section 18-4-401.

Source: L. 2003: Entire article amended with relocations, p. 1859, § 1, effective August 6. **L. 2019:** (2) amended, (HB 19-1267), ch. 182, p. 2059, § 3, effective January 1, 2020.

Editor's note: This section is similar to former §§ 8-4-116 and 8-4-117 as they existed prior to 2003, and the former § 8-4-114 was repealed.

Cross references: For the legislative declaration in HB 19-1267, see section 1 of chapter 182, Session Laws of Colorado 2019.

8-4-115. Certificate of registration required. No person shall engage in activities as a field labor contractor unless the person first obtains a certificate of registration from the division and unless such certificate is in full force and effect and in such person's immediate possession.

Source: L. 2003: Entire article amended with relocations, p. 1860, § 1, effective August 6.

Editor's note: This section is similar to former § 8-4-118 as it existed prior to 2003, and the former § 8-4-115 was relocated to § 8-4-103 (6).

8-4-116. Issuance of certificate of registration. (1) The director, after appropriate investigation, shall issue a certificate of registration to any person who:

(a) Has executed and filed with the director a written application subscribed and sworn to by the applicant containing such information concerning his or her conduct and method of operation as a field labor contractor as the director may require in order to effectively carry out the provisions of this article;

(b) Has consented to designation of the director as the agent available to accept service of process for any action against such field labor contractor at any and all times when such field labor contractor has departed from the jurisdiction of this state or has become unavailable to accept service;

(c) Has demonstrated evidence to the director that he or she has satisfied the insurance requirements of articles 40 to 47 of this title.

(2) Upon notice and hearing in accordance with rules prescribed by the director, the director may refuse to issue and may suspend, revoke, or refuse to renew a certificate of registration of any field labor contractor if the director finds that such field labor contractor:

(a) Knowingly has made any misrepresentation or false statement in his or her application for a certificate of registration or any renewal thereof;

(b) Knowingly has given false or misleading information to any migratory laborer concerning the terms, conditions, or existence of agricultural employment;

(c) Has failed, without justification, to perform agreements entered into or to comply with arrangements made with farm operators;

(d) Has failed, without justification, to comply with the terms of any working arrangements he or she has made with migratory laborers;

(e) Has permitted his or her insurance maintained pursuant to the requirements of paragraph (c) of subsection (1) of this section to terminate, lapse, or otherwise become inoperative;

(f) Is not in fact the real party in interest in any such application or certificate of registration and that the real party in interest is a person, firm, partnership, association, or corporation which previously has been denied a certificate of registration; has had a certificate of registration suspended or revoked; or which does not presently qualify for a certificate of registration.

Source: L. 2003: Entire article amended with relocations, p. 1860, § 1, effective August 6.

Editor's note: (1) This section is similar to former § 8-4-119 as it existed prior to 2003, and the former § 8-4-116 was relocated to § 8-4-114 (1).

(2) Articles 40 to 47 of this title, referenced in subsection (1)(c), are the provisions of the "Workers' Compensation Act of Colorado".

8-4-117. Additional obligations. (1) Every field labor contractor shall:

(a) Carry a certificate of registration at all times while engaging in activities as a field labor contractor and exhibit the same to all persons with whom he or she intends to deal in the capacity of a field labor contractor;

(b) Ascertain and disclose in writing to each migratory laborer, in a language in which the migratory laborer is fluent at the time the migratory laborer is recruited, the following information:

(I) The area of employment;

(II) The crops and operations on which the migratory laborer may be employed;

(III) Transportation, housing, and insurance to be provided to the migratory laborer;

(IV) The wage rate to be paid;

(V) The charges by the field labor contractor for his or her services; and

(VI) The existence of any strikes at the place of contracted employment;

(c) Promptly pay or deliver, when due to the migratory laborer entitled thereto, all moneys or other things of value entrusted to the field labor contractor by or on behalf of such migratory laborer.

Source: L. 2003: Entire article amended with relocations, p. 1861, § 1, effective August 6.

Editor's note: This section is similar to former § 8-4-120 as it existed prior to 2003, and the former § 8-4-117 was relocated to § 8-4-114 (2).

8-4-118. Authority to obtain information. The director or the director's designated representative may investigate and gather data pertinent to matters that may aid in carrying out the provisions of this article. In any case where a complaint has been filed with the director or the director's designated representative regarding a violation of this article, or where the director has reasonable grounds to believe that a field labor contractor has violated provisions of this article, the director or the director's designated representative may investigate and issue subpoenas as provided by section 8-4-112 requiring the attendance and testimony of any witness or the production of any evidence in connection with such investigation.

Source: L. 2003: Entire article amended with relocations, p. 1861, § 1, effective August 6.

Editor's note: This section is similar to former § 8-4-121 as it existed prior to 2003, and the former § 8-4-118 was relocated to § 8-4-115.

8-4-119. Penalty provisions. (1) Any field labor contractor who commits a violation of any provision of this article or implementing regulation shall be subject to a civil penalty of not more than two hundred fifty dollars for each violation. The penalty shall be assessed by the director pursuant to a published schedule of penalties and after written notice and after an opportunity for hearing under procedures established by the director. This provision as to civil penalties shall not exclude the possibility of criminal penalties as set forth in this article.

(2) The director, in the director's discretion, may grant a reasonable period of time, but in no event longer than ten days after the day of notification, for correction of the violation. In the event the violation is corrected within that period, no penalty shall be imposed.

Source: L. 2003: Entire article amended with relocations, p. 1861, § 1, effective August 6.

Editor's note: This section is similar to former § 8-4-122 as it existed prior to 2003, and the former § 8-4-119 was relocated to § 8-4-116.

8-4-120. Discrimination prohibited - employee protections. No employer shall intimidate, threaten, restrain, coerce, blacklist, discharge, or in any manner discriminate against any employee who has filed any complaint or instituted or caused to be instituted any proceeding under this article or related law or who has testified or may testify in any proceeding on behalf of himself, herself, or another regarding afforded protections under this article. Any employer who violates the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than five hundred dollars, or by imprisonment in the county jail for not more than sixty days, or by both such fine and imprisonment.

Source: L. 2003: Entire article amended with relocations, p. 1862, § 1, effective August 6.

Editor's note: This section is similar to former § 8-4-124 as it existed prior to 2003, and the former § 8-4-120 was relocated to § 8-4-117.

8-4-121. Nonwaiver of employee rights. Any agreement, written or oral, by any employee purporting to waive or to modify such employee's rights in violation of this article shall be void.

Source: L. 2003: Entire article amended with relocations, p. 1862, § 1, effective August 6.

Editor's note: This section is similar to former § 8-4-125 as it existed prior to 2003, and the former § 8-4-121 was relocated to § 8-4-118.

8-4-122. Limitation of actions. All actions brought pursuant to this article shall be commenced within two years after the cause of action accrues and not after that time; except that all actions brought for a willful violation of this article shall be commenced within three years after the cause of action accrues and not after that time.

Source: L. 2003: Entire article amended with relocations, p. 1862, § 1, effective August 6.

Editor's note: This section is similar to former § 8-4-126 as it existed prior to 2003, and the former § 8-4-122 was relocated to § 8-4-119.

8-4-123. Termination of occupancy pursuant to contract of employment - legislative declaration. (1) The general assembly hereby finds, determines, and declares that many businesses, such as nursing homes or building management companies, either desire or are required by law to have staff on premises at all times. As part of the compensation for such employees, many employers offer housing to employees. However, once that employment relationship ceases, it may become undesirable for such employees to occupy the premises for many reasons, including the safety of the employer's patients, clients, customers, or tenants. Under traditional landlord and tenant law, such employees may have established the technical or legal right to occupy the premises for a fixed term that continues far beyond the cessation of the employment relationship. However, in employment situations, such occupancy is not a tenancy, but a license to occupy the premises pursuant to an employment relationship. The occupancy of the premises by the employee is not entered into by the employer for the purpose of providing housing, but merely as a means to provide services to the employer's patients, clients, customers, or tenants. In certain cases, it may be necessary to curtail the occupancy of former employees in order to protect the rights or safety of an employer's tenants or patients.

(2) (a) Pursuant to a written agreement meeting the requirements of paragraph (b) of this subsection (2), a license to occupy the premises entered into as part of an employee's compensation may be terminated at any time after the employment relationship ceases between an employer and employee. A termination of a license to occupy the premises shall be effective three days after the service of written notice of termination of a license to occupy the premises.

(b) An agreement made pursuant to this section shall be in writing and shall include the following:

(I) The names of the employer and employee;

(II) A statement that the license to occupy the premises is provided to the employee as part of the employee's compensation and is subject to termination at any time after the employment relationship ceases;

(III) The address of the premises; and

(IV) The signature of both the employer and the employee.

(c) The notice of termination of a license to occupy the premises shall describe the premises and shall set forth the time when the license to occupy the premises will terminate. The notice shall be signed by the employer or the employer's agent or attorney.

(3) If an employee fails to vacate the premises within three days after the receipt of the notice of termination of the license to occupy the premises, the employer may contact the county sheriff to have the employee removed from the premises. The county sheriff shall remove the employee and any personal property of the employee from the premises upon the showing to the county sheriff of the notice of termination of the license to occupy the premises and agreement pursuant to which the license to occupy the premises was granted.

Source: L. 2003: Entire article amended with relocations, p. 1862, § 1, effective August 6.

Editor's note: This section is similar to former § 8-4-127 as it existed prior to 2003, and the former § 8-4-123 was relocated to § 8-4-110 (2).

ARTICLE 5

Wage Equality

Law reviews: For article, "An Overview of Federal and State Wage-Hour Laws -- Part II", see 14 Colo. Law. 781 (1985); for article, "Sex-based Wage Discrimination: A Management View", see 62 Den. U. L. Rev. 393 (1985); for note, "Comparable Worth: The Next Step Toward Pay Equity Under Title VII", see 62 Den. U. L. Rev. 417 (1985); for article, "Legal Overview of Equal Pay and Comparable Worth", see 15 Colo. Law. 1201 (1986); for article, "Colorado's Equal Pay for Equal Work Act: What Employment Counsel Need to Know", see 48 Colo. Law. 36 (Oct. 2019).

PART 1

WAGE EQUALITY REGARDLESS OF SEX

8-5-101. Definitions - repeal. As used in this article 5, unless the context otherwise requires:

(1) Repealed.

(2) "Director" means the director of the division of labor standards and statistics.

(3) (a) "Division" means the division of labor standards and statistics in the department of labor and employment.

(b) This subsection (3) is repealed, effective January 1, 2021.

(4) **[*Editor's note: This version of subsection (4) is effective until January 1, 2021.*]** "Employee" means any individual in the employment of any employer.

(4) **[*Editor's note: This version of subsection (4) is effective January 1, 2021.*]** "Employee" means a person employed by an employer.

(5) **[*Editor's note: This version of subsection (5) is effective until January 1, 2021.*]** "Employer" means the state and every county, city, town, and body corporate and politic therein and every person, corporation, partnership, and association, including those operating in a representative capacity.

(5) **[*Editor's note: This version of subsection (5) is effective January 1, 2021.*]** "Employer" means the state or any political subdivision, commission, department, institution, or school district thereof, and every other person employing a person in the state.

(6) (a) "Employment" means any trade, occupation, job, or position in which any person may be engaged in the service of another for wages or salary, except household and domestic servants and farm and ranch laborers.

(b) This subsection (6) is repealed, effective January 1, 2021.

(7) **[*Editor's note: Subsection (7) is effective January 1, 2021.*]** "Liquidated damages" means damages to compensate an employee for the delay in receiving amounts due as a result of an employer's violation of this article 5. "Liquidated damages" does not constitute a penalty to the employer.

(8) **[*Editor's note: Subsection (8) is effective January 1, 2021.*]** "Sex" means an employee's gender identity.

(9) **[*Editor's note: Subsection (9) is effective January 1, 2021.*]** "Wage rate" means:

(a) For an employee paid on an hourly basis, the hourly compensation paid to the employee plus the value per hour of all other compensation and benefits received by the employee from the employer; and

(b) For an employee paid on a salary basis, the total of all compensation and benefits received by the employee from the employer.

Source: L. 55: p. 503, § 1. **CRS 53:** § 80-23-1. **C.R.S. 1963:** § 80-3-1. **L. 69:** p. 593, § 68. **L. 86:** (1) repealed, p. 502, § 125, effective July 1. **L. 2016:** (2) and (3) amended, (HB 16-1323), ch. 131, p. 378, § 11, effective August 10. **L. 2019:** IP, (4), and (5) amended and (7), (8), and (9) added, (SB 19-085), ch. 247, p. 2412, § 3, effective January 1, 2021; (3)(b) and (6)(b) added by revision, (SB 19-085), ch. 247, pp. 2412, 2417, §§ 3, 9.

Editor's note: Section 9(2) of chapter 247 (SB 19-085), Session Laws of Colorado 2019, provides that the act changing this section applies to violations that occur on or after January 1, 2021.

Cross references: For the short title ("Equal Pay for Equal Work Act") and the legislative declaration in SB 19-085, see sections 1 and 2 of chapter 247, Session Laws of Colorado 2019.

8-5-102. Wage discrimination prohibited. [*Editor's note: This version of this section is effective until January 1, 2021.*] No employer shall make any discrimination in the amount or rate of wages or salary paid or to be paid his employees in any employment in this state solely on account of the sex thereof.

8-5-102. Wage discrimination prohibited. [*Editor's note: This version of this section is effective January 1, 2021.*] (1) An employer shall not discriminate between employees on the basis of sex, or on the basis of sex in combination with another protected status as described in section 24-34-402 (1)(a), by paying an employee of one sex a wage rate less than the rate paid to an employee of a different sex for substantially similar work, regardless of job title, based on a composite of skill; effort, which may include consideration of shift work; and responsibility, except where the employer demonstrates each of the following:

(a) That the wage rate differential is based on:

(I) A seniority system;

(II) A merit system;

(III) A system that measures earnings by quantity or quality of production;

(IV) The geographic location where the work is performed;

(V) Education, training, or experience to the extent that they are reasonably related to the work in question; or

(VI) Travel, if the travel is a regular and necessary condition of the work performed;

(b) That each factor relied on in subsection (1)(a) of this section is applied reasonably;

(c) That each factor relied on in subsection (1)(a) of this section accounts for the entire wage rate differential; and

(d) That prior wage rate history was not relied on to justify a disparity in current wage rates.

(2) An employer shall not:

(a) Seek the wage rate history of a prospective employee or rely on the wage rate history of a prospective employee to determine a wage rate;

(b) Discriminate or retaliate against a prospective employee for failing to disclose the prospective employee's wage rate history;

(c) Discharge, or in any manner discriminate or retaliate against, an employee for invoking this section on behalf of anyone or assisting in the enforcement of this subsection (2);

(d) Discharge, discipline, discriminate against, coerce, intimidate, threaten, or interfere with an employee or other person because the employee or person inquired about, disclosed, compared, or otherwise discussed the employee's wage rate;

(e) Prohibit, as a condition of employment, an employee from disclosing the employee's wage rate; or

(f) Require an employee to sign a waiver or other document that:

(I) Prohibits the employee from disclosing wage rate information; or

(II) Purports to deny the employee the right to disclose the employee's wage rate information.

Source: L. 55: p. 503, § 2. **CRS 53:** § 80-23-2. **C.R.S. 1963:** § 80-3-2. **L. 2019:** Entire section amended, (SB 19-085), ch. 247, p. 2413, § 4, effective January 1, 2021.

Editor's note: Section 9(2) of chapter 247 (SB 19-085), Session Laws of Colorado 2019, provides that the act changing this section applies to violations that occur on or after January 1, 2021.

Cross references: (1) For minimum wages for workers, see article 6 of this title.

(2) For the short title ("Equal Pay for Equal Work Act") and the legislative declaration in SB 19-085, see sections 1 and 2 of chapter 247, Session Laws of Colorado 2019.

8-5-103. Enforcement - rules - complaints. [*Editor's note: This version of this section is effective until January 1, 2021.*] (1) The director has the power to administer, carry out, and enforce all of the provisions of this article and may promulgate rules and regulations for that

purpose. Copies of the rules and regulations shall be furnished by the division to all employees and employers upon written request.

(2) Upon written complaint, duly executed and verified, by any employee that any employer has, within one year from the date of such complaint, violated the provisions of section 8-5-102, the director or any referee of the division may proceed to hear and determine such complaint, and the director may make an award upon said complaint. Judicial review may be had of any award of the director under this article pursuant to section 24-4-106, C.R.S.

8-5-103. Enforcement - rules - complaints. [*Editor's note: This version of this section is effective January 1, 2021.*] (1) The director is authorized to create and administer a process to accept and mediate complaints and to provide legal resources concerning alleged violations of section 8-5-102, and to promulgate rules as necessary for this purpose. The process created and administered by the director does not affect or prevent the right of an aggrieved person from commencing a civil action pursuant to subsection (2) of this section.

(2) A person aggrieved by a violation of section 8-5-102 may commence a civil action in district court no later than two years after the violation occurs. A violation of section 8-5-102 (1) occurs on each occasion that a person is affected by wage discrimination, including each occasion that a discriminatory wage rate is paid.

(3) A person aggrieved by a violation of section 8-5-102 may obtain relief for back pay for the entire time the violation continues, not to exceed three years.

(4) If a civil action is commenced under this section, any party to the civil action may demand a trial by jury.

(5) Nothing in this section prevents an aggrieved person from filing a charge with the Colorado civil rights division pursuant to section 24-34-306.

Source: L. 55: p. 504, § 3. **CRS 53:** § 80-23-3. **C.R.S. 1963:** § 80-3-3. **L. 69:** p. 593, § 69. **L. 86:** Entire section amended, p. 472, § 31, effective July 1. **L. 2019:** Entire section amended, (SB 19-085), ch. 247, p. 2414, § 5, effective January 1, 2021.

Editor's note: Section 9(2) of chapter 247 (SB 19-085), Session Laws of Colorado 2019, provides that the act changing this section applies to violations that occur on or after January 1, 2021.

Cross references: For the short title ("Equal Pay for Equal Work Act") and the legislative declaration in SB 19-085, see sections 1 and 2 of chapter 247, Session Laws of Colorado 2019.

8-5-104. Employer liability - awards. [*Editor's note: This version of this section is effective until January 1, 2021.*] An employer who violates the provisions of section 8-5-102 is liable in an amount equal to the difference between the amount which he paid to the complaining employee and the amount which the employee would have received had there been no discrimination; and, if the director finds that such discrimination was willful, the director may impose a penalty upon the employer in addition thereto of not more than the amount of such difference. The amount of such liability so determined by the director shall constitute the award of the director. Such award shall be the property of the employee but may be recovered for the employee in a suit brought by the director in his name in any court in the county of the residence

of the employer within this state having jurisdiction of the amount of the demand in the suit. The director may join in one suit all of his awards against any one employer under this article.

8-5-104. Employer liability - awards. [*Editor's note: This version of this section is effective January 1, 2021.*] (1) (a) An employer who violates section 8-5-102 (1) is liable for economic damages in an amount equal to the difference between the amount that the employer paid to the complaining employee and the amount that the employee would have received had there been no violation plus liquidated damages in an amount equal to the employee's economic damages, except as provided in subsection (1)(b) of this section.

(b) (I) If the employer demonstrates that the act or omission giving rise to the violation was in good faith and that the employer has reasonable grounds for believing that the employer did not violate section 8-5-102 (1), the court shall not award liquidated damages.

(II) In determining whether the employer's violation was in good faith, the fact finder may consider evidence that within two years prior to the date of the commencement of a civil action pursuant to section 8-5-103, the employer completed a thorough and comprehensive pay audit of its workforce, with the specific goal of identifying and remedying unlawful pay disparities.

(2) An employer who violates any provision of section 8-5-102 is liable for:

(a) Legal and equitable relief, which may include employment, reinstatement, promotion, pay increase, payment of lost wage rates, and liquidated damages; and

(b) The employee's reasonable costs, including attorney fees.

(3) Nothing in this section precludes an employee from asserting any other available statutory or common-law claims.

Source: L. 55: p. 504, § 4. **CRS 53:** § 80-23-4. **C.R.S. 1963:** § 80-3-4. **L. 69:** p. 594, § 70. **L. 2019:** Entire section amended, (SB 19-085), ch. 247, p. 2415, § 6, effective January 1, 2021.

Editor's note: Section 9(2) of chapter 247 (SB 19-085), Session Laws of Colorado 2019, provides that the act changing this section applies to violations that occur on or after January 1, 2021.

Cross references: For the short title ("Equal Pay for Equal Work Act") and the legislative declaration in SB 19-085, see sections 1 and 2 of chapter 247, Session Laws of Colorado 2019.

8-5-105. Records open to inspection - repeal. (1) When complaint is made to the division by any employee against any employer for a violation of this article, all books, records, and payrolls of such employer, material and pertinent to such complaint, shall be open for inspection by the division or any of its agents duly appointed for that purpose.

(2) This section is repealed, effective January 1, 2021.

Source: L. 55: p. 504, § 5. **CRS 53:** § 80-23-5. **C.R.S. 1963:** § 80-3-5. **L. 69:** p. 594, § 71. **L. 2019:** (2) added by revision, (SB 19-085), ch. 247, pp. 2415, 2417, §§ 7, 9.

Editor's note: Section 9(2) of chapter 247 (SB 19-085), Session Laws of Colorado 2019, provides that the act repealing this section applies to violations that occur on or after January 1, 2021.

Cross references: For the short title ("Equal Pay for Equal Work Act") and the legislative declaration in SB 19-085, see sections 1 and 2 of chapter 247, Session Laws of Colorado 2019.

8-5-106. Colorado pay equity commission - creation - duties - cash fund - report - repeal. (Repealed)

Source: L. 2010: Entire section added, (HB 10-1417), ch. 266, p. 1217, § 1, effective May 25.

Editor's note: Subsection (6) provided for the repeal of this section, effective July 1, 2015. (See L. 2010, p. 1217.)

PART 2

TRANSPARENCY IN PAY AND OPPORTUNITIES
FOR PROMOTION AND ADVANCEMENT

Editor's note: Section 9(2) of chapter 247 (SB 19-085), Session Laws of Colorado 2019, provides that the act adding this part 2 applies to violations that occur on or after January 1, 2021.

Cross references: For the short title ("Equal Pay for Equal Work Act") and the legislative declaration in SB 19-085, see sections 1 and 2 of chapter 247, Session Laws of Colorado 2019.

8-5-201. Employment opportunities - opportunities for promotion or advancement - pay rates in job listings. [*Editor's note: This section is effective January 1, 2021.*] (1) An employer shall make reasonable efforts to announce, post, or otherwise make known all opportunities for promotion to all current employees on the same calendar day and prior to making a promotion decision.

(2) An employer shall disclose in each posting for each job opening the hourly or salary compensation, or a range of the hourly or salary compensation, and a general description of all of the benefits and other compensation to be offered to the hired applicant.

Source: L. 2019: Entire part added, (SB 19-085), ch. 247, p. 2416, § 8, effective January 1, 2021.

8-5-202. Record keeping. [*Editor's note: This section is effective January 1, 2021.*] An employer shall keep records of job descriptions and wage rate history for each employee for the

duration of the employment plus two years after the end of employment in order to determine if there is a pattern of wage discrepancy.

Source: L. 2019: Entire part added, (SB 19-085), ch. 247, p. 2416, § 8, effective January 1, 2021.

8-5-203. Enforcement - rules. [*Editor's note: This section is effective January 1, 2021.*] (1) The director has the power to administer, carry out, and enforce all of the provisions of this part 2 and may promulgate rules for that purpose. The director shall provide written copies of rules promulgated pursuant to this section to all employees and employers upon written request.

(2) (a) A person who claims to be aggrieved by a violation of section 8-5-201 or 8-5-202 may file a written complaint with the director within one year after the date that the person learned of the violation. The written complaint must state the name and address of the employer and a detailed account of the alleged violation.

(b) An employer's failure to comply with section 8-5-201 (1) for one promotional opportunity is considered one violation.

(c) An employer's failure to comply with section 8-5-201 (2) for one job opening is considered one violation regardless of the number of postings that list the job opening.

(3) The director shall investigate complaints of violations of this part 2 and shall promulgate rules necessary to govern the investigations.

(4) Upon finding that an employer has violated this part 2, the director may order the employer to pay a fine of no less than five hundred dollars and no more than ten thousand dollars per violation.

(5) If an employee bringing suit for a violation of section 8-5-102 demonstrates a violation of this part 2, and the court finds a violation of this part 2, the court may order appropriate relief, including a rebuttable presumption that records not kept by the employer in violation of section 8-5-202 contained information favorable to the employee's claim and an instruction to the jury that failure to keep records can be considered evidence that the violation was not made in good faith.

Source: L. 2019: Entire part added, (SB 19-085), ch. 247, p. 2416, § 8, effective January 1, 2021.

ARTICLE 6

Minimum Wages of Workers

Law reviews: For article, "An Overview of Federal and State Wage-Hour Laws -- Part I", which discusses the federal wage-hour laws, see 14 Colo. Law. 384 (1985).

8-6-101. Legislative declaration - minimum wage of workers - authority of a local government to enact minimum wage laws - enforcement - report - severability - definition. (1) The welfare of the state of Colorado demands that workers be protected from conditions of labor that have a pernicious effect on their health and morals, and it is therefore declared, in the

exercise of the police and sovereign power of the state of Colorado, that inadequate wages and unsanitary conditions of labor exert such pernicious effect.

(2) Repealed.

(3) (a) (I) Notwithstanding any other provision of law, a local government may enact through its governing body or, when available, through its initiative or referendum powers, a law establishing minimum wages for individuals performing, or expected to perform, four or more hours of work for an employer in any given week within the geographic boundaries of the local government's jurisdiction. Minimum wages established in accordance with this section may exceed the statewide minimum wage established in accordance with section 15 of article XVIII of the state constitution, any other minimum wage established by state law, or any minimum wage established by federal law; except that a local government that enacts a minimum wage in accordance with this subsection (3) shall provide a tip offset for employees of any business or enterprise that prepares and offers for sale food or beverages for consumption either on or off the premises equal to the tip offset provided in section 15 of article XVIII of the state constitution. The tip offset applies only to employees who regularly receive tips and only when a tip offset is permitted by state law. A local government shall not include in its minimum wage law time spent in the local government's jurisdiction by an employee solely for the purpose of traveling through the local government's jurisdiction from a point of origin outside of the local government's boundaries to a destination outside of the local government's boundaries, with no employment-related or commercial stops in the local government's jurisdiction, except for refueling or the employee's personal meals or errands.

(II) All adult employees and emancipated minors, whether employed on an hourly, piecework, commission, time, task, or other basis, shall be paid not less than the minimum wage enacted by the local government through its governing body or through initiative or referendum powers.

(b) A local government that enacts a minimum wage law in accordance with this subsection (3) may adopt provisions for the local enforcement of the law, including:

(I) A private right of action to enforce the requirement in a court of competent jurisdiction;

(II) At levels that may exceed those set by state law:

(A) Fines and penalties;

(B) Payment of unpaid wages or unpaid overtime based on those wages;

(C) Liquidated damages;

(D) Interest;

(E) Costs and attorney fees payable to any affected prevailing employee; and

(F) Costs and attorney fees payable to the local government or its designated enforcement departments;

(III) Procedures for the local government to order any appropriate or equitable relief; and

(IV) Other provisions necessary for the efficient and cost-effective enforcement of a local minimum wage law.

(c) (I) Except as provided in subsection (3)(c)(II) of this section, a local minimum wage adopted by a county is only enforceable within the unincorporated portion of the county.

(II) One or more contiguous counties and any municipality within each county may enter into intergovernmental agreements to establish a local minimum wage law within the

unincorporated portion of each county and within each municipality. An intergovernmental agreement entered into in accordance with this subsection (3)(c) must establish the manner in which a local government minimum wage law will be enforced and administered.

(d) Before enacting a minimum wage law, a local government shall consult with surrounding local governments and engage stakeholders, including chambers of commerce, small and large businesses, businesses that employ tipped workers, workers, labor unions, and community groups.

(4) For purposes of this section, "local government" means a:

(a) City;

(b) Home rule city;

(c) Town;

(d) Territorial charter city;

(e) City and county;

(f) County; or

(g) Home rule county.

(5) If any provision of this section is found by a court of competent jurisdiction to be unconstitutional, the remaining provisions of this section are valid, unless it appears to the court that the valid provisions of this section are so essentially and inseparably connected with, and so dependent upon, the void provision that it cannot be presumed the legislature would have enacted the valid provisions without the void one; or unless the court determines that the valid provisions, standing alone, are incomplete and are incapable of being executed in accordance with the legislative intent.

(6) A local government that enacts a local minimum wage law pursuant to this section must specify that an increase in the local minimum wage must take effect on the same date as a scheduled increase to the statewide minimum wage required under section 15 of article XVIII of the state constitution.

(7) If a local government enacts a local minimum wage law requiring a minimum wage that exceeds the statewide minimum wage, the local government may only increase the local minimum wage each year by up to one dollar and seventy-five cents or fifteen percent, whichever is higher, until the local minimum wage reaches the amount enacted by the local government.

(8) (a) By July 1, 2021, the executive director of the department of labor and employment shall issue a written report regarding local minimum wage laws in the state. The report must include the location, nature, and scope of enacted local minimum wage laws. To the extent feasible, the executive director shall also include in the report economic data, including jobs, earnings, and sales tax revenue, in the jurisdiction of any local government that has enacted a local minimum wage law pursuant to this section, as well as data for neighboring jurisdictions, relevant regions, and the state. The report may include recommendations for possible improvements to this section.

(b) The executive director shall update the report by July 1 each year thereafter if an additional local government enacts a minimum wage law after July 1 of the year prior.

(c) (I) The executive director shall submit the report required in this subsection (8) to the senate local government committee and the house of representatives transportation and local government committee, or their successor committees.

(II) Notwithstanding section 24-1-136 (11)(a)(I), the report required in this subsection (8) continues indefinitely.

(9) (a) The executive director of the department of labor and employment shall notify the executive director of the department of health care policy and financing if a local government enacts a minimum wage that exceeds the statewide minimum wage.

(b) If the executive director of the department of health care policy and financing receives notice pursuant to subsection (9)(a) of this section, the executive director shall, as soon as practicable, submit a report to the joint budget committee with recommendations about whether provider rates, with the exception of rates for an eligible nursing facility provider as defined in section 25.5-6-201 (15.5), need to be increased to accommodate the local government's minimum wage increase and if establishing a fund to pass through those increases to facilities in the jurisdiction of the local government that has raised the minimum wage is necessary.

(c) Notwithstanding section 24-1-136 (11)(a)(I), the report required in this subsection (9) continues indefinitely.

(10) (a) If at any point ten percent of local governments in the state have enacted a local minimum wage law pursuant to this section, a local government that has not previously enacted a local minimum wage law shall not enact a local minimum wage law pursuant to this section until the general assembly has amended this section to authorize additional local governments to enact local minimum wage laws. A local government that enacted a local minimum wage law prior to the point at which ten percent of local governments have enacted a local minimum wage law may continue to amend that law.

(b) For purposes of determining whether ten percent of local governments in the state have enacted a local minimum wage law pursuant to this section, when a county enacts a local minimum wage law, if a local minimum wage law is enacted by any local government located within that county, only the county's minimum wage law counts toward the calculation of the ten percent. If local governments enter into an intergovernmental agreement on the enforcement or administration of local minimum wage policies, that will only be counted as one local minimum wage for determining the calculation of the ten percent.

Source: L. 17: p. 380, § 1. **C.L.** § 4262. **CSA:** C. 97, § 236. **CRS 53:** § 80-9-1. **C.R.S. 1963:** § 80-7-1. **L. 77:** Entire section amended, p. 428, § 2, effective July 1. **L. 99:** Entire section amended, p. 289, § 2, effective April 14. **L. 2019:** (2) repealed, (3) amended, and (4) to (10) added, (HB 19-1210), ch. 320, p. 2972, § 4, effective January 1, 2020.

Cross references: For the legislative declaration in HB 19-1210, see section 1 of chapter 320, Session Laws of Colorado 2019.

8-6-102. Construction. Whenever this article or any part thereof is interpreted by any court, it shall be liberally construed by such court.

Source: L. 17: p. 389, § 22. **C.L.** § 4282. **CSA:** C. 97, § 256. **CRS 53:** § 80-9-20. **C.R.S. 1963:** § 80-7-20.

8-6-103. Definitions. As used in this article, unless the context otherwise requires:

(1) and (2) Repealed.

(3) "Director" means the director of the division of labor standards and statistics.

(4) "Division" means the division of labor standards and statistics in the department of labor and employment.

(5) "Minor" means any person of either sex under the age of eighteen years.

(6) "Occupation" means every vocation, trade, pursuit, and industry.

(7) Repealed.

Source: L. 17: pp. 380, 382, §§ 2, 5, 7. **C.L.** §§ 4263, 4266, 4268. **CSA:** C. 97, §§ 237, 240, 242. **CRS 53:** §§ 80-9-2, 80-9-4, 80-9-6. **C.R.S. 1963:** §§ 80-7-2, 80-7-4, 80-7-6. **L. 69:** pp. 604, 605, §§ 86, 87, 89. **L. 77:** (7) repealed, p. 432, § 13, effective July 1. **L. 86:** (1) and (2) repealed, p. 502, § 125, effective July 1. **L. 2016:** (3) and (4) amended, (HB 16-1323), ch. 131, p. 378, § 12, effective August 10.

Cross references: For the division of labor and the director of the division of labor and their powers and duties, see article 1 of this title.

8-6-104. Wages shall be adequate - conditions healthful and moral. It is unlawful to employ workers in any occupation within the state of Colorado for wages which are inadequate to supply the necessary cost of living and to maintain the health of the workers so employed. It is unlawful to employ workers in any occupation within this state under conditions of labor detrimental to their health or morals.

Source: L. 17: p. 381, § 4. **C.L.** § 4265. **CSA:** C. 97, § 239. **CRS 53:** § 80-9-3. **C.R.S. 1963:** § 80-7-3. **L. 77:** Entire section amended, p. 428, § 3, effective July 1.

Cross references: For the payment of wages generally, see article 4 of this title; for wage equality, see article 5 of this title; for the "Colorado Youth Employment Opportunity Act of 1971", see article 12 of this title; for the eight-hour workday requirement, see article 13 of this title; for the general protection of building employees, see article 14 of this title.

8-6-105. Director to investigate. It is the duty of the director to inquire into the wages paid to employees and into the conditions of labor surrounding said employees in any occupation in this state if the director has reason to believe that said conditions of labor are detrimental to the health or morals of said employees or that the wages paid to a substantial number of employees are inadequate to supply the necessary cost of living and to maintain such employees in health. At the request of not less than twenty-five persons engaged in any occupation, the director shall forthwith make such investigation as is provided in this article. Such investigation may be made at any time, upon the initiative of the director.

Source: L. 17: p. 381, § 5. **C.L.** § 4266. **CSA:** C. 97, § 240. **CRS 53:** § 80-9-4. **C.R.S. 1963:** § 80-7-4. **L. 69:** p. 604, § 87. **L. 77:** Entire section amended, p. 429, § 4, effective July 1.

8-6-106. Determination of minimum wage and conditions. The director shall determine the minimum wages sufficient for living wages for persons of ordinary ability,

including minimum wages sufficient for living wages, whether paid according to time rate or piece rate; the minimum wages sufficient for living wages for learners and apprentices; standards of conditions of labor and hours of employment not detrimental to health or morals for workers; and what are unreasonably long hours. In all such determinations, the director shall be bound by the provisions of this article and of section 15 of article XVIII of the state constitution; except that, if a higher minimum wage rate is established by applicable federal law or rules, the director shall be bound by such federal law or rules.

Source: L. 17: p. 382, § 6. **C.L.** § 4267. **CSA:** C. 97, § 241. **CRS 53:** § 80-9-5. **C.R.S. 1963:** § 80-7-5. **L. 69:** p. 604, § 88. **L. 77:** Entire section amended, p. 429, § 5, effective July 1. **L. 2007:** Entire section amended, p. 46, § 1, effective March 14.

8-6-107. Powers of director - duty of employer. (1) The director, for the purposes of this article, has power to investigate and ascertain the conditions of labor and the wages in the different occupations, whether paid by time rate or piece rate, in the state of Colorado. The director has power, in person or through any authorized representative, to inspect and examine and make excerpts from any books, reports, contracts, payrolls, documents, papers, and other records of any employer that in any way pertain to the question of wages and to require from any such employer full and true statements of the wages paid.

(2) Every employer shall keep a register of the names, ages, dates of employment, and residence addresses of all employees. It is the duty of every such employer, whether a person, firm, or corporation, to furnish to the director, upon request, any reports or information which the director may require to carry out the purposes of this article, such reports and information to be verified by the oath of the person, or a member of the firm or the president, secretary, or manager of the corporation, furnishing the same if and when so requested by the director; and the director or any authorized representative shall be allowed free access to the place of business of such employer for the purpose of making any investigation authorized by this article.

Source: L. 17: p. 382, § 7. **C.L.** § 4268. **CSA:** C. 97, § 242. **CRS 53:** § 80-9-6. **C.R.S. 1963:** § 80-7-6. **L. 69:** p. 605, § 89. **L. 77:** Entire section amended, p. 429, § 6, effective July 1.

8-6-108. Public hearings - witness fees - contempt - director to make rules. (1) The director may hold public hearings at such times and places as he deems proper for the purpose of investigating any of the matters he is authorized to investigate by this article at which hearings employers, employees, or other interested persons may appear and give testimony as to the matter under consideration. The director has the power to subpoena and compel the attendance of any witness and to administer oaths, also, by subpoena, to compel the production of any books, papers, or other evidence at any public hearing of the director or at any session of any wage board. All witnesses subpoenaed by said director shall be paid the same mileage and per diem as are allowed by law to witnesses in civil cases before the district court of the state of Colorado. If any person fails to attend as a witness or to bring with him any books, papers, or other evidence when subpoenaed by the director or refuses to testify when ordered so to do, the director may apply to any district court in this state to compel obedience on the part of such person. The district court shall thereupon compel obedience by proceedings for contempt as in cases of disobedience of any order of said court in a proceeding pending before said court. The

director shall not be bound by the technical rules of evidence. Said director may hold meetings for the transaction of any of his business at such times and places as he prescribes.

(2) The director has power to make reasonable and proper rules and procedure and to enforce said rules and procedure.

Source: L. 17: p. 383, § 8. **C.L.** § 4269. **CSA:** C. 97, § 243. **CRS 53:** § 80-9-7. **C.R.S. 1963:** § 80-7-7. **L. 64:** p. 288, § 218. **L. 69:** p. 605, § 90. **L. 73:** p. 1409, § 60. **L. 86:** (2) amended, p. 472, § 32, effective July 1.

Cross references. For witness and mileage fees, see §§ 13-33-102 and 13-33-103; for proceedings for contempt, see C.R.C.P. 107.

8-6-108.5. Minimum wage - rules. (1) Effective July 1, 1977, the minimum wage for minors may be fifteen percent below the minimum wage for other workers; except that the full minimum wage shall be paid to any emancipated minor. An emancipated minor shall mean any individual less than eighteen years of age who:

(a) Has the sole or primary responsibility for his own support;

(b) Is married and living away from parents or guardian;

(c) Is able to show that his well-being is substantially dependent upon being gainfully employed.

(2) An employer may pay a rate of fifteen percent lower than the minimum wage to persons certified by the director to be less efficient due to a physical disability.

(3) The director may issue only such rules as are necessary to carry out the provisions of this article and as are consistent with the purposes and intent of section 8-6-101 and section 15 of article XVIII of the state constitution; except that, if a higher minimum wage rate is established by applicable federal law or rules, the director's rules shall be consistent with such federal law or rules.

Source: L. 77: Entire section added, p. 430, § 7, effective July 1. **L. 93:** (2) amended, p. 1630, § 3, effective July 1. **L. 2007:** (3) amended, p. 46, § 2, effective March 14.

8-6-109. Methods of establishing minimum wages - wage board. (1) If after investigation the director is of the opinion that the conditions of employment surrounding said employees are detrimental to the health or morals or that a substantial number of workers in any occupation are receiving wages, whether by time rate or piece rate, inadequate to supply the necessary costs of living and to maintain the workers in health, the director shall proceed to establish minimum wage rates either directly or by the indirect method described in subsection (2) of this section. If he selects the direct method, the director shall establish the minimum wage rates.

(2) If he adopts the indirect method, the director shall establish a wage board consisting of not more than three representatives of employers in the occupation in question, and of an equal number of persons to represent the employees in said occupation, and of an equal number of disinterested persons to represent the public, and someone representing the director if it is desired. The director shall name and appoint all members of the wage board and designate the chairman thereof. The selection of members representing employers and employees shall be, so

far as practicable, through election by employers and employees respectively, subject to approval and selection by the director. The members of the wage board shall be compensated at the same rate and fees for service as jurors in courts of record, and they shall be allowed their necessary traveling and clerical expenses incurred in the actual performance of their duties, to be paid from the appropriations for the expenses of the division.

(3) The proceedings and deliberations of such wage board shall be made a matter of record for the use of the director and shall be admissible as evidence in any proceedings before the director. Each wage board has the same power as the director to subpoena witnesses, administer oaths, and compel the production of books, papers, and other evidence. Witnesses subpoenaed by a wage board shall be allowed the same compensation as when subpoenaed by the director.

Source: L. 17: p. 384, § 9. **C.L.** § 4270. **CSA:** C. 97, § 244. **CRS 53:** § 80-9-8. **C.R.S. 1963:** § 80-7-8. **L. 69:** p. 606, § 91. **L. 77:** (1) an (2) amended, p. 430, § 8, effective July 1.

Cross references: For juror's fees, see § 13-33-101; for mileage fees of jurors, see § 13-33-103.

8-6-110. Wage board - duties - report - quorum. The director may transmit to each wage board all pertinent information in his possession relative to the wages paid or material to the subject of inquiry of the occupation in question. Each wage board shall endeavor to determine, if requested so to do by the director, the standard conditions of employment; the minimum wage, whether by time rate or piece rate, adequate to maintain in health and to supply with the necessary cost of living an employee of ordinary ability in the occupation in question, or in any branches thereof; and suitable minimum wages, graded, so far as practicable, on a rising scale toward the minimum allowed experienced workers, for learners and apprentices. When a majority of the members of a wage board agree upon standard conditions of employment or minimum wage board determinations, they shall report such determinations to the director, together with the reasons therefor and the facts relating thereto. A majority of the members of any such wage board shall constitute a quorum.

Source: L. 17: p. 385, § 10. **C.L.** § 4271. **CSA:** C. 97, § 245. **CRS 53:** § 80-9-9. **C.R.S. 1963:** § 80-7-9. **L. 69:** p. 606, § 92. **L. 77:** Entire section amended, p. 430, § 9, effective July 1.

8-6-111. Director to review report. (1) Upon the receipt of a report from a wage board, the director shall review the same and may approve or disapprove any determination or recommit the subject to the same or a new wage board. If the director approves any of the determinations of the wage board, said director shall publish notice not less than once a week for two successive weeks in a newspaper of general circulation published in the county in which any business directly affected thereby is located, that he will, on a date and at a place named in said notice, hold a public meeting, at which all persons in favor of or opposed to said recommendations will be given a hearing.

(2) After publication of notice and the meeting, the director, if so desired, may make and render such an order as may be proper or necessary to adopt the recommendations and carry the same into effect and require all employees in the occupation directly affected thereby to preserve

and comply with such recommendations and order. Such order is effective thirty days after it is made and rendered and shall be in full force and effect on and after that day. After the order is effective, it is unlawful for any employer to violate or disregard any of the terms of the order or to employ any worker in any occupation covered by the order at lower wages or under other conditions than authorized or permitted by the order. The director shall, as far as is practicable, mail a copy of any such order to every employer affected thereby; and every employer affected by the order shall keep a copy thereof posted in a conspicuous place in such employer's establishment. Such order shall include a notice of the contents of sections 8-12-105 (3), 8-12-115 (4)(b)(II), and 8-12-116 (2).

(3) In case of an emergency the director may authorize or permit the employment of any person for more hours per day or per week than the maximum now fixed by law.

(4) Overtime, at a rate of one and one-half times the regular rate of pay, may be permitted by the director under conditions and rules and for increased minimum wages which the director, after investigation, determines and prescribes by order and which shall apply equally to all employers in such industry or occupation.

Source: L. 17: p. 386, § 11. **C.L.** § 4272. **CSA:** C. 97, § 246. **CRS 53:** § 80-9-10. **C.R.S. 1963:** § 80-7-10. **L. 69:** p. 607, § 93. **L. 77:** (2), (3), and (4) amended, p. 431, § 10, effective July 1. **L. 86:** (4) amended, p. 472, § 33, effective July 1. **L. 2000:** (2) amended, p. 1487, § 2, effective July 1.

Cross references: For the maximum number of hours minors may be employed, see § 8-12-105; for the general eight-hour day requirement, see article 13 of this title.

8-6-112. New determination of wages and conditions. Whenever a minimum wage rate or a new standard of conditions of employment has been established in any occupation, the director, if he deems proper or necessary so to do, upon petition of either employers or employees, may reconvene the wage board or establish a new wage board, and any recommendation made by such board shall be dealt with in the same manner as the original recommendation of a wage board. Pending any new determination, any minimum wage rate and any new standard of conditions of employment theretofore established shall be and continue in force and effect. It is the duty of the director to survey and review for adequacy established wage orders made pursuant to the provisions of section 8-6-111 at least every four years, whether or not the director is petitioned to do so by either employers or employees.

Source: L. 17: p. 387, § 12. **C.L.** § 4273. **CSA:** C. 97, § 247. **CRS 53:** § 80-9-11. **C.R.S. 1963:** § 80-7-11. **L. 69:** pp. 607, 665, §§ 94, 1.

8-6-113. Employment at less than minimum wage - license. (Repealed)

Source: L. 17: p. 387, § 13. **C.L.** § 4274. **CSA:** C. 97, § 248. **CRS 53:** § 80-9-12. **C.R.S. 1963:** § 80-7-12. **L. 69:** p. 608, § 95. **L. 77:** Entire section repealed, p. 432, § 13, effective July 1.

8-6-114. Wages and working conditions for minors. (Repealed)

Source: L. 17: p. 387, § 14. **C.L.** § 4275. **CSA:** C. 97, § 247. **CRS 53:** § 80-9-13. **C.R.S. 1963:** § 80-7-13. **L. 69:** p. 608, § 96. **L. 77:** Entire section repealed, p. 432, § 13, effective July 1.

8-6-115. Discrimination by employer - penalty - prosecutions. Any employer who discharges or threatens to discharge, or in any other way discriminates against an employee because such employee serves upon a wage board, or is active in its formation, or has testified or is about to testify, or because the employer believes that the employee may testify in any investigation or proceeding relative to enforcement of this article is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than two hundred dollars nor more than one thousand dollars for each violation. The director shall investigate and report to the proper prosecuting officials whether employers in each occupation investigated are obeying his decrees, and the director or employees of the division may cause informations to be filed with and prosecutions to be instituted by the proper prosecuting officials for any violation of the provisions of this article.

Source: L. 17: p. 388, § 15. **C.L.** § 4276. **CSA:** C. 97, § 250. **CRS 53:** § 80-9-14. **C.R.S. 1963:** § 80-7-14. **L. 69:** p. 608, § 97.

8-6-116. Violation - penalty. (1) The minimum wages fixed by the director, as provided in this article 6, are the minimum wages paid to the employees, and the payment to such employees of a wage less than the minimum so fixed is unlawful, and every employer or other person who intentionally, individually or as an officer, agent, or employee of a corporation or other person, pays or causes to be paid to any such employee a wage less than the minimum commits theft as defined in section 18-4-401.

(2) For the purpose of this section, the amount of the theft is the unpaid balance of the full amount of the minimum wage, as described in section 8-6-118.

Source: L. 17: p. 388, § 16. **C.L.** § 4277. **CSA:** C. 97, § 251. **CRS 53:** § 80-9-15. **L. 63:** p. 290, § 9. **C.R.S. 1963:** § 80-7-15. **L. 69:** p. 608, § 98. **L. 73:** p. 1409, § 61. **L. 77:** Entire section amended, p. 431, § 11, effective July 1. **L. 2019:** Entire section amended, (HB 19-1267), ch. 182, p. 2059, § 4, effective January 1, 2020.

Cross references: For the legislative declaration in HB 19-1267, see section 1 of chapter 182, Session Laws of Colorado 2019.

8-6-117. Minimum wage presumed reasonable - conclusiveness. In every prosecution for the violation of any provision of this article, the minimum wage established by the director shall be prima facie presumed to be reasonable and lawful and the wage required to be paid. The findings of fact made by the director acting within prescribed powers, in the absence of fraud, shall be conclusive.

Source: L. 17: p. 388, § 17. **C.L.** § 4278. **CSA:** C. 97, § 252. **CRS 53:** § 80-9-16. **C.R.S. 1963:** § 80-7-16. **L. 69:** p. 609, § 99. **L. 77:** Entire section amended, p. 432, § 12, effective July 1.

8-6-118. Recovery of balance of minimum wage. An employee receiving less than the legal minimum wage applicable to such employee is entitled to recover in a civil action the unpaid balance of the full amount of such minimum wage, together with reasonable attorney fees and court costs, notwithstanding any agreement to work for a lesser wage.

Source: L. 17: p. 389, § 18. **C.L.** § 4279. **CSA:** C. 97, § 253. **CRS 53:** § 80-9-17. **C.R.S. 1963:** § 80-7-17. **L. 2014:** Entire section amended, (SB 14-005), ch. 276, p. 1120, § 8, effective January 1, 2015.

Cross references: For the short title ("Wage Protection Act of 2014") in SB 14-005, see section 1 of chapter 276, Session Laws of Colorado 2014.

8-6-119. Investigation of complaints. Any person may register with the division a complaint that the wages paid to an employee for whom a rate has been established are less than that rate, and the director shall investigate the matter and take all proceedings necessary to enforce the payment of the minimum wage rate.

Source: L. 17: p. 389, § 19. **C.L.** § 4280. **CSA:** C. 97, § 254. **CRS 53:** § 80-9-18. **C.R.S. 1963:** § 80-7-18. **L. 69:** p. 609, § 100.

ARTICLE 7

Salaries of Employees in Mining

8-7-101 to 8-7-109. (Repealed)

Source: L. 77: Entire article repealed, p. 292, § 2, effective May 26.

Editor's note: This article was numbered as article 12 of chapter 80, C.R.S. 1963. For amendments to this article prior to its repeal in 1977, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

ARTICLE 8

Truck System Abolished

8-8-101 to 8-8-109. (Repealed)

Source: L. 95: Entire article repealed, p. 194, § 6, effective April 13.

Editor's note: This article was numbered as article 20 of chapter 80, C.R.S. 1963. For amendments to this article prior to its repeal in 1995, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

ARTICLE 9

Assignment of Wages

Cross references: For wage assignments in relation to child support or maintenance, see § 14-14-111.5.

8-9-101. Assignment of wages - requirements. This article is subject to the provisions of articles 2 and 3 of the "Uniform Consumer Credit Code". No assignment of wages by any employee to any person for the benefit of such employee shall be valid or enforceable. No employer or debtor shall recognize or honor any assignment of wages for any purpose unless it is in writing and for a fixed and definite part of the wages earned or to be earned within thirty days from the date of such assignment. Any assignment which is postdated or dated on any other date than that of its actual execution, shall be void and of no effect for any purpose.

Source: L. 49: p. 231, § 3. **CSA:** C. 97, § 223(1). **CRS 53:** § 80-11-1. **C.R.S. 1963:** § 80-15-1. **L. 71:** p. 853, § 3.

Cross references: For the "Uniform Consumer Credit Code", see articles 1 to 9 of title 5.

8-9-102. Copies to be given employer and assignor. No assignment of wages shall be valid or enforceable unless a copy of the assignment is given or mailed by registered mail to the employer within five days after its execution and a copy of the assignment given to the wage earner making the assignment.

Source: L. 49: p. 232, § 4. **CSA:** C. 97, § 227(1). **CRS 53:** § 80-11-2. **C.R.S. 1963:** § 80-15-2.

8-9-103. When assignment must be recorded. No assignment of wages not already earned at the time of the assignment and no assignment of any other sum to become due to the assignor shall be valid as against any creditor of the assignor who has not had actual notice of the assignment at the time the same is made unless the same is recorded with the recorder of the county wherein such wages are to be earned or such sums are to become due within five days from date thereof.

Source: L. 49: p. 231, § 1. **CSA:** C. 97, § 232(1). **CRS 53:** § 80-11-3. **C.R.S. 1963:** § 80-15-3.

8-9-104. Joinder of wife or husband in assignment - acknowledgment. No assignment of wages, except for child support, not already earned at the time of the assignment or any sum to become due the assignor after the date of such assignment shall be valid unless, if the assignor is married and residing with his spouse, such spouse joins in and signs such assignment and such assignment is duly acknowledged before a notary public or some other officer authorized by the laws of Colorado to take acknowledgments.

Source: L. 49: p. 231, § 2. **CSA:** C. 97, § 233(1). **CRS 53:** § 80-11-4. **C.R.S. 1963:** § 80-15-4. **L. 81:** Entire section amended, p. 909, § 2, effective June 8.

8-9-105. Burden of proof of validity on assignee. If any assignment of wages or other sums to be earned or to become due after the date of such assignment is contested by any creditor of the assignor, the burden of proof that the assignment was recorded as provided in section 8-9-103 or that the creditor had actual notice of the assignment at the time garnishee summons was issued and that the assignment was made in accordance with the provisions of this article rests upon the assignee under the assignment.

Source: L. 49: p. 232, § 5. **CSA:** C. 97, § 234(1). **CRS 53:** § 80-11-5. **C.R.S. 1963:** § 80-15-5.

8-9-106. Deductions for union dues. Nothing in this article shall prevent or prohibit the use of the check-off between employers or employees in the custom or practice of the deduction of union dues by an employer for his employees where such an arrangement has been entered into between the parties.

Source: L. 49: p. 232, § 6. **CSA:** C. 97, § 235(1). **CRS 53:** § 80-11-6. **C.R.S. 1963:** § 80-15-6.

8-9-107. Other authorized deductions. (1) Nothing contained in this article shall be construed to affect deductions authorized by an employee to be made by an employer for hospital, medical, stock purchases, savings, insurance, charities, credit unions, banks, savings and loans, or any other financial institution or other similar purposes, or for rent, board, and subsistence provided in connection with employment, if the authorization is revocable.

(2) Rent, board, and subsistence deductions as provided in subsection (1) of this section shall not be made a condition of employment.

Source: L. 49: p. 232, § 7. **CSA:** C. 97, § 235(2). **CRS 53:** § 80-11-7. **C.R.S. 1963:** § 80-15-7. **L. 71:** p. 853, § 3. **L. 83:** Entire section amended, p. 405, § 1, effective May 23.

ARTICLE 10

Preferred Claims

Cross references: For the power of Pinnacol Assurance to recover benefits for civil defense employees, see § 24-33.5-813.

8-10-101. Wages a preferred claim. When the business of any person, corporation, company, or firm is suspended by the action of creditors or put into the hands of a receiver or trustee, the debts owing to laborers, servants, or employees, which have occurred by reason of their labor or employment shall be considered and treated as preferred claims. Such laborers or employees shall be preferred creditors and shall first be paid in full. If there are not sufficient funds to pay them in full, they shall be paid from the proceeds of the sale of the property seized.

Any person interested may contest any such claim, or part thereof, by filing exceptions thereto, supported by affidavit, with the officer having the custody of such property, and thereupon the claimant shall be required to reduce his claim to judgment before a court having jurisdiction thereof before any part thereof is paid.

Source: L. 03: p. 143, § 1. **R.S. 08:** § 6998. **C.L.** § 4243. **CSA:** C. 97, § 217. **CRS 53:** § 80-12-1. **C.R.S. 1963:** § 80-16-1.

8-10-102. Statement of claim presented. Any laborer, servant, or employee desiring to enforce his claim for wages under this article shall present a statement under oath showing the amount due, the kind of work for which the wages are due, and when performed to the officer, person, or court charged with the property within twenty days after the seizure thereof on any execution or writ of attachment or within sixty days after same has been placed in the hands of any receiver or trustee, and thereupon it is the duty of the person or court having or receiving such statement to pay the amount of the claim to the person entitled thereto.

Source: L. 03: p. 143, § 2. **R.S. 08:** § 6999. **C.L.** § 4244. **CSA:** C. 97, § 218. **CRS 53:** § 80-12-2. **C.R.S. 1963:** § 80-16-2.

8-10-103. Payment - prorating - prior mortgage not impaired. No claim under this article shall be paid until after the expiration of the time in which to present such claim. If the funds realized from the sale of the property seized are insufficient to pay the total claims presented, such funds shall be prorated on such claims. The provisions of this article shall not be construed to extend to creditors who held a duly recorded mortgage upon the property attached which was given for a debt actually existing from such mortgage before the labor was performed.

Source: L. 03: p. 144, § 3. **R.S. 08:** § 7000. **C.L.** § 4245. **CSA:** C. 97, § 219. **CRS 53:** § 80-12-3. **C.R.S. 1963:** § 80-16-3.

Labor Conditions

ARTICLE 11

Occupational Safety and Health

8-11-100.1 to 8-11-125. (Repealed)

Source: L. 80: Entire article repealed, p. 451, § 6, effective April 13.

Editor's note: This article was numbered as articles 2 and 22 of chapter 80, C.R.S. 1963. For amendments to this article prior to its repeal in 1980, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

ARTICLE 12

Colorado Youth Employment Opportunity Act

Editor's note: This article was numbered as article 6 of chapter 80, C.R.S. 1963. The substantive provisions of this article were repealed and reenacted in 1971, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this article prior to 1971, consult the Colorado statutory research explanatory note beginning on page vii in the front of this volume.

Law reviews: For article, "An Overview of Federal and State Wage-Hour Laws -- Part II", see 14 Colo. Law. 781 (1985).

8-12-101. Short title. This article shall be known and may be cited as the "Colorado Youth Employment Opportunity Act of 1971".

Source: L. 71: R&RE, p. 889, § 1. **C.R.S. 1963:** § 80-6-13.

8-12-102. Legislative declaration. (1) It is the policy of this state to foster the economic, social, and educational development of young people through employment. Work is an integral factor in providing a sense of purpose, direction, and self-esteem necessary to the overall physical and mental health of an individual. In the first part of this century, state and federal laws and regulations were needed to prevent the exploitation of child labor. Unfortunately, such legislation also has tended, on occasion, to limit and curtail opportunities for minors to participate in reasonable work experiences. Young people, especially those who have completed high school or occupational training and no longer are in school, should not be denied employment opportunities because of arbitrary minimum age limits. Work, however, should be coordinated with schooling wherever appropriate. Work and study combined must be developed in the interest of the youth to be trained.

(2) Repealed.

Source: L. 71: R&RE, p. 889, § 1. **C.R.S. 1963:** § 80-6-2. **L. 99:** Entire section amended, p. 289, § 3, effective April 14. **L. 2019:** (2) repealed, (HB 19-1210), ch. 320, p. 2976, § 5, effective January 1, 2020.

Cross references: For the legislative declaration in HB 19-1210, see section 1 of chapter 320, Session Laws of Colorado 2019.

8-12-103. Definitions. As used in this article, unless the context otherwise requires:

(1) Repealed.

(2) "Director" means the director of the division of labor standards and statistics.

(3) "Division" means the division of labor standards and statistics in the department of labor and employment.

(4) "Employment" means any occupation engaged in for compensation in money or other valuable consideration, whether paid to the minor or to some other person, including, but not limited to, occupation as a servant, agent, subagent, or independent contractor.

(5) "Minor" means any person under the age of eighteen, except a person who has received a high school diploma or a passing score on the general educational development examination. The state board of education may administer the general educational development examination to any minor seventeen years of age or older who wishes to be considered an adult for the purpose of this article if such person is qualified to take the examination under the standards established by the state board of education.

(6) "School day" means any day when normal classes are in session during the regular school year in the school district.

(7) "School hours" means that period during which the student is expected to be in school in the school district.

Source: L. 71: R&RE, p. 889, § 1. **C.R.S. 1963:** § 80-6-3. **L. 86:** (1) repealed, p. 502, § 125, effective July 1. **L. 2016:** (2) and (3) amended, (HB 16-1323), ch. 131, p. 378, § 13, effective August 10.

8-12-104. Exemptions. (1) The provisions of this article, except section 8-12-110, shall not apply to the following:

(a) School work and supervised educational activities;

(b) Home chores;

(c) Work done for a parent or guardian, except where the parent or guardian receives any payment therefor;

(d) Newsboys and newspaper carriers.

(2) Any minor employed as an actor, model, or performer shall be exempt from the provisions of subsection (1) of section 8-12-105.

(3) The director may grant exemptions from any provision of this article, except for sections 8-12-113 and 8-12-114, for an individual minor if he finds that such an exemption would be in the best interests of the minor involved. In granting exemptions, the director shall consider, among other things, the previous training which the minor has received in his proposed occupation and his knowledge of the proper safety measures to be taken in connection with such occupation. The director may require any applicant for an exemption from section 8-12-110 to submit to a test of his ability to perform the skills required for the proposed occupation. Such tests may be administered by a community and technical college, a private occupational school, or any other institution which offers courses in the skills required, which courses are approved by either the state board for community colleges and occupational education or the private occupational school division.

(4) Any employer, minor, minor's parent or guardian, school official, or youth employment specialist may request an exemption, as provided in subsection (3) of this section, from a provision of this article.

Source: L. 71: R&RE, p. 890, § 1. **C.R.S. 1963:** § 80-6-4. **L. 79:** (3) amended, p. 1631, § 1, effective July 19. **L. 81:** (3) amended, p. 850, § 21, effective July 1. **L. 90:** (3) amended, p. 1160, § 6, effective July 1.

8-12-105. Minimum age requirements - maximum hours of work. (1) No minor under the age of fourteen shall be permitted employment in this state except as authorized by sections 8-12-104, 8-12-106, and 8-12-107.

(2) On school days, during school hours, no minor under the age of sixteen shall be permitted employment except as provided in section 8-12-113; and, after school hours, no minor under the age of sixteen shall be permitted to work in excess of six hours unless the next day is not a school day.

(3) Except for babysitters, no minor under the age of sixteen shall be permitted to work between the hours of nine-thirty p.m. and five a.m., except as authorized by section 8-12-104 (2), unless the next day is not a school day.

(4) Except for the provisions of subsection (5) of this section, no employer shall be permitted to work a minor more than forty hours in a week or more than eight hours in any twenty-four-hour period. In case of emergencies which may arise in the conduct of an industry or occupation (not subject to a wage order promulgated under article 6 of this title) the director may authorize an employer to allow a minor to work more than eight hours in a twenty-four-hour period. In such emergencies an employee shall be paid at a rate of one and one-half times his time rate as determined in accordance with the provisions of section 8-6-106 for each hour worked in excess of forty hours in a week.

(5) In seasonal employment for the culture, harvest, or care of perishable products where wages are paid on a piece basis, as determined in accordance with the provisions of section 8-6-106, a minor fourteen years of age or older may be permitted to work hours in excess of the limitations of subsection (4) of this section; but in no case is he permitted to work more than twelve hours in any twenty-four-hour period nor more than thirty hours in any seventy-two-hour period; except that a minor fourteen or fifteen years of age may work more than eight hours per day on only ten days in any thirty-day period. Overtime wage provisions of subsection (4) of this section shall not apply to this subsection (5).

Source: L. 71: R&RE, pp. 890, 898, §§ 1, 2. **C.R.S. 1963:** § 80-6-5. **L. 73:** p. 938, § 1.

Cross references: For the eight-hour day requirement in general, see article 13 of this title.

8-12-106. Permissible occupations at age nine or older. (1) Subject to the limitations of sections 8-12-105 and 8-12-110, any minor at age nine or older shall be permitted employment in any of the following nonhazardous occupations:

(a) Delivery of handbills, advertising, and advertising samples;

(b) Shoeshining;

(c) Gardening and care of lawns involving no power-driven lawn equipment;

(d) Cleaning of walks involving no power-driven snow-removal equipment;

(e) Casual work usual to the home of the employer and not specifically prohibited in this article;

(f) Caddying on golf courses;

(g) Any other occupation which is similar to those enumerated in this subsection (1) and is not specifically prohibited by this article.

Source: L. 71: R&RE, p. 891, § 1. **C.R.S. 1963:** § 80-6-6.

8-12-107. Permissible occupations at age twelve or older. (1) Subject to the limitations of sections 8-12-105 and 8-12-110, any minor at age twelve or older shall be permitted employment in any of the following nonhazardous occupations:

(a) Sale and delivery of periodicals and door-to-door selling of merchandise and the delivery thereof;

(b) Babysitting;

(c) Gardening and care of lawns, including the operation of power-driven lawn equipment if such type of equipment is approved by the division or if the minor has received training conducted or approved by the division in the operation of the equipment;

(d) Cleaning of walks, including the operation of power-driven snow-removal equipment;

(e) Agricultural work, except for that declared to be hazardous under the "Fair Labor Standards Act of 1938", as amended. However, it is the intent of the general assembly that migrant children eligible for attendance at migrant schools be encouraged to attend such schools.

(f) Any other occupation which is similar to those enumerated in this subsection (1) and is not specifically prohibited by this article.

Source: L. 71: R&RE, p. 892, § 1. **C.R.S. 1963:** § 80-6-7.

Cross references: For the "Fair Labor Standards Act of 1938", see 29 U.S.C. § 201 et seq.

8-12-108. Permissible occupations at age fourteen. (1) In addition to the occupations permitted by sections 8-12-106 and 8-12-107, and subject to the limitations of sections 8-12-105 and 8-12-110, any minor fourteen years of age or older shall be permitted employment in any of the following occupations:

(a) Nonhazardous occupations in manufacturing;

(b) Public messenger service and errands by foot, bicycle, and public transportation;

(c) Operation of automatic enclosed freight and passenger elevators;

(d) Janitorial and custodial service, including the operation of vacuum cleaners and floor waxers;

(e) Office work and clerical work, including the operation of office equipment;

(f) Warehousing and storage, including unloading and loading of vehicles;

(g) Nonhazardous construction and nonhazardous repair work. The operation of motor vehicles shall be subject to article 2 of title 42, C.R.S.

(h) Occupations in retail food service;

(i) Occupations in gasoline service establishments, including but not limited to dispensing gasoline, oil, and other consumer items, courtesy service, car cleaning, washing, and polishing, the use of hoists where supervised, and changing tires; except that no minor may inflate or change any tire mounted on a rim equipped with a removable retaining ring. The operation of motor vehicles shall be subject to article 2 of title 42, C.R.S.

(j) Occupations in retail stores, including cashiering, selling, modeling, art work, work in advertising departments, window trimming, price marking by hand or machine, assembling orders, packing and shelving, or bagging and carrying out customers' orders;

(k) Occupations in restaurants, hotels, motels, or other public accommodations, except the operation of power food slicers and grinders;

(l) Occupations related to parks or recreation, including but not limited to recreation aides and conservation projects;

(m) Any other occupation which is similar to those enumerated in this subsection (l) and not specifically prohibited by this article.

Source: L. 71: R&RE, p. 892, § 1. **C.R.S. 1963:** § 80-6-8.

8-12-109. Permissible occupations at age sixteen. In addition to the occupations permitted by sections 8-12-106 to 8-12-108 and subject to the limitations of sections 8-12-105 and 8-12-110, any minor sixteen years of age or older shall be permitted employment in any occupation which involves the use of a motor vehicle if the minor is licensed to operate the motor vehicle for such purpose pursuant to article 2 of title 42, C.R.S.

Source: L. 71: R&RE, p. 893, § 1. **C.R.S. 1963:** § 80-6-9.

8-12-110. Hazardous occupations prohibited for minors. (1) No minor shall be permitted employment in any occupation declared to be hazardous in subsection (2) of this section unless such minor is fourteen years of age or older and he is employed:

(a) Incidental to or upon completion of a program of apprentice training;

(b) Incidental to or upon completion of a student-learner program of occupational education under the auspices of a public school, local district college, community and technical college, federally funded work-training program, or private occupational school approved by the private occupational school division;

(c) Upon completion of any other program of training approved by the state board for community colleges and occupational education; or

(d) Upon completion of a program of occupational education conducted outside this state which the director determines offers instructional quality and content comparable to that offered in programs certified by the state board for community colleges and occupational education.

(2) The following occupations are declared to be hazardous:

(a) Operation of any high pressure steam boiler or high temperature water boiler;

(b) Work which primarily involves the risk of falling from any elevated place located ten feet or more above the ground except that work defined as agricultural involving elevations of twenty feet or less above ground;

(c) Manufacturing, transporting, or storing of explosives;

(d) Mining, logging, oil drilling, or quarrying;

(e) Any occupation involving exposure to radioactive substances or ionizing radiation;

(f) Operation of the following power-driven machinery: Woodworking machines, metal-forming machines, punching or shearing machines, bakery machines, paper products machines, shears, and automatic pin-setting machines and any other power-driven machinery which the director determines to be hazardous;

(g) Slaughter of livestock and rendering and packaging of meat;

(h) Occupations directly involved in the manufacture of brick or other clay construction products or of silica refractory products;

(i) Wrecking or demolition, but not including manual auto wrecking;

(j) Roofing;

(k) Occupations in excavation operations.

(3) The director shall promulgate regulations, in accordance with section 24-4-103, C.R.S., to define the occupations prohibited under this section and to prescribe what types of equipment shall be required to make an occupation nonhazardous for minors.

Source: L. 71: R&RE, p. 893, § 1. **C.R.S. 1963:** § 80-6-10. **L. 79:** (1)(b) amended, p. 1631, § 2, effective July 19. **L. 81:** (1)(b) amended, p. 851, § 22, effective July 1. **L. 86:** (2)(f) and (3) amended, p. 473, § 34, effective July 1. **L. 88:** (1)(a) amended, p. 1429, § 3, effective June 11. **L. 90:** (1)(b) amended, p. 1160, § 7, effective July 1.

8-12-111. Age certificates. (1) Any employer desiring proof of the age of any minor employee or prospective employee may require the minor to submit an age certificate. Upon request of a minor, an age certificate shall be issued by or under the authority of the school superintendent of the district or county in which the applicant resides. The superintendents, principals, or headmasters of independent or parochial schools shall issue age certificates to minors who attend such schools.

(2) The age certificate shall show the age of the minor, the date of his birth, the date of issuance of the certificate, the name and position of the issuing officer, the name, address, and description of the minor, and what evidence was accepted as proof of age. The age certificate shall also show the school hours applicable and shall state that a separate school release permit is required for minors under sixteen to work on regular school days during such school hours. It shall be signed by the issuing officer and by the minor in his presence.

(3) An age certificate shall not be issued unless the minor's birth certificate or a photocopy or extract thereof is exhibited to the issuing officer, or unless such evidence was previously examined by the school authorities and the information is shown on the school records. If a birth certificate is not available, other documentary evidence such as a baptismal certificate or a passport may be accepted. If such evidence is not available, the parent or guardian shall appear with the minor and shall make an oath before the judge or other officer of the juvenile or county court as to the age of the minor.

(4) The employer shall keep an age certificate received by him for the duration of the minor's employment and shall keep on file all age certificates where they may be readily examined by an agent of the division. Upon termination of employment and upon request, the certificate shall be returned to the minor.

Source: L. 71: R&RE, p. 894, § 1. **C.R.S. 1963:** § 80-6-11.

8-12-112. Proof of high school diploma, passing score on general educational development examination, or completion of career and technical education program. Any employer may require proof of a high school diploma, a passing score on the general educational development examination, or completion of a career and technical education program. The

employer shall maintain a record of the high school diploma, proof of a passing score on the general educational development examination, or completion of a career and technical education program.

Source: L. 71: R&RE, p. 894, § 1. **C.R.S. 1963:** § 80-6-12. **L. 2017:** Entire section amended, (SB 17-294), ch. 264, p. 1384, § 5, effective May 25.

8-12-113. School release permit. (1) Any minor fourteen or fifteen years of age who wishes to work on school days during school hours shall first secure a school release permit. The permit shall be issued only by the school district superintendent, his agent, or some other person designated by the board of education. The school release permit shall be issued only for a specific position with a designated employer. The permit shall be for a specific length of time not to exceed thirty days. The permit shall be cancelled upon the termination of such employment and shall be issued only in the following circumstances:

(a) If the minor is to be employed in an occupation not prohibited by section 8-12-110 and as evidence thereof presents a signed statement from his prospective employer; and

(b) If the parent or guardian of the minor consents to the employment; and

(c) If the issuing officer believes the best interests of the minor will be served by permitting him to work.

(2) The school release permit shall show the name, address, and description of the minor, the name and address of the employer, the kind of work to be performed, and the hours of exemption and shall also require the signature of the parent and the minor in the presence of the issuing officer.

(3) Inasmuch as it is desirable and practical to encourage school attendance by minors at least part time, no school release permit shall be issued under this section unless limited to require class attendance by the minor for at least three class hours each regular school day; except that, in cases of extreme hardship, class attendance may be waived if the issuing officer determines that such action would be in the best interest of the minor.

(4) If the issuing officer is in doubt about whether the proposed employment is in accordance with this article, he shall consult with the division before issuing the permit.

(5) Upon termination for any reason of the employment authorized, the employer shall return the school release permit directly to the issuing officer with a notation showing the date of termination.

(6) The issuing officer is authorized to cancel a school release permit if the issuing officer determines that the action would be in the best interest of the minor. If a school release permit is cancelled, for reasons other than the termination of employment for which the permit was granted, the minor shall be entitled to a review of the cancellation by the court having jurisdiction of juvenile matters in the county in which the minor resides, in accordance with the procedures established by section 8-12-114.

Source: L. 71: R&RE, p. 895, § 1. **C.R.S. 1963:** § 80-6-13.

8-12-114. Appeal from denial or cancellation of school release permit - procedure. (1) If a minor is refused a school release permit or has had a school release permit cancelled for reasons other than the termination of employment for which the permit was granted, he shall be

entitled to review by the court having jurisdiction of juvenile matters in the county in which the minor resides, in accordance with the procedures described in this section.

(2) The official who refused to issue or cancelled the school release permit shall, upon demand made within five days after the refusal or cancellation, promptly furnish the minor and his parent or guardian with a written statement of the reasons for such refusal or cancellation.

(3) Within five days after the receipt of such statement, the minor and his parent or guardian may petition the court for an order directing the issuance or reissuance of a school release permit. The petition shall state the reasons why the court should issue such an order, and the petitioner shall attach to such petition the statement of the issuing officer obtained as provided in subsection (2) of this section.

(4) The court shall hold a hearing and receive such further testimony and evidence as it deems necessary. If the court finds that the issuance or reissuance of a permit is in the best interest of the minor, it shall grant the petition.

(5) No fee shall be charged by the court in such proceedings.

Source: L. 71: R&RE, p. 896, § 1. **C.R.S. 1963:** § 80-6-14.

8-12-115. Director of division of labor standards and statistics - powers and duties - rules and regulations. (1) The director shall enforce the provisions of this article.

(2) The director shall take the necessary steps to inform employers, school authorities, and the general public regarding the provisions of this article, and he shall work with other public and private agencies to minimize the obstacles to legitimate employment of minors.

(3) The director shall receive and investigate complaints and may from time to time visit employers at reasonable times and inspect pertinent records to determine compliance with this article.

(4) (a) If investigation of any place of employment or complaint discloses a violation of this article, except section 8-12-105 (3), the director shall give the employer written notice describing the violation and specifying the provisions of this article that such employer is allegedly violating. Within ten days of receipt of such notice of violation, the employer may file a written request for a hearing on the issue of whether the violation exists, which hearing shall be conducted in accordance with section 24-4-105, C.R.S. After a hearing concerning a violation of this article, or after the expiration of twenty days after the issuance of a notice of violation during which the employer has neither requested a hearing nor ceased the conduct that constitutes the alleged violation, the director may issue a final order requiring the employer to cease and desist the conduct found to be in violation. At any time thereafter, the director may order the violating employer to pay a penalty of twenty dollars for each offense. Each day that the conduct constituting the violation is continued after the order is made final, and each minor employed in violation of this article, constitutes a separate offense. The order imposing the penalty shall become final upon issuance, and the penalty shall be due and payable thirty days after the order assessing the penalty is entered, unless prior to that time the order has been modified or a hearing on the penalty has been requested as provided by section 24-4-105, C.R.S. All penalties imposed by this section shall be collected as provided in section 8-1-142.

(b) (I) If investigation of any place of employment or complaint discloses a violation of section 8-12-105 (3), the director shall give the employer written notice describing the violation and specifying the provisions of this article that such employer is allegedly violating. Within ten

days after receipt of such notice of violation, the employer may file a written request for a hearing on the issue of whether the violation exists, which hearing shall be conducted in accordance with section 24-4-105, C.R.S. After a hearing concerning a violation of section 8-12-105 (3), or after the expiration of twenty days after the issuance of a notice of violation during which the employer has neither requested a hearing nor ceased the conduct which constitutes the alleged violation, the director may issue a final order requiring the employer to cease and desist the conduct found to be in violation. At any time thereafter, the director may order the violating employer to pay a penalty pursuant to subparagraph (II) of this paragraph (b). The order imposing the penalty shall become final upon issuance, and the penalty shall be due and payable thirty days after the order assessing the penalty is entered, unless prior to that time the order has been modified or a hearing on the penalty has been requested as provided by section 24-4-105, C.R.S. All penalties imposed by this section shall be collected as provided in section 8-1-142.

(II) Failure to comply with the provisions of this paragraph (b) shall make the offender liable for administrative fines pursuant to the following penalty schedule:

(A) For a first offense, by a fine of not less than two hundred dollars nor more than five hundred dollars;

(B) For a second offense within six months after the first offense, by a fine of not less than five hundred dollars nor more than one thousand dollars;

(C) For a third or subsequent offense within six months after the first offense, by a fine of not less than one thousand dollars nor more than ten thousand dollars.

(5) The findings, orders, and penalties made by the director shall be subject to judicial review pursuant to section 24-4-106, C.R.S.

(6) The director may apply for an injunction in any court of competent jurisdiction to enjoin any person from committing any act prohibited by this article.

(7) The director, in accordance with section 24-4-103, C.R.S., shall promulgate rules and regulations more specifically defining the occupations and types of equipment permitted or prohibited by this article.

Source: L. 71: R&RE, p. 896, § 1. **C.R.S. 1963:** § 80-6-15. **L. 86:** (5) and (7) amended, p. 473, § 35, effective July 1. **L. 2000:** (4) amended, p. 1486, § 1, effective July 1.

8-12-116. Penalty for violations. (1) Any person, having legal responsibility for a minor under the age of eighteen years, who knowingly permits such minor to be employed in violation of this article, is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than twenty dollars nor more than one hundred dollars for each offense.

(2) Any person, firm, or corporation, or any agent, manager, superintendent, or foreman of any firm or corporation, who, by himself or through an agent, subagent, foreman, superintendent, or manager, knowingly violates or knowingly fails to comply with any of the provisions of this article is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than twenty dollars nor more than one hundred dollars for each offense. Upon conviction of a second or subsequent offense, such person shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, or by imprisonment in the county jail for not longer than ninety days, or by both such fine and imprisonment.

Source: L. 71: R&RE, p. 897, § 1. **C.R.S. 1963:** § 80-6-16.

8-12-117. Minors covered by workers' compensation. All minors, whether lawfully or unlawfully employed, shall be subject to the rights and remedies of the "Workers' Compensation Act of Colorado", articles 40 to 47 of this title, if the employer is included within the meaning of section 8-40-203.

Source: L. 71: R&RE, p. 897, § 1. **C.R.S. 1963:** § 80-6-17. **L. 90:** Entire section amended, p. 556, § 3, effective July 1.

ARTICLE 13

Eight-hour Day

Cross references: For hours of work for minors, see § 8-12-105; for office hours of county officers, see § 30-10-109.

Law reviews: For article, "An Overview of Federal and State Wage-Hour Laws -- Part II", see 14 Colo. Law. 781 (1985).

8-13-101. Employment declared dangerous. Employment in all underground mines, underground workings, and smelters is declared to be injurious to health and dangerous to life and limb.

Source: L. 13: p. 306, § 1. **C.L.** § 4172. **CSA:** C. 97, § 100. **CRS 53:** § 80-7-1. **C.R.S. 1963:** § 80-14-1. **L. 87:** Entire section amended, p. 376, § 1, effective June 20.

8-13-102. Eight-hour day - exceptions. (1) The period of employment of persons working in all underground mines, underground workings, and smelters may exceed eight hours within a twenty-four-hour period upon the following conditions:

(a) The operator of the underground mine, underground workings, or smelter establishes a work plan setting forth the terms and conditions under which the period of employment may exceed eight hours in a twenty-four-hour period; and

(b) The operator provides reasonable notice to its employees, except in cases of emergency or upset conditions, of proposed increases in the regular work schedule which would result in a period of employment in excess of eight hours in a twenty-four-hour period. Reasonable notice shall be construed to be not less than one week, during which time affected employees may comment.

(2) Nothing in this section shall be construed so as to alter the provisions of any collective bargaining agreement.

Source: L. 13: p. 306, § 2. **C.L.** § 4173. **CSA:** C. 97, § 101. **CRS 53:** § 80-7-2. **C.R.S. 1963:** § 80-14-2. **L. 87:** Entire section amended, p. 376, § 2, effective June 20. **L. 89:** Entire section R&RE, p. 375, § 1, effective April 5.

8-13-102.1. Period of employment - relation to conservation of fuel. (1) The general assembly hereby finds and declares that in order to give full effect to state programs for the conservation of fuel and not to impede or prevent the execution of any fuel conservation powers the governor may impose pursuant to part 3 of article 20 of title 24, C.R.S., it is necessary to enact this section. The general assembly further finds and declares that it is necessary to enact this section in order for certain industries to support and cooperate with such state programs and powers and to assist their employees in the conservation of fuel by providing opportunity for certain employers to establish four-day workweeks thereby omitting one day of travel to and from work for employees.

(2) For purposes of section 8-13-102, "period of employment" means time spent which is directly related to an employee's performance of his primary job duties. "Period of employment" does not include time spent, whether or not compensation is paid, which is not directly related to the employee's performance of his primary job duties, including, but not limited to, meal periods, travel time, rest periods, and waiting time.

Source: L. 79: Entire section added, p. 871, § 2, effective June 22.

Editor's note: Part 3 of article 20 of title 24 concerning the fuel conservation powers of the governor which is referred to in subsection (1) was repealed, effective February 1, 1982.

8-13-103. Penalty for violation. Any person, body corporate, general manager, or employer who violates or causes to be violated any of the provisions of sections 8-13-101 and 8-13-102 is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than two hundred fifty dollars nor more than five hundred dollars, or by imprisonment in the county jail for not less than ninety days nor more than six months, or by both such fine and imprisonment. Each day in violation of the provisions of sections 8-13-101 and 8-13-102 shall constitute a separate offense.

Source: L. 13: p. 306, § 3. **C.L.** § 4174. **CSA:** C. 97, § 102. **CRS 53:** § 80-7-3. **C.R.S. 1963:** § 80-14-3.

8-13-104. Eight-hour day for public employees. (Repealed)

Source: L. 1893: p. 305, § 1. **L. 1894:** p. 85, § 1. **R.S. 08:** § 3921. **C.L.** §4175. **CSA:** C. 97, § 103. **CRS 53:** § 80-7-4. **C.R.S. 1963:** § 80-14-4. **L. 86:** Entire section repealed, p. 508, § 1, effective March 26.

8-13-105. Emergency cases. (Repealed)

Source: L. 1893: p. 305, § 2. **L. 1894:** p. 85, § 2. **R.S. 08:** § 3922. **C.L.** § 4176. **CSA:** C. 97, § 104. **CRS 53:** § 80-7-5. **L. 63:** p. 621, § 1. **C.R.S. 1963:** § 80-14-5. **L. 73:** p. 942, § 1. **L. 75:** Entire section R&RE, p. 290, § 1, effective January 1, 1976. **L. 86:** Entire section repealed, p. 508, § 1, effective March 26.

8-13-106. Penalty for violation. (Repealed)

Source: L. 1893: p. 305, § 2. **L. 1894:** p. 86, § 3. **R.S. 08:** § 3923. **C.L.** § 4177. **CSA:** C. 97, 104. **CRS 53:** § 80-7-6. **L. 63:** p. 621, § 2. **C.R.S. 1963:** § 80-14-6. **L. 86:** Entire section repealed, p. 508, § 1, effective March 26.

8-13-107. Firemen - hours of duty. It is unlawful for any municipality, or any officer or employee thereof, to require any person holding any position or employment in the fire department of such municipality, except one who may be at any time in command of the department, to be or remain on duty in such employment during any calendar month for periods of time which in the aggregate during such month amount to more than twelve hours for each day in said month. The requiring of more hours of work in cases of conflagrations or similar emergencies shall not be unlawful. This section shall apply to all municipalities having fire departments, whether such municipalities are created under general laws, or by special charter, or by or under the provisions of article XX of the constitution of the state of Colorado.

Source: L. 21: p. 333, § 1. **C.L.** § 4178. **CSA:** C. 97, § 106. **CRS 53:** § 80-7-7. **C.R.S. 1963:** § 80-14-7. **L. 86:** Entire section amended, p. 508, § 2, effective March 26.

8-13-108. Penalty for violation. Any officer, agent, or employee of any municipality who orders, directs, compels, or requires any employee or other person in any such fire department, except one who may be at any time in command of the fire department, to be or remain on duty in such work or employment in any calendar month for a longer time than that provided for in section 8-13-107 except in cases of emergency, is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, or by imprisonment in the county jail for not more than one hundred days, or by both such fine and imprisonment.

Source: L. 21: p. 334, § 2. **C.L.** § 4179. **CSA:** C. 97, § 107. **CRS 53:** § 80-7-8. **C.R.S. 1963:** § 80-14-8.

8-13-109. Employment in cement and plaster factories injurious. (Repealed)

Source: L. 27: p. 288, § 1. **CSA:** C. 97, § 114. **CRS 53:** § 80-7-15. **C.R.S. 1963:** § 80-14-12. **L. 2000:** Entire section repealed, p. 161, § 1, effective March 17.

8-13-110. Overtime not mandatory. Nothing in this article shall be construed to mandate overtime for employees in and about cement manufacturing plants and plaster manufacturing plants unless otherwise negotiated by contract.

Source: L. 27: p. 288, § 2. **CSA:** C. 97, § 115. **CRS 53:** § 80-7-16. **C.R.S. 1963:** § 80-14-13. **L. 2000:** Entire section amended, p. 161, § 2, effective March 17.

8-13-111. Penalty for violation. (Repealed)

Source: L. 27: p. 289, § 3. **CSA:** C. 97, § 116. **CRS 53:** § 80-7-17. **C.R.S. 1963:** § 80-14-14. **L. 2000:** Entire section repealed, p. 161, § 3, effective March 17.

ARTICLE 13.3

Family and Medical Leave

Cross references: For the legislative declaration contained in the 2009 act adding this article, see section 1 of chapter 340, Session Laws of Colorado 2009.

PART 1

PARENTAL INVOLVEMENT

8-13.3-101 to 8-13.3-104. (Repealed)

Editor's note: (1) This part 1 was added in 2009 and was not amended prior to its repeal in 2015. For the text of this part 1 prior to 2015, consult the 2014 Colorado Revised Statutes and the Colorado statutory research explanatory note beginning on page vii in the front of this volume.

(2) Section 8-13.3-104 provided for the repeal of this part 1, effective September 1, 2015. (See L. 2009, p. 1791.)

PART 2

FAMILY AND MEDICAL LEAVE ELIGIBILITY

Editor's note: (1) Article 13.3 was enacted in 2009 by HB 09-1057 and included a future repeal for the article in § 8-13.3-104, effective September 1, 2015.

(2) Part 2 of this article was enacted in 2013 by HB 13-1222 and includes a future repeal for this part 2 in § 8-13.3-205, effective when certain conditions specified in this part 2 are met.

8-13.3-201. Short title. This part 2 shall be known and may be cited as the "Family Care Act".

Source: L. 2013: Entire part added, (HB 13-1222), ch. 157, p. 508, §1, effective August 7.

8-13.3-202. Definitions. As used in this part 2, unless the context otherwise requires:

(1) "Civil union" has the same meaning as set forth in section 14-15-103 (1), C.R.S.

(2) "Employee" means a person employed by an employer and who is eligible for FMLA leave.

(3) "Employer" has the same meaning as set forth in the FMLA.

(4) "FMLA" means the federal "Family and Medical Leave Act of 1993", Pub.L. 103-3, as amended, 29 U.S.C. sec. 2601, et seq.

(5) "FMLA leave" means leave from work and all benefits authorized by the FMLA.

Source: L. 2013: Entire part added, (HB 13-1222), ch. 157, p. 508, §1, effective August 7.

8-13.3-203. Family and medical leave - state requirements. (1) In addition to the leave to which an employee is entitled under the FMLA, an employee in this state is entitled to FMLA leave to care for a person who has a serious health condition, as that term is defined in the FMLA, if the person:

(a) Is the employee's partner in a civil union, as defined in section 14-15-103 (5), C.R.S.; or

(b) Is the employee's domestic partner and:

(I) Has registered the domestic partnership with the municipality in which the person resides or with the state, if applicable; or

(II) Is recognized by the employer as the employee's domestic partner.

(2) (a) For purposes of confirming an employee's relationship to a person described in subsection (1) of this section for whom the employee is requesting FMLA leave, the employer may require the employee to provide reasonable documentation or a written statement of family relationship, in accordance with the FMLA.

(b) An employer may require an employee seeking FMLA leave for a person described in subsection (1) of this section to submit the same certification as the employer may require under the FMLA.

(3) FMLA leave taken by an employee pursuant to this section runs concurrently with leave taken under the FMLA, and this section does not:

(a) Increase the total amount of leave to which an employee is entitled during a twelve-month period under the FMLA, this section, or both; and

(b) Preclude an employer from granting an employee an amount of leave that exceeds the total amount of leave to which the employee is entitled during a twelve-month period under the FMLA.

Source: L. 2013: Entire part added, (HB 13-1222), ch. 157, p. 509, §1, effective August 7.

8-13.3-204. Enforcement. If an employer denies an employee in this state FMLA leave to care for a person described in section 8-13.3-203 who is not a person for whom the employee would be entitled to leave under the FMLA, or interferes with an employee's exercise of or attempt to exercise his or her right to FMLA leave for persons described in section 8-13.3-203, the employer is subject to damages and equitable relief as specified in the FMLA. An aggrieved employee may bring an action in state court against the employer to recover damages or equitable relief.

Source: L. 2013: Entire part added, (HB 13-1222), ch. 157, p. 509, §1, effective August 7.

8-13.3-205. Repeal of part. This part 2 is repealed if the United States congress enacts and the president signs federal legislation amending the FMLA to permit employees to use FMLA leave for all persons described in section 8-13.3-203. The executive director of the

department of labor and employment shall notify the revisor of statutes, in writing, if the condition specified in this section occurs.

Source: L. 2013: Entire part added, (HB 13-1222), ch. 157, p. 510, §1, effective August 7.

Editor's note: (1) As of publication date, the revisor of statutes has not received the notice referred to in this section.

(2) (a) Effective March 27, 2015, the United States Department of Labor's Wage and Hour Division revised the regulation defining "spouse" under the Family and Medical Leave Act of 1993 (FMLA) in light of the U.S. Supreme Court's decision in United States v. Windsor, 570 U.S. 744, 133 S. Ct. 2675, 186 L. Ed. 2d 808 (2013), which held section 3 of the Defense of Marriage Act, 1 U.S.C. section 7, unconstitutional. The applicable regulations, 29 CFR 825.102 and 825.122(b), define spouse to include an individual in a same-sex marriage that was entered into in a state that recognizes such marriages or, if entered into outside of any state, is valid in the place where entered into and could have been entered into in at least one state.

(b) On March 26, 2015, the U.S. District Court for the Northern District of Texas, in Texas v. United States, granted a request made by the states of Texas, Arkansas, Louisiana, and Nebraska for a preliminary injunction with respect to the department's final rule revising the regulatory definition of spouse under the FMLA. On June 26, 2015, the district court dissolved the preliminary injunction in light of the Supreme Court's decision in Obergefell v. Hodges, 576 U.S. __ (2015). For a discussion of Obergefell v. Hodges, see the editor's note for section 31 of article II of the state constitution.

PART 3

FAMILY AND MEDICAL LEAVE IMPLEMENTATION

8-13.3-301. Legislative declaration. (1) The general assembly hereby finds and declares that:

(a) Colorado is a family-friendly state, and providing the workers of Colorado with family and medical leave insurance will encourage an entrepreneurial atmosphere and economic growth and promote a healthy business climate;

(b) The United States is the only industrialized nation in the world that does not mandate access to paid leave benefits. Simultaneously, nearly half of Americans live paycheck to paycheck and are unable to access two thousand dollars in the event of an emergency.

(c) This part 3 prepares for the implementation of a paid family and medical leave program in the state by completing a thorough analysis of paid family and medical leave programs by experts in the field, the establishment of a family and medical leave implementation task force, and actuarial and third-party studies;

(d) As specified in this part 3:

(I) The timeline for the analysis and implementation of a statewide paid family and medical leave program is as follows:

(A) By July 1, 2019, appointing authorities are required to make their appointments to the task force;

(B) By October 1, 2019, the department is required to provide the task force with the results of a third-party study and paid family and medical leave plan recommendations from the experts in the field, and the task force is required to accept and consider public comment regarding the administration and establishment of a paid family and medical leave program;

(C) By November 1, 2019, the task force shall make its initial recommendation on a family and medical leave program for employees in the state and provide the recommendation to an actuary contracted by the department;

(D) By December 1, 2019, an independent actuarial analysis must be completed and submitted to the task force;

(E) By January 8, 2020, the task force shall report its final recommendation on a paid family and medical leave program for all employees in the state;

(II) The timeline may also be assumed as follows:

(A) By July 1, 2020, the family and medical leave program will be established;

(B) By January 1, 2022, the public education and outreach campaign will begin;

(C) By January 1, 2023, the family and medical leave program funding will begin; and

(D) By January 1, 2024, the family and medical leave program will start paying benefits;

(e) The intent of this part 3 is to assist in the preparation of legislation in the 2020 legislative session establishing a paid family and medical leave program in the state.

Source: L. 2019: Entire part added, (SB 19-188), ch. 352, p. 3246, § 1, effective May 30.

8-13.3-302. Definitions. As used in this part 3, unless the context otherwise requires:

(1) "Department" means the department of labor and employment.

(2) "Executive director" means the executive director of the department.

(3) "Task force" means the family and medical leave implementation task force created in section 8-13.3-304 (1).

Source: L. 2019: Entire part added, (SB 19-188), ch. 352, p. 3248, § 1, effective May 30.

8-13.3-303. Department to perform analyses. (1) (a) The department shall analyze the feasibility of contracting with a third party to administer parts of a paid family and medical leave program for all employees in the state as an alternative to state administration of all aspects of such a program. In determining whether a third party should administer parts of a paid family and medical leave program, the department shall consider whether doing so would be cost-effective, in the short term and in the long term for both the state and covered individuals, and lead to more efficient program administration and benefit management while assuring quality, worker experience, affordability, coverage, and program accountability, as compared to if the state administers all aspects of the program.

(b) In fulfilling the requirements of this subsection (1), the department shall make a request for information from third parties that may be willing to administer single or multiple parts of a paid family and medical leave program. The requests for information pursuant to this subsection (1)(b) must solicit information from third parties that includes, but is not limited to, the third party's:

(I) Prior experience with paid family and medical leave insurance or providing monetary benefits in Colorado related to employees taking leave from work due to serious health conditions, parental bonding, or other family and medical leave purposes;

(II) Commitment to affirmative action, diversity, equity, and inclusion policies;

(III) Language access experience and cultural competency; and

(IV) Current or expected employee pay rates and benefits.

(c) Any study pursuant to this section must consider:

(I) The estimated difference in administrative costs charged by third parties as compared to a state-run paid family and medical leave program;

(II) The estimated difference in claims processing speeds;

(III) The state's costs to oversee any third-party administration, including costs to conduct annual audits and review regular reports from the third party;

(IV) The ability of a third party to satisfy necessary worker privacy and confidentiality requirements;

(V) The ability of a third party to access existing state data or to effectively interface with the department's systems and information;

(VI) The potential costs and challenges associated with terminating a third-party contract due to quality or compliance concerns following implementation of the program, as well as the feasibility of timely substituting administration by the state or a different third party without a disruption in benefits and administration; and

(VII) A timeline that presumes a paid family and medical leave program that is established by July 1, 2020; begins public education and outreach on January 1, 2022; establishes the funding stream on January 1, 2023; and starts paying benefits on January 1, 2024.

(d) The department's study must specifically address the effect of using a third-party administrator on the following aspects of a paid family and medical leave program:

(I) Claims appeals and administrative enforcement;

(II) Premium rate setting and collection of premiums;

(III) Approval and oversight of private plans, if applicable; and

(IV) Management of elective coverage of employees who may not be included in the program.

(2) (a) (I) The department shall contract with at least three experts in the field of paid family and medical leave selected by the task force. The experts must be local and national experts:

(A) With demonstrated experience studying the health, economic, and social benefits of access to paid leave; the cost and economic impact of paid leave; and the drafting and implementation of paid family and medical leave programs at the state level; and

(B) Who have some familiarity with cross-state comparisons.

(II) The department shall commission a report from the experts under contract with the department pursuant to this subsection (2)(a) on the establishment of a paid family and medical leave program for employees in the state. The recommendations must specify the parameters that ensure that a program:

(A) Is affordable for the lowest-wage workers;

(B) Is equitable across workers of all incomes and classifications;

(C) Is accessible particularly to workers least likely to have access to paid leave today;

(D) Is adequate; and

(E) Includes a minimum duration of leave that meets evidence-based standards and wage replacement that is sufficient to allow the lowest-wage workers to participate.

(b) The recommendations must review, evaluate, and assess at least the following elements, without limitation:

(I) The purposes of the leave, including serious illness, caring for a loved one with a serious illness, bonding with a new child, and needs arising from military deployment and the effects of domestic violence, stalking, and sexual assault;

(II) Self-employed workers' access to paid family and medical leave and a mechanism to allow self-employed workers to participate;

(III) Eligibility to take leave;

(IV) The definition of family or family member for whom an individual may take leave for purposes of providing care;

(V) Job protection and other employment protections, including their effect on an individual's ability to take leave;

(VI) The duration of leave;

(VII) The amount of the wage replacement;

(VIII) The maximum weekly wage replacement amount;

(IX) The program funding structure;

(X) Program implementation;

(XI) The role of third-party vendors on program sustainability;

(XII) The solvency of a paid family and medical leave fund under various models;

(XIII) The portability of paid family and medical leave benefits;

(XIV) The sustainability of a paid family and medical leave program;

(XV) How a paid family and medical leave program would interact with other benefits; and

(XVI) A timeline that presumes a paid family and medical leave program that is established by July 1, 2020; begins education and outreach on January 1, 2022; establishes the funding stream on January 1, 2023; and starts paying benefits on January 1, 2024.

(3) No later than October 1, 2019:

(a) The department shall provide the task force created in section 8-13.3-304 with:

(I) The results of the third-party study conducted pursuant to subsection (1) of this section; and

(II) The paid family and medical leave plan report from experts commissioned in accordance with subsection (2) of this section; and

(b) The department of public health and environment shall provide the task force with a report detailing the health benefits related to paid family and medical leave.

(4) The department shall contract for the services of a qualified private actuary to perform an actuarial study of the initial recommendation for a family and medical leave program created by the task force pursuant to section 8-13.3-304 (8)(b). The actuarial study shall be provided to the task force no later than December 1, 2019.

Source: L. 2019: Entire part added, (SB 19-188), ch. 352, p. 3248, § 1, effective May 30.

8-13.3-304. Family and medical leave implementation task force. (1) There is hereby created in the department the family and medical leave implementation task force.

(2) The task force consists of the following members:

(a) Three members who are workers or represent an organization that represents workers' interests in paid family and medical leave, each of whom shall be appointed from a list of at least three names submitted by a recognized statewide organization that promotes workers' rights;

(b) Three members who are private employers with a range of business size and experience in providing employees with paid family and medical leave, each of whom shall be appointed from a list of at least three names submitted by a recognized statewide organization of employers;

(c) One member who is a representative of a state policy organization that works on issues of economic opportunity;

(d) One member who is a private insurer with experience in administering temporary disability or family and medical leave insurance benefits;

(e) One member who represents a state policy organization that works on health advocacy;

(f) One labor economist with demonstrated research or expertise in studying paid family and medical leave and labor standards, and the data necessary to do so;

(g) One member who is a representative of a statewide domestic violence organization;

(h) One member who is a professional from a recognized institution of higher education and who has expertise in studying paid family and medical leave;

(i) One member who is a representative of organized labor; and

(j) Two nonvoting members, one of whom must represent the department.

(3) The members of the task force are appointed as follows:

(a) The governor shall appoint one member;

(b) The speaker of the house of representatives shall appoint four members;

(c) The president of the senate shall appoint four members;

(d) The house minority leader shall appoint two members;

(e) The senate minority leader shall appoint two members;

(f) The executive director shall appoint one nonvoting member; and

(g) The executive director of the department of personnel shall appoint one nonvoting member.

(4) (a) The appointing authorities shall make the appointments to the task force no later than July 1, 2019.

(b) In making the appointments, the appointing authorities shall ensure that the appointments reflect communities of color, rural communities, and historically underutilized businesses, as defined in section 24-49.5-105 (4).

(c) The department shall assist and coordinate the appointing authorities to ensure that members appointed to the task force pursuant to subsection (3) of this section meet the membership requirements specified in subsection (2) of this section.

(5) Each member of the task force serves at the pleasure of the appointing authority.

(6) Each member of the task force serves without compensation but is entitled to receive reimbursement for actual and necessary expenses the member incurs in the performance of the member's duties as a member of the task force.

(7) (a) The member appointed by the executive director shall call the first meeting of the task force.

(b) The task force shall elect a chair from among its voting members.

(8) (a) No later than September 1, 2019, the task force shall accept and consider public comment regarding the administration and establishment of a paid family and medical leave program in the state. The task force shall receive public comment for a minimum of thirty days.

(b) No later than November 1, 2019, the task force shall make an initial recommendation on a family and medical leave program for employees in the state and provide the recommendation to the actuary contracted by the department pursuant to section 8-13.3-303 (4). In making the recommendation, the task force shall consider the information it receives pursuant to section 8-13.3-303 (3).

(c) No later than January 8, 2020, after consideration of the actuarial analysis performed on the task force's initial recommendation, the task force shall report its final recommendation on a paid family and medical leave program for all employees in the state, along with the third-party administration study made pursuant to section 8-13.3-303 (1), and the actuarial study made pursuant to section 8-13.3-303 (4) to:

(I) The senate committees on finance and business, labor, and technology, or their successor committees;

(II) The house of representatives committees on finance and business affairs and labor, or their successor committees; and

(III) The governor.

(d) Recommendations made by the task force pursuant to this subsection (8) should attempt to meet a timeline that presumes a paid family and medical leave program that is established by July 1, 2020; begins education and outreach on January 1, 2022; establishes the funding stream on January 1, 2023; and starts paying benefits on January 1, 2024.

(9) Upon request by the task force, the department shall provide office space, equipment, and staff services as may be necessary to implement this section.

Source: L. 2019: Entire part added, (SB 19-188), ch. 352, p. 3251, § 1, effective May 30.

8-13.3-305. Paid family and medical leave program implementation authorization. The department shall not implement the recommended plan for a paid family and medical leave program unless the general assembly, acting by bill, directs the department to implement the program. If the department is directed to implement the plan, it shall begin implementation by a date specified by the general assembly acting by bill.

Source: L. 2019: Entire part added, (SB 19-188), ch. 352, p. 3253, § 1, effective May 30.

PART 4

HEALTHY FAMILIES AND WORKPLACES

Editor's note: Section 4 of chapter 294 (SB 20-205), Session Laws of Colorado 2020, provides that the act adding this part 4 applies to conduct occurring on or after July 14, 2020.

8-13.3-401. Short title. The short title of this part 4 is the "Healthy Families and Workplaces Act".

Source: L. 2020: Entire part added, (SB 20-205), ch. 294, p. 1443, § 1, effective July 14.

8-13.3-402. Definitions. As used in this part 4, unless the context otherwise requires:

(1) "Director" means the director of the division.

(2) "Division" means the division of labor standards and statistics in the department of labor and employment created in section 8-1-103.

(3) "Domestic abuse" has the meaning set forth in section 13-14-101 (2).

(4) "Employee" has the meaning set forth in section 8-4-101 (5). "Employee" does not include an "employee" as defined in 45 U.S.C. sec. 351 (d) who is subject to the federal "Railroad Unemployment Insurance Act", 45 U.S.C. sec. 351 et seq.

(5) (a) "Employer" has the meaning set forth in section 8-4-101 (6); except that the term includes the state and its agencies or entities, counties, cities and counties, municipalities, school districts, and any political subdivisions of the state.

(b) "Employer" does not include the federal government.

(6) "Family member" means:

(a) An employee's immediate family member, as defined in section 2-4-401 (3.7);

(b) A child to whom the employee stands in loco parentis or a person who stood in loco parentis to the employee when the employee was a minor; or

(c) A person for whom the employee is responsible for providing or arranging health- or safety-related care.

(7) "Harassment" has the meaning set forth in section 18-9-111.

(8) (a) (I) "Paid sick leave" means time off from work that is:

(A) Compensated at the same hourly rate or salary and with the same benefits, including health care benefits, as the employee normally earns during hours worked; and

(B) Provided by an employer to an employee for one or more of the purposes described in sections 8-13.3-404 to 8-13.3-406.

(II) As used in subsection (8)(a)(I)(A) of this section:

(A) "Same hourly rate or salary" under this part 4 does not include overtime, bonuses, or holiday pay.

(B) For employees paid on a commission basis only, "same hourly rate or salary" means a rate of no less than the applicable minimum wage.

(C) For employees paid an hourly, weekly, or monthly wage and also paid on a commission basis, "same hourly rate or salary" means the rate of pay equivalent to the employee's hourly, weekly, or monthly wage or the applicable minimum wage, whichever is greater.

(b) "Paid sick leave" is "wages" as defined in section 8-4-101 (14).

(9) "Public health emergency" means:

(a) An act of bioterrorism, a pandemic influenza, or an epidemic caused by a novel and highly fatal infectious agent, for which:

(I) An emergency is declared by a federal, state, or local public health agency; or

(II) A disaster emergency is declared by the governor; or

(b) A highly infectious illness or agent with epidemic or pandemic potential for which a disaster emergency is declared by the governor.

(10) "Retaliatory personnel action" means:

(a) The denial of any right guaranteed under this part 4; or

(b) Any adverse action against an employee for exercising any right guaranteed in this part 4, including:

(I) Any threat, discipline, discharge, suspension, demotion, reduction of hours, or reporting or threatening to report an employee's suspected citizenship or immigration status or the suspected citizenship or immigration status of a family member of the employee to a federal, state, or local agency; or

(II) Any sanctions against an employee who is the recipient of public benefits for rights guaranteed under this part 4; or

(III) Interference with or punishment for participating in or assisting, in any manner, an investigation, proceeding, or hearing under this part 4.

(11) "Sexual assault" has the meaning set forth in section 18-3-402.

(12) "Successor employer" means an employing unit, whether or not an employing unit at the time of acquisition, that becomes an employer subject to this part 4 because it acquires all of an organization, a trade, or a business or substantially all of the assets of one or more employers subject to this part 4.

(13) "Year" means a regular and consecutive twelve-month period as determined by an employer; except that, for the purposes of section 8-13.3-411, "year" means a calendar year.

Source: L. 2020: Entire part added, (SB 20-205), ch. 294, p. 1443, § 1, effective July 14.

8-13.3-403. Paid sick leave - accrual - carry forward to subsequent year - comparable leave provided by employer - no payment for unused leave - rules - repeal. (1) (a) All employees working in Colorado have the right to paid sick leave as specified in this part 4.

(b) Effective January 1, 2021, each employer with sixteen or more employees shall provide each employee paid sick leave as provided in this section. This subsection (1)(b) is repealed, effective January 1, 2022.

(c) Effective January 1, 2022, each employer shall provide each employee paid sick leave as provided in this section.

(2) (a) Each employee earns at least one hour of paid sick leave for every thirty hours worked by the employee; except that an employee is not entitled under this section to earn or use more than forty-eight hours of paid sick leave each year, unless the employer selects a higher limit. An employer may satisfy the accrual requirements of this section by providing the employee with an amount of paid sick leave that meets or exceeds the requirements of this section at the beginning of the year. Nothing in this section discourages or prohibits an employer from providing paid sick leave that accrues at a faster or more generous rate than required by this section. This subsection (2)(a) does not limit the ability of an employee to use paid sick leave as provided in section 8-13.3-405.

(b) Nothing in this part 4 precludes an employer from providing employees more paid sick leave than the amounts specified in this subsection (2).

(c) An employee who is exempt from overtime required in section 8-6-111 (4) accrues paid sick leave based on the assumption that the employee works forty hours per week. If the employee's normal workweek consists of fewer than forty hours, the employee accrues paid sick leave based upon the number of hours that comprise the employee's normal workweek.

(3) (a) An employee begins to accrue paid sick leave when employment with the employer begins and may use accrued paid sick leave as it is accrued.

(b) Up to forty-eight hours of paid sick leave that an employee accrues in a year but does not use carries forward to, and may be used in, a subsequent year; except that an employer is not required to allow the employee to use more than forty-eight hours of paid sick leave in a year.

(4) An employer that has a paid leave policy for its employees may satisfy the requirements of this section and section 8-13.3-405 and is not required to provide additional paid sick leave to its employees if the employer:

(a) Makes available to its employees, through its paid leave policy, an amount of paid leave sufficient to satisfy section 8-13.3-405 and meet the accrual requirements of subsection (2)(a) of this section; and

(b) Allows its employees to use the paid leave for the same purposes and under the same conditions as those applicable to paid sick leave under this part 4.

(5) (a) Except as specified in subsection (5)(b) of this section, and notwithstanding section 8-4-101 (14)(a)(IV), nothing in this section requires an employer to provide financial or other reimbursement of unused paid sick leave to an employee upon termination, resignation, retirement, or other separation from employment; except that an individual may recover paid sick leave as a remedy for a retaliatory personnel action that prevented the individual from using paid sick leave.

(b) If an employee separates from employment and is rehired by the same employer within six months after the separation, the employer shall reinstate any paid sick leave that the employee had accrued but not used during the employee's previous employment with the employer and that had not been converted to monetary compensation to the employee at the time of separation from employment.

(6) An employer may loan paid sick leave to an employee in advance of accrual of paid sick leave by the employee.

(7) If an employee is transferred to a separate division, entity, or location but remains employed by the same employer, the employee is entitled to all paid sick leave accrued at the prior division, entity, or location and is entitled to use all paid sick leave as provided in this section.

(8) If a successor employer succeeds an original employer, all employees of the original employer who remain employed by the successor employer are entitled to all paid sick leave that the employees accrued when employed by the original employer and are entitled to use previously accrued paid sick leave as specified in section 8-13.3-404.

(9) The division shall promulgate rules regarding compensation and accrual of paid sick leave for employees employed and compensated on a fee-for-service basis.

Source: L. 2020: Entire part added, (SB 20-205), ch. 294, p. 1445, § 1, effective July 14.

8-13.3-404. Use of paid sick leave - purposes - time increments. (1) An employer shall allow an employee to use the employee's accrued paid sick leave to be absent from work when:

(a) The employee:

(I) Has a mental or physical illness, injury, or health condition that prevents the employee from working;

(II) Needs to obtain a medical diagnosis, care, or treatment of a mental or physical illness, injury, or health condition; or

(III) Needs to obtain preventive medical care;

(b) The employee needs to care for a family member who:

(I) Has a mental or physical illness, injury, or health condition;

(II) Needs to obtain a medical diagnosis, care, or treatment of a mental or physical illness, injury, or health condition; or

(III) Needs to obtain preventive medical care;

(c) The employee or the employee's family member has been the victim of domestic abuse, sexual assault, or harassment and the use of leave is to:

(I) Seek medical attention for the employee or the employee's family member to recover from a mental or physical illness, injury, or health condition caused by the domestic abuse, sexual assault, or harassment;

(II) Obtain services from a victim services organization;

(III) Obtain mental health or other counseling;

(IV) Seek relocation due to the domestic abuse, sexual assault, or harassment; or

(V) Seek legal services, including preparation for or participation in a civil or criminal proceeding relating to or resulting from the domestic abuse, sexual assault, or harassment; or

(d) Due to a public health emergency, a public official has ordered closure of:

(I) The employee's place of business; or

(II) The school or place of care of the employee's child and the employee needs to be absent from work to care for the employee's child.

(2) An employer shall allow an employee to use paid sick leave upon the request of an employee. The request may be made orally, in writing, electronically, or by any other means acceptable to the employer. When possible, the employee shall include the expected duration of the absence. An employer may provide a written policy that contains reasonable procedures for the employee to provide notice when the use of paid sick leave taken under this section is foreseeable. An employer shall not deny paid sick leave to the employee based on noncompliance with such a policy.

(3) An employee must use paid sick leave in hourly increments unless the employee's employer allows paid sick leave to be taken in smaller increments of time.

(4) An employer shall not require, as a condition of providing paid sick leave under this part 4, an employee who uses paid sick leave to search for or find a replacement worker to cover the time during which the employee is absent from work.

(5) When the use of paid sick leave taken under this section is foreseeable, the employee shall make a good-faith effort to provide notice of the need for paid sick leave to the employee's employer in advance of the use of the paid sick leave and shall make a reasonable effort to schedule the use of paid sick leave in a manner that does not unduly disrupt the operations of the employer.

(6) Notwithstanding section 8-13.3-405 (4)(b), for paid sick leave of four or more consecutive work days, an employer may require reasonable documentation that the paid sick leave is for a purpose authorized by this part 4.

Source: L. 2020: Entire part added, (SB 20-205), ch. 294, p. 1447, § 1, effective July 14.

8-13.3-405. Additional paid sick leave during a public health emergency. (1) In addition to paid sick leave accrued under section 8-13.3-403, on the date a public health emergency is declared, each employer in the state shall supplement each employee's accrued paid sick leave as necessary to ensure that an employee may take the following amounts of paid sick leave for the purposes specified in subsection (3) of this section:

(a) For employees who normally work forty or more hours in a week, at least eighty hours;

(b) For employees who normally work fewer than forty hours in a week, at least the greater of either the amount of time the employee is scheduled to work in a fourteen-day period or the amount of time the employee actually works on average in a fourteen-day period.

(2) (a) An employer may count an employee's unused accrued paid sick leave under section 8-13.3-403 toward the supplemental paid sick leave required in subsection (1) of this section.

(b) An employee may use paid sick leave under this section until four weeks after the official termination or suspension of the public health emergency.

(3) An employer shall provide its employees the paid sick leave required in subsection (1) of this section for the following absences related to a public health emergency:

(a) An employee's need to:

(I) Self-isolate and care for oneself because the employee is diagnosed with a communicable illness that is the cause of a public health emergency;

(II) Self-isolate and care for oneself because the employee is experiencing symptoms of a communicable illness that is the cause of a public health emergency;

(III) Seek or obtain medical diagnosis, care, or treatment if experiencing symptoms of a communicable illness that is the cause of a public health emergency;

(IV) Seek preventive care concerning a communicable illness that is the cause of a public health emergency; or

(V) Care for a family member who:

(A) Is self-isolating after being diagnosed with a communicable illness that is the cause of a public health emergency;

(B) Is self-isolating due to experiencing symptoms of a communicable illness that is the cause of a public health emergency;

(C) Needs medical diagnosis, care, or treatment if experiencing symptoms of a communicable illness that is the cause of a public health emergency; or

(D) Is seeking preventive care concerning a communicable illness that is the cause of a public health emergency;

(b) With respect to a communicable illness that is the cause of a public health emergency:

(I) A local, state, or federal public official or health authority having jurisdiction over the location in which the employee's place of employment is located or the employee's employer determines that the employee's presence on the job or in the community would jeopardize the health of others because of the employee's exposure to the communicable illness or because the employee is exhibiting symptoms of the communicable illness, regardless of whether the employee has been diagnosed with the communicable illness; or

(II) Care of a family member after a local, state, or federal public official or health authority having jurisdiction over the location in which the family member's place of

employment is located or the family member's employer determines that the family member's presence on the job or in the community would jeopardize the health of others because of the family member's exposure to the communicable illness or because the family member is exhibiting symptoms of the communicable illness, regardless of whether the family member has been diagnosed with the communicable illness;

(c) Care of a child or other family member when the individual's child care provider is unavailable due to a public health emergency, or if the child's or family member's school or place of care has been closed by a local, state, or federal public official or at the discretion of the school or place of care due to a public health emergency, including if a school or place of care is physically closed but providing instruction remotely;

(d) An employee's inability to work because the employee has a health condition that may increase susceptibility to or risk of a communicable illness that is the cause of the public health emergency.

(4) Notwithstanding any other provision in this part 4:

(a) An employee shall notify the employee's employer of the need for paid sick leave under this section as soon as practicable when the need for paid sick leave is foreseeable and the employer's place of business has not been closed;

(b) Documentation is not required to take paid sick leave under this section; and

(c) Employees are only eligible for paid sick leave in the amount described in subsection (1) of this section once during the entirety of a public health emergency even if such public health emergency is amended, extended, restated, or prolonged.

Source: L. 2020: Entire part added, (SB 20-205), ch. 294, p. 1449, § 1, effective July 14.

8-13.3-406. Paid sick leave related to COVID-19. (1) Employers in the state shall comply with the federal "Emergency Paid Sick Leave Act" in the "Families First Coronavirus Response Act", Pub.L. 116-127.

(2) On and after July 14, 2020, through December 31, 2020, each employer in the state, regardless of size, shall provide paid sick leave in the amount and for the purposes provided in the federal "Emergency Paid Sick Leave Act" in the "Families First Coronavirus Response Act", Pub.L. 116-127, to each employee who is not covered under the "Emergency Paid Sick Leave Act".

Source: L. 2020: Entire part added, (SB 20-205), ch. 294, p. 1451, § 1, effective July 14.

8-13.3-407. Employee rights protected - retaliation prohibited. (1) An employee is entitled to:

(a) Use paid sick leave consistent with this part 4;

(b) File a complaint or inform any person about an employer's alleged violation of this part 4;

(c) Cooperate with the division in its investigation of an alleged violation of this part 4; and

(d) Inform any person of the person's potential rights under this part 4.

(2) (a) An employer shall not take retaliatory personnel action or discriminate against an employee or former employee because the person has exercised, attempted to exercise, or

supported the exercise of rights protected under this part 4, including the right to request or use paid sick leave pursuant to this part 4; the right to file a complaint with the division or court or inform any person about any employer's alleged violation of this part 4; the right to participate in an investigation, hearing, or proceeding or cooperate with or assist the division in its investigations of alleged violations of this part 4; and the right to inform any person of the person's potential rights under this part 4.

(b) It is unlawful for an employer to count paid sick leave taken by an employee pursuant to this part 4 as an absence that may lead to or result in discipline, discharge, demotion, suspension, or any other retaliatory personnel action against the employee.

(3) The protections of this section apply to any person acting in good faith who alleges a violation of this part 4, even if the allegation is determined to be mistaken.

(4) The division shall investigate each claim of denial of paid sick leave in violation of this part 4. The division may investigate claims of retaliation in violation of this part 4.

(5) If an investigation of employer retaliation or interference with employee rights yields a determination that:

(a) Rights of multiple employees have been violated, the violation as to each employee is a separate violation for purposes of fines, penalties, or other remedies;

(b) A violation cost an employee the employee's job or pay, the determination may include an order to reinstate the employee, to pay the employee's lost pay until reinstatement or for a reasonable period if reinstatement is determined not to be feasible, or both.

(6) Determinations made by the division under this section are appealable pursuant to section 8-4-111.5 and rules promulgated by the department regarding appeals and strategic enforcement.

Source: L. 2020: Entire part added, (SB 20-205), ch. 294, p. 1451, § 1, effective July 14.

8-13.3-408. Notice to employees - penalty - rules. (1) Each employer shall notify its employees that they are entitled to paid sick leave, pursuant to rules promulgated by the division. The rules must require the notice to:

(a) Specify the amount of paid sick leave to which employees are entitled and the terms of its use under this part 4; and

(b) Notify employees that employers cannot retaliate against an employee for requesting or using paid sick leave and that an employee has the right to file a complaint or bring a civil action if paid sick leave is denied by the employer or the employer retaliates against the employee for exercising the employee's rights under this part 4.

(2) An employer complies with the notice requirements of this section by:

(a) Supplying each employee with a written notice containing the information specified in subsection (1) of this section that is in English and in any language that is the first language spoken by at least five percent of the employer's workforce; and

(b) Displaying a poster created pursuant to subsection (3) of this section in a conspicuous and accessible location in each establishment where the employer's employees work that contains the information required by subsection (1) of this section in English and in any language that is the first language spoken by at least five percent of the employer's workforce.

(3) The division shall create and make available to employers posters and notices that contain the information required by subsection (1) of this section, and employers may use the posters and notices to comply with the requirements of this section.

(4) (a) An employer who willfully violates subsection (2)(a) or (6) of this section is subject to a civil fine not to exceed one hundred dollars for each separate violation.

(b) An employer who willfully violates subsection (2)(b) of this section is subject to a civil fine not to exceed one hundred dollars.

(c) The fines collected under this subsection (4) shall be transmitted to the state treasurer, who shall deposit the fines in the general fund.

(5) If an employer's business is closed due to a public health emergency or a disaster emergency due to a public health concern, the notice and posting requirements of this section are waived for the period during which the place of business is closed.

(6) If an employer does not maintain a physical workplace, or an employee teleworks or performs work through a web-based platform, the employer shall provide the notice required in this section through electronic communication or a conspicuous posting in the web-based platform.

Source: L. 2020: Entire part added, (SB 20-205), ch. 294, p. 1452, § 1, effective July 14.

8-13.3-409. Employer records. (1) An employer shall retain records for each employee for a two-year period, documenting hours worked, paid sick leave accrued, and paid sick leave used. Upon appropriate notice and at a mutually agreeable time, the employer shall allow the division access to the records for purposes of monitoring compliance with this part 4.

(2) If an issue arises as to an employee's right to paid sick leave and the employer has not maintained or retained adequate records for that employee or does not allow the division reasonable access to the records, the employer shall be presumed to have violated this part 4 unless the employer demonstrates compliance by a preponderance of the evidence.

Source: L. 2020: Entire part added, (SB 20-205), ch. 294, p. 1453, § 1, effective July 14.

8-13.3-410. Authority of director - rules. The director may coordinate implementation and enforcement of this part 4 and adopt rules as necessary for such purposes.

Source: L. 2020: Entire part added, (SB 20-205), ch. 294, p. 1453, § 1, effective July 14.

8-13.3-411. Enforcement - judicial review of director's actions - repeal. (1) The director and the division have jurisdiction over the enforcement of this part 4 and may exercise all powers granted under article 1 of this title 8 to enforce this part 4.

(2) The division may enforce the requirements of this part 4.

(3) Pursuant to section 8-1-130, any findings, awards, or orders issued by the director with respect to enforcement of this part 4 constitute final agency action, and any person affected by such final agency action may seek judicial review as provided in section 24-4-106.

(4) (a) A person aggrieved by a violation of this part 4 may commence a civil action in district court no later than two years after the violation occurs. A violation of this part 4 occurs

on each occasion that a person is affected by a failure to provide paid sick leave or retaliation related to paid sick leave.

(b) (I) Beginning January 1, 2021, an employer with sixteen or more employees who violates this part 4 is liable for back pay and any other relief as provided by section 8-5-104 (2)(a) and (2)(b). This subsection (4)(b)(I) is repealed, effective January 1, 2022.

(II) Beginning January 1, 2022, an employer who violates this part 4 is liable for back pay and any other relief as provided by section 8-5-104 (2)(a) and (2)(b).

(c) If a civil action is commenced under this section, any party to the civil action may demand a trial by jury.

(d) Before commencing any civil action under this section, an aggrieved person must, in accordance with article 4 of this title 8, submit a complaint to the division or make a written demand for compensation or other relief to the employer. An employer has fourteen days to respond after receiving either a notice from the division that a complaint has been filed with the division or a written demand from the aggrieved person for compensation or other relief under this part 4.

(e) If a person aggrieved by a violation of this part 4 files a civil action to enforce a judgment made under this section, the court shall waive any filing fee required under article 32 of title 13.

(f) Nothing in this section prevents an aggrieved person from filing a charge with the division pursuant to this section.

Source: L. 2020: Entire part added, (SB 20-205), ch. 294, p. 1454, § 1, effective July 14.

8-13.3-412. Confidentiality of employee information - definition. (1) An employer shall not require disclosure of details relating to domestic violence, sexual assault, or stalking or the details of an employee's or an employee's family member's health information as a condition of providing paid sick leave under this part 4.

(2) Any health or safety information possessed by an employer regarding an employee or employee's family member must:

(a) Be maintained on a separate form and in a separate file from other personnel information;

(b) Be treated as confidential medical records; and

(c) Not be disclosed except to the affected employee or with the express permission of the affected employee.

(3) As used in this section, "affected employee" means the employee:

(a) About whom the health information pertains or who is the victim of the domestic abuse, sexual assault, or harassment; or

(b) Whose family member is the subject of the health information or is the victim of the domestic abuse, sexual assault, or harassment.

Source: L. 2020: Entire part added, (SB 20-205), ch. 294, p. 1454, § 1, effective July 14.

8-13.3-413. Employers encouraged to provide more generous paid sick leave. (1) Nothing in this part 4 discourages or prohibits an employer from adopting or continuing a paid sick leave policy that is more generous than the paid sick leave policy required by this part 4.

(2) Nothing in this part 4 diminishes:

(a) The obligation of an employer to comply with any contract, collective bargaining agreement, employment benefit plan, or other agreement providing employees with a more generous paid sick leave policy than the paid sick leave policy required by this part 4; or

(b) The rights, privileges, or remedies of an employee under a collective bargaining or partnership agreement, employer policy, or employment contract.

(3) Nothing in this part 4 diminishes the rights of public employees regarding paid sick leave or the use of paid sick leave as provided in section 24-50-104 (7).

Source: L. 2020: Entire part added, (SB 20-205), ch. 294, p. 1455, § 1, effective July 14.

8-13.3-414. Other legal requirements applicable. (1) This part 4 provides minimum requirements pertaining to paid sick leave and does not preempt, limit, or otherwise affect the applicability of any other law, regulation, requirement, policy, or standard that provides for a greater amount, accrual, or use by employees of paid sick leave or that extends other protections to employees.

(2) To the extent allowable and not in conflict with federal law, any paid sick leave provided to an employee of a federal contractor as required by federal executive order 13706, "Establishing Paid Sick Leave for Federal Contractors", as published in 81 Fed. Reg. 67598 (2016), is considered paid sick leave provided under this part 4.

Source: L. 2020: Entire part added, (SB 20-205), ch. 294, p. 1455, § 1, effective July 14.

8-13.3-415. Collective bargaining agreements. (1) (a) With agreement of the fund trustees, an employer signatory to a multiemployer collective bargaining agreement may fulfill its obligations under this part 4 by making contributions to a multiemployer paid sick leave fund, plan, or program based on the hours each of its employees accrues pursuant to this part 4 while working under the multiemployer collective bargaining agreement, if the fund, plan, or program enables employees to collect paid sick leave from the fund, plan, or program based on hours they have worked under the multiemployer collective bargaining agreement and for the purposes specified under this part 4.

(b) Employees who work under a multiemployer collective bargaining agreement into which their employers make contributions as provided in subsection (1)(a) of this section may collect from the paid sick leave fund, plan, or program based on hours they have worked under the multiemployer collective bargaining agreement and for the purposes specified under this part 4.

(2) This part 4 does not apply to employees covered by a bona fide collective bargaining agreement in effect on July 14, 2020 if the collective bargaining agreement provides for equivalent or more generous paid sick leave for the employees covered by the collective bargaining agreement.

(3) For employees covered by a bona fide collective bargaining agreement that is initially negotiated or negotiated for the next collective bargaining agreement after July 14, 2020, this part 4 does not apply to such employees if the requirements of this part 4 are expressly waived in the collective bargaining agreement and the collective bargaining agreement provides

for equivalent or more generous paid sick leave for the employees covered by the collective bargaining agreement.

Source: L. 2020: Entire part added, (SB 20-205), ch. 294, p. 1456, § 1, effective July 14.

8-13.3-416. Employer policies. An employer policy adopted or retained must not diminish an employee's right to paid sick leave under this part 4. Any agreement by an employee to waive the employee's rights under this part 4 is void as against public policy.

Source: L. 2020: Entire part added, (SB 20-205), ch. 294, p. 1456, § 1, effective July 14.

8-13.3-417. Severability. If any provision of this part 4 or application thereof to any person or circumstance is judged invalid, the invalidity does not affect other provisions or applications of this part 4 that can be given effect without the invalid provision or application, and to this end the provisions of this part 4 are declared severable.

Source: L. 2020: Entire part added, (SB 20-205), ch. 294, p. 1456, § 1, effective July 14.

8-13.3-418. Employer authorized to take disciplinary action. Nothing in this part 4 prohibits an employer from taking disciplinary action against an employee who uses paid sick leave provided under this part 4 for purposes other than those described in this part 4.

Source: L. 2020: Entire part added, (SB 20-205), ch. 294, p. 1456, § 1, effective July 14.

PART 5

PAID FAMILY AND MEDICAL LEAVE INSURANCE

8-13.3-501. Short title. [*Editor's note: This section is effective upon proclamation of the governor for the votes cast November 3, 2020.*] This part 5 shall be known and may be cited as the "Paid Family and Medical Leave Insurance Act".

Source: Initiated 2020: Entire part added, Proposition 118, effective upon proclamation of the Governor.

Editor's note: This section was originally numbered as 18-13.3-401 in Proposition 118 but was renumbered on revision for ease of location.

8-13.3-502. Purposes and findings. [*Editor's note: This section is effective upon proclamation of the governor for the votes cast November 3, 2020.*] The people of the state of Colorado hereby find and declare that:

(1) Workers in Colorado experience a variety of personal and family caregiving obligations, but it can be difficult or impossible to adequately respond to those needs without access to paid leave.

(2) Access to paid family and medical leave insurance helps employers in Colorado by reducing turnover, recruiting workers, and promoting a healthy business climate, while also ensuring that smaller employers can compete with larger employers by providing paid leave benefits to their workers through an affordable insurance program.

(3) Paid family and medical leave insurance will also provide a necessary safety net for all Colorado workers when they have personal or family caregiving needs, including low-income workers living paycheck to paycheck who are disproportionately more likely to lack access to paid leave and least able to afford unpaid leave.

(4) Due to the need to provide paid time off to Colorado workers to address family and medical needs, such as the arrival of a new child, military family needs, and a personal or a family member's serious health condition, including the effects of domestic violence and sexual assault, it is necessary to create a statewide paid family and medical leave insurance enterprise and to authorize the enterprise to:

(a) Collect insurance premiums from employers and employees at rates reasonably calculated to defray the costs of providing the program's leave benefits to workers; and

(b) Receive and expend revenues generated by the premiums and other moneys, issue revenue bonds and other obligations, expend revenues generated by the premiums to pay family and medical leave insurance benefits and associated administrative and program costs, and exercise other powers necessary and appropriate to carry out its purposes.

(5) The fiscal approach of this part 5 has been informed by the experience of other state family and medical leave insurance programs, modeling based on the Colorado workforce, and input from a variety of stakeholders in Colorado.

(6) The creation of a statewide paid family and medical leave insurance enterprise is in the public interest and will promote the health, safety, and welfare of all Coloradans, while also encouraging an entrepreneurial atmosphere and economic growth.

Source: Initiated 2020: Entire part added, Proposition 118, effective upon proclamation of the Governor.

Editor's note: This section was originally numbered as 18-13.3-402 in Proposition 118 but was renumbered on revision for ease of location.

8-13.3-503. Definitions. [*Editor's note: This section is effective upon proclamation of the governor for the votes cast November 3, 2020.*] As used in this part 5, unless the context otherwise requires:

(1) "Application year" means the 12-month period beginning on the first day of the calendar week in which an individual files an application for family and medical leave insurance benefits.

(2) "Average weekly wage" means one-thirteenth of the wages paid during the quarter of the covered individual's base period, as defined in section 8-70-103 (2), or alternative base period, as defined in section 8-70-103 (1.5), in which the total wages were highest. For purposes of calculating average weekly wage, wages include, but are not limited to, salary, wages, tips, commissions, and other compensation as determined by the director by rule.

(3) "Covered individual" means any person who:

(a) (I) Earned at least $2,500 in wages subject to premiums under this part 5 during the person's base period, as defined in section 8-70-103 (2), or alternative base period, as defined in section 8-70-103 (1.5); or

(II) Elects coverage and meets the requirements of section 8-13.3-514;

(b) Meets the administrative requirements outlined in this part 5 and in regulations; and

(c) Submits an application with a claim for benefits pursuant to section 8-13.3-516 (6)(d).

(4) "Director" means the director of the division.

(5) "Division" means the division of family and medical leave insurance created in section 8-13.3-508.

(6) "Domestic violence" means any conduct that constitutes "domestic violence" as set forth in section 18-6-800.3 (1) or section 14-10-124 (1.3)(a) or "domestic abuse" as set forth in section 13-14-101 (2).

(7) "Employee" means any individual, including a migratory laborer, performing labor or services for the benefit of another, irrespective of whether the common-law relationship of master and servant exists. For the purposes of this part 5, an individual primarily free from control and direction in the performance of the labor or services, both under the individual's contract for the performance of the labor or services and in fact, and who is customarily engaged in an independent trade, occupation, profession, or business related to the labor or services performed is not an "employee." "Employee" does not include an "employee" as defined by 45 U.S.C. section 351 (d) who is subject to the federal "Railroad Unemployment Insurance Act," 45 U.S.C. section 351 et seq.

(8) (a) "Employer" means any person engaged in commerce or an industry or activity affecting commerce that:

(I) Employs at least one person for each working day during each of twenty or more calendar workweeks in the current or immediately preceding calendar year; or

(II) Paid wages of one thousand five hundred dollars or more during any calendar quarter in the preceding calendar year.

(b) "Employer" includes:

(I) A person who acts, directly or indirectly, in the interest of an employer with regard to any of the employees of the employer;

(II) A successor in interest of an employer that acquires all of the organization, trade, or business or substantially all of the assets of one or more employers; and

(III) The state or a political subdivision of the state.

(c) "Employer" does not include the federal government.

(9) "Family and medical leave insurance benefits" or "benefits" means the benefits provided under the terms of this part 5.

(10) "Family and medical leave insurance program" or "program" means the program created in section 8-13.3-516.

(11) "Family member" means:

(a) Regardless of age, a biological, adopted or foster child, stepchild or legal ward, a child of a domestic partner, a child to whom the covered individual stands in loco parentis, or a person to whom the covered individual stood in loco parentis when the person was a minor;

(b) A biological, adoptive or foster parent, stepparent or legal guardian of a covered individual or covered individual's spouse or domestic partner or a person who stood in loco

parentis when the covered individual or covered individual's spouse or domestic partner was a minor child;

(c) A person to whom the covered individual is legally married under the laws of any state, or a domestic partner of a covered individual as defined in section 24-50-603 (6.5);

(d) A grandparent, grandchild or sibling (whether a biological, foster, adoptive or step relationship) of the covered individual or covered individual's spouse or domestic partner; or

(e) As shown by the covered individual, any other individual with whom the covered individual has a significant personal bond that is or is like a family relationship, regardless of biological or legal relationship.

(12) "Fund" means the family and medical leave insurance fund created in section 8-13.3-518.

(13) "Health care provider" means any person licensed, certified, or registered under federal or Colorado law to provide medical or emergency services, including, but not limited to, physicians, doctors, nurses, emergency room personnel, and midwives.

(14) "Local government" has the same meaning as set forth in section 29-1-304.5 (3)(b).

(15) "Paid family and medical leave" means leave taken from employment in connection with family and medical leave insurance benefits under this part 5.

(16) "Qualifying exigency leave" means leave based on a need arising out of a covered individual's family member's active duty service or notice of an impending call or order to active duty in the armed forces, including, but not limited to, providing for the care or other needs of the military member's child or other family member, making financial or legal arrangements for the military member, attending counseling, attending military events or ceremonies, spending time with the military member during a rest and recuperation leave or following return from deployment, or making arrangements following the death of the military member.

(17) "Retaliatory personnel action" means denial of any right guaranteed under this part 5, including, but not limited to, any threat, discharge, suspension, demotion, reduction of hours, or any other adverse action against an employee for the exercise of any right guaranteed in this part 5. "Retaliatory personnel action" also includes interference with or punishment for in any manner participating in or assisting an investigation, proceeding, or hearing under this part 5.

(18) "Safe leave" means any leave because the covered individual or the covered individual's family member is the victim of domestic violence, the victim of stalking, or the victim of sexual assault or abuse. Safe leave under this part 5 applies if the covered individual is using the leave from work to protect the covered individual or the covered individual's family member by:

(a) Seeking a civil protection order to prevent domestic violence pursuant to sections 13-14-104.5, 13-14-106, or 13-14-108;

(b) Obtaining medical care or mental health counseling or both for himself or herself or for his or her children to address physical or psychological injuries resulting from the act of domestic violence, stalking, or sexual assault or abuse;

(c) Making his or her home secure from the perpetrator of the act of domestic violence, stalking, or sexual assault or abuse, or seeking new housing to escape said perpetrator; or

(d) Seeking legal assistance to address issues arising from the act of domestic violence, stalking, or sexual assault or abuse, or attending and preparing for court- related proceedings arising from said act or crime.

(19) "Serious health condition" is an illness, injury, impairment, pregnancy, recovery from childbirth, or physical or mental condition that involves inpatient care in a hospital, hospice or residential medical care facility, or continuing treatment by a health care provider.

(20) "Sexual assault or abuse" means any offense as described in section 16-11.7-102 (3), or sexual assault, as described in section 18-3-402, committed by any person against another person regardless of the relationship between the actor and the victim.

(21) "Stalking" means any act as described in section 18-3-602.

(22) "State average weekly wage" means the state average weekly wage determined in accordance with section 8-47-106.

Source: Initiated 2020: Entire part added, Proposition 118, effective upon proclamation of the Governor.

Editor's note: This section was originally numbered as 18-13.3-403 in Proposition 118 but was renumbered on revision for ease of location.

8-13.3-504. Duration. **[*Editor's note: This section is effective upon proclamation of the governor for the votes cast November 3, 2020.*]** Beginning January 1, 2024, an individual has the right to take paid family and medical leave, and to receive family and medical leave insurance benefits while taking paid family and medical leave, if the individual:

(1) Meets the definition of "covered individual" under section 8-13.3-503 (3); and

(2) Meets one of the following requirements:

(a) Because of birth, adoption or placement through foster care, is caring for a new child during the first year after the birth, adoption or placement of that child;

(b) Is caring for a family member with a serious health condition;

(c) Has a serious health condition;

(d) Because of any qualifying exigency leave;

(e) Has a need for safe leave.

Source: Initiated 2020: Entire part added, Proposition 118, effective upon proclamation of the Governor.

Editor's note: This section was originally numbered as 18-13.3-404 in Proposition 118 but was renumbered on revision for ease of location.

8-13.3-505. Duration. **[*Editor's note: This section is effective upon proclamation of the governor for the votes cast November 3, 2020.*]** (1) The maximum number of weeks for which a covered individual may take paid family and medical leave and for which family and medical leave insurance benefits are payable for any purpose, or purposes in aggregate, under section 8-13.3-504 (2) in an application year is 12 weeks; except that benefits are payable up to an additional four weeks to a covered individual with a serious health condition related to pregnancy complications or childbirth complications.

(2) The first payment of benefits shall be made to an individual within two weeks after the claim is filed, and subsequent payments shall be made every two weeks thereafter.

(3) A covered individual may take intermittent leave in increments of either one hour or shorter periods if consistent with the increments the employer typically uses to measure employee leave, except that benefits are not payable until the covered individual accumulates at least eight hours of family and medical leave insurance benefits.

(4) The covered individual shall make a reasonable effort to schedule paid family and medical leave under this part 5 so as not to unduly disrupt the operations of the employer.

(5) In any case in which the necessity for leave under this part 5 is foreseeable, an employee shall provide notice to the individual's employer with not less than 30 days' notice before the date the leave is to begin of the individual's intention to take leave under this part 5. If the necessity for leave is not foreseeable or providing 30 days' notice is not possible, the individual shall provide the notice as soon as practicable.

(6) Nothing in this section entitles a covered individual to more leave than required under this section.

Source: Initiated 2020: Entire part added, Proposition 118, effective upon proclamation of the Governor.

Editor's note: This section was originally numbered as 18-13.3-405 in Proposition 118 but was renumbered on revision for ease of location.

8-13.3-506. Amount of benefits. **[*Editor's note: This section is effective upon proclamation of the governor for the votes cast November 3, 2020.*]** (1) The amount of family and medical leave insurance benefits shall be determined as follows:

(a) The weekly benefit shall be determined as follows:

(I) The portion of the covered individual's average weekly wage that is equal to or less than 50 percent of the state average weekly wage shall be replaced at a rate of 90 percent; and

(II) The portion of the covered individual's average weekly wage that is more than 50 percent of the state average weekly wage shall be replaced at a rate of 50 percent.

(b) The maximum weekly benefit is 90 percent of the state average weekly wage, except that for paid family and medical leave beginning before January 1, 2025, the maximum weekly benefit is 1,100 dollars.

(2) The division shall calculate a covered individual's weekly benefit amount based on the covered individual's average weekly wage earned from the job or jobs from which the covered individual is taking paid family and medical leave, up to the maximum total benefit established in section 8-13.3-506 (1)(b). If a covered individual taking paid family and medical leave from a job continues working at an additional job or jobs during this time, the division shall not consider the covered individual's average weekly wage earned from the additional job or jobs when calculating the covered individual's weekly benefit amount. A covered individual with multiple jobs may elect whether to take leave from one job or multiple jobs.

Source: Initiated 2020: Entire part added, Proposition 118, effective upon proclamation of the Governor.

Editor's note: This section was originally numbered as 18-13.3-406 in Proposition 118 but was renumbered on revision for ease of location.

8-13.3-507. Premiums. [*Editor's note: This section is effective upon proclamation of the governor for the votes cast November 3, 2020.*] (1) Payroll premiums shall be authorized in order to finance the payment of family and medical leave insurance benefits under this part 5, and administration of the family and medical leave insurance program.

(2) Beginning on January 1, 2023, for each employee, an employer shall remit to the fund established under section 8-13.3-518 premiums in the form and manner determined by the division.

(3) (a) From January 1, 2023, through December 31, 2024, the premium amount is nine-tenths of one percent of wages per employee.

(b) For the 2025 calendar year, and each calendar year thereafter, the director shall set the premium based on a percent of employee wages and at the rate necessary to obtain a total amount of premium contributions equal to one hundred thirty-five percent of the benefits paid during the immediately preceding calendar year plus an amount equal to one hundred percent of the cost of administration of the payment of those benefits during the immediately preceding calendar year, less the amount of net assets remaining in the fund as of December 31 of the immediately preceding calendar year. The premium shall not exceed one and two tenths of a percent of wages per employee. The division shall provide public notice in advance of January first of any changes to the premium.

(4) (a) A self-employed individual who elects coverage under section 8-13.3-514 shall pay only 50 percent of the premium required for an employee by section 8-13.3-507 (3) on that individual's income from self-employment.

(b) An employee of a local government who elects coverage under section 8-13.3-514 shall pay only 50 percent of the premium required for an employee by section 8-13.3-507 (3) on that employee's income from that local government employment.

(c) An employee of a local government or a self-employed person who elects coverage under section 8-13.3-514 shall remit the premium amount required by this subsection directly to the division, in the form and manner required by the director by rule.

(5) An employer with 10 or more employees may deduct up to 50 percent of the premium required for an employee by section 8-13.3-507 (3) from that employee's wages and shall remit 100 percent of the premium required by section 8-13.3-507 (3) to the fund. An employer with fewer than 10 employees may deduct up to 50 percent of the premium required for an employee by section 8-13.3-507 (3) from that employee's wages and shall remit 50 percent of the premium required by section 8-13.3-507 (3) to the fund.

(6) Premiums shall not be required for employees' wages above the contribution and benefit base limit established annually by the federal social security administration for purposes of the Federal Old-Age, Survivors, and Disability Insurance program limits pursuant to 42 U.S.C. section 430.

(7) The premiums collected under this part 5 are used exclusively for the payment of Family and medical leave insurance benefits and the administration of the program. Premiums established under this section are fees and not taxes.

(8) An employer with an approved private plan under section 8-13.3-521 shall not be required to remit premiums under this section to the fund.

(9) Notwithstanding section 8-13.3-507 (2), if a local government has declined participation in the program in accordance with section 8-13.3-522:

(a) The local government is not required to pay the premiums imposed in this section or collect premiums from employees who have elected coverage pursuant to section 8-13.3-514; and

(b) An employee of the local government is not required to pay the premiums imposed in this section unless the employee has elected coverage pursuant to section 8-13.3- 514.

Source: Initiated 2020: Entire part added, Proposition 118, effective upon proclamation of the Governor.

Editor's note: This section was originally numbered as 18-13.3-407 in Proposition 118 but was renumbered on revision for ease of location.

8-13.3-508. Division of family and medical leave insurance. [*Editor's note: This section is effective upon proclamation of the governor for the votes cast November 3, 2020.*] (1) There is hereby created in the department of labor and employment the division of family and medical leave insurance, the head of which is the director of the division.

(2) (a) The division constitutes an enterprise for purposes of section 20 of article X of the Colorado constitution, as long as the division retains authority to issue revenue bonds and the division receives less than ten percent of its total annual revenues in grants, as defined in section 24-77-102 (7), from all Colorado state and local governments combined. For as long as it constitutes an enterprise pursuant to this section, the division is not subject to section 20 of article X of the Colorado constitution.

(b) The enterprise established pursuant to this section has all the powers and duties authorized by this part 5 pertaining to family and medical leave insurance benefits. The fund constitutes part of the enterprise established pursuant to this section.

(c) Nothing in this section limits or restricts the authority of the division to expend its revenues consistent with this part 5.

(d) The division is hereby authorized to issue revenue bonds for the expenses of the division, which bonds may be secured by any revenues of the division. Revenue from the bonds issued pursuant to this subsection shall be deposited into the fund.

Source: Initiated 2020: Entire part added, Proposition 118, effective upon proclamation of the Governor.

Editor's note: This section was originally numbered as 18-13.3-408 in Proposition 118 but was renumbered on revision for ease of location.

8-13.3-509. Leave and employment protection. [*Editor's note: This section is effective upon proclamation of the governor for the votes cast November 3, 2020.*] (1) Any covered individual who has been employed with the covered individual's current employer for at least 180 days prior to the commencement of the covered individual's paid family and medical leave who exercises the covered individual's right to family and medical leave insurance benefits shall be entitled, upon return from that leave, to be restored by the employer to the position held by the covered individual when the leave commenced, or to be restored to an equivalent position

with equivalent employment benefits, pay and other terms and conditions of employment. Nothing in this section entitles any restored employee to:

(a) The accrual of any seniority or employment benefits during any period of leave; or

(b) Any right, benefit, or position of employment other than any right, benefit, or position to which the employee would have been entitled had the employee not taken the leave. Nothing in this section relieves an employer of any obligation under a collective bargaining agreement.

(2) During any paid family and medical leave taken pursuant to this part 5, the employer shall maintain any health care benefits the covered individual had prior to taking such leave for the duration of the leave as if the covered individual had continued in employment continuously from the date the individual commenced the leave until the date the family and medical leave insurance benefits terminate. The covered individual shall continue to pay the covered individual's share of the cost of health benefits as required prior to the commencement of the leave.

(3) It is unlawful for an employer or any other person to interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right protected under this part 5.

(4) An employer, employment agency, employee organization or other person shall not take retaliatory personnel action or otherwise discriminate against a person because the individual exercised rights protected under this part 5. Such rights include, but are not limited to, the right to: request, file for, apply for or use benefits provided for under this part 5; take paid family and medical leave from work under this part 5; communicate to the employer or any other person or entity an intent to file a claim, a complaint with the division or courts, or an appeal; testify or assist in any investigation, hearing or proceeding under this part 5, at any time, including during the period in which the person receives family and medical leave insurance benefits under this part 5; inform any person about any employer's alleged violation of this part 5; and inform any person of his or her rights under this part 5.

(5) It is unlawful for an employer to count paid family and medical leave taken under this part 5 as an absence that may lead to or result in discipline, discharge, demotion, suspension or any other adverse action.

(6) (a) An aggrieved individual under this section may bring a civil action in a court of competent jurisdiction.

(b) An employer who violates this section is subject to the damages and equitable relief available under 29 U.S.C. section 2617 (a)(1).

(c) Except as provided in section 8-13.3-509 (6)(d), a claim brought in accordance with this section must be filed within two years after the date of the last event constituting the alleged violation for which the action is brought.

(d) In the case of such action brought for a willful violation of this section, such action may be brought within 3 years of the date of the last event constituting the alleged violation for which such action is brought.

(7) The director, by rule, shall establish a fine structure for employers who violate this section, with a maximum fine of $500 per violation. The director shall transfer any fines collected pursuant to this section to the state treasurer for deposit in the fund. The director, by rule, shall establish a process for the determination, Assessment, and appeal of fines under this subsection.

(8) This section does not apply to an employee of a local government that has elected coverage pursuant to section 8-13.3-514.

Source: Initiated 2020: Entire part added, Proposition 118, effective upon proclamation of the Governor.

Editor's note: This section was originally numbered as 18-13.3-409 in Proposition 118 but was renumbered on revision for ease of location.

8-13.3-510. Coordination of benefits. **[*Editor's note: This section is effective upon proclamation of the governor for the votes cast November 3, 2020.*]** (1) (a) Leave taken with wage replacement under this part 5 that also qualifies as leave under the "Family and Medical Leave Act," as amended, Pub. L. 103-3, codified at 29 U.S.C. sec. 2601 et. seq., or part 2 of article 13.3 of title 8 runs concurrently with leave taken under the "Family and Medical Leave Act" or part 2 of article 13.3 of title 8, as applicable.

(b) An employer may require that payment made or paid family and medical leave taken under this part 5 be made or taken concurrently or otherwise coordinated with payment made or leave allowed under the terms of a disability policy, including a disability policy contained within an employment contract, or a separate bank of time off solely for the purpose of paid family and medical leave under this part 5, as applicable. The employer shall give its employees written notice of this requirement.

(c) Notwithstanding section 8-13.3-510 (1)(b), under no circumstances shall an employee be required to use or exhaust any accrued vacation leave, sick leave, or other paid time off prior to or while receiving family and medical leave insurance benefits under this part 5. However, an employee and an employer may mutually agree that the employee may use any accrued vacation leave, sick leave, or other paid time off while receiving family and medical leave insurance benefits under this part 5, unless the aggregate amount a covered individual would receive would exceed the covered individual's average weekly wage. Nothing in this subsection requires an employee to receive or use, or an employer to provide, additional paid time off as described in this subsection.

(2) (a) This part 5 does not diminish:

(I) The rights, privileges, or remedies of an employee under a collective bargaining agreement, employer policy, or employment contract;

(II) An employer's obligation to comply with a collective bargaining agreement, employer policy, or employment contract, as applicable, that provides greater leave than provided under this part 5; or

(III) Any law that provides greater leave than provided under this part 5.

(b) After the effective date of this part 5, an employer policy adopted or retained shall not diminish an employee's right to benefits under this part 5. Any agreement by an employee to waive the employee's rights under this part 5 is void as against public policy.

(3) The director shall determine by rule the interaction of benefits or coordination of leave when a covered individual is concurrently eligible for paid family and medical leave and benefits under this part 5 with:

(a) Leave pursuant to section 24-34-402.7; or

(b) Workers' compensation benefits under article 42 of title 8.

Source: Initiated 2020: Entire part added, Proposition 118, effective upon proclamation of the Governor.

Editor's note: This section was originally numbered as 18-13.3-410 in Proposition 118 but was renumbered on revision for ease of location.

8-13.3-511. Notice. [*Editor's note: This section is effective upon proclamation of the governor for the votes cast November 3, 2020.*] The division shall develop a program notice that details the program requirements, benefits, claims process, payroll deduction requirements, the right to job protection and benefits continuation under section 8-13.3-509, protection against retaliatory personnel actions or other discrimination, and other pertinent program information. Each employer shall post the program notice in a prominent location in the workplace and notify its employees of the program, in writing, upon hiring and upon learning of an employee experiencing an event that triggers eligibility pursuant to section 8-13.3-504. The division shall provide the information required by this section in a manner that is culturally competent and linguistically appropriate.

Source: Initiated 2020: Entire part added, Proposition 118, effective upon proclamation of the Governor.

Editor's note: This section was originally numbered as 18-13.3-411 in Proposition 118 but was renumbered on revision for ease of location.

8-13.3-512. Appeals. [*Editor's note: This section is effective upon proclamation of the governor for the votes cast November 3, 2020.*] (1) The director shall establish a system for administrative review and determination of claims, and appeal of such determinations, including denial of family and medical leave insurance benefits. In establishing such system, the director may utilize any and all procedures and appeals mechanisms established under sections 8-4-111.5 (5), 8-74-102, and 8-74-103.

(2) Judicial review of any decision with respect to family and medical leave insurance benefits under this section is permitted in a court of competent jurisdiction after a covered individual aggrieved thereby has exhausted all administrative remedies established by the director. If a covered individual files a civil action in a court of competent jurisdiction to enforce a judgment made under this section, any filing fee under article 32 of title 13 shall be waived.

Source: Initiated 2020: Entire part added, Proposition 118, effective upon proclamation of the Governor.

Editor's note: This section was originally numbered as 18-13.3-412 in Proposition 118 but was renumbered on revision for ease of location.

8-13.3-513. Erroneous payments and disqualification for benefits. [*Editor's note: This section is effective upon proclamation of the governor for the votes cast November 3, 2020.*] (1) A covered individual is disqualified from family and medical leave insurance benefits for one year if the individual is determined by the director to have willfully made a false

statement or misrepresentation regarding a material fact, or willfully failed to report a material fact, to obtain benefits under this part 5.

(2) If family and medical leave insurance benefits are paid erroneously or as a result of willful misrepresentation, or if a claim for family and medical leave insurance benefits is rejected after benefits are paid, the division may seek repayment of benefits from the recipient. The director shall exercise his or her discretion to waive, in whole or in part, the amount of any such payments where the recovery would be against equity and good conscience.

Source: Initiated 2020: Entire part added, Proposition 118, effective upon proclamation of the Governor.

Editor's note: This section was originally numbered as 18-13.3-413 in Proposition 118 but was renumbered on revision for ease of location.

8-13.3-514. Elective coverage. [*Editor's note: This section is effective upon proclamation of the governor for the votes cast November 3, 2020.*] (1) An employee of a local government that has declined participation in the program pursuant to section 8-13.3-522 or a self-employed person, including an independent contractor, sole proprietor, partner or joint venturer, may elect coverage under this part 5 for an initial period of not less than three years. The self-employed person or employee of a local government must file a notice of election in writing with the director, as required by the division. The election becomes effective on the date of filing the notice. As a condition of election, the self-employed person or employee of a local government must agree to supply any information concerning income that the division deems necessary.

(2) A self-employed person or an employee of a local government who has elected coverage may withdraw from coverage within 30 days after the end of the three-year period of coverage, or at such other times as the director may prescribe by rule, by filing written notice with the director, such withdrawal to take effect not sooner than 30 days after filing the notice.

Source: Initiated 2020: Entire part added, Proposition 118, effective upon proclamation of the Governor.

Editor's note: This section was originally numbered as 18-13.3-414 in Proposition 118 but was renumbered on revision for ease of location.

8-13.3-515. Reimbursement of advance payments. [*Editor's note: This section is effective upon proclamation of the governor for the votes cast November 3, 2020.*] (1) Except as provided in section 8-13.3-515 (2), if an employer has made advance payments to an employee that are equal to or greater than the amount required under this part 5, during any period of paid family and medical leave for which such employee is entitled to the benefits provided by this part 5, the employer is entitled to be reimbursed by the fund out of any benefits due or to become due for the existing paid family and medical leave, if the claim for reimbursement is filed with the fund prior to the fund's payment of the benefits to the employee.

(2) If an employer that provides family and medical leave insurance benefits through a private plan approved pursuant to section 8-13.3-521 makes advance payments to an employee

that are equal to or greater than the amount required under this part 5, during any period of paid family and medical leave for which such employee is entitled to the benefits provided by this part 5, the entity that issued the private plan shall reimburse the employer out of any benefits due or to become due for the existing paid family and medical leave, if the claim for reimbursement is filed with the entity that issued the private plan prior to the private plan's payment of the benefits under the private plan to the employee.

(3) The director, by rule, shall establish a process for reimbursements under this section.

Source: Initiated 2020: Entire part added, Proposition 118, effective upon proclamation of the Governor.

Editor's note: This section was originally numbered as 18-13.3-415 in Proposition 118 but was renumbered on revision for ease of location.

8-13.3-516. Family and medical leave insurance program. [*Editor's note: This section is effective upon proclamation of the governor for the votes cast November 3, 2020.*] (1) By January 1, 2023, the division shall establish and administer a family and medical leave insurance program and begin collecting premiums as specified in this part 5. By January 1, 2024, the division shall start receiving claims from and paying family and medical leave insurance benefits to covered individuals.

(2) The division shall establish reasonable procedures and forms for filing claims for benefits under this part 5 and shall specify what supporting documentation is necessary to support a claim for benefits, including any documentation required from a health care provider for proof of a serious health condition and any documentation required by the division with regards to a claim for safe leave.

(3) The division shall notify the employer within five business days of a claim being filed pursuant to this part 5.

(4) The division shall use information sharing and integration technology to facilitate the disclosure of relevant information or records so long as an individual consents to the disclosure as required under state law.

(5) Information contained in the files and records pertaining to an individual under this part 5 are confidential and not open to public inspection, other than to public employees in the performance of their official duties. However, the individual or an authorized representative of an individual may review the records or receive specific information from the records upon the presentation of the individual's signed authorization.

(6) The director shall adopt rules as necessary or as specified in this part 5 to implement and administer this part 5. The director shall adopt rules including, but not limited to:

(a) Confidentiality of information related to claims filed or appeals taken;

(b) Guidance on the factors used to determine whether an individual is a covered individual's family member;

(c) The form and manner of filing claims for benefits and providing related documentation pursuant to section 8-13.3-516 (2); and

(d) The form and manner of submitting an application with a claim for benefits to the division or to the entity that issued a private plan approved pursuant to section 8-13.3-521.

(7) Initial rules and regulations necessary for implementation of this part 5 shall be adopted by the director and promulgated by January 1, 2022.

Source: Initiated 2020: Entire part added, Proposition 118, effective upon proclamation of the Governor.

Editor's note: This section was originally numbered as 18-13.3-416 in Proposition 118 but was renumbered on revision for ease of location.

8-13.3-517. Income Tax. **[*Editor's note: This section is effective upon proclamation of the governor for the votes cast November 3, 2020.*]** (1) If the internal revenue service determines that family and medical leave insurance benefits under this part 5 are subject to federal income tax, the division or a private plan approved under section 8-13.3-521 shall inform an individual filing a new claim for family and medical leave insurance benefits, at the time of filing such claim, that:

(a) The internal revenue service has determined that benefits are subject to federal income tax; and

(b) Requirements exist pertaining to estimated tax payments.

(2) Benefits received pursuant to this part 5 are not subject to state income tax.

(3) The director, in consultation with the department of revenue, shall issue rules regarding tax treatment and related procedures regarding family and medical leave insurance benefits, as well as the sharing of necessary information between the division and the department of revenue.

Source: Initiated 2020: Entire part added, Proposition 118, effective upon proclamation of the Governor.

Editor's note: This section was originally numbered as 18-13.3-417 in Proposition 118 but was renumbered on revision for ease of location.

8-13.3-518. Family and medical leave insurance fund - establishment and investment. **[*Editor's note: This section is effective upon proclamation of the governor for the votes cast November 3, 2020.*]** (1) There is hereby created in the state treasury the family and medical leave insurance fund. The fund consists of premiums paid pursuant to section 8-13.3-507 and revenues from revenue bonds issued in accordance with section 8-13.3-508 (2)(d). Money in the fund may be used only to pay revenue bonds; to reimburse employers who pay family and medical leave insurance benefits directly to employees in accordance with section 8-13.3-515 (1); and to pay benefits under, and to administer, the program pursuant to this part 5, including technology costs to administer the program and outreach services developed under section 8-13.3-520. Interest earned on the investment of money in the fund remains in the fund. Any money remaining in the fund at the end of a fiscal year remains in the fund and does not revert to the general fund or any other fund. State money in the fund is continuously appropriated to the division for the purpose of this section. The general assembly shall not appropriate money from the fund for the general expenses of the state.

(2) The division may seek, accept, and expend gifts, grants, and donations, including program-related investments and community reinvestment funds, to finance the costs of establishing and implementing the program.

Source: Initiated 2020: Entire part added, Proposition 118, effective upon proclamation of the Governor.

Editor's note: This section was originally numbered as 18-13.3-418 in Proposition 118 but was renumbered on revision for ease of location.

8-13.3-519. Reports. [*Editor's note: This section is effective upon proclamation of the governor for the votes cast November 3, 2020.*] Notwithstanding section 24-1-136 (11)(a)(I), beginning January 1, 2025, the division shall submit a report to the legislature by April 1 of each year that includes, but is not limited to, projected and actual program participation by section 8-13.3-504 (2) purpose, gender of beneficiary, average weekly wage of beneficiary, other demographics of beneficiary as determined by the division, premium rates, fund balances, outreach efforts, and, for leaves taken under section 8-13.3-504 (2)(b), family members for whom leave was taken to provide care.

Source: Initiated 2020: Entire part added, Proposition 118, effective upon proclamation of the Governor.

Editor's note: This section was originally numbered as 18-13.3-419 in Proposition 118 but was renumbered on revision for ease of location.

8-13.3-520. Public education. [*Editor's note: This section is effective upon proclamation of the governor for the votes cast November 3, 2020.*] By July 1, 2022, and for as long as the program continues, the division shall develop and implement outreach services to educate the public about the family and medical leave insurance program and availability of paid family and medical leave and benefits under this part 5 for covered individuals. The division shall provide the information required by this section in a manner that is culturally competent and linguistically appropriate. The division may, on its own or through a contract with an outside vendor, use a portion of the money in the fund to develop, implement, and administer outreach services.

Source: Initiated 2020: Entire part added, Proposition 118, effective upon proclamation of the Governor.

Editor's note: This section was originally numbered as 18-13.3-420 in Proposition 118 but was renumbered on revision for ease of location.

8-13.3-521. Substitution of private plans. [*Editor's note: This section is effective upon proclamation of the governor for the votes cast November 3, 2020.*] (1) Employers may apply to the division for approval to meet their obligations under this part 5 through a private

plan. In order to be approved, a private plan must confer all of the same rights, protections and benefits provided to employees under this part 5, including, but not limited to:

(a) Allowing family and medical leave insurance benefits to be taken for all purposes specified in section 8-13.3-504 (2);

(b) Providing family and medical leave insurance benefits to a covered individual for any of the purposes, including multiple purposes in the aggregate, as set forth in section 8-13.3-504 (2), for the maximum number of weeks required in section 8-13.3-505 (1) in a benefit year;

(c) Allowing family and medical leave insurance benefits under section 8-13.3-504 (2)(b) to be taken to care for any family member;

(d) Allowing family and medical leave insurance benefits under section 8-13.3-504 (2)(c) to be taken by a covered individual with any serious health condition;

(e) Allowing family and medical leave insurance benefits under section 8-13.3-504 (2)(e) to be taken for any safe leave purposes;

(f) Providing a wage replacement rate for all family and medical leave insurance benefits of at least the amount required by section 8-13.3-506 (1)(a);

(g) Providing a maximum weekly benefit for all family and medical leave insurance benefits of at least the amount specified in section 8-13.3-506 (1)(b);

(h) Allowing a covered individual to take intermittent leave as authorized by section 8-13.3-505 (3);

(i) Imposing no additional conditions or restrictions on family and medical leave insurance benefits, or paid family and medical leave taken in connection therewith, beyond those explicitly authorized by this part 5 or regulations issued pursuant to this part 5;

(j) Allowing any employee covered under the private plan who is eligible for family and medical leave insurance benefits under this part 5 to receive benefits and take paid family and medical leave under the private plan; and

(k) Providing that the cost to employees covered by a private plan shall not be greater than the cost charged to employees under the state plan under section 8-13.3-507.

(2) In order to be approved as meeting an employer's obligations under this part 5, a private plan must also comply with the following provisions:

(a) If the private plan is in the form of self-insurance, the employer must furnish a bond to the state, with some surety company authorized to transact business in the state, in the form, amount, and manner required by the division;

(b) The plan must provide for all eligible employees throughout their period of employment; and

(c) If the plan is in the form of a third party that provides for insurance, the forms of the policy must be issued by an insurer approved by the state.

(3) The division shall withdraw approval for a private plan granted under section 8-13.3-521 (1) when terms or conditions of the plan have been violated. Causes for plan termination shall include, but not be limited to, the following:

(a) Failure to pay benefits;

(b) Failure to pay benefits timely and in a manner consistent with this part 5;

(c) Failure to maintain an adequate surety bond under section 8-13.3-521 (2)(a);

(d) Misuse of private plan money;

(e) Failure to submit reports or comply with other compliance requirements as required by the director by rule; or

(f) Failure to comply with this part 5 or the regulations promulgated pursuant to this part 5.

(4) An employee covered by a private plan approved under this section shall retain all applicable rights under section 8-13.3-509.

(5) A contested determination or denial of family and medical leave insurance benefits by a private plan is subject to appeal before the division and any court of competent jurisdiction as provided by section 8-13.3-512.

(6) The director, by rule, shall establish a fine structure for employers and entities offering private plans that violate this section, with a maximum fine of $500 per violation. The director shall transfer any fines collected pursuant to this subsection to the state treasurer for deposit into the fund. The director, by rule, shall establish a process for the determination, assessment, and appeal of fines under this subsection.

(7) The director shall annually determine the total amount expended by the division for costs arising out of the administration of private plans. Each entity offering a private plan pursuant to this section shall reimburse the division for the costs arising out of the private plans in the amount, form, and manner determined by the director by rule. The director shall transfer payments received pursuant to this section to the state treasury for deposit in the fund.

Source: Initiated 2020: Entire part added, Proposition 118, effective upon proclamation of the Governor.

Editor's note: This section was originally numbered as 18-13.3-421 in Proposition 118 but was renumbered on revision for ease of location.

8-13.3-522. Local government employers' ability to decline participation in program - rules. [*Editor's note: This section is effective upon proclamation of the governor for the votes cast November 3, 2020.*] (1) A local government may decline participation in the family and medical leave insurance program in the form and manner determined by the director by rule.

(2) An employee of a local government that has declined participation in the program in accordance with this section may elect coverage as specified in section 8-13.3-514.

(3) The director shall promulgate reasonable rules for the implementation of this section. At a minimum, the rules must include:

(a) The process by which a local government may decline participation in the program;

(b) The process by which a local government that has previously declined participation in the program may subsequently elect coverage in the program; and

(c) The notice that a local government is required to provide its employees regarding whether the local government is participating in the program, the ability of the employees of a local government that has declined participation to elect coverage pursuant to section 8-13.3-514, and any other necessary requirements.

Source: Initiated 2020: Entire part added, Proposition 118, effective upon proclamation of the Governor.

Editor's note: This section was originally numbered as 18-13.3-422 in Proposition 118 but was renumbered on revision for ease of location.

8-13.3-523. Severability. **[*Editor's note: This section is effective upon proclamation of the governor for the votes cast November 3, 2020.*]** If any provision of this part 5 or its application to any person or circumstance is held invalid, the remainder of part 5 or the application of the provision to other persons or circumstances is not affected.

Source: Initiated 2020: Entire part added, Proposition 118, effective upon proclamation of the Governor.

Editor's note: This section was originally numbered as 18-13.3-423 in Proposition 118 but was renumbered on revision for ease of location.

8-13.3-524. Effective date. **[*Editor's note: This section is effective upon proclamation of the governor for the votes cast November 3, 2020.*]** This part 5 takes effect upon official declaration of the governor and is self-executing.

Source: Initiated 2020: Entire part added, Proposition 118, effective upon proclamation of the Governor.

Editor's note: This section was originally numbered as 18-13.3-424 in Proposition 118 but was renumbered on revision for ease of location.

ARTICLE 13.5

Workplace Accommodations for Nursing Mothers

Law reviews: For article, "Mediating the Interactive Process", see 46 Colo. Law. 35 (May 2017).

8-13.5-101. Short title. This article shall be known and may be cited as the "Workplace Accommodations for Nursing Mothers Act".

Source: L. 2008: Entire article added, p. 328, § 1, effective August 5.

8-13.5-102. Legislative declaration. (1) The general assembly hereby finds, determines, and declares that:

(a) The American academy of pediatrics recommends breastfeeding exclusively for the first six months of an infant's life and has continuously endorsed breastfeeding for at least one year or longer as the optimal form of nutrition for infants and as a foundation for good feeding practices;

(b) Extensive research indicates that there are diverse and compelling advantages to nursing for infants, mothers, families, businesses, and society, including less illness among children who are nursed and lower health care costs;

(c) Epidemiologic research shows that breastfeeding infants provides benefits to their general health, growth, and development and results in significant decreases in risk for numerous acute illnesses;

(d) Breastfeeding has been shown to have numerous health benefits for mothers, including an earlier return to prepregnant weight, delayed resumption of ovulation with increased child spacing, improved bone remineralization postpartum with reduction in hip fractures in the postmenopausal period, and reduced risk of ovarian cancer and premenopausal breast cancer;

(e) In addition to individual health benefits, providing opportunities for breastfeeding results in substantial benefits to employers, including reduced health care costs, reduced employee absenteeism for care attributable to infant illness, improved employee productivity, higher morale and greater loyalty, improved ability to attract and retain valuable employees, and a family-friendly image in the community;

(f) Nursing is a basic, normal, and important act of nurturing that should be encouraged in the interests of maternal and infant health.

(2) The general assembly further declares that the purpose of this article is for the state of Colorado to become involved in the national movement to recognize the medical importance of breastfeeding, within the scope of complete pediatric care, and to encourage removal of boundaries placed on nursing mothers in the workplace.

Source: L. 2008: Entire article added, p. 328, § 1, effective August 5.

8-13.5-103. Definitions. As used in this article, unless the context otherwise requires:

(1) "Employer" means a person engaged in business who has one or more employees. "Employer" includes the state and any political subdivision of the state.

(2) "Reasonable efforts" means any effort that would not impose an undue hardship on the operation of the employer's business.

(3) "Undue hardship" means any action that requires significant difficulty or expense when considered in relation to factors such as the size of the business, the financial resources of the business, or the nature and structure of its operation, including consideration of the special circumstances of public safety.

Source: L. 2008: Entire article added, p. 329, § 1, effective August 5.

8-13.5-104. Right of nursing mothers to express breast milk in workplace - private location - discrimination prohibited. (1) An employer shall provide reasonable unpaid break time or permit an employee to use paid break time, meal time, or both, each day to allow the employee to express breast milk for her nursing child for up to two years after the child's birth.

(2) The employer shall make reasonable efforts to provide a room or other location in close proximity to the work area, other than a toilet stall, where an employee can express breast milk in privacy.

(3) An employer that makes reasonable efforts to accommodate an employee who chooses to express breast milk in the workplace shall be deemed to be in compliance with the requirements of this section.

(4) The department of labor and employment shall provide, on its website, information and links to other websites where employers can access information regarding methods to accommodate nursing mothers in the workplace. The department shall consult with appropriate organizations or associations to determine the appropriate information and website links to provide on the department's website so as to provide employers with the most accurate and useful information available.

(5) Before an employee may seek litigation for a violation of this section, there shall be nonbinding mediation between the employer and the employee.

Source: L. 2008: Entire article added, p. 329, § 1, effective August 5.

ARTICLE 14

Protection of Building Employees

8-14-101. Protection of building employees. A person employing or directing another to perform labor of any kind in the erection, repairing, altering, or painting of a house, building, or structure shall not furnish or erect for the performance of such labor scaffolding, hoists, stays, ladders, or other mechanical contrivances which are unsafe, unsuitable, or improper and which are not constructed, placed, and operated to give proper protection to life and limb of a person so employed or engaged. Scaffolding or staging swung or suspended from an overhead support more than twenty feet from the ground or floor shall have a safety rail of wood, properly bolted, secured, and braced, rising at least thirty-four inches above the floor or main portions of the scaffolding or staging and extending along the entire length of the outside and the ends thereof and properly attached thereto, and such scaffolding or staging shall be so fastened to prevent the same from swaying from the building or structure.

Source: L. 13: p. 448, § 1. **C.L.** § 4186. **CSA:** C. 97, § 117. **CRS 53:** § 80-16-1. **C.R.S. 1963:** § 80-13-1.

8-14-102. Scaffolding - complaints - duty of building inspector. (1) Whenever complaint is made to the building inspector of any town or city wherein work is being done that the scaffolding or the slings, hangers, blocks, pulleys, stays, braces, ladders, or ropes of any swinging or stationary scaffolding used in the construction, alteration, repairing, painting, cleaning, or pointing of buildings within the limits of such city are unsafe or liable to prove dangerous to the life or limb of any person, the building inspector shall immediately cause an inspection to be made of the scaffolding or the slings, hangers, blocks, pulleys, stays, braces, ladders, irons, or other parts connected therewith. If, after examination, the scaffolding or any of the parts are found to be dangerous to life or limb, the building inspector shall prohibit the use thereof and require the same to be altered and reconstructed to avoid such danger. The building inspector making the examination shall attach a certificate to the scaffolding or the slings, hangers, irons, ropes, or other parts thereof examined by him stating that he has made an examination and that he has found it safe or unsafe, as the case may be. If he declares it unsafe, he shall notify the person responsible for its erection of the fact at once, in writing, and warn him against the use thereof. Such notice may be served personally upon the person responsible for its

erection or by affixing it conspicuously to the scaffolding or the part thereof declared to be unsafe. After the notice has been so served or affixed, the person responsible therefor shall immediately remove the scaffolding or part thereof or alter or strengthen it in such manner as to render it safe, in the discretion of the officer who has examined it.

(2) The building inspector, whose duty it is to examine or test any scaffolding or part thereof as required by this section, shall have free access at all reasonable hours to any building or premises containing scaffolding or where it is in use. All swinging or stationary scaffolding shall be so constructed as to bear four times the maximum weight required to be dependent therefrom or placed thereon when in use, and not more than four men shall be allowed on any swinging scaffolding at one time.

Source: L. 13: p. 448, § 2. **C.L.** § 4187. **CSA:** C. 97, § 118. **CRS 53:** § 80-16-2. **C.R.S. 1963:** § 80-13-2.

8-14-103. Flooring - hoisting of materials - regulations. (1) All contractors and owners, when constructing buildings in cities where the plans and specifications require the floors to be arched between the beams thereof or where the floors or filling in between the floors are of fireproof material or brick work, shall complete the flooring or filling in as the building progresses to not less than within three tiers of beams below that on which the iron work is being erected. If the plans and the specifications of the buildings do not require filling in between the beams of floors with brick or fireproof material, all contractors for carpenter work in the course of construction shall lay the underflooring thereof on each story as the building progresses to not less than within two stories below the one to which the building has been erected.

(2) Where double floors are not to be used, the contractor shall keep the floor planked over not less than two stories below the story where the work is being performed. If the floor beams are of iron or steel, the contractor for the iron or steel work of building in course of construction, or the owners of such building, shall thoroughly plank over the entire tier of iron or steel beams on which the structural iron or steel work is being erected except such spaces as may be reasonably required for the proper construction of such iron or steel work and for the raising or lowering of materials to be used in the construction of the building or such spaces as may be designated by the plans and specifications for stairways and elevator shafts. If elevators, elevating machines, or hod-hoisting apparatus are used within a building in the course of construction for the purpose of lifting materials to be used in the construction, the contractors or owners shall cause the shafts or openings in each floor to be enclosed or fenced in on all sides by a barrier at least eight feet in height; except on two sides, which may be used for taking off and putting on materials, and those sides shall be guarded by an adjustable barrier not less than three nor more than four feet from the floor and not less than two feet from the edge of the shaft or opening. If a building in course of construction is five stories or more in height, no lumber or timber needed for such construction shall be hoisted or lifted on the outside of the building.

Source: L. 13: p. 449, § 3. **C.L.** § 4188. **CSA:** C. 97, § 119. **CRS 53:** § 80-16-3. **C.R.S. 1963:** § 80-13-3.

8-14-104. Building inspector to enforce - prosecutions. The building inspector shall enforce all the provisions of this article. He shall investigate complaints made to him of

violations of such provisions, and, if he finds that such complaints are well-founded, he shall issue an order directed to the person or corporation complained of requiring such person or corporation to comply with those provisions. If such order is disregarded, the building inspector shall present to the district attorney of the proper county all the facts ascertained by him in regard to the alleged violation and all other papers, documents, or evidence pertaining thereto which he has in his possession. The district attorney to whom such presentation is made shall proceed at once to prosecute the person or corporation for the violations complained of.

Source: L. 13: p. 450, § 4. **C.L.** § 4189. **CSA:** C. 97, § 120. **CRS 53:** § 80-16-4. **C.R.S. 1963:** § 80-13-4.

8-14-105. Penalty for violation. Any person, corporation, company, or association who violates any of the provisions of this article is guilty of a misdemeanor and, upon conviction thereof, shall be fined in a sum of not less than fifty dollars nor more than five hundred dollars for each offense.

Source: L. 13: p. 451, § 5. **C.L.** § 4190. **CSA:** C. 97, § 121. **CRS 53:** § 80-16-5. **C.R.S. 1963:** § 80-13-5.

ARTICLE 14.3

Veterans Employment Programs

PART 1

EMPLOYMENT SERVICES FOR VETERANS PILOT PROGRAM

8-14.3-101 to 8-14.3-103. (Repealed)

Editor's note: (1) This part 1 was added in 2015. For amendments to this part 1 prior to its repeal in 2018, consult the 2017 Colorado Revised Statutes and the Colorado statutory research explanatory note beginning on page vii in the front of this volume.

(2) Section 8-14.3-103 provided for the repeal of this part 1, effective January 1, 2018. (See L. 2016, p. 662.)

PART 2

COLORADO VETERANS' SERVICE-TO-CAREER PROGRAM

8-14.3-201. Short title. The short title of this part 2 is the "Colorado Veterans' Service-to-career Program".

Source: L. 2016: Entire part added, (HB 16-1267), ch. 187, p. 659, § 1, effective August 10. **L. 2018:** Entire section amended, (HB 18-1343), ch. 242, p. 1502, § 1, effective July 1.

8-14.3-201.5. Legislative declaration. (1) The general assembly finds, determines, and declares that:

(a) The pilot program enacted in House Bill 16-1267, which created the Colorado veterans' service-to-career pilot program that authorized nonprofit agencies to partner with work force centers selected by the department to provide veterans and other eligible participants with skills training, internships, work placements, mentorship opportunities, career and professional counseling, and support services, has been successful in increasing the employment rates for veterans, veterans' spouses, and eligible participants; and

(b) The services offered through the pilot program were designed to enhance work force center services not available under the federal act.

(2) The general assembly further finds, determines, and declares that the Colorado veterans' service-to-career pilot program should continue as a program whose goal is to assist veterans, spouses, and eligible participants in seeking, obtaining, and retaining employment.

Source: L. 2018: Entire section added, (HB 18-1343), ch. 242, p. 1502, § 2, effective July 1.

8-14.3-202. Definitions. As used in this part 2, unless the context otherwise requires:

(1) "Act" means the federal "Workforce Innovation and Opportunity Act", Pub.L. 113-128.

(2) "Apprenticeship" means an apprenticeship training program registered with the United States department of labor, office of apprenticeship.

(3) "Department" means the department of labor and employment.

(4) "Eligible participant" means a:

(a) Veteran;

(b) Veteran's spouse;

(c) Veteran's dependent child who is twenty-six years of age or younger and lives in the home of the veteran;

(d) Veteran's caregiver who is eighteen years of age or older and has significant responsibility for managing the well-being of an injured veteran; and

(e) Person who is actively serving in the United States armed forces and who is within six months of being discharged under conditions other than dishonorable or a member of the National Guard or military reserves who has completed initial entry training.

(5) "Integrated service and support center" means a nonprofit center that is affiliated with a work force center and veterans service offices in a centralized location where government agencies, nonprofit organizations, and other entities collaborate to provide services to eligible participants. Services offered may include assistance for eligible participants in securing federal benefits, counseling services, employment support, education, life skills, and wellness support.

(5.5) "Internship" means a training program with a business or nonprofit organization during which the eligible participant receives skills training that could result in future employment in that sector or industry.

(6) "Program" means the Colorado veterans' service-to-career program created in this part 2.

(7) "Spouse" means a veteran's current spouse or former spouse who is currently eligible for veterans' benefits.

(8) "Veteran" means a person who actively served in the United States armed forces and who was discharged or released under conditions other than dishonorable, in accordance with U.S.C. title 38, as amended. "Veteran" includes a person serving or who served in the National Guard or as a reservist.

(8.5) "Work-based learning" means a continuum of activities that occur, in part or in whole, in the workplace, providing the learner with hands-on, real-world work experience.

(9) (a) "Work force center" means a work force center created by a work force development board pursuant to the "Colorado Career Advancement Act", part 2 of article 83 of this title 8.

(b) For purposes of a grant application under section 8-14.3-203, "work force center" also includes a nonprofit entity that:

(I) Has a primary focus of serving veterans; and

(II) Joins with the work force center to submit a joint application.

Source: L. 2016: Entire part added, (HB 16-1267), ch. 187, p. 659, § 1, effective August 10. **L. 2018:** (9) amended, (HB 18-1375), ch. 274, p. 1694, § 2, effective May 29; (1), (4), (5), (6), and (9) amended and (5.5) and (8.5) added, (HB 18-1343), ch. 242, p. 1503, § 3, effective July 1. **L. 2020:** (2) amended, (HB 20-1402), ch. 216, p. 1042, § 9, effective June 30.

Editor's note: Amendments to subsection (9) by HB 18-1343 and HB 18-1375 were harmonized.

8-14.3-203. Colorado veterans' service-to-career program - report. (1) One or more work force centers selected by the department pursuant to the grant program developed by the department in subsection (4) of this section may contract with a nonprofit agency to administer the program. Work force centers selected by the department and the nonprofit agency shall develop and expand programs to provide work force development-related services specifically tailored to the unique needs and talents of eligible participants. The services may include:

(a) Skills training;

(b) Opportunities for apprenticeship or internship placements, including an internship that allows for direct entry of eligible participants;

(c) Opportunities for internship placements for a specified and limited time period as long as the tasks performed by the intern do not replace the tasks currently performed by a paid contractor or employee;

(d) Opportunities for work placements with businesses or other organizations; and

(e) Support services, as needed.

(1.5) The department shall collaborate with stakeholders and, if feasible, develop a grant application form by March 1, 2019, so that a nonprofit agency may submit one application for multiple service centers effective with the fiscal year 2019-20 grant cycle.

(2) (a) If an internship, as allowable, is not fully funded by the employer, the employer and the work force center may share the cost of the hourly wage or stipend for the eligible participant, as determined by the work force center and as permitted under state and federal law.

(b) If an eligible participant is eligible for funding through the act, this funding must be used first. If funding is not available or is limited or if the use of funds is not allowable under the act, the eligible participant may use program funding.

(3) The work force centers selected by the department and the nonprofit agency are encouraged to additionally provide services that include:

(a) Job fairs;

(b) Mentorship opportunities with professionals;

(c) Professional and industry-specific seminars;

(d) Career and professional counseling; and

(e) Counseling on educational and skills training opportunities available to eligible participants.

(4) The department shall develop a grant process so that work force centers may apply for money to administer the program. Each work force center that wishes to administer the program must submit a grant application that:

(a) Describes the current services that the work force center offers and demonstrates that those services:

(I) Do not duplicate services currently provided under the federal act; and

(II) Will complement other services offered under the program;

(b) States how the grant money would enable the work force center to expand its services for the purposes of the program;

(c) Describes businesses or other organizations it is partnering with to provide the necessary services;

(d) Explains how the services will be tailored or specifically marketed to any subgroup of eligible participants, including:

(I) Eligible participants with significant barriers to employment, including those specified in 38 U.S.C. sec. 4100 et seq., such as veterans with bad conduct discharges;

(II) Veterans experiencing homelessness;

(III) Vietnam-era veterans who served for more than one hundred days between 1965 and 1975;

(IV) Eligible participants experiencing addiction;

(V) National Guard and military reserve veterans; and

(VI) Veterans who are not able to enroll under the federal act or who are enrolled under the federal act but could benefit from greater support; and

(e) Addresses any other requirements the department deems necessary.

(5) In selecting work force centers to administer the program, the department shall give preference to a work force center that:

(a) Partners with an agency that is an integrated service and support center for veterans and their families;

(b) Is located in the state of Colorado, in order to serve the highest number of eligible participants;

(c) Has existing programs or partnerships with businesses or organizations in the community to provide services appropriate to the program; and

(d) Has the capacity to provide a wide range of work force development-related services tailored to the unique needs of eligible participants.

(6) (a) Each work force center chosen to receive a grant shall use the money for direct services to eligible participants. Each work force center chosen to receive a grant shall report on the services offered; participation by each subgroup of eligible participants; the program's success measured through gainful employment and participation in skills training or educational programs of eligible participants; and any other requirements that the department deems necessary. Notwithstanding section 24-1-136 (11)(a)(I), the work force center shall submit the report to the department, which shall relay all information from the reports annually to the state, veterans, and military affairs committees of the house of representatives and the senate or to their successor committees.

(b) The department shall develop an evaluation methodology to measure program outcomes and effectiveness prior to initiating the bid process for awarding grants. To the extent feasible, the evaluation process must enable a comparison between programs serving similar populations. It is the intent of the general assembly that the department award the grants no later than January 1, 2019. The grant period may be extended for one year subject to money appropriated by the general assembly. The grant award must include data tracking requirements that will be used to measure outcomes and effectiveness.

(c) Any unspent money remaining in the department's fiscal year 2017-18 appropriation for administrative costs may be used for the purpose of designing an evaluation methodology or contracting out the design. Any unspent money for direct program services remaining as of June 30, 2018, may be used by the programs in effect as of June 30, 2018, for the fiscal year starting July 1, 2018. Unspent money available at the end of each fiscal year rolls over to the next fiscal year to be spent in that year.

(d) In analyzing and reporting on the performance data described in subsections (6)(a) and (6)(b) of this section, the department shall separately account for data pertaining to significant barriers to employment.

Source: L. 2016: Entire part added, (HB 16-1267), ch. 187, p. 660, § 1, effective August 10. **L. 2018:** IP(1), (1)(b), (2), (3)(e), (4), (5), and (6) amended and (1.5) added, (HB 18-1343), ch. 242, p. 1504, § 4, effective July 1.

8-14.3-204. Appropriation. The general assembly may annually appropriate money from the marijuana tax cash fund created in section 39-28.8-501 to the department to be used for the program. The department may use up to five percent of any money appropriated by the general assembly for development and administrative costs incurred by the department pursuant to this section; except that this five-percent limitation does not apply to any contract the department enters into in connection with an evaluation of the program pursuant to section 8-14.3-203 (6). Up to eight percent of the money may also be used by the work force center for administrative costs incurred by the work force center and the nonprofit agency to implement and operate the program.

Source: L. 2016: Entire part added, (HB 16-1267), ch. 187, p. 662, § 1, effective August 10. **L. 2018:** Entire section amended, (HB 18-1343), ch. 242, p. 1506, § 5, effective July 1.

8-14.3-205. Repeal of part. This part 2 is repealed, effective January 1, 2024.

Source: L. 2016: Entire part added, (HB 16-1267), ch. 187, p. 662, § 1, effective August 10. **L. 2018:** Entire section amended, (HB 18-1343), ch. 242, p. 1507, § 6, effective July 1.

ARTICLE 14.4

Worker Rights Related to a Public Health Emergency

Editor's note: Section 4 of chapter 276 (HB 20-1415), Session Laws of Colorado 2020, provides that the act adding this article 14.4 applies to conduct occurring on or after July 11, 2020.

8-14.4-101. Definitions. As used in this article 14.4, unless the context otherwise requires:

(1) "Department" means the department of labor and employment.

(2) "Division" means the division of labor standards and statistics in the department.

(3) "Principal" means:

(a) An "employer" as set forth in the federal "Fair Labor Standards Act of 1938", 29 U.S.C. sec. 203 (d);

(b) A foreign labor contractor and a migratory field labor contractor or crew leader;

(c) The state of Colorado, local governments, and political subdivisions of the state as defined in section 1-7.5-103 (6); and

(d) An entity that contracts with five or more independent contractors in the state each year.

(4) "Public health emergency" means:

(a) A public health order issued by a state or local public health agency; or

(b) A disaster emergency declared by the governor based on a public health concern.

(5) "Worker" means:

(a) An employee as defined in section 8-4-101 (5); or

(b) A person who works for an entity that contracts with five or more independent contractors in the state each year.

Source: L. 2020: Entire article added, (HB 20-1415), ch. 276, p. 1351, § 1, effective July 11.

8-14.4-102. Prohibition against discrimination based on claims related to a public health emergency. (1) A principal shall not discriminate, take adverse action, or retaliate against any worker based on the worker, in good faith, raising any reasonable concern about workplace violations of government health or safety rules, or about an otherwise significant workplace threat to health or safety, related to a public health emergency to the principal, the principal's agent, other workers, a government agency, or the public if the principal controls the workplace conditions giving rise to the threat or violation.

(2) (a) A principal shall not require or attempt to require a worker to sign a contract or other agreement that would limit or prevent the worker from disclosing information about

workplace health and safety practices or hazards related to a public health emergency or to otherwise abide by a workplace policy that would limit or prevent such disclosures.

(b) A contract or agreement that violates subsection (2)(a) of this section is void and unenforceable as contrary to the public policy of this state. A principal's attempt to impose such a contract or agreement is an adverse action in violation of this article 14.4.

(3) A principal shall not discriminate, take adverse action, or retaliate against a worker based on the worker voluntarily wearing at the worker's workplace the worker's own personal protective equipment, such as a mask, faceguard, or gloves, if the personal protective equipment:

(a) Provides a higher level of protection than the equipment provided by the principal;

(b) Is recommended by a federal, state, or local public health agency with jurisdiction over the worker's workplace; and

(c) Does not render the worker incapable of performing the worker's job or prevent a worker from fulfilling the duties of the worker's position.

(4) A principal shall not discriminate, take adverse action, or retaliate against a worker based on the worker opposing any practice the worker reasonably believes is unlawful under this article 14.4 or for making a charge, testifying, assisting, or participating in any manner in an investigation, proceeding, or hearing as to any matter the worker reasonably believes to be unlawful under this article 14.4.

(5) This section does not apply to a worker who discloses information:

(a) That the worker knows to be false; or

(b) With reckless disregard for the truth or falsity of the information.

(6) Nothing in this section authorizes a worker to share individual health information that is otherwise prohibited from disclosure under state or federal law.

Source: L. 2020: Entire article added, (HB 20-1415), ch. 276, p. 1352, § 1, effective July 11.

8-14.4-103. Principal post notice of rights - rules. (1) A principal shall post notice of a worker's rights under this article 14.4 in a conspicuous location on the principal's premises.

(2) The division shall promulgate rules to establish the form of the notice required in subsection (1) of this section.

Source: L. 2020: Entire article added, (HB 20-1415), ch. 276, p. 1353, § 1, effective July 11.

8-14.4-104. Relief for aggrieved person. (1) A person may seek relief for a violation of this article 14.4 by:

(a) Filing a complaint with the division pursuant to section 8-14.4-105; or

(b) Bringing an action in district court pursuant to section 8-14.4-106.

(2) A person shall exhaust administrative remedies pursuant to section 8-14.4-105 prior to bringing an action in court.

Source: L. 2020: Entire article added, (HB 20-1415), ch. 276, p. 1353, § 1, effective July 11.

8-14.4-105. Enforcement by the division - rules. (1) (a) Within two years after an alleged violation of this article 14.4, an aggrieved individual or whistleblower may file a complaint against a principal with the division as specified in this subsection (1).

(b) Until the date the division makes a complaint form publicly available:

(I) An aggrieved individual or whistleblower may file a complaint of a violation of this article 14.4 with the division in any form, by mail or electronic mail;

(II) The division may later require the aggrieved individual or whistleblower to complete the division's complaint form; and

(III) The filing date is the date of the claimant's original filing, even if the division later requests additional information or completion of the division's complaint form.

(c) After the division makes a complaint form publicly available, an aggrieved individual or whistleblower may file a complaint only by completing the required form.

(2) The division shall either:

(a) Investigate alleged principal violations of, or interference with rights or responsibilities under, this article 14.4 and complaints filed with the division by aggrieved individuals and whistleblowers; or

(b) Authorize an aggrieved individual or whistleblower to proceed with an action in district court as provided in sections 8-14.4-106 and 8-14.4-107. A person who receives authorization pursuant to this subsection (2)(b) is considered to have exhausted administrative remedies.

(3) In an investigation of alleged principal retaliation or interference with worker rights, if an investigation yields a determination that:

(a) A violation has occurred, the division may award reasonable attorney fees and impose fines pursuant to section 8-1-140 (2);

(b) Rights of multiple workers have been violated, the violation as to each worker is a separate violation for purposes of fines, penalties, or other remedies; and

(c) A worker was fired, voluntarily left employment, or experienced a reduction in pay due to a principal's violation, the determination may include an order to:

(I) Reinstate or rehire the worker and pay the worker's back pay until reinstatement or rehiring; or

(II) Pay the worker front pay for a reasonable period after the order, if reinstatement or rehiring is determined not to be feasible.

(4) Determinations made by the division under this section are appealable pursuant to section 8-4-111.5 and rules promulgated by the department regarding appeals and strategic enforcement.

Source: L. 2020: Entire article added, (HB 20-1415), ch. 276, p. 1353, § 1, effective July 11.

8-14.4-106. Relief authorized. (1) An aggrieved individual may, within ninety days after exhausting administrative remedies pursuant to section 8-14.4-105, commence an action in district court against a principal for a violation of this article 14.4.

(2) A court may order affirmative relief that the court determines to be appropriate, including the following relief, against a respondent who is found to have engaged in a discriminatory, adverse, or retaliatory employment practice prohibited by this article 14.4:

(a) Reinstatement or rehiring of a worker, with or without back pay;

(b) The greater of either:

(I) Ten thousand dollars; or

(II) Any lost pay resulting from the violation, including back pay for a reinstated or rehired worker and front pay for a worker who is not reinstated or rehired; and

(c) Any other equitable relief the court deems appropriate.

(3) (a) In addition to the relief available pursuant to subsection (2) of this section, in a civil action brought by a plaintiff under this article 14.4 against a defendant who is found to have engaged in an intentional discriminatory, adverse, or retaliatory employment practice, the plaintiff may recover compensatory and punitive damages as specified in this subsection (3).

(b) A plaintiff may recover punitive damages against a defendant if the plaintiff demonstrates by clear and convincing evidence that the defendant engaged in a discriminatory, adverse, or retaliatory employment practice with malice or reckless indifference to the rights of the plaintiff. However, if the defendant demonstrates good-faith efforts to comply with this article 14.4 and to prevent discriminatory, adverse, and retaliatory employment practices in the workplace, the court shall not award punitive damages against the defendant.

(c) A plaintiff may recover compensatory damages against a defendant for other pecuniary losses, emotional pain and suffering, inconvenience, mental anguish, loss of enjoyment of life, and other nonpecuniary losses.

(d) In determining the appropriate level of damages to award a plaintiff who has been the victim of an intentional discriminatory, adverse, or retaliatory employment practice, the court shall consider the size and assets of the defendant and the egregiousness of the discriminatory, adverse, or retaliatory employment practice.

(e) Compensatory or punitive damages awarded pursuant to this subsection (3) are in addition to, and do not include, front pay, back pay, interest on back pay, or any other type of relief awarded pursuant to subsection (2) of this section.

(4) If a plaintiff in a civil action filed under this article 14.4 seeks compensatory or punitive damages pursuant to subsection (3) of this section, any party to the civil action may demand a trial by jury.

(5) The court shall award reasonable attorney fees to a plaintiff who prevails in an action brought pursuant to this section.

Source: L. 2020: Entire article added, (HB 20-1415), ch. 276, p. 1355, § 1, effective July 11.

8-14.4-107. Whistleblower enforcement - qui tam - definition. (1) As used in this section, "whistleblower" means a worker with knowledge of an alleged violation of this article 14.4, or the worker's representative.

(2) (a) A whistleblower who has exhausted the administrative remedies pursuant to section 8-14.4-105 may bring a civil action against a principal for a violation of this article 14.4 on behalf of the state in district court pursuant to this section. The state may intervene in the action to prosecute in its own name.

(b) At the time that the action is filed, the whistleblower shall give written notice to the division of the specific provisions of this article 14.4 alleged to have been violated.

(c) If the court finds that a violation has occurred, the court may enter a judgment against the principal of not less than one hundred dollars and not more than one thousand dollars for each violation, and for appropriate injunctive and equitable relief. The court shall award the whistleblower reasonable attorney fees. The attorney fees are not subject to the distribution specified in subsection (3) of this section.

(3) The proceeds of any judgment entered pursuant to this section shall be distributed as follows:

(a) Seventy-five percent to the division for enforcement of this article 14.4; and

(b) Twenty-five percent to the first whistleblower who filed the action.

(4) The right to bring an action under this section shall not be impaired by any private contract. An action under this section shall be tried promptly, without regard to concurrent adjudication of private claims.

Source: L. 2020: Entire article added, (HB 20-1415), ch. 276, p. 1356, § 1, effective July 11.

8-14.4-108. Rulemaking. The division may promulgate rules necessary to implement this article 14.4.

Source: L. 2020: Entire article added, (HB 20-1415), ch. 276, p. 1356, § 1, effective July 11.

Workers' Compensation Cost Containment

Cross references: For the "Workers' Compensation Act of Colorado", see articles 40 to 47 of this title.

ARTICLE 14.5

Cost Containment

8-14.5-101. Short title. This article shall be known and may be cited as the "Workers' Compensation Cost Containment Act".

Source: L. 89: Entire article added, p. 376, § 1, effective July 1. **L. 90:** Entire section amended, p. 556, § 4, effective July 1.

8-14.5-102. Legislative declaration. The general assembly hereby finds and declares that any adjustments to premiums for workers' compensation insurance be granted on the basis of equity, rate adequacy, fairness, and insurer compliance with Colorado insurance rating laws. The general assembly further finds and declares that notwithstanding the granting of different rates to insureds for their experience modification, participation in return-to-work programs, and premium volume discounts not exceeding fifteen percent, any other premium adjustments should be principally weighted in a manner primarily encouraging the adoption and successful

implementation by insureds of effective workplace safety programs mainly encompassing risk management and medical cost containment procedures.

Source: L. 89: Entire article added, p. 376, § 1, effective July 1. **L. 90:** Entire section amended, p. 556, § 5, effective July 1. **L. 93:** Entire section amended, p. 2083, § 1, effective July 1.

8-14.5-103. Definitions. As used in this article, unless the context otherwise requires:

(1) "Approved program" means a cost containment or risk management program approved by the board.

(2) "Board" means the workers' compensation cost containment board established pursuant to section 8-14.5-104.

(3) "Certified program" means a cost containment or risk management program which has been implemented for a period of at least one year and certified by the board.

(3.5) "Commissioner" means the insurance commissioner, appointed pursuant to section 10-1-104, C.R.S.

(4) "Department" means the department of labor and employment.

(5) "Director" means the director of the division.

(6) "Division" means the division of workers' compensation in the department of labor and employment.

(7) "High risk employer" means any employer classified in the upper ten percent of the insurance rate schedule in the Colorado workers' compensation insurance system.

(8) "Managed care" shall have the meaning set forth in section 8-42-101 (3.6)(p)(I)(B).

(9) "Workplace safety program" means those programs offered by insurance carriers authorized to do business in this state for purposes of workers' compensation insurance policies and implemented by employers to promote cost containment and risk management of workplace safety hazards.

Source: L. 89: Entire article added, p. 376, § 1, effective July 1. **L. 90:** (2) amended, p. 1836, § 4, effective May 31; (2) amended, p. 556, § 6, effective July 1. **L. 93:** (3) amended, p. 1723, § 1, effective June 6; (3.5) and (7) to (9) added, p. 2083, § 2, effective July 1.

Editor's note: Amendments to subsection (2) by House Bill 90-1160 and House Bill 90-1316 were harmonized.

8-14.5-104. Creation of board. (1) There is hereby created in the division the workers' compensation cost containment board, to be composed of seven members: The commissioner of insurance, the chief executive officer of Pinnacol Assurance, and five members appointed by the governor and confirmed by the senate. Appointed members of the board shall be chosen among the following: Employers or their designated representatives engaged in businesses having workers' compensation insurance rates in the upper five percent of the rate schedule, actuaries or executives with risk management experience in the insurance industry, or employers who have demonstrated good risk management experience with respect to their workers' compensation insurance.

(2) The board shall exercise its powers and perform its functions under the department and the director of the division as if the same were transferred to the department by a **type 2** transfer, as such transfer is defined in the "Administrative Organization Act of 1968", article 1 of title 24, C.R.S.

(3) The appointed members of the board shall serve for terms of three years and may be reappointed; except that, of the members first appointed, two shall serve for terms of three years; two shall serve for terms of two years, and one shall serve for a term of one year. The chief executive officer of Pinnacol Assurance and the commissioner of insurance shall serve continuously.

(4) Members of the board shall receive no compensation but shall be reimbursed for actual and necessary traveling and subsistence expenses incurred in the performance of their official duties as members of the board.

Source: L. 89: Entire article added, p. 377, § 1, effective July 1. **L. 90:** (1) amended, p. 557, § 7, effective July 1. **L. 2002:** (1) and (3) amended, p. 1880, § 25, effective July 1.

8-14.5-105. Powers and duties of board - rules. (1) The board shall have the following powers and duties:

(a) To establish model cost containment and risk management programs for selected classifications in the upper ten percent of the insurance rate schedule under the Colorado workers' compensation insurance program;

(b) To adopt standards for the approval of particular cost containment and risk management programs submitted by community, technical, or local district colleges or by employers in those selected high risk classifications;

(c) To receive, evaluate, and certify cost containment and risk management programs implemented by community, technical, or local district colleges or by employers in those selected high risk classifications for a period of at least one year;

(d) To promote cost containment and risk management training by community, technical, or local district colleges, employers, groups of employers, or trade associations;

(e) To review annually the classifications in the upper ten percent of the insurance rate schedule under the Colorado workers' compensation insurance program for inclusion in the cost containment program;

(f) To set the qualifications for technical personnel to assist community, technical, and local district colleges and employers in establishing risk management and cost containment programs;

(g) To disseminate information regarding the types of workers' compensation insurance policies available;

(h) To adopt such rules and regulations as may be necessary to carry out the purposes of this article.

Source: L. 89: Entire article added, p. 377, § 1, effective July 1. **L. 90:** (1)(a), (1)(e), and (1)(g) amended, p. 557, § 8, effective July 1. **L. 91:** Entire section amended, p. 1353, § 1, effective April 20.

8-14.5-106. Duties of director. (1) The director shall have the following powers and duties:

(a) To provide technical advice to the board;

(b) To provide technical advice and assistance to community, technical, or local district colleges, employers, groups of employers, or trade associations with respect to the development and implementation of cost containment and risk management programs;

(c) To publish, as may be appropriate, documents relating to the development and implementation of cost containment and risk management programs;

(d) To maintain records of all proceedings of the board, including the evaluation of proposals for cost containment and risk management programs submitted by employers and by community, technical, or local district colleges;

(e) To maintain records of all employers and community, technical, or local district colleges with certified programs.

Source: L. 89: Entire article added, p. 378, § 1, effective July 1. **L. 91:** Entire section amended, p. 1354, § 2, effective April 20.

8-14.5-107. Cost containment certification. Any employer complying with an approved program for at least one year may present evidence of such compliance to the board and petition the board to certify its program. The names of such certified employers shall be made available on a periodic basis to bona fide insurance carriers on file with the division.

Source: L. 89: Entire article added, p. 378, § 1, effective July 1.

8-14.5-107.5. Workplace safety programs - study by commissioner. (1) The commissioner shall undertake a full study of current workplace safety, risk management, and cost containment programs offered by insurers, including Pinnacol Assurance, a review and analysis of the various incentives used by insurers to obtain policyholder participation, including any premium adjustment programs in use, and shall evaluate other possible programs and incentives that could be used by insurers to expand workplace safety programs and reward policyholder participation. The commissioner shall consult with the Colorado department of labor and employment in conducting the study. Such study, review and analysis, and evaluation shall include but not be limited to the following:

(a) Whether or not by a date certain, all insurers including Pinnacol Assurance issuing workers' compensation insurance policies in this state shall offer all insureds in the ten most populous counties a managed care plan featuring a designated medical provider;

(b) Whether or not by a date certain, if it is in the best interest of employers and employees, all insurers including Pinnacol Assurance issuing workers' compensation insurance policies in this state shall offer to all or some selected classes of insureds some type of basic workplace safety program;

(c) Whether or not the board or the commissioner should continue providing certification of workplace safety programs or whether such certification should be provided by insurers for insureds;

(d) Whether or not by July 1, 1995, the commissioner should promulgate regulations concerning the granting of premium adjustments for an insured's participation and implementation of a basic workplace safety program or managed care program;

(e) The participation by insureds in existing workplace safety programs offered by insurers and the methods by which insurers offer such programs;

(f) Insurer compliance with deductible provisions;

(g) Insurer compliance with the provisions of part 4 of article 4 of title 10, C.R.S., regarding the current design and use of any premium adjustment, rate deviation, premium discount, retro-rate, scheduled adjustment, or other type of financial plan and their effect on the fairness and reasonableness of rates for those insureds not qualifying for experience or schedule rating;

(h) The efficacy of reducing the premium dollar volume needed for an insured to become experience rated;

(i) A cost benefit analysis of implementation of workplace safety programs.

(2) (a) Repealed.

(b) Insurers shall make all necessary information and records pertaining to workplace safety programs of such insurers available to the commissioner in carrying out the study required by subsection (1) of this section. The reasonable costs of such study shall be borne by insurers, including Pinnacol Assurance, as determined by the commissioner based on the total cost of such study.

Source: L. 93: Entire section added, p. 2084, § 3, effective July 1. **L. 97:** (2)(a) repealed, p. 1474, § 6, effective June 3. **L. 2002:** IP(1), (1)(a), (1)(b), and (2)(b) amended, p. 1881, § 26, effective July 1.

8-14.5-108. Cost containment fund - creation. All moneys collected for cost containment pursuant to section 8-14.5-109 or 8-44-112 (1)(b)(III) shall be transmitted to the state treasurer who shall credit the same to the cost containment fund, which fund is hereby created. All moneys credited to said fund and all interest earned thereon shall be subject to appropriation by the general assembly to pay the direct and indirect costs of the cost containment program, and said moneys shall remain in such fund for such purposes and shall not revert to the general fund or any other fund.

Source: L. 89: Entire article added, p. 378, § 1, effective July 1. **L. 90:** Entire section amended, p. 1841, § 24, effective July 1.

8-14.5-109. Grants-in-aid - cooperative agreements. The division may receive grants-in-aid from any agency of the United States and may cooperate and enter into agreements with any agency of the United States, any agency of any other state, and any other agency of this state or its political subdivisions, for the purpose of carrying out the provisions of this article.

Source: L. 89: Entire article added, p. 378, § 1, effective July 1.

8-14.5-110. Repeal of article. (Repealed)

Source: L. 89: Entire article added, p. 378, § 1, effective July 1. **L. 92:** Entire section repealed, p. 1810, § 1, effective March 16.

Apprenticeship and Training

ARTICLE 15

Pre-apprenticeships and Apprenticeships

8-15-101. (Repealed)

Source: L. 2016: Entire article RC&RE, (HB 16-1287), ch. 224, p. 857, § 2, effective August 10.

Editor's note: (1) This article was numbered as article 1 of chapter 9, C.R.S. 1963. It was repealed in 1987 and was subsequently recreated and reenacted in 2016, resulting in the addition, relocation, or elimination of sections as well as subject matter. For amendments to this article prior to 1987, consult the Colorado statutory research explanatory note beginning on page vii in the front of this volume.

(2) Subsection (5) provided for the repeal of this section, effective July 1, 2017. (See L. 2016, p. 857.)

ARTICLE 15.5

Displaced Homemakers

Editor's note: This article was repealed in 1979 and was subsequently recreated and reenacted in 1980, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this article prior to 1979, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

Law reviews: For article, "Colorado's Displaced Homemakers Act", see 27 Colo. Law. 129 (June 1998).

8-15.5-101. Short title. This article shall be known and may be cited as the "Displaced Homemakers Act".

Source: L. 80: Entire article RC&RE, p. 452, § 1, effective July 1.

8-15.5-102. Definitions. As used in this article, unless the context otherwise requires:

(1) "Department" means the department of labor and employment.

(2) "Displaced homemaker" means an individual who:

(a) Has worked in the home, providing unpaid household services for family members for a substantial number of years;

(b) Is not gainfully employed;

(c) Has had, or would have, difficulty finding employment; and

(d) (I) Has depended on the income of a family member and has lost that income; or

(II) Has depended on government assistance as the parent of dependent children, but who is no longer eligible for such assistance, or is supported, as the parent of minor children, by government assistance, but whose children are within two years of reaching the age of eighteen years.

(3) "Executive director" means the executive director of the department of labor and employment.

Source: L. 80: Entire article RC&RE, p. 452, § 1, effective July 1.

8-15.5-103. Multipurpose service centers for displaced homemakers. (1) The executive director may establish multipurpose service centers for displaced homemakers and is authorized to enter into contracts with and make grants to agencies or organizations, public or private, to establish, organize, and administer the various programs enumerated in section 8-15.5-104.

(2) Each service center shall include the following services:

(a) Job counseling services which shall:

(I) Be specifically designed for displaced homemakers; and

(II) Operate to counsel displaced homemakers with respect to appropriate job opportunities;

(b) Job training and job placement services which shall:

(I) Develop, by working with state and local government agencies and private employers, training and placement programs for jobs in the public and private sectors;

(II) Assist displaced homemakers in gaining admission to existing public and private job-training programs and opportunities; and

(III) Assist in identifying community needs and creating new jobs in the public and private sectors;

(c) Health education and counseling services in cooperation with existing health programs with respect to:

(I) General principles of preventive health care;

(II) Health care consumer education, particularly in the selection of physicians and health care services, including, but not limited to, health maintenance organizations and health insurance;

(III) Family health care and nutrition;

(IV) Substance use disorders; and

(V) Other related health care matters;

(d) Financial management services which provide information and assistance with respect to insurance, taxes, estate and probate problems, mortgages, loans, and other related financial matters;

(e) Educational services, including:

(I) Outreach and information about courses offering credit through secondary or postsecondary education programs, including bilingual programming where appropriate; and

(II) Information about such other programs which are determined by the executive director to be of interest and benefit to displaced homemakers;

(f) Legal counseling and referral services; and

(g) Outreach and information services with respect to employment, education, health, public assistance, and unemployment assistance programs which the executive director determines would be of interest and benefit to displaced homemakers.

(3) Supervisory, technical, and administrative positions relating to centers established under this article shall, to the maximum extent feasible, be filled by displaced homemakers.

Source: L. 80: Entire article RC&RE, p. 453, § 1, effective July 1. **L. 83:** (1) amended, p. 395, § 2, effective June 3. **L. 2017:** (2)(c)(IV) amended, (SB 17-242), ch. 263, p. 1263, § 33, effective May 25.

Cross references: For the legislative declaration in SB 17-242, see section 1 of chapter 263, Session Laws of Colorado 2017.

8-15.5-104. Selection and administration of centers. (1) In selecting sites for the centers established under section 8-15.5-103, the executive director shall consider:

(a) The location of any existing facilities for displaced homemakers and any existing services similar to those listed in section 8-15.5-103 which might be incorporated into a center;

(b) The needs of each region of the state for a center;

(c) The needs of both urban and rural communities.

(2) The executive director shall select a public or private organization to administer each center. The selection of such an organization shall be made after consultation with local government agencies and shall take into consideration the experience and capability of such organizations in administering the services to be provided by each center.

(3) The executive director shall consult and cooperate with the secretary or director of such agencies in the executive branch of the federal and state governments as the executive director considers appropriate to facilitate the establishment of centers under this article with existing state or federal programs of a similar nature.

Source: L. 80: Entire article RC&RE, p. 454, § 1, effective July 1. **L. 83:** (2) amended, p. 396, § 3, effective June 3.

8-15.5-105. Evaluation. (1) The executive director, in cooperation with the administrator of each center, and in consultation with appropriate heads of executive agencies, shall prepare and furnish to the general assembly evaluations of the centers established under this article, including:

(a) A thorough assessment of each center;

(b) Recommendations covering the administration and expansion of such centers; and

(c) Data on the numbers of persons referred to and enrolled in the programs enumerated in section 8-15.5-103, and data on job placements and employment of persons enrolled in such programs.

(2) No later than January 1, 1981, the executive director shall submit to the general assembly an evaluation pursuant to this section. Subsequent evaluations shall be made every two years.

(3) The executive director, in consultation with the appropriate heads of executive agencies, shall prepare and furnish to the general assembly a study to determine the feasibility of and appropriate procedure for placing displaced homemakers in:

(a) Programs established under the federal "Workforce Innovation and Opportunity Act", 29 U.S.C. sec. 3101 et seq.;

(b) Work incentive programs established under section 432 (b)(1) of the federal "Social Security Act";

(c) Related federal and state employment, education, and health assistance programs; and

(d) Programs established or benefits provided under federal and state unemployment compensation laws by consideration of full-time homemakers as provided eligible for such benefits or programs.

Source: L. 80: Entire article RC&RE, p. 454, § 1, effective July 1. **L. 2009:** (3)(a) amended, (SB 09-292), ch. 369, p. 1939, § 5, effective August 5. **L. 2016:** (3)(a) amended, (HB 16-1302), ch. 183, p. 626, § 1, effective May 19.

Editor's note: (1) The "Comprehensive Employment and Training Act of 1973", referenced in subsection (3)(a), was repealed in 1982. For similar provisions, see the "Workforce Investment Act of 1998", 29 U.S.C. § 2801 et seq.

(2) Section 432 of the "Social Security Act", referenced in subsection (3)(b), was repealed in 1988. For a similar provision, see 42 U.S.C. § 632a.

8-15.5-106. Advisory body. The executive director shall establish an advisory body to the department which shall consist of members who are representative of displaced homemakers, local service deliverers, appropriate state agencies, and the general public. The advisory body shall provide recommendations to the executive director regarding the planning, operation, and evaluation of the activities mandated by this article.

Source: L. 80: Entire article RC&RE, p. 455, § 1, effective July 1.

8-15.5-107. Rules and regulations. The executive director shall promulgate rules and regulations to govern the eligibility of persons for the job training and other programs of the multipurpose service center, the level of stipends for the job training programs described in section 8-15.5-103 (2)(b), a sliding fee scale for the service programs described in section 8-15.5-103 (2)(c) to (2)(g), and such other matters as the executive director deems necessary.

Source: L. 80: Entire article RC&RE, p. 455, § 1, effective July 1.

8-15.5-108. Displaced homemakers fund - creation. (1) There is hereby created in the state treasury the displaced homemakers fund. All fees collected pursuant to section 14-10-120.5, C.R.S., shall be deposited in said fund. All moneys in the fund shall be subject to annual

appropriation by the general assembly and, commencing July 1, 1980, shall be available for carrying out the purposes of this article; except that, if the amount in said fund from fees collected pursuant to section 14-10-120.5, C.R.S., exceeds one hundred forty-five thousand dollars in any fiscal year, the excess of one hundred forty-five thousand dollars shall revert to the general fund.

(2) The executive director may apply for and accept any funds, grants, gifts, or services made available by any agency or department of the federal government or any private agency or individual, which funds, grants, gifts, or services shall be used to carry out the total program of this article. Funds and grants received pursuant to this subsection (2) shall be placed in the displaced homemakers fund in a separate account and shall not be included in computing the amount that will revert to the general fund pursuant to subsection (1) of this section.

Source: L. 80: Entire article RC&RE, p. 455, § 1, effective July 1. **L. 82:** (1) amended, p. 233, § 1, effective April 23. **L. 93:** (1) amended, p. 1515, § 18, effective June 6.

Public Works

ARTICLE 16

Rate of Wages on Public Works

8-16-101. (Repealed)

Source: L. 85: Entire article repealed, p. 340, § 1, effective June 13.

Editor's note: This article was numbered as article 17 of chapter 80, C.R.S. 1963. For amendments to this article prior to its repeal in 1985, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

ARTICLE 17

Colorado Labor on Public Works

8-17-101. Colorado labor employed on public works - definitions. (1) Whenever any public works project financed in whole or in part by funds of the state, counties, school districts, or municipalities of the state of Colorado are undertaken in this state, Colorado labor shall be employed to perform at least eighty percent of the work. The governmental body financing a public works project shall waive the eighty percent requirement if there is reasonable evidence to demonstrate insufficient Colorado labor to perform the work of the project and if compliance with this article would create an undue burden that would substantially prevent a project from proceeding to completion. A governmental body that allows a waiver pursuant to this subsection (1) shall post notice of the waiver and a justification for the waiver on its website. A governmental body shall not impose contractual damages on a contractor for a delay in work due to the waiver process.

(2) As used in this article 17:

(a) "Colorado labor" means any person who is a resident of the state of Colorado, at the time of the public works project, without discrimination as to race, color, creed, sex, sexual orientation, marital status, national origin, ancestry, age, or religion except when sex or age is a bona fide occupational qualification. A resident of the state of Colorado is a person who can provide a valid Colorado driver's license, a valid Colorado state-issued photo identification, or documentation that he or she has resided in Colorado for the last thirty days.

(b) "Public works project" has the same meaning as "public project" as defined in section 24-103-908 (1).

Source: L. 33: p. 660, § 1. **CSA:** C. 138, § 263. **L. 39:** p. 473, § 1. **CRS 53:** § 80-21-1. **C.R.S. 1963:** § 80-18-1. **L. 77:** Entire section amended, p. 446, § 1, effective May 26. **L. 2008:** Entire section amended, p. 1599, § 12, effective May 29. **L. 2013:** Entire section amended, (HB 13-1292), ch. 266, p. 1395, § 2, effective May 24. **L. 2015:** (2)(b) amended, (SB 15-264), ch. 259, p. 942, § 8, effective August 5. **L. 2017:** IP(2) and (2)(b) amended, (HB 17-1051), ch. 99, p. 349, § 60, effective August 9.

Cross references: (1) For the legislative declaration contained in the 2008 act amending this section, see section 1 of chapter 341, Session Laws of Colorado 2008.

(2) In 2013, this section was amended by the "Keep Jobs In Colorado Act of 2013". For the short title, see section 1 of chapter 266, Session Laws of Colorado 2013.

8-17-102. Contracts to provide for preference of Colorado labor. All contracts let for public works financed in whole or in part by funds of the state, counties, school districts, or municipalities of the state of Colorado shall contain provisions for the preference in employment of Colorado labor.

Source: L. 33: p. 660, § 2. **CSA:** C. 138, § 264. **CRS 53:** § 80-21-2. **C.R.S. 1963:** § 80-18-2.

8-17-103. Penalty for violation. (Repealed)

Source: L. 33: p. 660, § 2. **CSA:** C. 138, § 264. **CRS 53:** § 80-21-2. **C.R.S. 1963:** § 80-18-2. **L. 2013:** Entire section repealed, (HB 13-1292), ch. 266, p. 1396, § 3, effective May 24.

Cross references: In 2013, this section was repealed by the "Keep Jobs In Colorado Act of 2013". For the short title, see section 1 of chapter 266, Session Laws of Colorado 2013.

8-17-104. Enforcement - violation - penalties - Colorado labor enforcement cash fund - creation. (1) The department of labor and employment shall enforce the requirements of this article in the event of a complaint alleging a potential violation of the requirements of this article. In connection with the department's duty to enforce the requirements of this article, the department shall receive complaints about potential violations of such requirements, initiate investigations based on such complaints, and impose penalties for the violation of the

requirements of this article pursuant to subsection (2) of this section. The department shall not investigate or take any other action regarding a complaint filed more than ninety days after the project has been finalized.

(2) (a) After conducting an investigation of a complaint alleging a violation of the provisions of this article, if the department of labor and employment determines that a contractor has knowingly violated the requirements of this article by importing labor in excess of that permitted pursuant to section 8-17-101 (1), the executive director of the department of labor and employment or the executive director's designee shall impose a fine on such contractor as follows:

(I) For the first violation, five thousand dollars or an amount equal to one percent of the cost of the contract, whichever is less;

(II) For the second violation, ten thousand dollars or an amount equal to one percent of the cost of the contract, whichever is less; or

(III) For the third violation and any violation thereafter, twenty-five thousand dollars or an amount equal to one percent of the cost of the contract, whichever is less.

(b) When the department of labor and employment receives a complaint, it shall notify the contractor of the complaint, but shall commence the investigation only at the completion of the project. The department shall complete any investigation in response to a complaint within ninety days of the date that the department began the investigation. Compliance shall be measured over the entirety of the completed project.

(c) If the department of labor and employment has imposed three fines on a contractor pursuant to paragraph (a) of this subsection (2) within five years and finds the violations to be egregious, the executive director of the department of labor and employment or the executive director's designee may initiate the process to debar the contractor pursuant to section 24-109-105, C.R.S.

(d) The executive director of the department of labor and employment may dismiss a complaint in his or her discretion if, after conducting an investigation pursuant to this section, the department determines that the circumstances that led to the complaint were the result of a minor paperwork violation.

(3) A contractor who is found to be in violation of the provisions of this article may appeal such finding to the executive director of the department of labor and employment. The executive director or the executive director's designee shall hold a hearing to review such notice or order and take final action in accordance with article 4 of title 24, C.R.S., and may either conduct the hearing personally or appoint an administrative law judge from the department of personnel. Final agency action is subject to judicial review pursuant to article 4 of title 24, C.R.S.

(4) The revenue collected from the fines imposed pursuant to subsection (2) of this section shall be transmitted to the state treasurer, who shall credit the same to the Colorado labor enforcement cash fund, which is hereby created. The general assembly shall make appropriations from the fund as necessary to cover the direct and indirect costs of the department of labor and employment in connection with the requirements of this article. All moneys not expended or encumbered and all interest earned on the investment or deposit of moneys in the fund remain in the fund and do not revert to the general fund or any other fund at the end of any fiscal year.

(5) The requirements of this article may not be enforced through a private right of action.

Source: L. 2013: Entire section added, (HB 13-1292), ch. 266, p. 1396, § 4, effective May 24.

Cross references: In 2013, this section was added by the "Keep Jobs In Colorado Act of 2013". For the short title, see section 1 of chapter 266, Session Laws of Colorado 2013.

8-17-105. Compliance standard. Compliance with the requirements of this article shall be calculated on the total taxable wages and fringe benefits, minus any per diem payments, paid to workers employed directly on the site of the project and who satisfy the definition of Colorado labor.

Source: L. 2013: Entire section added, (HB 13-1292), ch. 266, p. 1398, § 4, effective May 24.

Cross references: In 2013, this section was added by the "Keep Jobs In Colorado Act of 2013". For the short title, see section 1 of chapter 266, Session Laws of Colorado 2013.

8-17-106. Rules. (1) The executive director of the department of labor and employment shall promulgate rules for the implementation of this article. Such rules shall be promulgated in accordance with the "State Administrative Procedure Act", article 4 of title 24, C.R.S., and must include, but need not be limited to:

(a) A procedure for filing a complaint alleging that a contractor is in violation of the provisions of this article;

(b) A procedure for the uniform investigation of any complaint alleging a violation of the provisions of this article; and

(c) A procedure for filing an appeal pursuant to section 8-17-104 (3).

Source: L. 2013: Entire section added, (HB 13-1292), ch. 266, p. 1398, § 4, effective May 24.

Cross references: In 2013, this section was added by the "Keep Jobs In Colorado Act of 2013". For the short title, see section 1 of chapter 266, Session Laws of Colorado 2013.

8-17-107. Federal and state law. Nothing in this article applies to any project that receives federal moneys. In addition, nothing in this article contravenes any existing treaty, law, agreement, or regulation of the United States. Contracts entered into in accordance with any treaty, law, agreement, or regulation of the United States do not violate this article to the extent of that accordance. The requirements of this article are suspended if such requirement would contravene any treaty, law, agreement, or regulation of the United States, or would cause denial of federal moneys or preclude the ability to access federal moneys that would otherwise be available.

Source: L. 2013: Entire section added, (HB 13-1292), ch. 266, p. 1398, § 4, effective May 24.

Cross references: In 2013, this section was added by the "Keep Jobs In Colorado Act of 2013". For the short title, see section 1 of chapter 266, Session Laws of Colorado 2013.

ARTICLE 17.5

Illegal Aliens - Public Contracts for Services

Law reviews: For article, "2006 Immigration Legislation in Colorado", see 35 Colo. Law. 79 (Oct. 2006); for article, "Colorado Among Leading States to Enact Immigration Enforcement Laws on Employers", see 38 Colo. Law. 55 (April 2009).

8-17.5-101. Definitions. As used in this article, unless the context otherwise requires:

(1) (Deleted by amendment, L. 2008, p. 736, § 1, effective May 13, 2008.)

(2) "Contractor" means a person having a public contract for services with a state agency or political subdivision of the state.

(3) "Department" means the department of labor and employment.

(3.3) "Department program" means the employment verification program established pursuant to section 8-17.5-102 (5)(c).

(3.7) "E-verify program" means the electronic employment verification program created in Public Law 104-208, as amended, and expanded in Public Law 108-156, as amended, and jointly administered by the United States department of homeland security and the social security administration, or its successor program.

(4) "Executive director" means the executive director of the department of labor and employment.

(4.5) "Newly hired for employment" means hired to work in the United States since the effective date of the public contract for services.

(5) "Political subdivision" means any city, county, city and county, town, special district, school district, local improvement district, or any other kind of municipal, quasi-municipal, or public corporation organized pursuant to law.

(6) (a) "Public contract for services" means any type of agreement, regardless of what the agreement may be called, between a state agency or political subdivision and a contractor for the procurement of services.

(b) "Public contract for services" does not include:

(I) Agreements relating to the offer, issuance, or sale of securities, including but not limited to agreements pertaining to:

(A) Underwriting, marketing, remarketing, paying, transferring, rating, or registering securities; or

(B) The provision of credit enhancement, liquidity support, interest rate exchanges, or trustee or financial consulting services in connection with securities;

(II) Agreements for investment advisory services or fund management services;

(III) Any grant, award, or contract funded by any federal or private entity for any research or sponsored project activity of an institution of higher education or an affiliate of an institution of higher education that is funded from moneys that are restricted by the entity under the grant, award, or contract. For purposes of this subparagraph (III), "sponsored project" means an agreement between an institution of higher education and another party that provides

restricted funding and requires oversight responsibilities for research and development or other specified programmatic activities that are sponsored by federal or private agencies and organizations.

(IV) Intergovernmental agreements; or

(V) Agreements for information technology services or products and services.

(7) "Services" means the furnishing of labor, time, or effort by a contractor or a subcontractor not involving the delivery of a specific end product other than reports that are merely incidental to the required performance.

(8) "State agency" means any department, commission, council, board, bureau, committee, institution of higher education, agency, or other governmental unit of the executive, legislative, or judicial branch of state government.

Source: L. 2006: Entire article added, p. 1694, § 1, effective August 7. **L. 2008:** (1), (5) and (6) amended and (3.3), (3.7), and (4.5) added, p. 736, § 1, effective May 13.

8-17.5-102. Illegal aliens - prohibition - public contracts for services - rules. (1) A state agency or political subdivision shall not enter into or renew a public contract for services with a contractor who knowingly employs or contracts with an illegal alien to perform work under the contract or who knowingly contracts with a subcontractor who knowingly employs or contracts with an illegal alien to perform work under the contract. Prior to executing a public contract for services, each prospective contractor shall certify that, at the time of the certification, it does not knowingly employ or contract with an illegal alien who will perform work under the public contract for services and that the contractor will participate in the e-verify program or department program in order to confirm the employment eligibility of all employees who are newly hired for employment to perform work under the public contract for services.

(2) (a) Each public contract for services shall include a provision that the contractor shall not:

(I) Knowingly employ or contract with an illegal alien to perform work under the public contract for services; or

(II) Enter into a contract with a subcontractor that fails to certify to the contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under the public contract for services.

(b) Each public contract for services shall also include the following provisions:

(I) A provision stating that the contractor has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under the public contract for services through participation in either the e-verify program or the department program;

(II) A provision that prohibits the contractor from using either the e-verify program or the department program procedures to undertake preemployment screening of job applicants while the public contract for services is being performed;

(III) A provision that, if the contractor obtains actual knowledge that a subcontractor performing work under the public contract for services knowingly employs or contracts with an illegal alien, the contractor shall be required to:

(A) Notify the subcontractor and the contracting state agency or political subdivision within three days that the contractor has actual knowledge that the subcontractor is employing or contracting with an illegal alien; and

(B) Terminate the subcontract with the subcontractor if within three days of receiving the notice required pursuant to sub-subparagraph (A) of this subparagraph (III) the subcontractor does not stop employing or contracting with the illegal alien; except that the contractor shall not terminate the contract with the subcontractor if during such three days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien;

(IV) A provision that requires the contractor to comply with any reasonable request by the department made in the course of an investigation that the department is undertaking pursuant to the authority established in subsection (5) of this section.

(3) If a contractor violates a provision of the public contract for services required pursuant to subsection (2) of this section, the state agency or political subdivision may terminate the contract for a breach of the contract. If the contract is so terminated, the contractor shall be liable for actual and consequential damages to the state agency or political subdivision.

(4) A state agency or political subdivision shall notify the office of the secretary of state if a contractor violates a provision of a public contract for services required pursuant to subsection (2) of this section and the state agency or political subdivision terminates the contract for such breach. Based on this notification, the secretary of state shall maintain a list that includes the name of the contractor, the state agency or political subdivision that terminated the public contract for services, and the date of the termination. A contractor shall be removed from the list if two years have passed since the date the contract was terminated, or if a court of competent jurisdiction determines that there has not been a violation of the provision of the public contract for services required pursuant to subsection (2) of this section. A state agency or political subdivision shall notify the office of the secretary of state if a court has made such a determination. The list shall be available for public inspection at the office of the secretary of state and shall be published on the internet on the website maintained by the office of the secretary of state.

(5) (a) The department may investigate whether a contractor is complying with the provisions of a public contract for services required pursuant to subsection (2) of this section. The department may conduct on-site inspections where a public contract for services is being performed within the state of Colorado, request and review documentation that proves the citizenship of any person performing work on a public contract for services, or take any other reasonable steps that are necessary to determine whether a contractor is complying with the provisions of a public contract for services required pursuant to subsection (2) of this section. The department shall receive complaints of suspected violations of a provision of a public contract for services required pursuant to subsection (2) of this section and shall have discretion to determine which complaints, if any, are to be investigated. The results of any investigation shall not constitute final agency action. The department is authorized to promulgate rules in accordance with article 4 of title 24, C.R.S., to implement the provisions of this subsection (5).

(b) The executive director shall notify a state agency or political subdivision if he or she suspects that there has been a breach of a provision in a public contract for services required pursuant to subsection (2) of this section.

(c) (I) There is hereby created the department program. Any contractor who participates in the department program shall notify the department and the contracting state agency or political subdivision of such participation. A participating contractor shall comply with the provisions of subparagraph (II) of this paragraph (c) and shall consent to department audits

conducted in accordance with subparagraph (III) of this paragraph (c). Failure to meet either of these obligations shall constitute a violation of the department program. The executive director shall notify a contracting state agency or political subdivision of such violation.

(II) A participating contractor shall, within twenty days after hiring an employee who is newly hired for employment to perform work under the public contract for services, affirm that the contractor has examined the legal work status of such employee, retained file copies of the documents required by 8 U.S.C. sec. 1324a, and not altered or falsified the identification documents for such employees. The contractor shall provide a written, notarized copy of the affirmation to the contracting state agency or political subdivision.

(III) The department may conduct random audits of state agencies or political subdivisions to review the affidavits and of contractors to review copies of the documents required by subparagraph (II) of this paragraph (c). Audits shall not violate federal law.

(6) Nothing in this section shall be construed as requiring a contractor to violate any terms of participation in the e-verify program.

Source: L. 2006: Entire article added, p. 1695, § 1, effective August 7. **L. 2007:** (1) and (2)(b)(I) amended, p. 119, § 1, effective August 3. **L. 2008:** (1), (2)(b)(I), (2)(b)(II), and (5)(a) amended and (5)(c) and (6) added, pp. 737, 738, 739, §§ 2, 3, 4, effective May 13.

ARTICLE 18

Preference for State Commodities and Services

Editor's note: This article was repealed in 1985 and was subsequently recreated and reenacted in 1987, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this article prior to 1985, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

8-18-101. Bid preference - state contracts. (Repealed)

Source: L. 87: Entire article RC&RE, p. 379, § 1, effective May 13. **L. 95:** (1) amended and (3) added, p. 26, § 1, effective July 1. **L. 2004:** (1)(a) amended, p. 270, § 1, effective August 4. **L. 2017:** Entire section repealed, (HB 17-1051), ch. 99, p. 354, § 76, effective August 9.

Editor's note: This section was relocated to § 24-103-906 in 2017.

Cross references: For general provisions concerning state purchasing, see the "Procurement Code", articles 101 to 112 of title 24.

8-18-102. Repeal of article. (Repealed)

Source: L. 87: Entire article RC&RE, p. 379, § 1, effective May 13. **L. 89:** Entire section repealed, p. 381, § 1, effective July 1.

8-18-103. Preference for state agricultural products. (Repealed)

Source: L. 2004: Entire section added, p. 270, § 2, effective August 4. **L. 2005:** (1) and (2)(d) amended and (4) and (5) added, p. 1485, § 1, effective August 8. **L. 2017:** Entire section repealed, (HB 17-1051), ch. 99, p. 354, § 76, effective August 9.

Editor's note: This section was relocated to § 24-103-907 in 2017.

ARTICLE 19

Bid Preference - Public Projects

8-19-101. Bid preference - public projects. (Repealed)

Source: L. 85: Entire article added, p. 342, § 1, effective July 1. **L. 2017:** Entire section repealed, (HB 17-1051), ch. 99, p. 354, § 76, effective August 9.

Editor's note: This section was relocated to § 24-103-908 (2) in 2017.

8-19-102. Definitions. (Repealed)

Source: L. 85: Entire article added, p. 342, § 1, effective July 1. **L. 91:** (1)(c) amended, p. 1056, § 8, effective July 1. **L. 99:** (2)(b) amended, p. 72, § 1, effective March 17. **L. 2013:** Entire section amended, (HB 13-1292), ch. 266, p. 1398, § 5, effective May 24. **L. 2017:** Entire section repealed, (HB 17-1051), ch. 99, p. 354, § 76, effective August 9.

Editor's note: This section was relocated to § 24-103-908 (1) in 2017.

8-19-102.5. Resident bidder - reciprocity. (Repealed)

Source: L. 99: Entire section added, p. 72, § 2, effective March 17. **L. 2001:** Entire section amended, p. 959, § 1, effective August 8. **L. 2013:** Entire section repealed, (HB 13-1292), ch. 266, p. 1399, § 6, effective May 24.

8-19-103. Repeal of article. (Repealed)

Source: L. 85: Entire article added, p. 342, § 1, effective July 1. **L. 88:** Entire section repealed, p. 367, § 1, effective February 26.

8-19-104. Bid preference - survey. (Repealed)

Source: L. 2013: Entire section added, (HB 13-1292), ch. 266, p. 1399, § 7, effective May 24. **L. 2016:** (1) amended, (SB 16-189), ch. 210, p. 755, § 9, effective June 6. **L. 2017:** Entire section repealed, (HB 17-1051), ch. 99, p. 354, § 76, effective August 9.

Editor's note: This section was relocated to § 24-103-908 (3) in 2017.

8-19-105. Federal and state law. (Repealed)

Source: L. 2013: Entire section added, (HB 13-1292), ch. 266, p. 1400, § 7, effective May 24. **L. 2017:** Entire section repealed, (HB 17-1051), ch. 99, p. 354, § 76, effective August 9.

Editor's note: This section was relocated to § 24-103-908 (4) in 2017.

ARTICLE 19.5

Bid Preference - Recycled Plastic Products

8-19.5-101. Bid preference - recycled plastic products. (Repealed)

Source: L. 89: Entire article added, p. 1181, § 2, effective July 1. **L. 2017:** Entire section repealed, (HB 17-1051), ch. 99, p. 354, § 76, effective August 9.

Editor's note: This section was relocated to § 24-103-909 in 2017.

Cross references: For provisions concerning the labeling and coding of plastic bottles and rigid plastic containers, see article 17 of title 25.

ARTICLE 19.7

Bid Preference - Recycled Paper Products

8-19.7-101 to 8-19.7-103. (Repealed)

Editor's note: (1) Section 8-19.7-103 (2) provided for the repeal of this article, effective July 1, 1995. (See L. 90, p. 464.)

(2) This article was added in 1990. For amendments to this article prior to its repeal in 1995, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

Fuel Products

Cross references: For provisions regarding oil wells and boreholes, see article 61 of title 34; for the "Oil and Gas Conservation Act", see article 60 of title 34; for regulations regarding royalties under the federal leasing act, see article 63 of title 34; for provisions regarding underground storage of natural gas, see article 64 of title 34.

ARTICLE 20

PART 1

DIVISION OF OIL AND PUBLIC SAFETY

8-20-101. Division of oil and public safety - creation - appointment of director - transfer of duties. (1) There is hereby created within the department of labor and employment the division of oil and public safety, the head of which shall be the director of the division of oil and public safety. The director of the division of oil and public safety shall be appointed by the executive director of the department of labor and employment and shall not have an interest in the manufacture, sale, or distribution of oils.

(2) The director of the division of oil and public safety, on and after July 1, 2001, shall execute, administer, perform, and enforce the rights, powers, duties, functions, and obligations vested prior to July 1, 2001, in the state inspector of oils, the state boiler inspector, and, with respect to articles 6 and 7 of title 9, C.R.S., the director of the division of labor standards and statistics. On July 1, 2001, all employees of the state inspector of oils, the state boiler inspector, and, with respect to duties performed pursuant to articles 6 and 7 of title 9, C.R.S., the director of the division of labor standards and statistics, whose principal duties are concerned with the duties and functions to be performed by the director of the division of oil and public safety and whose employment by the director of the division of oil and public safety is deemed necessary by the director of the division of oil and public safety to carry out the purposes of articles 20 and 20.5 of this title and articles 4, 6, and 7 of title 9, C.R.S., shall be transferred to the director of the division of oil and public safety and shall become employees thereof. These employees shall retain all rights to the state personnel system and retirement benefits under the laws of this state, and their services shall be deemed continuous. All transfers and any abolishment of positions in the state personnel system shall be made and processed in accordance with state personnel system laws and rules.

(3) and (4) Repealed.

(5) The director of the division of oil and public safety shall enforce and administer article 5.5 of title 9, C.R.S.

Source: L. 15: pp. 376, 377, §§ 40, 42, 44. **L. 19:** p. 562, §2. **C.L.** §§ 3653, 3655, 3657. **CSA:** C. 118, §§ 54, 56, 58. **CRS 53:** §§ 100-1-1, 100-1-2. **C.R.S. 1963:** §§ 100-1-1, 100-1-2. **L. 69:** p. 661, §§ 248, 249. **L. 2001:** Entire section R&RE, p. 1114, § 3, effective June 5. **L. 2007:** (5) added, p. 1423, § 3, effective January 1, 2008. **L. 2008:** (3) repealed, p. 1020, § 2, effective May 21. **L. 2009:** (4) repealed, (HB 09-1151), ch. 230, p. 1060, § 14, effective January 1, 2010. **L. 2016:** (2) amended, (HB 16-1323), ch. 131, p. 379, § 14, effective August 10.

8-20-102. Duties of director of division of oil and public safety - rules. (1) The director of the division of oil and public safety shall make, promulgate, and enforce rules setting forth minimum and general standards covering the design, construction, location, installation, and operation of equipment for storing, handling, and utilizing liquid fuel products. Said rules shall be such as are reasonably necessary for the protection of the health, welfare, and safety of

the public and persons using such materials, and shall be in substantial conformity with the generally accepted standards of safety concerning the same subject matter. Such rules shall be adopted by the director of the division of oil and public safety in compliance with section 24-4-103, C.R.S.

(2) The director of the division of oil and public safety shall enforce the provisions of section 8-20-213 concerning recycled and used motor oil.

(3) Prior to January 1, 2014, the director of the division of oil and public safety shall promulgate rules for natural gas setting forth standards related to inspections; specifications; shipment notification; record keeping; labeling of containers; use of meters or mechanical devices for measurement; submittal of installation plans; and minimum standards for the design, construction, location, installation, and operation of retail natural gas systems. The division shall begin enforcing the rules on July 1, 2014. The director may modify or update the rules in his or her discretion. All of the rules required by this subsection (3) must be reasonably necessary for the protection of the health, welfare, and safety of the public and persons using such materials, and the rules must be in substantial conformity with the generally accepted standards of safety concerning the same subject matter. The director shall adopt the rules in compliance with section 24-4-103, C.R.S.

(4) (a) On or before January 1, 2017, the director of the division of oil and public safety shall promulgate rules concerning retail hydrogen fuel systems for vehicles. The rules must set forth standards relating to:

(I) Inspections;

(II) Specifications;

(III) Shipment notification;

(IV) Record keeping;

(V) Labeling of containers;

(VI) Use of meters or mechanical devices for measurement;

(VII) Submittal of installation plans; and

(VIII) Minimum standards for the design, construction, location, installation, and operation of retail hydrogen fuel systems for vehicles.

(b) The director of the division of oil and public safety may collect reasonable fees, which the director shall establish by rule in the amounts necessary to offset the direct and indirect costs, including the costs for salaries and operating expenses, incurred by the division in administering this article.

(c) The division shall begin enforcing the rules required by this subsection (4) on July 1, 2017. The director may modify the rules at his or her discretion.

(d) Each rule required by this subsection (4) must be reasonably necessary for the protection of the health, welfare, and safety of the public and persons using hydrogen fuel, and the rules must substantially conform with the generally accepted standards of safety concerning hydrogen fuel. The director shall adopt the rules in compliance with section 24-4-103, C.R.S.

Source: L. 15: p. 377, § 43. **C.L.** § 3656. **CSA:** C. 118, § 57. **CRS 53:** § 100-1-3. **C.R.S. 1963:** § 100-1-3. **L. 69:** p. 661, § 250. **L. 73:** p. 1066, § 1. **L. 95:** Entire section amended, p. 351, § 2, effective April 27. **L. 2001:** Entire section amended, p. 1115, § 4, effective June 5. **L. 2003:** (1) amended, p. 1820, § 2, effective May 21. **L. 2013:** (3) added, (HB 13-1110), ch.

225, p. 1055, § 2, effective August 15. **L. 2016:** (4) added, (HB 16-1053), ch. 4, p. 7, § 1, effective March 9.

Cross references: For the legislative declaration contained in the 2003 act amending subsection (1), see section 1 of chapter 279, Session Laws of Colorado 2003. For the legislative declaration in the 2013 act adding subsection (3), see section 1 of chapter 225, Session Laws of Colorado 2013.

8-20-103. Inspector's report - publications.

(1) Repealed.

(2) Publications of the office circulated in quantity outside the executive branch shall be issued in accordance with the provisions of section 24-1-136, C.R.S.

Source: L. 15: p. 376, § 39; **C.L.** § 3652; **CSA:** C. 118, § 53; **CRS 53:** § 100-1-4; **C.R.S. 1963:** § 100-1-4. **L. 64:** p. 158, § 108. **L. 83:** Entire section amended, p. 825, § 3, effective July 1. **L. 97:** (1) repealed, p. 1474, § 7, effective June 3.

8-20-104. Enforcement of law - penalties - definitions. (1) The director shall enforce this article, articles 4, 5.5, and 7 of title 9, C.R.S., and rules promulgated pursuant to this article and articles 4, 5.5, and 7 of title 9, C.R.S., by appropriate actions in courts of competent jurisdiction.

(2) (a) The director may issue a notice of violation to a person who is believed to have violated this article, article 4, 5.5, or 7 of title 9, C.R.S., or rules promulgated pursuant to this article or article 4, 5.5, or 7 of title 9, C.R.S. The notice shall be delivered to the alleged violator personally, by certified mail, return receipt requested, or by any means that verifies receipt as reliably as certified mail, return receipt requested.

(b) The notice of violation shall allege the facts that constitute a violation and the rule or statute violated.

(c) The notice of violation may require the alleged violator to act to correct the alleged violation.

(d) Within ten working days after delivery of the notice of violation, the alleged violator may request in writing an informal conference with the director concerning the notice of violation. If the alleged violator fails to request such conference within ten days, the notice is then final, the notice is not subject to further review, and any statement of facts required to correct the alleged violation pursuant to paragraph (c) of this subsection (2) become a binding enforcement order.

(e) Upon receipt of a request for an informal conference, the director shall set a reasonable time and place for such conference and shall notify the alleged violator of such time and place. At the conference, the alleged violator may present evidence and arguments concerning the allegations in the notice of violation.

(f) Within twenty working days after the informal conference, the director shall uphold, modify, or strike the allegations within the notice of violation and may issue an enforcement order. The decision and, if applicable, enforcement order shall be delivered to the alleged violator personally, by certified mail, return receipt requested, or by any means that verifies receipt as reliably as certified mail, return receipt requested.

(3) (a) A person who is the subject of and is adversely affected by a notice of violation or an enforcement order issued pursuant to subsection (2) of this section may appeal such action to the executive director of the department of labor and employment. The executive director shall hold a hearing to review such notice or order and take final action in accordance with article 4 of title 24, C.R.S., and may either conduct the hearing personally or appoint an administrative law judge from the department of personnel.

(b) Final agency action shall be subject to judicial review pursuant to article 4 of title 24, C.R.S.

(c) An alleged violator who is required to correct an action pursuant to paragraph (c) of subsection (2) of this section shall be afforded the procedures set forth in section 24-4-104 (3), C.R.S., to the extent applicable.

(4) (a) An enforcement order issued pursuant to this section may impose a civil penalty, depending on the severity of the alleged violation, not to exceed five hundred dollars per violation for each day of violation; except that the director may impose a civil penalty not to exceed one thousand dollars per violation for each day of violation that results in, or may reasonably be expected to result in, serious bodily injury.

(b) A civil penalty collected for a violation of:

(I) Article 4 of title 9, C.R.S., or a rule promulgated pursuant to such article, shall be deposited in the boiler inspection fund created in section 9-4-109, C.R.S.;

(II) Article 5.5 of title 9, C.R.S., or a rule promulgated pursuant to such article, shall be deposited in the conveyance safety fund created in section 9-5.5-111, C.R.S.;

(III) Article 7 of title 9, C.R.S., or a rule promulgated pursuant to such article, shall be deposited in the public safety inspection fund created in section 8-1-151.

(5) The director may file suit in the district court in the judicial district in which a violation is alleged to have occurred to judicially enforce an enforcement order issued pursuant to this section.

(6) For the purposes of this section:

(a) "Director" means the director of the division of oil and public safety.

(b) "Division" means the division of oil and public safety.

(7) In addition to the remedies provided in this section, the director is authorized to apply to the district court, in the judicial district where the violation has occurred, for a temporary or permanent injunction restraining any person from violating any provision of articles 4, 5.5, and 7 of title 9, C.R.S., and rules promulgated pursuant to articles 4, 5.5, and 7 of title 9, C.R.S., regardless of whether there is an adequate remedy at law.

Source: L. 15: p. 377, § 41. **C.L.** § 3654. **CSA:** C. 118, § 55. **CRS 53:** § 100-1-5. **C.R.S. 1963:** § 100-1-5. **L. 2003:** Entire section amended, p. 1820, § 3, effective May 21. **L. 2006:** (1) and (2)(a) amended, p. 1355, § 1, effective July 1. **L. 2007:** (2)(a) amended, p. 1422, § 2, effective January 1, 2008. **L. 2008:** (1), (2)(a), and (4) amended and (7) added, p. 984, § 2, effective May 21. **L. 2009:** (1), (2)(a), (4)(b)(III), and (7) amended, (HB 09-1151), ch. 230, p. 1060, § 15, effective January 1, 2010. **L. 2010:** (1) amended, (HB 10-1422), ch. 419, p. 2064, § 10, effective August 11.

Cross references: For the legislative declaration contained in the 2003 act amending this section, see section 1 of chapter 279, Session Laws of Colorado 2003.

8-20-105. Expenses of administration. (Repealed)

Source: L. 83: Entire section added, p. 407, § 1, effective May 3. **L. 2003:** Entire section repealed, p. 1822, § 4, effective May 21.

Cross references: For the legislative declaration contained in the 2003 act repealing this section, see section 1 of chapter 279, Session Laws of Colorado 2003.

8-20-106. Confidentiality. (1) Information concerning liquefied petroleum gas storage tanks obtained under this article shall be available to the public; except that any specific information that is confidential by state or federal law shall remain confidential.

(2) Confidential records may be disclosed to officers, employees, or authorized representatives of this state or of the United States who have been charged with administering this article or subchapter I of the federal "Resource Conservation and Recovery Act of 1976", as amended. Such disclosure shall not constitute a waiver of confidentiality.

Source: L. 2003: Entire section added, p. 1822, § 5, effective May 21.

Cross references: (1) For the legislative declaration contained in the 2003 act enacting this section, see section 1 of chapter 279, Session Laws of Colorado 2003.

(2) For the "Resource Conservation and Recovery Act of 1976", as amended, see Pub.L. 94-580, codified at 42 U.S.C. sec. 6901 et seq.

PART 2

FUEL PRODUCTS

8-20-201. Definitions. As used in this part 2, unless the context otherwise requires:

(1) "Alternative fuel" means a motor fuel that combines petroleum-based fuel products with renewable fuels.

(1.1) "Antiknock index" or "AKI" means the arithmetic average of the research octane number (RON) and motor octane number (MON): AKI = (RON+MON)/2. This value is called by a variety of names in addition to antiknock index including: Octane rating, posted octane, and (R+M)/2 octane.

(1.2) "ASTM" means ASTM international, formerly known as the American society for testing and materials.

(1.3) "British thermal unit" or "BTU" means a scientific unit of measurement equal to the quantity of heat required to raise the temperature of one pound of water one degree Fahrenheit at approximately sixty degrees Fahrenheit.

(1.5) "Department" means the department of labor and employment, division of oil and public safety.

(1.7) "DOT" means the United States department of transportation.

(2) "Fuel products" means all gasoline; aviation gasoline; aviation turbine fuel; diesel; jet fuel; fuel oil; biodiesel; biodiesel blends; kerosene; all alcohol blended fuels; liquefied petroleum gas; gas or gaseous compounds, including hydrogen; natural gas, including

compressed natural gas and liquefied natural gas; and all other volatile, flammable, or combustible liquids, that are produced, compounded, and offered for sale or used for the purpose of generating heat, light, or power in internal combustion engines or fuel cells, for cleaning, or for any other similar usage.

(2.3) (a) "Gallon equivalent" means either a gallon diesel equivalent or a gallon gasoline equivalent.

(b) (Deleted by amendment, L. 97, p. 137, § 1, effective March 28, 1997.)

(2.5) (a) "Gallon diesel equivalent" means an amount of a motor fuel that contains an average lower heating value of one hundred twenty-eight thousand BTUs (British thermal units), but in no case contains a lower heating value of less than one hundred twenty-four thousand BTUs.

(b) (Deleted by amendment, L. 97, p. 137, § 1, effective March 28, 1997.)

(2.7) (a) "Gallon gasoline equivalent" means an amount of a motor fuel that contains an average lower heating value of one hundred fourteen thousand BTUs (British thermal units), but in no case contains a lower heating value of less than one hundred ten thousand BTUs.

(b) (Deleted by amendment, L. 97, p. 137, § 1, effective March 28, 1997.)

(3) "Gross gallons" as applied to fuel and petroleum products means units of two hundred thirty-one cubic inches measured at storage or metered temperature.

(3.5) "Hg" means the element mercury.

(4) "Lubricants" means petroleum products used for the purpose of reducing friction between moving surfaces.

(4.5) (a) "Motor fuel" means any liquid or gas used as fuel to generate power in engines or motors.

(b) (Deleted by amendment, L. 97, p. 137, § 1, effective March 28, 1997.)

(5) "Net gallons" as applied to fuel and petroleum products means units of two hundred thirty-one cubic inches measured at standard temperature.

(5.3) "NFPA" means the national fire protection association.

(5.5) "NIST" means the national institute of standards and technology.

(6) "Person" means an individual, trust or estate, partnership, association, joint stock company or corporation, and any receiver appointed by law.

(7) "Proved" as applied to measuring devices means the act of having verified the accuracy of meters used to measure fuel and petroleum products.

(8) "Prover" as applied to determination of meter accuracy means a calibrated volumetric receiver or a mechanical positive displacement device.

(8.5) "Renewable fuel" means a motor vehicle fuel that is produced from plant or animal products or wastes, as opposed to fossil fuel sources.

(9) "Standard temperature" as applied to fuel and petroleum products means sixty degrees Fahrenheit.

(10) "Temperature compensation" as applied to liquid measure of fuel and petroleum products means adjustment of gallons measured at storage or metered temperature to the standard temperature.

Source: L. 31: p. 589, §§ 1, 2. **CSA:** C. 118, § 1. **L. 41:** p. 581, § 1. **CRS 53:** § 100-2-1. **C.R.S. 1963:** § 100-2-1. **L. 73:** p. 1066, § 2. **L. 93:** (1) amended and (1.5), (2.3), (2.5), (2.7), and (4.5) added, p. 269, § 2, effective July 1. **L. 97:** (1), (2.3), (2.5), (2.7), and (4.5) amended, p. 137,

§ 1, effective March 28. **L. 2001:** (1.5) amended, p. 1115, § 5, effective June 5. **L. 2005:** (1), (1.5), and (2) amended and (1.1), (1.2), (1.7), (3.5), (5.3), and (5.5) added, p. 1341, § 1, effective August 8. **L. 2007:** (1), (1.1), and (1.2) amended and (1.3) and (8.5) added, p. 1759, § 2, effective June 1. **L. 2013:** (2) amended, (HB 13-1110), ch. 225, p. 1055, § 3, effective January 1, 2014. **L. 2016:** (2) amended, (HB 16-1053), ch. 4, p. 8, § 2, effective March 9.

Editor's note: The amendment made to subsection (1) by House Bill 93-1114 resulted in adding new language to subsection (1) and numbering what was subsection (1) as subsection (1.5).

Cross references: For the legislative declaration contained in the 1993 act amending subsection (1) and enacting subsections (1.5), (2.3), (2.5), (2.7), and (4.5), see section 1 of chapter 79, Session Laws of Colorado 1993. For the legislative declaration in the 2013 act amending subsection (2), see section 1 of chapter 225, Session Laws of Colorado 2013.

8-20-202. Classification of liquid fuel products. (1) "Liquid" means any material that has a fluidity greater than that of three hundred penetration asphalt when tested in accordance with ASTM specifications that are found in publication number D 5, "Test for Penetration of Bituminous Materials". Unless otherwise identified, the term "liquid" shall include both flammable and combustible liquids.

(2) "Flammable liquid" or "class I liquid" means a liquid that has a flash point below one hundred degrees Fahrenheit and a vapor pressure not exceeding forty PSIA at one degree Fahrenheit. Class I liquids are subdivided as follows:

(a) Class IA liquids have a flash point below seventy-three degrees Fahrenheit and a boiling point below one hundred degrees Fahrenheit.

(b) Class IB liquids have a flash point below seventy-three degrees Fahrenheit and a boiling point at or above one hundred degrees Fahrenheit.

(c) Class IC liquids have a flash point at or above seventy-three degrees Fahrenheit and below one hundred degrees Fahrenheit.

(3) "Combustible liquid" means a liquid that has a flash point at or above one hundred degrees Fahrenheit. Combustible liquids are subdivided as follows:

(a) Class II liquids have a flash point at or above one hundred degrees Fahrenheit and below one hundred forty degrees Fahrenheit.

(b) Class IIIA liquids have a flash point at or above one hundred forty degrees Fahrenheit and below two hundred degrees Fahrenheit.

(c) Class IIIB liquids have a flash point at or above two hundred degrees Fahrenheit.

Source: L. 31: p. 589, § 3. **CSA:** C. 118, § 2. **L. 41:** p. 581, § 2. **CRS 53:** § 100-2-2. **C.R.S. 1963:** § 100-2-2. **L. 2005:** Entire section R&RE, p. 1342, § 2, effective August 8.

8-20-203. Inspection. (1) All fuel products included within classes I and II shall be inspected and the containers of such products marked by brand or stencil as provided in this part 2, and all fuel products shall comply with the specifications provided for in this part 2.

(2) Fuel products included in class III shall be subject to inspection.

(3) All transports and other tank trucks used to carry fuel products shall prominently display thereon, in letters at least three inches in height, the name and address of the owner or operator thereof. All such transport, tank, and delivery trucks shall also display prominently upon the rear of the tank the appropriate DOT placard for the product contained therein.

(4) At all filling stations, garages, stores, and all other places where fuel products are sold or offered for sale, there shall be displayed in a prominent place where it may be readily seen on each pump, the name, trade name, symbol, sign, or other distinguishing mark or device of such fuel product in type at least two inches in height. If such fuel product has no such name, trade name, symbol, sign, or other distinguishing mark, or device, then there shall be displayed the name and address of the person from whom such fuel product was purchased.

Source: L. 31: p. 590, § 1. **CSA:** C. 118, § 3. **L. 41:** p. 582, § 3. **L. 43:** p. 446, § 1. **CRS 53:** § 100-2-3. **C.R.S. 1963:** § 100-2-3. **L. 2005:** (1), (2), and (3) amended, p. 1343, § 3, effective August 8.

8-20-204. Specifications - classes I, II, and III. (1) All products in classes I, II, and III shall comply with the most current applicable specifications of ASTM, which are found in section 5 of that organization's publication "Petroleum Products, Lubricants, and Fossil Fuels" and supplements thereto or revisions thereof as may be designated by ASTM, except as modified or rejected by this article or any rule promulgated pursuant to this article. If gasoline is blended with ethanol, the ASTM D 4814 specifications shall apply to the base gasoline prior to blending. Blends of gasoline and ethanol shall not exceed the ASTM D 4814 vapor pressure standard; except that, if the ethanol is blended at nine percent or higher but not exceeding ten percent, the blend may exceed the ASTM D 4814 vapor pressure standard by no more than 1.0 PSI. Class I products shall not be blended at a retail location with products commonly and commercially known as casinghead gasoline, absorption gasoline, condensation gasoline, drip gasoline, or natural gasoline.

(2) to (4) Repealed.

(5) To further avoid the perpetration of fraud upon the users and purchasers of motor fuel offered for sale for highway vehicle use, the artificial coloring of such motor fuel is absolutely prohibited, except in motor fuel having a research octane rating of eighty-eight or better after coloring, as determined by the ASTM's research method.

(6) The sale of any product under any grade name that indicates to the purchaser that it is of a certain automotive fuel rating or ASTM grade shall not be permitted unless the automotive fuel rating or grade indicated in the grade name is consistent with the value and meets the applicable requirements of ASTM. The AKI shall not be less than the AKI posted on the product dispenser or as certified on the invoice, bill of lading, shipping paper, or other documentation.

Source: L. 31: p. 590, § 5. **CSA:** C. 118, § 4. **L. 41:** p. 582, § 4. **L. 43:** p. 447, § 2. **CRS 53:** § 100-2-4. **C.R.S. 1963:** § 100-2-4. **L. 67:** p. 211, § 1. **L. 86:** (1) amended and (2) to (4) repealed, pp. 509, 510, §§ 1, 5, effective July 1. **L. 93:** (1) amended, p. 511, § 1, effective April 26. **L. 2005:** (1), (5), and (6) amended, p. 1343, § 4, effective August 8. **L. 2007:** (1) amended, p. 386, § 1, effective April 3.

8-20-204.5. Motor fuel blends containing alcohol - purity. No motor fuel blend containing alcohol derived from agricultural commodities and forest products shall be sold for retail use unless the alcohol in such blend has a purity of at least ninety-nine percent.

Source: L. 81: Entire section added, p. 459, § 1, effective May 18.

8-20-205. Specifications of kerosene. (Repealed)

Source: L. 31: p. 592, § 6. **CSA:** C. 118, § 5. **L. 41:** p. 583, § 5. **CRS 53:** § 100-2-5. **C.R.S. 1963:** § 100-2-5. **L. 2005:** Entire section repealed, p. 1344, § 5, effective August 8.

8-20-206. Shipper notify director. (1) Any person who ships fuel products included in classes I and II into the state, or who ships such fuel products from any refinery or pipeline terminal within the state to another point within the state, shall notify the director of the division of oil and public safety of the shipment within twenty-four hours after the shipment has been billed for departure in the case of tank cars, or after the shipment has been loaded for departure in the case of barrels, trucks, or tank wagons. At the same time, such person shall forward to the director of the division of oil and public safety a true sample of the contents of the shipment weighing at least eight ounces, with the specifications thereof and the number and initial of the tank car, or if some other method of transportation is used, an adequate description of the means of conveyance or container, so as to enable identification of the shipment. Any person who diverts a shipment of such fuel products into the state of Colorado from outside the state shall give the same notice and forward the same type of sample to the director of the division of oil and public safety within twenty-four hours after the billing of the shipment is changed to a Colorado destination.

(2) If more than one car of fuel products included in classes I and II is shipped at the same time from the same source and refinery run, the director of the division of oil and public safety may accept one sample for all or any part of such shipment.

Source: L. 31: p. 593, § 7. **CSA:** C. 118, § 6. **L. 41:** p. 584, § 6. **L. 49:** p. 535, § 1. **CRS 53:** § 100-2-6. **C.R.S. 1963:** § 100-2-6. **L. 2001:** Entire section amended, p. 1115, § 6, effective June 5. **L. 2005:** Entire section amended, p. 1344, § 6, effective August 8.

8-20-206.5. Environmental response surcharge - liquefied petroleum gas and natural gas inspection fund - perfluoroalkyl and polyfluoroalkyl substances cash fund - definitions. (1) (a) Every first purchaser of odorized liquefied petroleum gas, every manufacturer of fuel products who manufactures such products for sale within Colorado or who ships such products from any point outside of Colorado to a distributor within Colorado, and every distributor who ships such products from any point outside of Colorado to a point within Colorado shall pay to the executive director of the department of revenue, each calendar month, either twenty-five dollars per tank truckload of fuel products delivered during the previous calendar month for sale or use in Colorado or the fee for odorized liquefied petroleum gas and natural gas as specified in paragraph (d) of this subsection (1), whichever is applicable. Such payment shall be made on forms prescribed and furnished by the executive director. The

provisions of this section shall not apply to fuel that is especially prepared and sold for use in aircraft or railroad equipment or locomotives.

(b) In the event the available fund balance in the petroleum storage tank fund is greater than twelve million dollars, no surcharge shall be imposed, but if the available fund balance in the fund is less than:

(I) Twelve million dollars, the fee imposed by paragraph (a) of this subsection (1) shall be fifty dollars per tank truckload;

(II) Six million dollars, the fee imposed shall be seventy-five dollars per tank truckload;

(III) Three million dollars, the fee imposed shall be one hundred dollars per tank truckload.

(c) Notwithstanding paragraph (b) of this subsection (1), on and after September 1, 2023, if the available fund balance in the petroleum storage tank fund is greater than eight million dollars, no surcharge shall be imposed, but if the available fund balance in the fund is less than eight million dollars, the fee imposed by paragraph (a) of this subsection (1) is twenty-five dollars per tank truckload.

(d) Notwithstanding paragraph (b) of this subsection (1), the executive director of the department of revenue shall have the authority to determine and adjust a fee for odorized liquefied petroleum gas and natural gas, not to exceed ten dollars per tank truckload for liquefied petroleum gas and liquefied natural gas and per every eight thousand gallon equivalents for compressed natural gas.

(e) (I) There is hereby created the liquefied petroleum gas and natural gas inspection fund within the state treasury. Neither this section nor section 8-20.5-103 shall be construed to make the liquefied petroleum gas and natural gas inspection fund an enterprise fund. Such fund shall consist of:

(A) Liquefied petroleum gas and natural gas inspection moneys collected pursuant to this article;

(B) Civil penalties collected as a result of court actions pursuant to section 8-20-104;

(C) Any moneys appropriated to the fund by the general assembly; and

(D) Any moneys granted to the department from a federal agency or trade association for administration of the department's liquefied petroleum gas and natural gas inspection program.

(II) The executive director of the department of revenue shall adjust the fees collected pursuant to this article so that the balance of unexpended and unencumbered moneys in the liquefied petroleum gas and natural gas inspection fund does not exceed the amount necessary to accumulate and maintain in the liquefied petroleum gas and natural gas inspection fund a reserve sufficient to defray administrative expenses of the division of oil and public safety for a period of two months.

(III) The moneys in the fund shall be subject to annual appropriation by the general assembly. Moneys in the fund shall only be used for costs related to:

(A) Initial and subsequent inspections of liquefied petroleum gas and natural gas installations;

(B) Proving, including calibrating and adjusting, liquefied petroleum gas and natural gas meters and dispensers;

(C) Abatement of fire and safety hazards at liquefied petroleum gas and natural gas installations;

(D) Investigation of reported liquefied petroleum gas and natural gas that requires state matching dollars;

(E) Any federal program pertaining to liquefied petroleum gas and natural gas that requires state matching dollars;

(F) Liquefied petroleum gas and natural gas product quality testing;

(G) Administrative costs, including costs for contract services; and

(H) Defraying the salaries and operating expenses incurred by the department of labor and employment in the administration of this article as it pertains to liquefied petroleum gas and natural gas installations, meters, and dispensers. Such moneys shall be appropriated for such purposes by the general assembly.

(IV) The moneys in the liquefied petroleum gas and natural gas inspection fund and all interest earned on the moneys in the fund shall remain in such fund and shall not be credited or transferred to the general fund or any other fund at the end of any fiscal year.

(1.5) Notwithstanding the amount specified for any fee or surcharge in subsection (1) of this section, the executive director by rule or as otherwise provided by law may reduce the amount of one or more of the fees or surcharges if necessary pursuant to section 24-75-402 (3), C.R.S., to reduce the uncommitted reserves of the fund to which all or any portion of one or more of the fees or surcharges is credited. After the uncommitted reserves of the fund are sufficiently reduced, the executive director by rule or as otherwise provided by law may increase the amount of one or more of the fees or surcharges as provided in section 24-75-402 (4), C.R.S.

(2) The fee or surcharge imposed by subsection (1) of this section shall be collected, administered, and enforced in the same manner as the fuel taxes imposed pursuant to the provisions of article 27 of title 39, C.R.S., and the same penalty and interest provisions shall apply.

(3) (a) Except as set forth in paragraph (b) of this subsection (3), it is the duty of every manufacturer or distributor as described in subsection (1) of this section to compute the amount of the surcharge payable on all tank truckloads sold by the manufacturer or distributor and separately state the surcharge due on statements issued with each purchase of fuel. In the event that the manufacturer or distributor sells such fuel to a retailer or consumer or consumes such fuel, the manufacturer or distributor shall pay to the department of revenue the surcharge imposed in subsection (1) of this section.

(b) For compressed natural gas, the fuel distributor who reports the gallons for purposes of paying the tax set forth in article 27 of title 39, C.R.S., shall pay the surcharge imposed in subsection (1) of this section to the department of revenue.

(4) For the purposes of this section:

(a) "Available fund balance" means the sum of the current year revenues and the previous fund balance minus the sum of the obligations approved by the petroleum storage tank committee pursuant to section 8-20.5-104 and the costs incurred by the division of oil and public safety for purposes of administering articles 20 and 20.5 of this title.

(b) "Fuel product" means gasoline, blended gasoline, gasoline sold for gasohol production, gasohol, diesel, biodiesel blends, natural gas, and special fuels, and special fuel mixes with alcohol.

(c) "Tank truckload" means eight thousand gallons or gallon equivalents.

(5) Repealed.

(6) (a) In addition to the payment collected under subsection (1)(a) of this section, the executive director of the department of revenue shall also collect a fee to:

(I) Fund the perfluoroalkyl and polyfluoroalkyl substances cash fund;

(II) Support the department of transportation in functions related to freight movement and infrastructure in the state as well as infrastructure projects that enhance the safety of movement of commercial materials;

(III) Support the Colorado state patrol in regulating hazardous materials on highways in the state; and

(IV) Pay the costs to the department of revenue for administering the fee.

(b) On and after September 1, 2020, but before September 1, 2026, every manufacturer of fuel products who manufactures such products for sale within Colorado or who ships such products from any point outside of Colorado to a distributor within Colorado and every distributor who ships such products from any point outside of Colorado to a point within Colorado shall pay to the executive director of the department of revenue, each calendar month, twenty-five dollars per tank truckload of fuel products delivered during the previous calendar month for sale or use in Colorado. This section does not apply to fuel that is used in aviation or to odorized liquefied petroleum gas and natural gas.

(c) On and after September 1, 2020, but before October 1, 2021, the executive director of the department of revenue shall transmit any fee collected in accordance with this subsection (6) to the state treasurer, who shall credit:

(I) Fifty percent, minus the costs to the department of revenue for administering the fee, to the perfluoroalkyl and polyfluoroalkyl substances cash fund;

(II) Twenty-five percent, minus the costs to the department of revenue for administering the fee, to the department of transportation to support functions related to the administration of hazardous materials and safe and efficient freight movement and infrastructure in the state as well as supporting infrastructure projects that enhance the safety of movement of freight and hazardous materials;

(III) Twenty-five percent, minus the costs to the department of revenue for administering the fee, to the department of public safety for use by the Colorado state patrol to support the regulation of hazardous materials on highways in the state; and

(IV) The costs to the department of revenue for administering the fee.

(d) On and after October 1, 2021, but before October 1, 2026, the executive director of the department of revenue shall transmit any fee collected in accordance with this subsection (6) to the state treasurer, who shall credit:

(I) One hundred thousand dollars to the department of public safety for use by the Colorado state patrol to support the regulation of hazardous materials on highways in the state;

(II) Seventy-five percent of the amount remaining, minus the costs to the department of revenue for administering the fee, to the perfluoroalkyl and polyfluoroalkyl substances cash fund;

(III) Twenty-five percent of the amount remaining, minus the costs to the department of revenue for administering the fee, to the department of transportation to support functions related to the administration of hazardous materials and safe and efficient freight movement and infrastructure in the state as well as supporting infrastructure projects that enhance the safety of movement of freight and hazardous materials; and

(IV) The costs to the department of revenue for administering the fee.

(e) Notwithstanding subsection (6)(b) of this section, if the available fund balance in the perfluoroalkyl and polyfluoroalkyl substances cash fund is greater than eight million dollars, the executive director of the department of revenue shall not collect the fee described in subsection (6)(b) of this section, but if the available balance in the fund is less than eight million dollars within a fiscal year, the executive director of the department of revenue shall impose a fee in accordance with subsection (6)(b) of this section.

(f) As used in this subsection (6), "fuel products" means all gasoline; diesel; biodiesel; biodiesel blends; kerosene; and all alcohol blended fuels that are produced, compounded, and offered for sale or used for the purpose of generating heat, light, or power in internal combustion engines or fuel cells, for cleaning, or for any other similar usage. "Fuel products" does not mean fuel that is used in aviation or odorized liquefied petroleum gas and natural gas.

(7) (a) There is hereby created in the state treasury the perfluoroalkyl and polyfluoroalkyl substances cash fund, referred to in this subsection (7) as the "fund". The fund consists of money credited to the fund pursuant to subsection (6) of this section and any other money that the general assembly may appropriate or transfer to the fund.

(b) The money in the fund shall not be deposited in or transferred to the general fund or any other fund. The state treasurer shall credit all interest and income derived from the deposit and investment of money in the fund to the fund. Any unexpended and unencumbered money in the fund shall remain in the fund and shall not be credited or transferred to the general fund or any other fund.

(c) Money in the fund is continuously appropriated for costs related to:

(I) Administering the perfluoroalkyl and polyfluoroalkyl substances grant program and awarding grants in accordance with section 25-5-1310;

(II) Administering the perfluoroalkyl and polyfluoroalkyl substances takeback program and purchasing and disposing of eligible materials under the takeback program in accordance with section 25-5-1311; and

(III) Providing technical assistance in locating and studying perfluoroalkyl and polyfluoroalkyl substances to communities, stakeholders, and regulatory boards or commissions for the following purposes:

(A) Developing guidance and recommendations regarding human health-based standards for perfluoroalkyl and polyfluoroalkyl substances in water or other media; and

(B) Identifying safe disposal methods of materials containing perfluoroalkyl and polyfluoroalkyl substances.

Source: L. 89: Entire section added, p. 405, § 4, effective July 1. **L. 92:** (1)(b) and (5) amended, p. 1820, § 2, effective June 3. **L. 95:** (1)(b) amended, p. 419, § 4, effective July 1. **L. 96:** (1)(b) amended and (1)(c) added, p. 709, § 1, effective May 15. **L. 97:** (5) repealed, p. 138, § 2, effective March 28. **L. 98:** (1.5) added, p. 1324, § 22, effective June 1. **L. 2000:** (1)(b)(III) and (1)(c) amended, p. 1384, § 3, effective May 30. **L. 2003:** (1)(a) amended and (1)(d) and (1)(e) added, p. 1822, § 6, effective May 21; (1)(a), IP(1)(b), (1)(c), and (4) amended, p. 2664, § 1, effective June 5. **L. 2005:** (1)(b), (1)(c), and IP(1)(e)(I) amended, p. 1328, § 5, effective July 1; (4)(b) amended, p. 1345, § 7, effective August 8. **L. 2010:** (1)(a), (1)(c), and (2) amended, (HB 10-1185), ch. 82, p. 275, § 1, effective August 11. **L. 2013:** (1)(a), (1)(d), (1)(e), (3), and (4)(b) amended and (4)(c) added, (HB 13-1110), ch. 225, p. 1056, § 4, effective January 1, 2014. **L.**

2016: (1)(c) amended, (HB 16-1044), ch. 1, p. 1, § 1, effective August 10. **L. 2020:** (6) and (7) added, (SB 20-218), ch. 141, p. 612, § 1, effective June 29.

Editor's note: Amendments to subsection (1)(a) by House Bill 03-1099 and Senate Bill 03-324 were harmonized.

Cross references: (1) For the petroleum storage tank fund, see § 8-20.5-103.

(2) For the legislative declaration contained in the 2003 act amending subsection (1)(a) and enacting subsections (1)(d) and (1)(e), see section 1 of chapter 279, Session Laws of Colorado 2003. For the legislative declaration in the 2013 act amending subsections (1)(a), (1)(d), (1)(e), (3), and (4)(b) and adding subsection (4)(c), see section 1 of chapter 225, Session Laws of Colorado 2013.

8-20-207. Method of tests. Tests made by the director of the division of oil and public safety shall be made in accordance with the most recent standard methods of tests of ASTM. The director of the division of oil and public safety is not required in every case to make a complete analysis to ascertain every form of impurities, such as sulphur and tar-like matter, but when, in the opinion of the director, a more complete analysis is necessary or advisable, the director may make a detailed chemical analysis to determine exactly the impurities or imperfections. The director in his or her discretion is authorized to make inspections of petroleum products loaded for shipment into this state, at points outside of this state.

Source: L. 31: p. 594, § 9. **CSA:** C. 118, § 7. **L. 41:** p. 584, § 7. **CRS 53:** § 100-2-7. **C.R.S. 1963:** § 100-2-7. **L. 2001:** Entire section amended, p. 1116, § 7, effective June 5. **L. 2005:** Entire section amended, p. 1345, § 8, effective August 8.

8-20-208. Director to keep record. (1) The director of the division of oil and public safety shall keep a record of all inspections made, showing:

(a) Time and place of each;

(b) Number of packages inspected;

(c) Number of gallons contained therein;

(d) Record of rejections;

(e) Record of fuel products destroyed.

(2) If any fuel products included in classes I and II have been rejected, such report shall show the date and place thereof and quantity rejected, together with the name of the person possessing it, together with a record from whom received. All such records shall be open for public inspection.

Source: L. 31: p. 595, § 11. **CSA:** C. 118, § 8. **L. 41:** p. 584, § 8. **CRS 53:** § 100-2-8. **C.R.S. 1963:** § 100-2-8. **L. 2001:** IP(1) amended, p. 1116, § 8, effective June 5. **L. 2005:** (2) amended, p. 1345, § 9, effective August 8.

8-20-209. Access to premises - records. (1) Any duly authorized agent or employee of the division of oil and public safety shall have authority to enter in or upon the premises of any

manufacturer, vendor, or dealer in fuel products during regular business hours and inspect any such product intended for sale or use.

(2) Every distributor shall keep a complete and accurate record of the number of gallons, as covered in classes I and II, sold by such distributor and of the number of gallons of fuel used by such distributor, the date of such sales and of such use, and, except in the case of retail sales through filling stations operated by such distributor, the names and addresses of the purchasers.

Source: L. 31: p. 595, § 12. **CSA:** C. 118, § 9. **L. 41:** p. 585, § 9. **CRS 53:** § 100-2-9. **C.R.S. 1963:** § 100-2-9. **L. 2001:** (1) amended, p. 1116, § 9, effective June 5. **L. 2005:** (2) amended, p. 1345, § 10, effective August 8.

8-20-210. Records of carriers - access. Every agent or employee of any railroad company or other transportation company, having the custody of books or records showing the shipment or receipt of fuel products, shall permit the director of the division of oil and public safety or the director's agents and employees free access to such books and records to determine the amount of fuel products shipped and received. All clerks, bookkeepers, express agents or officials, railroad agents, employees of common carriers, or other persons shall render to the director of the division of oil and public safety or the director's employees all the assistance in their power when so requested in tracing, finding, and inspecting such shipments.

Source: L. 31: p. 596, § 13. **CSA:** C. 118, § 10. **L. 41:** p. 585, § 10. **CRS 53:** § 100-2-10. **C.R.S. 1963:** § 100-2-10. **L. 2001:** Entire section amended, p. 1116, § 10, effective June 5.

8-20-211. Labeling visible containers. All visible containers and all devices used for drawing class I product from underground or aboveground containers at filling stations, garages, or other places where such products are sold or offered for sale shall be stamped or labeled in a visible place with the letters and figures:

"State Inspected ___(Date)__".

Source: L. 31: p. 596, § 14. **CSA:** C. 118, § 11. **L. 41:** p. 585, § 11. **CRS 53:** § 100-2-11. **C.R.S. 1963:** § 100-2-11. **L. 2005:** Entire section amended, p. 1345, § 11, effective August 8.

8-20-211.5. Labeling of containers. Throughout the state of Colorado, all visible containers and all devices for drawing motor fuel blends containing class I fuel products and at least two percent by volume of alcohol from underground containers at filling stations, garages, or other places where such products are sold or offered for sale shall be stamped or labeled in a visible place with information indicating the presence of alcohol in the motor fuel blend. If the volume of ethanol exceeds ten percent, or if the volume of methanol exceeds two percent, the stamp or label shall state the exact percentage. Such information shall appear on the front of the pump in a position clear and conspicuous to the driver's position, in at least one-half inch block letters, with information that identifies the maximum percentage by volume to the nearest whole percent of ethanol or of methanol or methanol with cosolvents.

Source: L. 79: Entire section added, p. 1326, § 1, effective July 1. **L. 86:** Entire section amended, p. 509, § 2, effective July 1. **L. 89:** Entire section amended, p. 382, § 1, effective June 10. **L. 2000:** Entire section amended, p. 763, § 4, effective September 1. **L. 2005:** Entire section amended, p. 1346, § 12, effective August 8.

8-20-212. Loading lines to be cleaned. Any loading or unloading line once used for one class of fuel products shall not be used for loading or unloading other classes of fuel products until the lines have been thoroughly cleaned and approved by the director of the division of oil and public safety.

Source: L. 41: p. 585, § 12. **CSA:** C. 118, § 12. **CRS 53:** § 100-2-12. **C.R.S. 1963:** § 100-2-12. **L. 2001:** Entire section amended, p. 1116, § 11, effective June 5.

8-20-213. Recycled or used motor oil - legislative declaration - definitions - sale. (1) The general assembly hereby finds and declares that the used oil generated by this state each year is a valuable resource that can be reused as an environmentally acceptable re-refined product. The general assembly further finds that the disposal of automotive engine oil and other lubricants is very costly, creates environmental and health hazards, and depletes the state's and the nation's dwindling supply of petroleum. It is the intent of the general assembly to reduce the amount of used oil that is improperly disposed of and to increase the amount that is reused as a re-refined product.

(2) As used in this section, unless the context otherwise requires:

(a) "API service classification" means one of the two letter classification performance ratings for engine oils, including re-refined oils, as determined by the American petroleum institute.

(b) "Lubricant" means a lubricating oil as defined in paragraph (c) of this subsection (2) or any other substance or mixture of substances used to reduce the friction caused by automotive parts moving against each other.

(c) "Lubricating oil" means oil classified for use in an internal combustion engine, hydraulic system, gear box, differential gear mechanism, or wheel bearing.

(d) "Recycled oil" means oil that is prepared for automotive use by reclaiming and otherwise reprocessing used oil.

(e) "Re-refined oil" means used oil that has been refined using processing technology to remove the physical and chemical contaminants acquired through use and which, by itself or when blended with new lubricating oil or additives, meets applicable API service classifications and SAE viscosity grades.

(f) "SAE viscosity grade" means the measure of an oil's, including a re-refined oil's, resistance to flow at a given temperature, as determined by the society of automotive engineers.

(g) "Used oil" means refined crude or synthetic oil that as a result of use has become unsuitable for its original purpose due to loss of original properties or the presence of impurities and that may be recycled in an economical manner and made suitable for further use as an automotive lubricant.

(3) (a) It is unlawful for a person to package and sell a container of:

(I) Lubricant unless the container prominently displays the applicable API service classification, API certification mark, and SAE viscosity grade of the contents; or

(II) Lubricant made wholly or partly from used or recycled oil unless the container is plainly labeled as containing used or recycled oil.

(b) The label or advertising on a container of used or recycled oil shall accurately reflect the type of oil stored in such container.

(c) A person may represent a product made wholly or partly from re-refined oil to be equal to or better than a similar product made from virgin oil if the product for sale conforms with applicable API service classifications, API certification mark, and SAE viscosity grades.

(d) Notwithstanding section 8-20-104, a person found guilty of violating this subsection (3) shall be subject to a fine of not less than one hundred dollars and not more than five hundred dollars for the first offense. A person found guilty of a second or subsequent offense shall be enjoined from selling or distributing used oil for not less than one year and not more than five years.

Source: L. 41: p. 586, § 13. **CSA:** C. 118, § 13. **CRS 53:** § 100-2-13. **C.R.S. 1963:** § 100-2-13. **L. 95:** Entire section amended, p. 349, § 1, effective April 27. **L. 2003:** (3)(d) amended, p. 1824, § 7, effective May 21.

Cross references: For the legislative declaration contained in the 2003 act amending subsection (3)(d), see section 1 of chapter 279, Session Laws of Colorado 2003.

8-20-214. Inspectors - business forbidden. No person employed by the director of the division of oil and public safety to make inspections under this part 2 shall engage directly or indirectly in the business of dealing in petroleum products.

Source: L. 31: p. 598, § 17. **CSA:** C. 118, § 14. **L. 41:** p. 586, § 14. **CRS 53:** § 100-2-14. **C.R.S. 1963:** § 100-2-14. **L. 2001:** Entire section amended, p. 1117, § 12, effective June 5.

8-20-215. Mislabeling. No person shall mark, stencil, brand, or certify falsely any pump, receptacle, or container of fuel products, or change, alter, or deface the mark, brand, or a certificate on any such pump, receptacle, or container, or falsely represent the quality or grade of any fuel product.

Source: L. 31: p. 598, § 17. **CSA:** C. 118, § 14. **L. 41:** p. 586, § 14. **CRS 53:** § 100-2-15. **C.R.S. 1963:** § 100-2-15. **L. 2005:** Entire section amended, p. 1346, § 13, effective August 8.

8-20-216. Unlawful to deceive purchaser. It is unlawful for any person, firm, or corporation to store, sell, expose for sale, or offer for sale any liquid fuels, lubricating oils, or other similar products, in any manner whatsoever, so as to deceive or tend to deceive the purchaser as to the nature, price, quality, and identity of the products so sold or offered for sale.

Source: L. 31: p. 598, § 18. **CSA:** C. 118, § 15. **L. 41:** p. 586, § 15. **CRS 53:** § 100-2-16. **C.R.S. 1963:** § 100-2-16. **L. 86:** Entire section amended, p. 510, § 3, effective July 1.

8-20-217. Sale of products not indicated. It is unlawful for any person to store, keep, expose for sale, offer for sale, or sell from any tank or container, or from any pump or other distributing device or equipment, any fuel or other similar products than those indicated by the name, trade name, symbol, sign, or other distinguishing mark or device of such fuel or other products, or by the name and address of the manufacturer of such fuel product appearing upon the tank, container, pump, or other distributing equipment, from which the same are sold, offered for sale, or distributed.

Source: L. 31: p. 599, § 19. **CSA:** C. 118, § 16. **L. 41:** p. 586, § 16. **L. 43:** p. 448, § 3. **CRS 53:** § 100-2-17. **C.R.S. 1963:** § 100-2-17.

8-20-218. Calibration of transport, tank truck, or delivery trucks. (1) The director of the division of oil and public safety shall calibrate transport, trailer, and delivery truck tanks to determine the legal capacity of each compartment, allowing for expansion outage to conform to DOT regulations, except in the case of delivery truck tanks where two percent outage will suffice. Each tank compartment shall have affixed and spot-welded by the owner or operator thereof a capacity marker, which shall be set by measuring with a steel rule from the bottom of a steel bar set across the fill opening to the bottom of the marker (floated). The compartment gallonage shall be marked or stenciled with paint in figures at least one inch in height on each compartment dome collar.

(2) All new or additional vehicular tanks purchased or leased after April 6, 1955, by any person for hauling class I, II, or III petroleum products within or into the state shall be calibrated by the director of the division of oil and public safety and a certificate of calibration shall be issued to the owner or operator thereof before such equipment is put in service. A copy of the certificate of calibration shall accompany the tank at all times.

(3) Whenever a certificate of calibration has been lost or mutilated, the director of the division of oil and public safety shall issue a duplicate of the original which shall serve the purpose of the original. The director of the division of oil and public safety may order, after proper inspection, a calibration or a recalibration of any transport, trailer, or delivery truck tank operating in the state, whether calibrated by the director previously or not, when inspection by the director or the director's deputy reveals that tank compartments or capacity markers have been altered intentionally or accidentally, and the owner or operator shall comply with such order within ten days. If the owner or operator of a delivery truck tank has available calibrating equipment acceptable to the director of the division of oil and public safety, the tanks shall be calibrated in the presence of the director or the director's deputy, at or near the place of business of the owner or operator, and the director shall issue a certificate of calibration for said tank.

Source: L. 31: p. 599, § 19. **CSA:** C. 118, § 16. **L. 41:** p. 586, § 16. **L. 43:** p. 448, § 3. **CRS 53:** § 100-2-18. **L. 55:** p. 644, § 1. **C.R.S. 1963:** § 100-2-18. **L. 2001:** Entire section amended, p. 1117, § 13, effective June 5. **L. 2005:** (1) and (2) amended, p. 1346, § 14, effective August 8.

8-20-219. Equipment - disguise unlawful. It is unlawful for any person, firm, or corporation, to disguise or camouflage his equipment, by imitating the design, symbol, or trade

name of the equipment under which recognized brands of liquid fuels, lubricating oils, and similar products are generally marketed.

Source: L. 31: p. 599, § 20. **CSA:** C. 118, § 17. **L. 41:** p. 587, § 17. **CRS 53:** § 100-2-19. **C.R.S. 1963:** § 100-2-19.

8-20-220. Trade names - unlawful use. It is unlawful for any person, firm, or corporation, to expose for sale, offer for sale, or sell, under any trademark or trade name in general use, any liquid fuels, lubricating oils, or other like products, except those manufactured or distributed by the manufacturer or distributor marketing liquid fuels, lubricating oils, or other like products, under such trademark or trade names, or to substitute, mix, or adulterate the liquid fuels, lubricating oils, or other similar products sold, offered for sale, or distributed under such trademark or trade name.

Source: L. 31: p. 599, § 21. **CSA:** C. 118, § 18. **L. 41:** p. 587, § 18. **CRS 53:** § 100-2-20. **C.R.S. 1963:** § 100-2-20.

Cross references: For trademarks and trade names, see articles 70 and 71 of title 7.

8-20-221. Assisting in violations. It is unlawful for any person to aid or assist any other person in the violation of the provisions of this part 2, by depositing or delivering into any tank, receptacle, or other container, any liquid fuels, lubricating oils, or like products than those intended to be stored therein and distributed therefrom, as indicated by the name of the manufacturer or distributor or the trade name or trademark of the product displayed on the container itself, or on the pump, or on any other distributing device in connection therewith.

Source: L. 31: p. 599, § 22. **CSA:** C. 118, § 19. **L. 41:** p. 587, § 19. **CRS 53:** § 100-2-21. **C.R.S. 1963:** § 100-2-21.

8-20-222. Improvers of products. All materials, fluids, or substances offered for sale or exposed for sale, purporting to be substances for, or improvers of, fuel products to be used for power, heating, lubricating, or illuminating purposes, before being sold, exposed, or offered for sale, shall be submitted to the director of the division of oil and public safety for examination and inspection, and shall only be sold or offered for sale when properly labeled with a label, the form and contents of which label has been approved by the director in writing.

Source: L. 31: p. 600, § 23. **CSA:** C. 118, § 20. **L. 41:** p. 587, § 20. **CRS 53:** § 100-2-22. **C.R.S. 1963:** § 100-2-22. **L. 73:** p. 1067, § 3. **L. 2001:** Entire section amended, p. 1117, § 14, effective June 5. **L. 2005:** Entire section amended, p. 1346, § 15, effective August 8.

8-20-223. Containers - inspection. It is the duty of the director of the division of oil and public safety and the director's deputies to inspect all containers or storage tanks from which products of petroleum to be used for illuminating or power purposes are retailed. When such containers or storage tanks are found to be placed in an unsafe position or to contain water or foreign matter, the director shall make a written order to have the same properly cleaned or

removed, and upon failure of the owner to comply with said order within ten days after the date thereof, the director shall confiscate and cause the same to be destroyed or removed. All vendors of classes I, II, and III fuel products shall have fire extinguishers in their establishments.

Source: L. 31: p. 600, § 24. **CSA:** C. 118, § 21. **L. 41:** p. 587, § 21. **CRS 53:** § 100-2-23. **C.R.S. 1963:** § 100-2-23. **L. 78:** Entire section amended, p. 255, § 12, effective May 23. **L. 2001:** Entire section amended, p. 1118, § 15, effective June 5. **L. 2005:** Entire section amended, p. 1347, § 16, effective August 8.

8-20-223.5. Emission inspection. (1) The director of the division of oil and public safety shall conduct the emission inspection of any underground storage tank which is required to have installed pollution control equipment. Such inspection shall only be conducted in the ozone nonattainment area as defined pursuant to the authority contained in section 25-7-107, C.R.S. Such inspection shall be for the purpose of verifying the installation of such pollution control equipment and for the purpose of assuring its proper use.

(2) The director of the division of oil and public safety shall contract with the department of public health and environment for the purpose of submitting inspection reports, determining the frequency of certain inspections, assisting in the enforcement of the "Colorado Air Quality Control Act" as it pertains to underground storage tank pollution control equipment violations, and transmitting the payment for the costs of administering the program aspects in the department of public health and environment.

(3) The fees paid pursuant to this subsection (3) shall be no more than necessary to offset the direct cost of the inspection conducted pursuant to subsections (1) and (2) of this section, but in no event more than twelve dollars.

Source: L. 89: Entire section added, p. 1167, § 3, effective May 26. **L. 94:** (2) amended, p. 2721, § 312, effective July 1. **L. 2001:** (1) and (2) amended, p. 1118, § 16, effective June 5.

Editor's note: The "Colorado Air Quality Control Act" was changed to the "Colorado Air Pollution Prevention and Control Act" and is located in article 7 of title 25. (See L. 92, p. 1165.)

8-20-224. Empty containers - removal. It is the duty of the director of the division of oil and public safety or the director's deputies to notify the owner or person having in his or her possession empty oil barrels and other containers which are stored or placed in a position dangerous to property to remove the same to a place of safety.

Source: L. 31: p. 600, § 25. **CSA:** C. 118, § 22. **L. 41:** p. 588, § 22. **CRS 53:** § 100-2-24. **C.R.S. 1963:** § 100-2-24. **L. 2001:** Entire section amended, p. 1118, § 17, effective June 5.

8-20-225. Measuring device - sealing - approval of prover and procedure. (1) No person, or agent or employee of any person, shall use any meter or mechanical device for the measurement of oil, gasoline, or liquid fuels unless the same has been proved in a manner acceptable to the director of the division of oil and public safety and sealed as correct by the director or one of the director's deputies. The director and the director's deputies are further

authorized, if any such meter or mechanical device fails to comply with any of the provisions of this part 2, to seal the meter or mechanical device in a manner that prohibits its use until such meter or mechanical device complies with all of the provisions of this part 2, at which time the seal shall be removed by the director or the director's deputies.

(2) The specifications, tolerances, and other technical requirements published in the NIST handbook 44, "Specifications, Tolerances, and Other Technical Requirements for Commercial Weighing and Measuring Devices", NIST handbook 130, "Uniform Laws and Regulations in the area of legal metrology and engine fuel quality", and supplements thereto or revisions thereof, shall apply to the provisions of this article, except as modified or rejected by this article or any rule promulgated pursuant to this article.

Source: L. 31: p. 601, § 26. **CSA:** C. 118, § 23. **L. 41:** p. 588, § 23. **CRS 53:** § 100-2-25. **C.R.S. 1963:** § 100-2-25. **L. 67:** p. 150, § 1. **L. 73:** p. 1067, § 4. **L. 86:** Entire section amended, p. 510, § 4, effective July 1. **L. 2001:** (1) amended, p. 1118, § 18, effective June 5. **L. 2003:** (1) amended, p. 1824, § 8, effective May 21. **L. 2005:** (2) amended, p. 1347, § 17, effective August 8.

Cross references: For the legislative declaration contained in the 2003 act amending subsection (1), see section 1 of chapter 279, Session Laws of Colorado 2003.

8-20-226. False labels unlawful. No label upon, or invoice for, any lubricating oil or grease shall contain any untrue or misleading statement, and any person, agent, or employee of any person who substitutes any oil or grease for any other brand, without notice, shall be subject to the penalties prescribed in section 8-20-104.

Source: L. 31: p. 605, § 36. **CSA:** C. 118, § 24. **L. 41:** p. 588, § 24. **CRS 53:** § 100-2-26. **C.R.S. 1963:** § 100-2-26. **L. 2003:** Entire section amended, p. 1825, § 9, effective May 21.

Cross references: For the legislative declaration contained in the 2003 act amending this section, see section 1 of chapter 279, Session Laws of Colorado 2003.

8-20-227. Tests used. Where no tests are specified in this part 2, the most recent tests prescribed, accepted, and considered as standards by ASTM or NIST shall be used.

Source: L. 31: p. 605, § 37. **CSA:** C. 118, § 25. **L. 41:** p. 588, § 25. **CRS 53:** § 100-2-27. **C.R.S. 1963:** § 100-2-27. **L. 2005:** Entire section amended, p. 1347, § 18, effective August 8.

8-20-228. Hazardous, dangerous conditions - duty of director. (1) It is the duty of the director of the division of oil and public safety, whenever the director has reasonable and probable grounds to believe that a hazardous or dangerous condition exists due to deterioration of fuel products storage and piping facilities which are endangering human and environmental life to determine the reason for the condition. The director may order the person responsible for the hazardous or dangerous condition to take corrective measures within a reasonable period of

time to alleviate or eliminate the condition, and if the measures are not taken within such time, the director may act to alleviate or eliminate the same.

(2) If any person fails or refuses to comply with any such order of the director of the division of oil and public safety, the director, in the name of the people of the state of Colorado and through the attorney general, may apply to any district court having jurisdiction for a mandatory injunction to compel compliance with such order to alleviate or eliminate such hazardous or dangerous condition.

(3) The provisions of this part 2 shall not extend to nor be applicable to cities which are organized under article XX of the state constitution. If any such city desires to become subject to this part 2, the same may be accomplished by a resolution of the legislative body of such city adopted in the usual manner.

Source: L. 67: p. 144, § 1. **C.R.S. 1963:** § 100-2-29. **L. 73:** p. 1067, § 5. **L. 2001:** (1) and (2) amended, p. 1119, § 19, effective June 5.

8-20-229. Penalty. (Repealed)

Source: L. 31: p. 605, § 38, **CSA:** C. 118, § 26. **L. 41:** p. 588, § 26. **CRS 53:** § 100-2-28. **C.R.S. 1963:** § 100-2-28. **L. 2003:** Entire section repealed, p. 1825, § 10, effective May 21.

Cross references: For the legislative declaration contained in the 2003 act repealing this section, see section 1 of chapter 279, Session Laws of Colorado 2003.

8-20-230. Submittal of plans. (1) Plans for all installations utilizing liquid fuel products, except for those liquid fuel products which are defined as regulated substances and regulated pursuant to article 20.5 of this title, in storage containers of an aggregate of over fifteen hundred gallons water capacity, including gasoline stations, garages, stores, and all other places where said products are dispensed, shall be submitted to the director of the division of oil and public safety for approval before construction begins.

(2) Plans for the preceding installations shall include:

(a) Provisions for extended protection against underground leaks due to corrosion, erosion, electrolysis, galvanic action, soil shifting, soil compaction, and high groundwater tables;

(b) Provisions for a containment of liquid fuels in the event of damage to fuel dispensers and attendant piping;

(c) Provisions for safety of human and environmental life.

Source: L. 73: p. 1068, § 6. **C.R.S. 1963:** § 100-2-30. **L. 89:** (1) amended, p. 405, § 3, effective July 1. **L. 95:** (1) amended, p. 419, § 5, effective July 1. **L. 2001:** (1) amended, p. 1119, § 20, effective June 5.

8-20-231. Minimum standards - publications. (1) (a) The design, construction, location, installation, and operation of liquid fuel systems, fuel products, and equipment and the handling of liquid fuels and fuel products must conform to the minimum standards as prescribed by the applicable sections of the current edition of the national fire code published by the National Fire Protection Association, as revised by the Association from time to time.

(b) The minimum standards as prescribed must also apply to marine and pipeline terminals, natural gasoline plants, refineries, tank farms, underground storage facilities, aboveground storage facilities, and chemical plants utilizing liquid fuels; except that the gallon limitations in such minimum standards do not apply to:

(I) Aboveground storage facilities associated with mining;

(II) Oil and gas production facilities;

(III) Asphalt or concrete production;

(IV) Construction projects; or

(V) Activities related to aboveground storage facilities associated with mining, oil and gas production facilities, asphalt or concrete production, or construction projects.

(2) The director of the division of oil and public safety shall maintain copies of the codes in his or her office at all times for public examination.

Source: L. 73: p. 1068, § 6. **C.R.S. 1963:** § 100-2-31. **L. 90:** Entire section amended, p. 467, § 2, effective May 24. **L. 2001:** Entire section amended, p. 1119, § 21, effective June 5. **L. 2005:** Entire section amended, p. 1347, § 19, effective August 8. **L. 2016:** Entire section amended, (HB 16-1053), ch. 4, p. 8, § 3, effective March 9.

8-20-232. Method of sales. Petroleum products in liquid form shall be sold only by metered liquid measure or by weight.

Source: L. 73: p. 1068, § 6. **C.R.S. 1963:** § 100-2-32.

8-20-232.5. Method of sales of motor fuels - gallon equivalents - conversion factors. (1) In addition to any other allowed unit of measurement, motor fuels may be sold by gallon equivalents pursuant to the requirements of this section.

(2) (a) Any dispenser used for the sale of motor fuel in gallon equivalents shall display gallon equivalents as the primary display information provided. Such dispenser shall indicate the number of gallon equivalents and fractions of gallon equivalents sold, the total sales price of the motor fuel dispensed, and the sales price per gallon equivalent of motor fuel sold. Information concerning the sale of motor fuels by gallon equivalents may be provided at the point of sale in literature, signs, or other advertisements. Street sign advertisements regarding the sale of motor fuels by gallon equivalents may abbreviate the term "gallon gasoline equivalent" as "gallon G.E." and the term "gallon diesel equivalent" as "gallon D.E.".

(b) In addition to the information required by paragraph (a) of this subsection (2), the face of a dispenser that is used for the sale of motor fuel in gallon equivalents shall prominently display the conversion factor that is being used by the seller to determine the number of gallon equivalents sold based upon the type and amount of actual measured units of motor fuel that is dispensed. The information displayed on such a dispenser shall include, but is not limited to, the following statements concerning the conversion factor:

(I) "One gallon diesel equivalent of (type of motor fuel) is equivalent to (amount of actual units of measurement) of (type of motor fuel)."

(II) "One gallon diesel equivalent of (type of motor fuel) contains an average lower heating value of 128,000 BTUs of energy, but in no case contains a lower heating value of less than 124,000 BTUs of energy."

(III) "One gallon gasoline equivalent of (type of motor fuel) is equivalent to (amount of actual units of measurement) of (type of motor fuel)."

(IV) "One gallon gasoline equivalent of (type of motor fuel) contains an average lower heating value of 114,000 BTUs of energy, but in no case contains a lower heating value of less than 110,000 BTUs of energy."

(3) Any seller using gallon equivalents for motor fuel sales shall calculate the conversion factor used by the seller to convert the actual units by which a motor fuel is measured at the dispenser to gallon equivalent units based on the inferred energy content of such motor fuel as measured by one of the following methods:

(a) For conversions to gallon diesel equivalents:

(I) If the motor fuel is actually measured at the dispenser as a volume, the gallon diesel equivalent measurement shall be calculated by determining the number of measured volumetric units required to provide an average lower heating value of one hundred twenty-eight thousand BTUs (British thermal units), but in no case a lower heating value of less than one hundred twenty-four thousand BTUs.

(II) If the motor fuel is actually measured at the dispenser as a mass, the gallon diesel equivalent measurement shall be calculated by determining the number of measured mass units required to provide an average lower heating value of one hundred twenty-eight thousand BTUs (British thermal units), but in no case a lower heating value of less than one hundred twenty-four thousand BTUs.

(b) For conversions to gallon gasoline equivalents:

(I) If the motor fuel is actually measured at the dispenser as a volume, the gallon gasoline equivalent measurement shall be calculated by determining the number of measured volumetric units required to provide an average lower heating value of one hundred fourteen thousand BTUs (British thermal units), but in no case a lower heating value of less than one hundred ten thousand BTUs.

(II) If the motor fuel is actually measured at the dispenser as a mass, the gallon gasoline equivalent measurement shall be calculated by determining the number of measured mass units required to provide an average lower heating value of one hundred fourteen thousand BTUs (British thermal units), but in no case a lower heating value of less than one hundred ten thousand BTUs.

(4) The actual unit of measurement for a motor fuel sold in terms of gallon equivalents shall be calibrated by the seller with appropriate precision to ensure conformance with any required dispensing accuracies.

(5) Repealed.

Source: L. 93: Entire section added, p. 270, § 3, effective July 1. **L. 97:** (5) repealed, p. 138, § 3, effective March 28.

Cross references: For the legislative declaration contained in the 1993 act enacting this section, see section 1 of chapter 79, Session Laws of Colorado 1993.

8-20-233. Declaration on invoice. (1) The sale of petroleum products shall include on the sales statement a definite, plain, and conspicuous declaration of:

(a) The quantity of goods sold;

(b) The weight or basis for measurement of either gross volume or volume adjusted to standard temperature of sixty degrees Fahrenheit.

Source: L. 73: p. 1068, § 6. **C.R.S. 1963:** § 100-2-33.

8-20-234. Temperature compensator permanent. Whenever a temperature compensating meter is used to determine the amount of liquid fuels or liquefied petroleum gas offered for sale in the liquid state, such compensating meter shall be installed permanently on all meters within a geographical location owned by a user in Colorado and used exclusively for at least a period of one year and the temperature compensating devices shall not be disconnected, deactivated, or removed at any time except for repairs or for tests by the director of the division of oil and public safety. If a temperature compensating device is disconnected, deactivated, or removed for reasons other than repair, it shall not be reactivated for a period of one year from the date of removal. Notification of such removal or installation shall be in accordance with the provisions of section 8-20-408 (2).

Source: L. 73: p. 1068, § 6. **C.R.S. 1963:** § 100-2-34. **L. 2001:** Entire section amended, p. 1120, § 22, effective June 5.

8-20-235. Measuring gasoline and special fuel for sale to distributors. Notwithstanding any other provision of this part 2, the method of determining gallonage of gasoline or special fuel sold to distributors, as defined in section 39-27-101 (7), C.R.S., shall be on a gross or net gallons basis at the option of the distributor. Such election shall be for a twelve-month period.

Source: L. 81: Entire section added, p. 1892, § 1, effective May 18. **L. 98:** Entire section amended, p. 1040, § 12, effective July 1. **L. 2003:** Entire section amended, p. 1818, § 5, effective August 6.

Cross references: For the legislative declaration contained in the 2003 act amending this section, see section 1 of chapter 278, Session Laws of Colorado 2003.

PART 3

CONTAINERS OF GAS OR GASEOUS COMPOUNDS

8-20-301. Unlawful use of container. No person, firm, or corporation, except the owner thereof or persons authorized in writing by the owner, shall sell or offer for sale, or deliver any gas or gaseous compound used for heating or cooking, which is shipped, consigned, or delivered in steel containers, or containers made of other metal, plastic, or other substance, if such container bears upon the surface thereof, in plainly legible characters the name, initials, or trademark of the owner. The term "gas or gaseous compound" as used in this part 3 includes any material which is composed predominantly of any of the following hydrocarbons, or mixtures of the same: Propane, propylene, butanes, normal butane and isobutane, and butylenes.

Source: L. 43: p. 598, § 1. **CSA:** C. 165, § 25. **CRS 53:** § 100-4-1. **C.R.S. 1963:** § 100-4-1.

8-20-302. Refill container unlawful. No person, firm, or corporation, other than the owner or person authorized by the owner shall refill or use in any manner a container or receptacle which has imprinted thereon the name, initials, or trademark of the owner, for any gas or gaseous compound used for cooking or heating.

Source: L. 43: p. 598, § 2. **CSA:** C. 165, § 26. **CRS 53:** § 100-4-2. **C.R.S. 1963:** § 100-4-2.

8-20-303. Reuse of container unlawful. No person, firm, or corporation to whom such gas or gaseous compound has been sold or delivered in such containers shall sell, loan, deliver, or permit to be delivered such containers to any person other than such owner, or persons authorized by such owner to receive the delivery of such containers.

Source: L. 43: p. 598, § 3. **CSA:** C. 165, § 27. **CRS 53:** § 100-4-3. **C.R.S. 1963:** § 100-4-3.

8-20-304. Applicable - when. Sections 8-20-301 to 8-20-303 shall not apply to any gas or gaseous compound referred to in section 8-20-301, contained in such containers, unless the title to the containers is retained by the owner or his representative, and unless the gas or gaseous substance contained in the containers is sold and delivered upon the understanding and agreement that the container in which it was delivered shall be returned to the owner or its representative when the contents have been used up by the purchaser.

Source: L. 43: p. 599, § 4. **CSA:** C. 165, § 28. **CRS 53:** § 100-4-4. **C.R.S. 1963:** § 100-4-4.

8-20-305. Penalty for violation. Any fuel distributor who fills a fuel tank with liquified petroleum gas without the approval of the owner of the tank shall be liable in a civil action for treble damages in addition to costs and reasonable attorney fees.

Source: L. 43: p. 599, § 5. **CSA:** C. 165, § 29. **CRS 53:** § 100-4-5. **C.R.S. 1963:** § 100-4-5. **L. 2003:** Entire section amended, p. 1825, § 11, effective May 21.

Cross references: For the legislative declaration contained in the 2003 act amending this section, see section 1 of chapter 279, Session Laws of Colorado 2003.

PART 4

LIQUEFIED PETROLEUM GAS - RULES

8-20-401. Definitions. As used in this part 4, unless the context otherwise requires:

(1) Repealed.

(2) "GPA" means the gas processors association.

(3) "GPA 2140" means the publication number 2140 produced by the gas processors association.

(4) and (5) Repealed.

(6) "Liquefied petroleum gas", referred to as LPG, means and includes any material which is composed predominantly of any of the following hydrocarbons, or mixtures of the same: Propane, propylene, butanes, normal butane or isobutane, and butylenes.

(7) Repealed.

(8) The definitions as set forth in section 8-20-201, except section 8-20-201 (1), shall also apply to this part 4.

Source: L. 45: p. 496, § 1. **CSA:** C. 118, § 74. **CRS 53:** § 100-5-1. **C.R.S. 1963:** § 100-5-1. **L. 73:** p. 1069, § 7. **L. 91:** Entire section amended, p. 1346, § 2, effective April 19. **L. 2003:** (1), (4), (5), and (7) repealed, p. 1825, § 12, effective May 21.

Cross references: For the legislative declaration contained in the 2003 act repealing subsections (1), (4), (5), and (7), see section 1 of chapter 279, Session Laws of Colorado 2003.

8-20-402. Rules of director. The director of the division of oil and public safety shall make, promulgate, and enforce rules setting forth minimum general standards consistent with the provisions of section 8-20-405 covering the design, construction, location, installation, and operation of equipment for storing, handling, transporting, dispensing, and utilizing liquefied petroleum gases, and specifying the odorization of said gases and the degree thereof and the odorizing agent to be used therein. These rules shall be such as are reasonably necessary for the protection of the health, welfare, and safety of the public and persons using these materials and shall be in substantial conformity with the generally accepted standards of safety concerning the same subject matter. Such rules shall be adopted by the director of the division of oil and public safety only after a public hearing thereon.

Source: L. 45: p. 496, § 2. **CSA:** C. 118, § 75. **CRS 53:** § 100-5-2. **C.R.S. 1963:** § 100-5-2. **L. 2001:** Entire section amended, p. 1120, § 23, effective June 5. **L. 2003:** Entire section amended, p. 1825, § 13, effective May 21.

Cross references: For the legislative declaration contained in the 2003 act amending this section, see section 1 of chapter 279, Session Laws of Colorado 2003.

8-20-403. Penalty for violation. (Repealed)

Source: L. 45: p. 496, § 3. **CSA:** C. 118, § 76. **CRS 53:** § 100-5-3. **C.R.S. 1963:** § 100-5-3. **L. 2001:** Entire section amended, p. 1120, § 24, effective June 5. **L. 2003:** Entire section repealed, p. 1826, § 14, effective May 21.

Cross references: For the legislative declaration contained in the 2003 act repealing this section, see section 1 of chapter 279, Session Laws of Colorado 2003.

8-20-404. Conflicting rules forbidden. No municipality or other political subdivision shall adopt or enforce any ordinance or regulation in conflict with the provisions of this part 4 or with the rules promulgated under section 8-20-402.

Source: L. 45: p. 497, § 4. **CSA:** C. 118, § 77. **CRS 53:** § 100-5-4. **C.R.S. 1963:** § 100-5-4. **L. 2011:** Entire section amended, (HB 11-1303), ch. 264, p. 1149, § 4, effective August 10.

8-20-405. Minimum standards. (1) The design, construction, location, installation, and operation of liquefied petroleum gas systems and equipment, and the transportation and handling of liquefied petroleum gas, and the odorization of liquefied petroleum gas, the degree thereof, and the odorizing agent to be used therein, shall conform to the minimum standards therefor as prescribed by the applicable sections of the 2001 edition of the national fire code published by the national fire protection association, as revised by the association from time to time. The minimum standards as prescribed in this section shall also apply to marine and pipeline terminals, natural gasoline plants, refineries, tank farms, underground storage facilities such as salt and coal mines, aboveground storage facilities, and to chemical plants utilizing liquefied petroleum gas in the manufacture of their products. Copies of the pamphlets shall be kept and maintained in the office of the director of the division of oil and public safety at all times for examination by any interested person.

(2) Any changes to any standards promulgated by the national fire protection association after January 1, 2003, shall be reviewed by the director of the division of oil and public safety. After such review, the director may adopt such changes by rule.

Source: L. 63: p. 733, § 1. **C.R.S. 1963:** § 100-5-5. **L. 67:** p. 149, § 1. **L. 73:** p. 1069, § 8. **L. 2001:** Entire section amended, p. 1121, § 25, effective June 5. **L. 2003:** Entire section amended, p. 1826, § 15, effective May 21.

Cross references: For the legislative declaration contained in the 2003 act amending this section, see section 1 of chapter 279, Session Laws of Colorado 2003.

8-20-406. Submittal of plans. (1) Plans for all installations utilizing liquefied petroleum gas storage containers of over two thousand gallons water capacity shall be submitted to the director of the division of oil and public safety for approval before construction of such installations begins.

(2) Plans for any of the following shall be submitted to the director of the division of oil and public safety for approval before installation:

(a) Service stations supplying liquefied petroleum gas for motor fuel;

(b) Installations for filling of cylinders (bottles) or other portable containers meeting surface transportation board specifications;

(c) Industrial bulk storage installations and all other bulk storage installations utilizing storage containers for liquefied petroleum gas of over two thousand gallons aggregate water capacity.

Source: L. 63: p. 733, § 2. **C.R.S. 1963:** § 100-5-6. **L. 2001:** (1) and IP(2) amended, p. 1121, § 26, effective June 5; (2)(b) amended, p. 1266, § 3, effective June 5.

8-20-407. Reports of accidents. (1) Reports of accidents, fires, explosions, injuries, damage to property, or loss of life at installations using liquefied petroleum gas shall be reported to the director of the division of oil and public safety within twenty-four hours after their occurrence.

(2) Subsection (1) of this section includes accidents resulting from the improper use of equipment, appliances, and appurtenances to liquefied petroleum gas systems. The director of the division of oil and public safety may, at his or her discretion, investigate such occurrences and shall maintain a written record of his or her findings, which shall be available to public examination.

Source: L. 63: p. 734, § 3. **C.R.S. 1963:** § 100-5-7. **L. 2001:** Entire section amended, p. 1121, § 27, effective June 5.

8-20-408. Meter inspection. (1) No person, firm, partnership, or corporation shall use a liquefied petroleum gas liquid metering system for the sale of liquefied petroleum gas unless the system has been inspected, approved, and sealed by the director of the division of oil and public safety. Operation or use of a liquefied petroleum gas liquid metering system that has not been properly inspected and sealed constitutes a violation of sections 8-20-405 to 8-20-411, except under the circumstances outlined in subsection (2) of this section.

(2) The director of the division of oil and public safety shall be notified immediately when a new metering system is placed in service or when the seal on an operating metering system is broken for any purpose. Such systems may be operated on a temporary basis until reinspected and sealed by the director of the division of oil and public safety. Upon such notification, it is the responsibility of the director of the division of oil and public safety to make a field inspection within a reasonable period of time.

Source: L. 63: p. 734, § 4. **C.R.S. 1963:** § 100-5-8. **L. 2001:** Entire section amended, p. 1121, § 28, effective June 5. **L. 2003:** (1) amended, p. 1826, § 16, effective May 21.

Cross references: For the legislative declaration contained in the 2003 act amending subsection (1), see section 1 of chapter 279, Session Laws of Colorado 2003.

8-20-409. Requirements for appliances.

(1) (Deleted by amendment, L. 2003, p. 1827, § 17, effective May 21, 2003.)

(2) Appliances and components shall not be used or installed unless certified by or listed in standards established by rules promulgated by the director of the division of oil and public safety pursuant to section 8-20-102.

Source: L. 63: p. 734, § 5. **C.R.S. 1963:** § 100-5-9. **L. 2001:** (2) amended, p. 1122, § 29, effective June 5. **L. 2003:** Entire section amended, p. 1827, § 17, effective May 21.

Cross references: For the legislative declaration contained in the 2003 act amending this section, see section 1 of chapter 279, Session Laws of Colorado 2003.

8-20-410. Tank delivery truck, semitrailer, or truck trailer for bulk storage. No tank delivery truck, semitrailer, or truck trailer shall be used as a bulk storage plant for liquefied petroleum gas unless the same has been inspected and approved by the director of the division of oil and public safety.

Source: L. 63: p. 735, § 6. **C.R.S. 1963:** § 100-5-10. **L. 2001:** Entire section amended, p. 1122, § 30, effective June 5.

8-20-411. Location and charging of containers. (1) Permanently installed American petroleum institute-American society of mechanical engineers or United States department of transportation containers or surface transportation board containers provided with excess flow or back-flow check valves shall be located and filled in accordance with the applicable requirements of basic rules of the national fire code described in section 8-20-405. Private streets, roads, or rights-of-way shall not be classed as public streets or highways for the purpose of sections 8-20-405 to 8-20-411.

(2) DOT containers not provided with excess flow or back-flow check valves shall not be filled within the limits or boundaries of an area in which two or more mobile vehicles are situated. Such containers shall be filled in accordance with the applicable provisions of basic rules and of the national fire code, at a properly equipped container filling plant. Such plant shall be located at least fifty feet from the nearest trailer, important building, or line of property that may be built upon, and at least twenty-five feet from any public road, street, or highway. Such filling plant shall be enclosed by man-proof fencing or otherwise protected from tampering or physical damage. The area shall be kept locked when unattended.

(3) Container charging operations shall be performed only by qualified personnel.

Source: L. 63: p. 735, § 7. **C.R.S. 1963:** § 100-5-11. **L. 2001:** (1) and (2) amended, p. 1266, § 4, effective June 5. **L. 2003:** (1) amended, p. 1827, § 18, effective May 21. **L. 2005:** (2) amended, p. 1348, § 20, effective August 8.

Cross references: For the legislative declaration contained in the 2003 act amending subsection (1), see section 1 of chapter 279, Session Laws of Colorado 2003.

8-20-412. Violations of sections 8-20-405 to 8-20-414. (Repealed)

Source: L. 63: p. 735, § 8. **C.R.S. 1963:** § 100-5-12. **L. 74:** Entire section amended, p. 417, § 59, effective April 11. **L. 2003:** Entire section repealed, p. 1827, § 19, effective May 21.

Cross references: For the legislative declaration contained in the 2003 act repealing this section, see section 1 of chapter 279, Session Laws of Colorado 2003.

8-20-413. Specifications of liquefied petroleum gas as defined in GPA 2140. (1) Liquefied petroleum gas shall comply with the specifications of GPA 2140, "liquefied petroleum

gas specification", as revised as of January 1, 2003, including revisions that refer to ASTM international test of specifications.

(2) (Deleted by amendment, L. 2003, p. 1827, § 20, effective May 21, 2003.)

(3) Any changes to any standards promulgated by the GPA after January 1, 2003, shall be reviewed by the director of the division of oil and public safety. After such review, the director may adopt any such changes by rule.

Source: L. 73: p. 1069, § 9. **C.R.S. 1963:** § 100-5-13. **L. 91:** Entire section amended, p. 1345, § 1, effective April 19. **L. 2003:** Entire section amended, p. 1827, § 20, effective May 21.

Cross references: For the legislative declaration contained in the 2003 act amending this section, see section 1 of chapter 279, Session Laws of Colorado 2003.

8-20-414. Restrictions on use of butane and butane-propane mixtures. Liquefied petroleum gas containing more than five percent liquid volume butane or butylenes shall be designated as butane-propane mixtures and shall be sold for use only in those applications approved by the director of the division of oil and public safety and for which special use permits have been granted.

Source: L. 73: p. 1069, § 9. **C.R.S. 1963:** § 100-5-14. **L. 2001:** Entire section amended, p. 1122, § 31, effective June 5.

8-20-415. Liability limited. (1) No legal action shall be commenced or maintained against any person engaged in this state in the business of selling at retail, supplying, handling, or transporting liquefied petroleum gas if the alleged injury, damage, or loss was caused by:

(a) The alteration, modification, or repair of liquefied petroleum gas equipment or a liquefied petroleum gas appliance if the alteration, modification, or repair was done without the knowledge and consent of the liquefied petroleum gas seller, supplier, handler, or transporter; or

(b) The use of liquefied petroleum gas equipment or a liquefied petroleum gas appliance in a manner or for a purpose other than that for which the equipment or appliance was intended and that could not reasonably have been expected.

(2) A person who follows the applicable procedures established by the standards of the national fire code pursuant to section 8-20-405 as adopted by the director of the division of oil and public safety and rules promulgated pursuant to section 8-20-402 shall not be deemed to be grossly negligent or willful and wanton.

Source: L. 2004: Entire section added, p. 616, § 1, effective August 4.

PART 5

UNDERGROUND STORAGE TANKS

8-20-501 to 8-20-513. (Repealed)

Source: L. 95: Entire part repealed, p. 420, § 12, effective July 1.

Editor's note: This part 5 was added in 1989. For amendments to this part 5 prior to its repeal in 1995, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

Cross references: For current provisions concerning underground storage tanks, see part 2 of article 20.5 of this title.

PART 6

UNDERGROUND STORAGE TANK INSTALLERS

8-20-601 to 8-20-608. (Repealed)

Source: L. 95: Entire part repealed, p. 420, § 12, effective July 1.

Editor's note: This part 6 was added in 1989. For amendments to this part 6 prior to its repeal in 1995, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

PART 7

ABOVEGROUND STORAGE TANKS

8-20-701 to 8-20-705. (Repealed)

Source: L. 95: Entire part repealed, p. 420, § 12, effective July 1.

Editor's note: This part 7 was added in 1990. For amendments to this part 7 prior to its repeal in 1995, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

Cross references: For current provisions concerning aboveground storage tanks, see part 3 of article 20.5 of this title.

PART 8

COLORADO ANTIFREEZE LAW

Editor's note: This part 8 was added with relocations in 1994 containing relocated provisions of some sections formerly located in part 1 of article 10 of title 42. Former C.R.S. section numbers are shown in editors' notes following those sections that were relocated.

8-20-801. Short title. This part 8 shall be known and may be cited as the "Colorado Antifreeze Law".

Source: L. 94: Entire part added with relocations, p. 2536, § 2, effective January 1, 1995.

Editor's note: This section is similar to former § 42-10-101 as it existed prior to 1994.

8-20-802. Definitions. As used in this part 8, unless the context otherwise requires:

(1) "Antifreeze" means all substances and preparations intended for use as the cooling medium, or to be added to the cooling liquid, in the cooling system of internal combustion engines to prevent freezing of the cooling liquid or to lower its freezing point.

(2) "Person" means individuals, partnerships, corporations, companies, and associations.

Source: L. 94: Entire part added with relocations, p. 2536, § 2, effective January 1, 1995.

Editor's note: This section is similar to former § 42-10-102 as it existed prior to 1994.

8-20-803. Annual inspection of sample - permit authorizing sale - reinspection. (1) Before any antifreeze is sold, exposed for sale, or held with intent to sell within this state, a sample thereof must be inspected annually by the director of the division of oil and public safety at an inspection laboratory designated by the director of the division of oil and public safety. Upon application of the manufacturer, packer, seller, or distributor, and the payment of a fee not to exceed twenty-five dollars for each sample of antifreeze submitted, the director of the division of oil and public safety shall inspect the antifreeze submitted as set forth in this subsection (1), but in no case shall an approved antifreeze be inspected more than one time for each antifreeze marketing year beginning May 1 and ending April 30, except as set forth in this section.

(2) If the antifreeze is not adulterated or misbranded, meets the standards of the director of the division of oil and public safety, and is not in violation of this part 8, the director of the division of oil and public safety shall give the applicant a written permit authorizing the sale by any person of such antifreeze in this state for the marketing year for which the inspection fee is paid. If the director of the division of oil and public safety at a later date finds that the product to be sold, exposed for sale, or held with intent to sell has been materially altered or adulterated, or that a change has been made in the name, brand, or trademark under which the antifreeze is sold, or that it violates the provisions of this part 8, the director of the division of oil and public safety shall notify the applicant and the permit shall be cancelled.

(3) In the event a manufacturer, packer, seller, or distributor changes the composition, content, or formula of any antifreeze which the manufacturer, packer, seller, or distributor is marketing under a permit from the director of the division of oil and public safety, it is the duty of said manufacturer, packer, seller, or distributor to immediately notify the director of the division of oil and public safety and submit a sample for test in compliance with this section.

Source: L. 94: Entire part added with relocations, p. 2536, § 2, effective January 1, 1995. **L. 2001:** Entire section amended, p. 1122, § 32, effective June 5.

Editor's note: This section is similar to former § 42-10-103 as it existed prior to 1994.

8-20-804. When deemed adulterated. (1) An antifreeze shall be deemed to be adulterated:

(a) If it consists in whole or in part of any substances which will render it injurious to the cooling system of an internal combustion engine or will make the operation of any internal combustion engine dangerous to the user; or

(b) If its strength, quality, or purity falls below the standard of strength, quality, or purity under which it is sold.

Source: L. 94: Entire part added with relocations, p. 2537, § 2, effective January 1, 1995.

Editor's note: This section is similar to former § 42-10-104 as it existed prior to 1994.

8-20-805. When deemed misbranded. (1) Antifreeze shall be deemed to be misbranded:

(a) If its labeling is false or misleading in any particular; or

(b) If in package form it does not bear a label containing the name and place of business of the manufacturer, packer, seller, or distributor, and an accurate statement of the quantity of the contents in terms of weight or measure on the outside of the package.

Source: L. 94: Entire part added with relocations, p. 2537, § 2, effective January 1, 1995.

Editor's note: This section is similar to former § 42-10-105 as it existed prior to 1994.

8-20-806. Director to enforce. The director of the division of oil and public safety shall enforce the provisions of this part 8 by inspections, chemical analysis, or any other appropriate methods. All samples for inspection or analysis shall be taken from the stocks in the state or intended for sale in the state, or the director of the division of oil and public safety, through his or her agents, may call upon the manufacturer or distributor applying for an inspection of antifreeze to supply such samples thereof for analysis. The director of the division of oil and public safety, or his or her agents, shall have free access during business hours to all places of business, buildings, vehicles, cars, and vessels used in the manufacture, transportation, sale, or storage of any antifreeze, and may open any box, carton, parcel, or package containing or supposed to contain any antifreeze and may take samples for analysis.

Source: L. 94: Entire part added with relocations, p. 2537, § 2, effective January 1, 1995. **L. 2001:** Entire section amended, p. 1123, § 33, effective June 5.

Editor's note: This section is similar to former § 42-10-106 as it existed prior to 1994.

8-20-807. Rules. The director of the division of oil and public safety has authority to promulgate such rules as are necessary to promptly and effectively enforce the provisions of this part 8.

Source: L. 94: Entire part added with relocations, p. 2537, § 2, effective January 1, 1995. **L. 2001:** Entire section amended, p. 1123, § 34, effective June 5.

Editor's note: This section is similar to former § 42-10-107 as it existed prior to 1994.

8-20-808. List of brands may be furnished. The director of the division of oil and public safety may furnish, upon request, a list of the brands and trademarks of antifreeze inspected by the director during the marketing year that have been found to be in accord with this part 8.

Source: L. 94: Entire part added with relocations, p. 2537, § 2, effective January 1, 1995. **L. 2001:** Entire section amended, p. 1123, § 35, effective June 5.

Editor's note: This section is similar to former § 42-10-108 as it existed prior to 1994.

8-20-809. False advertising prohibited. No advertising literature relating to any antifreeze in this state shall contain any statement that the antifreeze advertised for sale has been approved by the director of the division of oil and public safety unless the said antifreeze has been inspected by the director of the division of oil and public safety and found to meet the standards of the division of oil and public safety and not to be in violation of this part 8, in which case such statement may be contained in any advertising literature where such brand or trademark of antifreeze is being advertised for sale.

Source: L. 94: Entire part added with relocations, p. 2538, § 2, effective January 1, 1995. **L. 2001:** Entire section amended, p. 1124, § 36, effective June 5.

Editor's note: This section is similar to former § 42-10-109 as it existed prior to 1994.

8-20-810. District attorney to bring actions. Whenever the director of the division of oil and public safety discovers any antifreeze is being sold or has been sold in violation of this part 8, it is the director's duty to bring this violation to the attention of the district attorney in the director's respective district, or the attorney general in cases where the district attorney refuses to act, to enforce the provisions of this part 8 by appropriate action in courts of competent jurisdiction.

Source: L. 94: Entire part added with relocations, p. 2538, § 2, effective January 1, 1995. **L. 2001:** Entire section amended, p. 1124, § 37, effective June 5.

Editor's note: This section is similar to former § 42-10-110 as it existed prior to 1994.

8-20-811. Disposition of fees. All fees provided for in this part 8 shall be collected by the department of revenue and remitted to the state treasurer to be credited to the general fund of the state.

Source: L. 94: Entire part added with relocations, p. 2538, § 2, effective January 1, 1995.

Editor's note: This section is similar to former § 42-10-111 as it existed prior to 1994.

8-20-812. Penalty. If any person violates the provisions of this part 8, or fails to comply with any of the provisions of this part 8, such person is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than fifty dollars nor more than three hundred dollars for each offense.

Source: L. 94: Entire part added with relocations, p. 2538, § 2, effective January 1, 1995.

Editor's note: This section is similar to former § 42-10-112 as it existed prior to 1994.

PART 9

BRAKE FLUID

Editor's note: This part 9 was added with relocations in 1994 containing relocated provisions of some sections formerly located in part 2 of article 10 of title 42. Former C.R.S. section numbers are shown in editors' notes following those sections that were relocated.

8-20-901. Sale of approved brake fluid. It is unlawful for any person, partnership, corporation, or association to sell or offer for sale brake fluid for automotive use which has not been approved by the director of the division of oil and public safety.

Source: L. 94: Entire part added with relocations, p. 2538, § 2, effective January 1, 1995. **L. 2001:** Entire section amended, p. 1124, § 38, effective June 5.

Editor's note: This section is similar to former § 42-10-201 as it existed prior to 1994.

8-20-902. Brake fluid specifications - list of approved brands. The director of the division of oil and public safety shall establish specifications or requirements for approved-type brake fluid; but the specifications or requirements shall not be lower in standard than the specifications and requirements of the society of automotive engineers, numbered J-70 b, approved May, 1963. The director shall compile and furnish upon request a list of brands and trademarks of brake fluid inspected by the director that have been so approved.

Source: L. 94: Entire part added with relocations, p. 2538, § 2, effective January 1, 1995. **L. 2001:** Entire section amended, p. 1124, § 39, effective June 5.

Editor's note: This section is similar to former § 42-10-202 as it existed prior to 1994.

8-20-903. District attorney to bring actions. Whenever the director of the division of oil and public safety discovers that any person, partnership, corporation, or association has sold or is offering for sale any brake fluid that does not conform to the minimum specifications established, the director shall notify the seller to immediately discontinue the sale of such nonconforming brake fluid. If such seller continues to offer the same for sale, it is the duty of the director to bring such violation to the attention of the district attorney in such respective district

to enforce the provisions of this part 9 by appropriate action or injunctive relief in courts of competent jurisdiction.

Source: L. 94: Entire part added with relocations, p. 2538, § 2, effective January 1, 1995. **L. 2001:** Entire section amended, p. 1124, § 40, effective June 5.

Editor's note: This section is similar to former § 42-10-203 as it existed prior to 1994.

8-20-904. Penalty. If any person, partnership, corporation, or association violates the provisions of this part 9, or fails to comply with any of the provisions of this part 9, such person, partnership, corporation, or association is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than fifty dollars nor more than three hundred dollars for each offense.

Source: L. 94: Entire part added with relocations, p. 2539, § 2, effective January 1, 1995.

Editor's note: This section is similar to former § 42-10-204 as it existed prior to 1994.

PART 10

AMUSEMENT RIDES

8-20-1001. Definitions. As used in this part 10, unless the context otherwise requires:

(1) "Amusement ride" means a ride or device, or a combination of rides or devices, as defined by rule of the division; except that "amusement ride" shall not include inflatable amusement rides.

(2) "Certificate of inspection" means documentation of an amusement ride inspection conducted by an inspector.

(3) "Director" means the director of the division or his or her designee.

(4) "Division" means the division of oil and public safety within the department of labor and employment.

(5) "Injury" means an injury that results in death or requires medical treatment administered by a physician or by registered professional personnel under the standing orders of a physician. For purposes of this subsection (5), "medical treatment" does not include first aid treatment or one-time treatment and subsequent observation of minor scratches, cuts, burns, splinters, or other minor injuries that do not ordinarily require medical care even though treatment is provided by a physician or by registered professional personnel.

(6) "Inspection" means a procedure conducted by an inspector to determine whether an amusement ride is being constructed, assembled, maintained, tested, operated, or inspected in accordance with the division's standards, the manufacturer's standards and criteria, or the insurer's standards, whichever is the most stringent, and that determines the current operational safety of the amusement ride.

(7) "Inspector" means a person certified to inspect amusement rides under criteria determined by rule of the division.

(8) "Operator" means an individual, corporation, or company or agent thereof who owns or controls, or has the duty to control, the operation of an amusement ride.

(9) "Registration" means the filing of a properly completed application with the division and approval of the application by the director.

Source: L. 2008: Entire part added, p. 1021, § 3, effective May 21.

8-20-1002. Duties of director - standards - certification of inspectors - fees - rules. (1) The director shall promulgate rules for the registration, construction, repair, and maintenance of amusement rides and for the financial responsibility of operators. The rules shall require operators to submit a periodic certificate of inspection to the division for each amusement ride. The director shall establish minimum standards for the certification of inspectors and shall require each operator to submit the inspector's qualifications to the division with an annual registration application. The inspector for each amusement ride shall be an independent third-party inspector.

(2) The director shall establish annual registration fees by rule to cover the costs of the division's oversight of amusement rides. All fees collected by the division pursuant to this section shall be transmitted to the state treasurer, who shall credit the same to the public safety inspection fund created by section 8-1-151.

(3) The director may prohibit the operation of an amusement ride that does not meet the registration, construction, repair, inspection, and maintenance requirements established by the division pursuant to subsection (1) of this section.

Source: L. 2008: Entire part added, p. 1022, § 3, effective May 21.

8-20-1003. Notification to division. (1) The operator of an amusement ride shall notify the division, within such times and in such manner as established by rule of the director, regarding:

(a) Any injury caused by an equipment failure of an amusement ride;

(b) The installation of any new amusement rides; and

(c) The schedule for the location of the operation of amusement rides.

Source: L. 2008: Entire part added, p. 1022, § 3, effective May 21.

8-20-1004. Rules. The director has the authority to promulgate rules as necessary for the implementation of this part 10.

Source: L. 2008: Entire part added, p. 1022, § 3, effective May 21.

ARTICLE 20.5

Petroleum Storage Tanks

Editor's note: This article was added with relocations in 1995 containing relocated provisions of some sections formerly located in parts 5, 6, and 7 of article 20 of this title and

article 18 of title 25. Former C.R.S. section numbers are shown in editors' notes following those sections that were relocated.

PART 1

ADMINISTRATION

8-20.5-101. Definitions. As used in this article, unless the context otherwise requires:

(1) "Abandoned tank" means an underground or aboveground petroleum storage tank that the current tank owner or operator or current property owner did not install, has never operated or leased to another for operation, and had no reason to know was present on the site at the time of site acquisition.

(2) (a) "Aboveground storage tank" means any one or a combination of containers, vessels, and enclosures, including structures and appurtenances connected to them, constructed of nonearthen materials, including but not limited to concrete, steel, or plastic, which provide structural support, used to contain or dispense fuel products and the volume of which, including the pipes connected thereto, is ninety percent or more above the surface of the ground.

(b) "Aboveground storage tank" does not include:

(I) A wastewater treatment tank system that is part of a wastewater treatment facility;

(II) Equipment or machinery that contains regulated substances for operational purposes;

(III) (A) Farm and residential tanks or tanks used for horticultural or floricultural operations.

(B) Nothing in sub-subparagraph (A) of this subparagraph (III), as amended by House Bill 05-1180, as enacted at the first regular session of the sixty-fifth general assembly, shall be construed as changing the property tax classification of property owned by a horticultural or floricultural operation.

(IV) Aboveground storage tanks located at natural gas pipeline facilities that are regulated under state or federal natural gas pipeline acts;

(V) Aboveground storage tanks associated with natural gas liquids separation, gathering, and production;

(VI) Aboveground storage tanks associated with crude oil production, storage, and gathering;

(VII) Aboveground storage tanks at transportation-related facilities regulated by the federal department of transportation;

(VIII) Aboveground storage tanks used to store heating oil for consumptive use on the premises where stored;

(IX) Aboveground storage tanks used to store flammable and combustible liquids at mining facilities and construction and earthmoving projects, including gravel pits, quarries, and borrow pits where, in the opinion of the director of the division of oil and public safety, tight control by the owner or contractor and isolation from other structures make it unnecessary to meet the requirements of this article;

(X) Any other aboveground tank excluded by regulation.

(2.5) "Alternative fuel" means a motor fuel that combines petroleum-based fuel products with renewable fuels.

(3) "Closure" means the abandonment of an underground storage tank in place or the removal and disposal of an underground storage tank.

(4) "Department" means the department of labor and employment, created in section 24-1-121, C.R.S.

(5) "Designee" means a qualified municipality, city, home rule city, city and county, county, fire protection district, or any other political subdivision of the state, including a county or district public health agency created pursuant to section 25-1-506, C.R.S., which county or district public health agency is acting under agreement or contract with the department for the implementation of the provisions of this article.

(5.5) "Fee lands" means land owned in fee simple within the exterior boundaries of the Southern Ute Indian reservations in Colorado. "Fee land" does not mean land owned by an Indian tribe or the federal government or held in trust by the federal government for the use or benefit of an Indian tribe or its members.

(6) "Fuel products" means all gasoline, aviation gasoline, diesel, aviation turbine fuel, jet fuel, fuel oil, biodiesel, biodiesel blends, kerosene, all alcohol blended fuels, gas or gaseous compounds, and other volatile, flammable, or combustible liquids, produced, compounded, and offered for sale or used for the purpose of generating heat, light, or power in internal combustion engines or fuel cells, for cleaning or for any other similar usage.

(7) "Municipality" means any city or any town operating under general or special laws of the state of Colorado or any home rule city or town, the charter or ordinances of which contain no provisions inconsistent with the provisions of part 3 of this article.

(8) "Operator" means any person in control of, or having responsibility for, the operation of an underground or aboveground storage tank.

(9) "Orphan tank" means an underground storage tank which is:

(a) Owned or operated by an unidentified owner as defined in this article; or

(b) No longer in use and was not closed in accordance with the procedures required by this article and the property has changed ownership prior to December 22, 1988, and such property is no longer used to dispense fuels.

(10) (a) "Owner" means:

(I) In the case of an underground storage tank in use on or after November 8, 1984, or brought into use after that date, any person who owns an underground storage tank used for the storage, use, or dispensing of regulated substances;

(II) In the case of an underground storage tank in use before November 8, 1984, but no longer in use on or after November 8, 1984, any person who owned such tank immediately before the discontinuation of its use; or

(III) Any person who owns an aboveground storage tank.

(b) For purposes of corrective action for petroleum releases, the term "owner" does not include any person who, without participating in the management of an underground storage tank and otherwise not engaged in petroleum production, refining, and marketing, holds indicia of ownership primarily to protect a security interest in or lien on the tank or the property where the tank is located.

(11) "Person" means any individual, trust, firm, joint-stock company, corporation (including a government corporation), partnership, association, commission, municipality, state, county, city and county, political subdivision of a state, interstate body, consortium, joint venture, commercial entity, or the government of the United States.

(12) "Property owner" means a person having a legal or equitable interest in real or personal property that is subject to this article.

(13) "Regulated substance" means:

(a) Any substance defined in section 101 (14) of the federal "Comprehensive Environmental Response, Compensation, and Liability Act of 1980", as amended, but not including any substance regulated as a hazardous waste under subtitle (C) of Title II of the federal "Resource Conservation and Recovery Act of 1976", as amended;

(b) Petroleum, including crude oil, and crude oil or any fraction thereof that is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute);

(c) Alternative fuel; or

(d) Renewable fuel.

(14) "Release" means any spilling, leaking, emitting, discharging, escaping, leaching, or disposing of a regulated substance from an underground storage tank into groundwater, surface water, or subsurface soils.

(14.5) "Renewable fuel" means a motor vehicle fuel that is produced from plant or animal products or wastes, as opposed to fossil fuel sources.

(15) "Reportable quantities" means quantities of a released regulated substance which equal or exceed the reportable quantity under the federal "Comprehensive Environmental Response, Compensation, and Liability Act of 1980", as amended, and petroleum products in quantities of twenty-five gallons or more.

(16) "Tank" means a stationary device designed to contain an accumulation of a regulated substance, constructed primarily of nonearthen materials which provide structural support including, but not limited to, wood, concrete, steel, or plastic.

(17) (a) "Underground storage tank" means any one or combination of tanks, including underground pipes connected thereto, except those identified in paragraph (b) of this subsection (17), that is used to contain an accumulation of regulated substances and the volume of which, including the volume of underground pipes connected thereto, is ten percent or more beneath the surface of the ground.

(b) "Underground storage tank" does not include:

(I) Any farm or residential tank with a capacity of one thousand one hundred gallons or less used for storing motor fuel for noncommercial purposes;

(II) Any tank used for storing heating oil for consumptive use on the premises where stored;

(III) Any septic tank;

(IV) Any pipeline facility, including its gathering lines, regulated under the federal "Natural Gas Pipeline Safety Act of 1968", as amended, or the federal "Hazardous Liquid Pipeline Safety Act of 1979", as amended, or regulated under Colorado law if such facility is an intrastate facility;

(V) Any surface impoundment, pit, pond, lagoon, or landfill;

(VI) Any storm-water or wastewater collection system;

(VII) Any flow-through process tank;

(VIII) Any liquid trap or associated gathering lines directly related to oil or gas production and gathering operations;

(IX) Any storage tank situated in an underground area, such as a basement, cellar, mine-working, drift, shaft, or tunnel area, if the tank is situated upon or above the surface of the floor;

(X) Any pipes connected to any tank described in subparagraphs (I) to (IX) of this paragraph (b); or

(XI) Any other underground tank excluded by regulation.

(18) "Upgrade" means the addition or retrofit of some systems such as cathodic protection, lining, modification of the system piping, or spill and overfill controls to improve the ability of a petroleum storage tank system to prevent the release of product.

Source: L. 95: Entire article added, p. 389, § 1, effective July 1. **L. 96:** (1) and (2)(b) amended and (17)(b)(XI) added, pp. 710, 711, §§ 2, 3, effective May 15. **L. 2001:** (2)(b)(IX) amended, p. 1125, § 41, effective June 5. **L. 2005:** (5.5) added, p. 418, § 4, effective July 1; (2)(b)(III) amended, p. 347, § 2, effective August 8; (6) amended, p. 1348, § 21, effective August 8. **L. 2007:** (2.5) and (14.5) added and (13) amended, p. 1760, §§ 3, 4, effective June 1. **L. 2008:** (5) amended, p. 2051, § 4, effective July 1. **L. 2009:** (13)(a) amended, (SB 09-292), ch. 369, p. 1939, § 6, effective August 5.

Editor's note: This section is similar to §§ 8-20-501, 8-20-601, 8-20-702, and 25-18-102 as they existed prior to 1995.

Cross references: For the federal "Comprehensive Environmental Response, Compensation, and Liability Act of 1980", see Pub.L. 96-510, codified at 42 U.S.C. § 9601 et seq. For the federal "Resource Conservation and Recovery Act of 1976", see Pub.L. 94-580, codified at 42 U.S.C. § 6901 et seq.

8-20.5-102. Registration - fees. (1) Each owner or operator of an underground or aboveground storage tank shall register such tank with the director of the division of oil and public safety within thirty days after the first day on which the tank is actually used to contain a regulated substance or, in the case of an aboveground storage tank, on or before July 1, 1993, or, thereafter, within thirty days after the first day on which the tank is actually used to contain a regulated substance. Each owner or operator shall renew such registration annually on or before the calendar day and month of initial registration for each year in which the storage tank is in use. An underground storage tank is considered to be in use at all times, except when the tank has been either removed from the ground or permanently closed in accordance with the rules promulgated pursuant to section 8-20.5-202 (1.5) that relate to the closure of such tanks.

(2) To register or renew registration of an underground or aboveground storage tank, the owner or operator of the tank shall submit to the director of the division of oil and public safety a completed registration or renewal form and payment of the fee established in subsection (3) of this section. The director of the division of oil and public safety shall provide registration and renewal forms.

(3) The registration and renewal fee shall be thirty-five dollars for each tank for each year. The fees collected pursuant to this subsection (3) shall be credited to the petroleum storage tank fund created in section 8-20.5-103.

(4) The director of the division of oil and public safety shall collect delinquent registration and renewal fees and assess a penalty of up to twice the amount of such fees and reasonable costs associated with the collection of such fees.

Source: L. 95: Entire article added, p. 392, § 1, effective July 1. **L. 2001:** (1), (2), and (4) amended, p. 1125, § 42, effective June 5. **L. 2007:** (4) amended, p. 386, § 2, effective April 3; (1) amended, p. 981, § 3, effective July 1.

Editor's note: This section is similar to former § 8-20-506 as it existed prior to 1995.

8-20.5-103. Petroleum storage tank fund - petroleum cleanup and redevelopment fund - creation - rules - repeal. (1) There is hereby created in the state treasury the petroleum storage tank fund, which is an enterprise fund. The fund consists of the following:

(a) Registration and annual renewal fees collected from owners or operators of aboveground and underground storage tanks pursuant to section 8-20.5-102 (3);

(b) Repealed.

(c) Fees collected pursuant to section 8-20.5-102 (4);

(d) Surcharge funds collected pursuant to section 8-20-206.5;

(e) Moneys reimbursed to the department in payment for costs incurred in the investigation of a release and performance of corrective action pursuant to section 8-20.5-209;

(f) Any moneys appropriated to the fund by the general assembly;

(g) Any moneys granted to the department from a federal agency for administration of the underground storage tank program; and

(h) Moneys from bonds issued pursuant to subsection (8) of this section.

(2) (a) The moneys in the petroleum storage tank fund and all interest earned on moneys in the fund shall not be credited or transferred to the general fund at the end of the fiscal year.

(b) Repealed.

(3) The moneys in the petroleum storage tank fund are continuously appropriated to the division of oil and public safety; except that moneys for the purposes specified in paragraphs (b), (f), and (g) of this subsection (3) are subject to annual appropriation by the general assembly. The fund shall be used for:

(a) Petroleum corrective action purposes and third-party liability where the costs exceed the minimum financial responsibility requirements of the owner or operator provided for in section 8-20.5-206; except that moneys from the fund may not be used for initial abatement and corrective action regarding fuels that are especially prepared and sold for use in aircraft or railroad equipment or locomotives;

(b) Administrative costs, limited each year to the amount of the registration fee stated in section 8-20.5-102, including costs for contract services and costs related to the delegation of duties to units of local government which are incurred by the department of labor and employment in carrying out administrative responsibilities pursuant to this article;

(c) Any costs related to the abatement of fire and safety hazards as ordered by the director of the division of oil and public safety pursuant to section 8-20.5-208 (3);

(d) Investigation of releases or suspected releases and performance of corrective action for petroleum releases by the department or its designated agent pursuant to section 8-20.5-209;

(e) Any federal program pertaining to petroleum underground storage tanks, which program requires state-matching dollars;

(f) (I) Costs related to petroleum storage tank facility inspections and meter calibrations.

(II) This paragraph (f) is repealed, effective September 1, 2023.

(g) Administrative costs necessary for the implementation of this article and section 8-20-206.5.

(3.5) (a) Moneys in the petroleum storage tank fund may be used as incentives to underground or aboveground storage tank owners and operators for significant operational compliance or to upgrade existing systems. The director of the division of oil and public safety shall promulgate rules to implement this subsection (3.5).

(b) For purposes of this subsection (3.5), "significant operational compliance" means that an owner or operator of an underground or aboveground storage tank is in full compliance with all of the requirements of this article and, through one or more best management practices that are not otherwise required, has prevented or reduced the threat of a release to the environment.

(4) Appropriations of moneys out of the fund for the purpose of initial abatement response or for corrective action purposes in the cleanup of releases shall be used only for those stated purposes and shall not be used for any administrative costs incurred by the department. Any amounts used for initial abatement response or for corrective action purposes shall be reported annually to the general assembly and the joint budget committee.

(5) Subject to section 8-20.5-104, the fund shall be available only to those underground and aboveground storage tanks owners or operators who are in compliance with the provisions of section 8-20.5-209 and regulations promulgated pursuant to sections 8-20.5-202 and 8-20.5-302.

(6) Moneys in the petroleum storage tank fund shall not be used:

(a) Repealed.

(b) To fund any programs that are not specifically stated within this section.

(7) (a) Subject to sections 8-20.5-206 (6) and 8-20.5-303 (6), owners and operators of underground and aboveground storage tanks on fee lands shall be eligible for access to the fund if the tank owner or operator:

(I) Has registered such tanks pursuant to section 8-20.5-102 and paid the surcharges imposed by section 8-20-206.5;

(II) Can demonstrate that the owner or operator is in compliance with the rules promulgated pursuant to sections 8-20.5-202 and 8-20.5-302; and

(III) Can demonstrate that the owner or operator has complied with sections 8-20.5-209 and 8-20.5-304 and any other rules, policies, and procedures of the department concerning corrective action.

(b) Underground and aboveground storage tank owners and operators who have been denied access to the fund prior to July 1, 2005, based upon a determination that the tanks are on fee lands, are eligible to reapply for reimbursement from the fund if the application is filed prior to December 31, 2005, and is not barred by settlement or other agreement.

(c) Nothing in this subsection (7) shall be construed to modify the department's authority to regulate operation of or corrective action for underground and aboveground storage tanks on fee lands.

(7.5) In addition to the sources identified in subsection (1) of this section, the petroleum storage tank fund includes the amount transferred from the petroleum cleanup and

redevelopment fund in accordance with subsection (9)(e)(II) of this section. On October 15, 2020, and the fifteenth day of each of the next seven months, the state treasurer shall transfer five hundred thousand dollars from the petroleum storage tank fund to the general fund. These transfers are repayment for the transfer from the petroleum cleanup and redevelopment fund, as the original amount transferred would have otherwise transferred to the general fund.

(8) The executive director of the department is authorized to issue bonds to reimburse assessment and corrective action costs to remediate petroleum contamination. The petroleum storage tank committee may temporarily raise such bonding limits in the event of extraordinary circumstances or environmental conditions.

(9) (a) There is hereby created in the state treasury the petroleum cleanup and redevelopment fund, which is referred to in this subsection (9) as the redevelopment fund. The redevelopment fund's sources of revenue are:

(I) Civil penalties collected pursuant to section 8-20.5-107;

(II) Any public or private gifts, grants, or donations to the redevelopment fund received by the department;

(III) Any legislative appropriations made to the redevelopment fund; and

(IV) Earned interest, which the state treasurer shall deposit in the redevelopment fund.

(b) (I) The department may use revenues in the redevelopment fund for administration, investigation, abatement action, and preparing and implementing corrective action plans for petroleum releases not covered by the petroleum storage tank fund if, in the opinion of the director of the division of oil and public safety, such actions would enhance environmental protection and beneficial use of the property affected by the releases. The revenues in the redevelopment fund:

(A) Remain in the fund and shall neither be credited nor transferred to the general fund at the end of any fiscal year;

(B) Are exempt from section 24-75-402, C.R.S.; and

(C) Are continuously appropriated to the division of oil and public safety for the purposes stated in this section and are not subject to annual appropriation by the general assembly; except that the uses of the fund for the department's costs in administering this subsection (9) are subject to annual appropriation by the general assembly.

(II) Subject to the availability of money in the redevelopment fund, the maximum amount payable from the redevelopment fund for any single corrective action plan must not exceed fifty percent of the eligible cleanup costs or five hundred thousand dollars, whichever is less.

(c) Repealed.

(d) The division of oil and public safety shall promulgate rules to implement this subsection (9).

(e) (I) Notwithstanding any other provision of this section to the contrary, on June 30, 2020, the state treasurer shall transfer two million dollars from the redevelopment fund to the general fund.

(II) Notwithstanding any other provision of this section, on June 29, 2020, the state treasurer shall transfer four million dollars from the redevelopment fund to the petroleum storage tank fund created in subsection (1) of this section.

Source: L. 95: Entire article added, p. 393, § 1, effective July 1. **L. 2000:** (3)(f) and (6) added, p. 1383, §§ 1, 2, effective May 30. **L. 2001:** (3)(c) amended, p. 1126, § 43, effective June 5. **L. 2002:** (2) amended, p. 150, § 2, effective March 27; (3)(f) amended, p. 950, § 1, effective August 7. **L. 2003:** (3)(g) added and (6)(a) repealed, p. 2665, §§ 3, 2, effective June 5. **L. 2005:** IP(1) amended and (1)(h) and (8) added, p. 1326, §§ 1, 2, effective July 1; (7) added, p. 416, § 1, effective July 1. **L. 2007:** IP(3), (3)(a), and (3)(f)(II) amended, p. 387, § 3, effective April 3; (3.5) added, p. 980, § 1, effective July 1. **L. 2010:** (3)(f)(II) amended, (HB 10-1185), ch. 82, p. 276, § 2, effective August 11. **L. 2013:** IP(1) amended, (1)(b) repealed, and (9) added, (HB 13-1252), ch. 247, p. 1196, § 1, effective May 18. **L. 2014:** (9)(b)(I) amended, (HB 14-1334), ch. 370, p. 1762, § 1, effective June 6. **L. 2015:** (3.5) added, (HB 15-1299), ch. 162, p. 494, § 1, effective August 5. **L. 2016:** (2)(b) repealed, (HB 16-1408), ch. 153, p. 472, § 26, effective July 1; IP(3) and (3)(f)(II) amended, (HB 16-1044), ch. 1, p. 1, § 2, effective August 10. **L. 2020:** (7.5) and (9)(e) added, (HB 20-1406), ch. 178, p. 810, § 1, effective June 29.

Editor's note: (1) This section is similar to former § 25-18-109 as it existed prior to 1995.

(2) Subsection (9)(c)(II) provided for the repeal of subsection (9)(c), effective July 1, 2014. (See L. 2013, p. 1196.)

8-20.5-104. Rules - petroleum storage tank committee. (1) The governor shall appoint a petroleum storage tank committee, which shall consist of seven members who have technical expertise and knowledge in fields related to corrective actions taken to mitigate underground and aboveground storage tank releases. The director of the division of oil and public safety or the director's designee, the executive director of the department or the designee of the executive director, and an owner or operator shall be permanent members of the committee. The remaining four members of the committee shall be chosen from among the following groups, with no more than one member representing each group: Fire protection districts; elected local governmental officials; companies that refine and retail motor fuels in Colorado; companies that wholesale motor fuels in Colorado; owners and operators of independent retail outlets; companies that conduct corrective actions or install and repair underground and aboveground storage tanks; and private citizens or interest groups. The department shall provide staff to support the activities of the committee.

(2) Members of the committee shall serve three-year terms. All vacancies shall be filled by the governor to serve the remainder of the unexpired term.

(3) Members of the committee shall receive no additional salary or per diem reimbursement for their services as members of the committee, but shall be allowed travel and parking costs and maintenance expenses while on official committee business conducted more than one hundred miles from their respective residences.

(4) The committee shall be required to meet no more than twice in any month. The committee shall recommend all regulatory actions proposed by the committee to the director of the division of oil and public safety for adoption or ratification. The committee shall conduct the following activities in accordance with section 24-4-105, C.R.S., as its routine business:

(a) Establish procedures, practices, and policies governing the committee's activities;

(b) Review standards and regulations governing underground and aboveground storage tanks;

(c) Establish procedures, practices, and policies governing the form and procedures for applications to the petroleum storage tank fund for reimbursement compensation;

(d) (I) Establish procedures, practices, and policies governing any and all aspects of processing, adjusting, defending, or paying claims against the fund. To encourage tank owners and operators to report and remediate contamination and achieve compliance with rules promulgated by the director of the division of oil and public safety, the committee may approve claims involving tanks not operated in substantial compliance, but may also determine the amount, if any, by which such claims may be reduced for noncompliance. Before imposing any reduction for noncompliance the committee shall determine whether the rules issued by the director of the division of oil and public safety are both substantially and procedurally no more stringent than United States environmental protection agency regulations under 42 U.S.C. sec. 6991 and whether the areas of noncompliance were brought into compliance prior to application to the fund, where possible. The committee shall use the following guidelines when imposing a reduction for noncompliance:

(A) Up to a ten percent reduction for failure to register a tank;

(B) Up to a twenty-five percent reduction for improper release detection;

(C) Up to a ten percent reduction for improper release reporting;

(D) Up to a twenty percent reduction for improper out-of-service and closure.

(II) Nothing in this article shall be construed to require the committee to approve a claim involving substantial noncompliance. The committee shall establish specific criteria to define when denial for substantial noncompliance may be imposed.

(e) Establish priorities governing the types of corrective actions which shall be reimbursed from the fund;

(f) Review corrective action plans submitted pursuant to section 8-20.5-209, for which no agreement has been reached through informal conferences between the department and the owner or operator, and make a recommendation to the department, upon request from the department or the owner or the operator, as to the corrective action that is acceptable;

(g) Issue public notices and hold public hearings to obtain comment on the activities described in this subsection (4);

(h) (I) (A) Pay interest to all persons who file a properly and fully completed claim for reimbursement and are not reimbursed in a timely manner. For purposes of this paragraph (h), interest shall accrue on the amount approved for payment by the committee at the rate determined pursuant to section 39-21-110.5, C.R.S., for each day a properly and fully completed application is not processed in a timely manner.

(B) Notwithstanding this paragraph (h), if a claimant cannot be reimbursed in a timely manner because insufficient moneys in the petroleum storage tank fund prevent the issuance of a reimbursement check within thirty days after approval of the disbursement, interest shall not begin to accrue on the claim until thirty-one days after sufficient moneys are available in said fund.

(II) For purposes of this paragraph (h), "timely manner" means:

(A) That an application filed with the petroleum storage tank fund on or after January 1, 1996, shall be submitted for review by the committee within ninety working days of receipt;

(B) That an application filed with the petroleum storage tank fund on or after July 1, 1995, but before January 1, 1996, shall be submitted for review by the committee within one hundred twenty working days of receipt;

(C) That an application filed with the petroleum storage tank fund before July 1, 1995, shall be submitted for review by the committee no later than December 31, 1995;

(D) That reimbursement checks shall be issued within thirty days after disbursement is approved by the committee.

(5) The committee may, in order to perform any or all of its responsibilities and functions under subsection (4) of this section, contract for the use of outside experts, consultants, or services.

(6) Reductions determined by the committee because of noncompliance shall be cumulative and shall apply to all eligible costs approved by the committee in the initial and all supplemental claims for the occurrence as defined in section 8-20.5-206 (2); except that in no instance shall cumulative reductions for noncompliance apply to claims submitted in accordance with section 8-20.5-206 (3) or 8-20.5-303 (3).

(7) The reductions described in subsections (4)(d) and (6) of this section pertain to this section only and shall not be construed to have any impact on cost-recovery actions taken in accordance with section 8-20.5-209 or any civil or criminal penalties imposed as part of an enforcement proceeding.

(8) At its first meeting of each fiscal year, on or about July 1, the committee shall establish and set aside for reimbursements to those individuals who are eligible to make application to the fund in accordance with section 8-20.5-206 (3) or 8-20.5-303 (3), an amount equal to twenty percent of the total budget of the department from the petroleum storage tank fund, which amount shall be used for the purpose of conducting remediation activities in accordance with sections 8-20.5-206 (3), 8-20.5-209, and 8-20.5-303 (3) and shall protect the integrity of the fund as a financial assurance mechanism for tank owners and operators. The committee shall reexamine on a quarterly basis the unencumbered balance of this allocation and may set aside lesser or additional amounts for reimbursements to such applicants based on the relative number of requested reimbursements from the owners and operators of active sites, with preference given to the remediation of recently contaminated locations and to active tank sites based on their higher potential for environmental impact.

(9) The petroleum storage tank committee shall exercise its powers and perform its duties and functions specified by this section under the department of labor and employment and the executive director thereof as if the same were transferred to the department by a **type 1** transfer, as such transfer is defined in section 24-1-105, C.R.S.

Source: L. 95: Entire article added, p. 394, § 1, effective July 1. **L. 96:** (4)(h)(I) amended, p. 711, § 4, effective May 15. **L. 2001:** (1), IP(4), and IP(4)(d)(I) amended, p. 1126, § 44, effective June 5. **L. 2007:** (8) amended, p. 387, § 4, effective April 3.

Editor's note: This section is similar to former § 25-18-105 as it existed prior to 1995.

8-20.5-105. Confidentiality. (1) Any records, reports, and information obtained from any person under the provisions of this article shall be available to the public; except that any records granted confidentiality by the director of the division of oil and public safety or a designee, or granted confidentiality under existing Colorado statutes or rules, shall remain confidential.

(2) Any person making such confidential records available to any person or organization without authorization from the affected operator or owner commits a class 3 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.

(3) Confidential records may be disclosed to officers, employees, or authorized representatives of the state or of the United States who have been charged with administering this article or subtitle I of the federal "Resource Conservation and Recovery Act of 1976", as amended. Such disclosure shall not constitute a waiver of confidentiality.

Source: L. 95: Entire article added, p. 397, § 1, effective July 1. **L. 2001:** (1) amended, p. 1126, § 45, effective June 5. **L. 2002:** (2) amended, p. 1467, § 19, effective October 1.

Editor's note: This section is similar to former § 25-18-106 as it existed prior to 1995.

Cross references: (1) For the legislative declaration contained in the 2002 act amending subsection (2), see section 1 of chapter 318, Session Laws of Colorado 2002.

(2) For the "Resource Conservation and Recovery Act of 1976", as amended, see Pub.L. 94-580, codified at 42 U.S.C. § 6901 et seq.

8-20.5-106. Injunctions. In addition to the remedies provided in this article, the director of the division of oil and public safety is authorized to apply to the district court, in the judicial district where the violation has occurred, for a temporary or permanent injunction restraining any person from violating any provision of this article, regardless of whether there is an adequate remedy at law.

Source: L. 95: Entire article added, p. 398, § 1, effective July 1. **L. 2001:** Entire section amended, p. 1127, § 46, effective June 5.

Editor's note: This section is similar to former § 8-20-513 as it existed prior to 1995.

8-20.5-107. Enforcement orders - civil penalties. (1) A notice of violation may be issued by the director of the division of oil and public safety to any person who is believed to have violated any provision of this article, any rule promulgated pursuant thereto, or any warrant issued pursuant to section 8-20.5-208. The notice of violation shall be served personally or by certified mail, return receipt requested, upon the alleged violator.

(2) The notice of violation shall set forth the facts which allegedly constitute the violation and the provisions which have allegedly been violated of either this article or any regulation promulgated pursuant thereto. The notice of violation may require the alleged violator to take any actions necessary to correct the alleged violation.

(3) Within ten working days after service of the notice of violation, the alleged violator may file a written request with the director of the division of oil and public safety for an informal conference regarding the notice of violation. If the alleged violator fails to timely request an informal conference, all provisions of the notice of violation shall become final and not subject to further administrative review. The director of the division of oil and public safety may then seek judicial enforcement of the notice of violation.

(4) Upon receipt of the written request, the director of the division of oil and public safety shall provide the alleged violator with a written notice of the date, time, and place of the informal conference. The director of the division of oil and public safety or a designee shall preside at the informal conference, during which the alleged violator and the entity that issued the notice of violation may present information and arguments regarding the allegations and requirements of the notice of violation.

(5) Within twenty working days after the informal conference, the director of the division of oil and public safety shall uphold, modify, or strike the allegations of the notice of violation and may issue an enforcement order. The decision shall be served upon the alleged violator personally or by certified mail, return receipt requested. Such notice of violation or enforcement order may be appealed within twenty working days to the executive director of the department. The executive director may either conduct the hearing personally or appoint an administrative law judge from the office of administrative courts in the department of personnel to conduct the hearing. The executive director may review such decision in accordance with the provisions of section 24-4-105, C.R.S., and final agency action shall be determined in accordance with the provisions of said section. Such final agency action shall be subject to judicial review in accordance with section 24-4-106, C.R.S.

(6) The enforcement order may require the alleged violator to pay a civil penalty not to exceed five thousand dollars per tank for each day of violation.

(7) The director of the division of oil and public safety may file suit in the district court for the judicial district in which violations have occurred to obtain judicial enforcement of the provisions of any enforcement order. The petroleum storage tank fund may be subrogated to the rights of an owner or operator with respect to a claimed amount at the time a claim is filed with the fund.

Source: L. 95: Entire article added, p. 398, § 1, effective July 1; (5) amended, p. 634, § 12, effective July 1. **L. 2001:** (1), (3), (4), (5), and (7) amended, p. 1127, § 47, effective June 5. **L. 2005:** (5) amended, p. 853, § 8, effective June 1.

Editor's note: This section is similar to former § 8-20-512 as it existed prior to 1995.

8-20.5-108. Petroleum storage tank administration - transfer to department of labor and employment - legislative declaration. (1) (a) The general assembly hereby finds, determines, and declares that there is a significant backlog in the processing of claims being made against the petroleum storage tank fund. Claims for reimbursement for cleaning up petroleum contamination are not acted upon in a timely manner, which places the storage tank owner in financial jeopardy. Lenders are reluctant to write loans on contaminated property, causing the next phase of remediation to be delayed and allowing contamination to spread, threatening the environment and unnecessarily escalating future cleanup expenses.

(b) The general assembly further finds, determines, and declares that it is in the best interest of this state to transfer petroleum storage tank administrative functions performed by the department of public health and environment to the department of labor and employment, and thereby consolidate the administration and regulation of petroleum storage tanks in this state under one department, which will minimize the cost of such functions and centralize management.

(2) (a) The administrative functions of the petroleum storage tank fund, including claims processing, corrective action plan review and approval, and any other responsibilities for petroleum storage tank programs performed by the department of public health and environment prior to July 1, 1995, are transferred to the department of labor and employment. All employees of the department of public health and environment, excluding any contract labor, who perform the functions transferred pursuant to this subsection (2) and whose employment in the department of labor and employment is deemed necessary by the executive director of the said department are transferred to the department of labor and employment and shall become employees thereof.

(b) Such employees shall retain all rights to the state personnel system and retirement benefits under the laws of this state, and their services shall be deemed to have been continuous. All transfers and any abolishment of positions in the state personnel system shall be made and processed in accordance with state personnel system laws and rules.

(c) On July 1, 1995, all items of property, real and personal, including office furniture and fixtures, books, documents, and records of the department of public health and environment pertaining to the duties and functions transferred to the department of labor and employment pursuant to this subsection (2) are transferred to the department of labor and employment and shall become the property of such department.

(3) Repealed.

Source: L. 95: Entire article added, p. 399, § 1, effective July 1.

Editor's note: Subsection (3)(c) provided for the repeal of subsection (3), effective December 31, 1996. (See L. 95, p. 399.)

PART 2

UNDERGROUND STORAGE TANKS

Law reviews: For article, "Colorado New Underground Storage Tank Law", see 19 Colo. Law. 233 (1990); for article, "Availability of the Colorado UST Fund to Property Owners and Mortgagees", see 23 Colo. Law. 873 (1994).

8-20.5-201. Legislative declaration. The general assembly hereby finds and declares that the leakage of regulated substances from underground storage tanks constitutes a potential threat to the waters and the environment of the state of Colorado and presents a potential menace to the public health, safety, and welfare of the people of the state of Colorado and that, to that end, it is the purpose of this part 2 to establish a program for the protection of the environment and of the public health and safety by preventing and mitigating the contamination of the subsurface soil, groundwater, and surface water which may result from leaking underground storage tanks.

Source: L. 95: Entire article added, p. 400, § 1, effective July 1.

Editor's note: This section is similar to former § 8-20-501 as it existed prior to 1995.

8-20.5-202. Duties of director of division of oil and public safety - rules. (1) The director of the division of oil and public safety shall promulgate and enforce rules that are no more stringent than the requirements contained in 42 U.S.C. sec. 6991 et seq., and the regulations promulgated thereunder, except as allowed by federal law, including the federal "Energy Policy Act of 2005", Pub.L. 109-58, as amended, for:

(a) Notification requirements for owners and operators of underground storage tanks;

(b) Design, performance, construction, and installation standards for new underground storage tanks;

(c) Design, performance, construction, and installation standards for the upgrading of existing underground storage tanks;

(d) General operating requirements;

(e) Release detection;

(f) Release reporting, investigation, and confirmation; and

(g) (Deleted by amendment, L. 2007, p. 980, § 2, effective July 1, 2007.)

(h) Financial responsibility for underground storage tank systems containing regulated substances.

(1.5) The director of the division of oil and public safety shall promulgate and enforce rules for out-of-service underground storage tank systems and closure of such tanks.

(1.7) Within one hundred twenty days after January 1, 2008, the director of the division of oil and public safety shall promulgate, and the division shall enforce, rules concerning the placement of underground storage tanks that contain renewable fuels. Such rules shall be promulgated with the purpose of developing a uniform statewide standard of issuing permits for underground storage tanks to promote the use of renewable fuels so that the process of obtaining a permit for an underground storage tank that contains renewable fuels may be more efficient and affordable.

(2) The director of the division of oil and public safety shall ensure that:

(a) All releases from underground storage tank systems are promptly assessed and that further releases are stopped;

(b) Actions are taken to identify, contain, and mitigate any immediate fire and safety hazards that are posed by a release;

(c) All releases from underground storage tank systems are investigated to determine if there are impacts of reportable quantities on subsurface soil, groundwater, and any nearby surface water;

(d) All releases above reportable quantities are reported to the director of the division of oil and public safety.

(3) The director of the division of oil and public safety shall, if necessary, negotiate and enter into memoranda of agreement with and apply for and receive grants from the United States environmental protection agency pursuant to the provisions of this article.

(4) The director of the division of oil and public safety shall establish criteria pursuant to subsection (1) of this section for delegation of authority to local agencies.

(5) Repealed.

Source: L. 95: Entire article added, p. 401, § 1, effective July 1. **L. 97:** (5) repealed, p. 1474, § 8, effective June 3. **L. 2001:** IP(1), IP(2), (2)(d), (3), and (4) amended, p. 1128, § 48,

effective June 5. **L. 2007:** IP(1) amended, p. 387, § 5, effective April 3; (1.7) added, p. 1760, § 5, effective June 1; IP(1) and (1)(g) amended and (1.5) added, p. 980, § 2, effective July 1.

Editor's note: (1) This section is similar to former § 8-20-503 as it existed prior to 1995.

(2) Amendments to the introductory portion to subsection (1) by Senate Bill 07-031 and Senate Bill 07-247 were harmonized.

8-20.5-203. Performance of duties by owner or operator. Duties imposed by this part 2 on the owner or the operator may be performed by either the owner or the operator. If neither the owner nor the operator performs the duties imposed by this part 2, both shall be considered in violation of this part 2.

Source: L. 95: Entire article added, p. 402, § 1, effective July 1.

Editor's note: This section is similar to former § 8-20-504 as it existed prior to 1995.

8-20.5-204. Installation and upgrading of underground storage tanks. (1) Plans for any installation of a new underground storage tank and plans for the complete upgrading of an existing underground storage tank shall be submitted by the owner or operator of the proposed or existing underground storage tank to the director of the division of oil and public safety for approval prior to such installation or upgrading.

(2) Plans for the installation of a new underground storage tank or for the complete upgrading of an existing underground storage tank shall be in compliance with the rules promulgated pursuant to section 8-20.5-202 (1). The director of the division of oil and public safety or a designee shall approve or reject proposed plans and amendments thereto within twenty working days after submittal of the plan. If no action is taken by the director of the division of oil and public safety or a designee within twenty working days after submittal, the plans shall be deemed approved.

(3) In an emergency situation the director of the division of oil and public safety shall respond to plans within twenty-four hours.

(4) The director of the division of oil and public safety or a designee shall make an on-site inspection of every new installation and every upgrading of an existing underground storage tank prior to the operational start-up of such tank to ensure that all of the standards established in this part 2 have been met. The director of the division of oil and public safety or a designee shall complete the on-site inspection within ten calendar days prior to the anticipated operational start-up date. For the purposes of this subsection (4), a designee may be an underground storage tank inspector when licensed as such by the director of the division of oil and public safety.

(5) All installations and inspections of underground storage tanks shall be performed in accordance with the rules promulgated by the director of the division of oil and public safety pursuant to section 8-20.5-202 (1).

(6) The director of the division of oil and public safety shall establish a fee to be paid by each person submitting plans pursuant to subsection (1) of this section for on-site inspection. The fees paid pursuant to this subsection (6) shall be:

(a) Used for the administration of this section; and

(b) No more than necessary to offset the direct costs of the inspections conducted pursuant to subsections (4) and (5) of this section, but in no event more than one hundred fifty dollars.

Source: L. 95: Entire article added, p. 402, § 1, effective July 1. **L. 2001:** (1) to (5) and IP(6) amended, p. 1128, § 49, effective June 5.

Editor's note: This section is similar to former § 8-20-505 as it existed prior to 1995.

8-20.5-205. More stringent requirements prohibited. (1) No municipality, city, home rule city, city and county, county, or other political subdivision of the state shall adopt or enforce any requirement more stringent than the provisions of this part 2. This section does not apply to requirements established pursuant to the uniform fire code or the national fire protection association codes, nor does it apply to requirements established pursuant to local zoning regulations.

(2) The limitation in subsection (1) of this section shall not apply to any municipality, city, home rule city, city and county, county, or other political subdivision of the state which has received an exemption from the committee created in section 8-20.5-104. The committee may grant a site-specific exemption when the applicant demonstrates that such an exemption would be cost beneficial and serve the health, safety, or economic interest of its citizens based on consideration of local hydrologic, geologic, or other conditions, including location of population concentrations or commercial areas.

Source: L. 95: Entire article added, p. 403, § 1, effective July 1.

Editor's note: This section is similar to former § 8-20-508 as it existed prior to 1995.

8-20.5-206. Financial responsibility for petroleum underground storage tanks. (1) (a) Moneys in the petroleum storage tank fund, created pursuant to section 8-20.5-103, and referred to in this section as the "fund", may be used by certain owners and operators of petroleum storage tanks to demonstrate their compliance with the financial responsibility requirements in federal regulations. Owners and operators not eligible for access to the fund shall be solely responsible for securing independent financial assistance, but may use any federally approved financial assurance mechanism identified in 40 CFR 280.94 through 280.103 to help fund the cost of complying with such requirements.

(b) (I) After payment is made from the fund for remediation expenses, the owner or operator on whose behalf the payment was made shall pay to the fund the remediation amount or ten thousand dollars, whichever is less.

(II) The payment required pursuant to subparagraph (I) of this paragraph (b) shall be waived if:

(A) The owner or operator discovers the contamination while upgrading tanks to meet the December 22, 1998, deadline for corrosion protection, spill and overfill prevention, or monthly monitoring;

(B) The upgrade is completed no later than December 22, 1997; and

(C) The annual throughput of petroleum products at the site does not exceed six hundred thousand gallons during the year preceding the discovery of contamination.

(c) After payment is made from the fund for personal injury or property damage settlement expenses, or a combination of both, the owner or operator on whose behalf the payment was made shall pay to the fund the aggregate settlement payment amount or twenty-five thousand dollars, whichever is less.

(d) Moneys in the fund shall not be used for any remediation activity at a location that is within a site identified by the national priorities list, or where a response action by this state has begun pursuant to the federal "Comprehensive Environmental Response, Compensation, and Liability Act of 1980".

(e) If an owner or operator cannot meet the financial requirements of paragraphs (b) and (c) of this subsection (1), another approved financial assurance mechanism must be identified for such owner or operator to remain in compliance with this section and to be allowed to continue operation of an underground petroleum storage tank.

(2) The maximum amount of liability of the fund under this section shall be three million dollars aggregate during a state fiscal year for multiple occurrences involving tanks that are the responsibility of an individual owner or operator, but in no event shall the liability of the fund exceed two million dollars per occurrence. For purposes of this section, an "occurrence" means the period of time from identification through remediation of a leak, spill, or release of a petroleum product from an underground storage tank. In the event the cost of remediation or third-party claims exceeds the amount available to pay such costs, such costs and claims shall be paid on a pro rata basis as determined by the committee created in section 8-20.5-104. Any balance owed shall be paid as moneys become available in the fund. Any excess costs that are not paid by the fund or by the federal leaking underground storage tank trust fund shall be paid by and are the sole responsibility of the responsible owner or operator.

(3) Moneys in the fund shall be available to pay required cleanup costs and third-party liability payments with no deductibles for the following applicants who are deemed to bear no responsibility for the release:

(a) A current or former property owner who has never owned, operated, leased, or managed petroleum underground storage tanks at the property where the release occurred, provided such property was acquired on or before June 3, 1992, and in the case of a preexisting release, the property owner had no reason to know that a release had occurred prior to acquiring the property;

(b) When an orphan or abandoned petroleum underground storage tank is involved and the applicant is a current or former owner, operator, or property owner who has never operated the tank or tanks and had no reason to know that a release had occurred prior to acquiring the property;

(c) A current owner or operator of petroleum underground storage tanks if at the time the owner or operator acquired such tanks such owner or operator had no reason to know that a release had already occurred, if such owner or operator has operated the tanks in accordance with sections 8-20.5-202 and 8-20.5-302, and if the release was detected on or before December 22, 1998;

(d) Any mortgagee or holder of an evidence of debt secured by a deed of trust who, through foreclosure of the mortgage or deed of trust or through receipt of a deed to the property

in lieu of foreclosure, acquires property on which an underground storage tank is located, and such mortgage or deed of trust is dated on or before January 1, 1993;

(e) (I) (A) Any mortgagee or holder of an evidence of debt secured by a deed of trust who, through foreclosure of the mortgage or deed of trust or through receipt of a deed to the property in lieu of foreclosure, acquires property on which an underground storage tank is located, and such mortgage or deed of trust is dated after January 1, 1993, and the mortgagee or holder of an evidence of debt secured by a deed of trust has obtained a certificate of eligibility regarding the property in accordance with the rules of the director of the division of oil and public safety; or

(B) Any mortgagee or holder of an evidence of debt as described in sub-subparagraph (A) of this subparagraph (I), who sells the property on which an underground storage tank is located in lieu of remediating such property and transfers the certificate of eligibility to the purchaser. Such purchaser may receive fund moneys pursuant to this subsection (3).

(II) The director of the division of oil and public safety shall promulgate rules necessary to implement this program.

(4) In lieu of seeking reimbursement directly from the fund, an owner, operator, or current property owner who bears no responsibility for the release, under the provisions of subsection (3) of this section, may request that the department perform the cleanup using funds from the petroleum storage tank fund without further proving eligibility for such use. In addition to any purpose provided for in section 8-20.5-103, moneys in the petroleum storage tank fund may be appropriated by the general assembly to the department for the purpose of providing for the cleanup authorized in this section.

(5) Whenever appropriate, to pay costs that exceed the maximum allowed to be paid from the fund under this section, the state shall seek funding from the federal leaking underground storage tank trust fund.

(6) Underground storage tanks containing petroleum or other regulated substances that are owned or operated by, or are on property owned or leased by, an Indian tribe or the federal government, or an agency or subcontractor performing services on behalf of the federal government shall be subject to federal financial responsibility regulations. Any financial responsibility requirements for damages caused by such tanks are not the responsibility of the fund unless the tanks are owned or operated by a person, other than the federal government or such agency or subcontractor, and located on property that is leased from or otherwise occupied pursuant to a permit or other agreement with the United States or any agency thereof other than the department of defense or the department of energy.

(7) Nothing in this article shall create any liability for the state of Colorado that exceeds the amount available in the fund.

(8) Subject to subsection (6) of this section, owners and operators of underground storage tanks that are on fee lands may use the fund to demonstrate compliance with the financial responsibility requirements in federal regulations if the owners and operators have registered such tanks pursuant to section 8-20.5-102.

Source: L. 95: Entire article added, p. 403, § 1, effective July 1. **L. 96:** (1)(b), (2), and (7) amended, p. 711, § 5, effective May 15. **L. 2001:** (3)(e)(I)(A) and (3)(e)(II) amended, p. 1129, § 50, effective June 5. **L. 2005:** (2), IP(3), (3)(a), and (3)(b) amended, p. 1326, § 3, effective July 1; (6) amended and (8) added, p. 417, § 2, effective July 1.

Editor's note: This section is similar to former § 8-20-509 as it existed prior to 1995.

Cross references: For the "Comprehensive Environmental Response, Compensation, and Liability Act of 1980", see Pub.L. 96-510, codified at 42 U.S.C. § 9601 et seq.

8-20.5-207. Financial responsibility for regulated substances other than petroleum. Owners and operators of underground storage tanks containing regulated substances other than petroleum may demonstrate financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damages by using any one or more of the mechanisms allowable under 40 CFR sections 280.95, 280.96, 280.97, 280.98, 280.99, 280.102, and 280.103. Owners and operators of underground storage tanks containing regulated substances other than petroleum shall not be eligible to participate in the petroleum storage tank fund, but shall be subject to federal financial responsibility regulations.

Source: L. 95: Entire article added, p. 406, § 1, effective July 1.

Editor's note: This section is similar to former § 8-20-510 as it existed prior to 1995.

8-20.5-208. Reporting of releases - investigation. (1) If a release is detected or suspected, the owner or operator shall immediately take all actions necessary to mitigate or stop the release and shall mitigate fire and safety hazards.

(2) Upon detection of any release of reportable quantities of a regulated substance from an underground storage tank, the owner or operator shall report such release to the director of the division of oil and public safety within twenty-four hours of its detection. However, the local fire authority shall be notified immediately if such release exceeds reportable quantities. If the director of the division of oil and public safety determines that the release of such reportable quantity will affect subsurface soils, groundwater, or surface water, the department may require the owner or operator to take corrective action in accordance with section 8-20.5-209.

(3) If the director of the division of oil and public safety or a designee finds that a release has occurred, and the owner or the operator cannot be identified, or is unwilling to mitigate or stop the release or mitigate fire and safety hazards, the director of the division of oil and public safety or a designee may initiate free product removal and whatever other actions are necessary to mitigate fire and safety hazards.

(4) For the purpose of enforcing this section, if a release poses an imminent and substantial threat to human health and the environment, the director of the division of oil and public safety or a designee is authorized to take such action as is necessary under the circumstances, including but not limited to:

(a) Entering any property, premises, or place where an underground storage tank is located;

(b) Monitoring or testing or requiring the owner or the operator to monitor or test any underground storage tank or any surrounding soils, groundwater, or surface water. A duplicate sample taken for testing shall be provided to any person, at such person's request, who the director of the division of oil and public safety or a designee reasonably believes may be responsible for the release. A duplicate copy of the analytical report pertaining to the samples taken pursuant to this paragraph (b) shall be provided as soon as practicable to any person who

the director of the division of oil and public safety or a designee reasonably believes may be responsible for the release. When such tests are performed, the director of the division of oil and public safety shall notify, when possible, any person reasonably believed to be an owner or operator.

(c) Entering any site or premises in which records relevant to the operation of an underground storage tank are maintained and to inspect and copy such records.

(5) If such entry or inspection is denied or not consented to, the director of the division of oil and public safety or a designee shall obtain, from the district or county court for the judicial district or county in which such property, premises, or place is located, a warrant to enter and inspect any such property, premises, or place prior to entry and inspection. The district and county courts of the state of Colorado are authorized to issue such warrants upon proper showing of the need for such entry and inspection.

(6) If requested by the director of the division of oil and public safety or a designee, the owner or the operator of an underground storage tank shall provide any information in such owner's or operator's possession regarding the tank.

Source: L. 95: Entire article added, p. 406, § 1, effective July 1. **L. 96:** (2) amended, p. 712, § 6, effective May 15. **L. 2001:** (2), (3), IP(4), (4)(b), (5), and (6) amended, p. 1129, § 51, effective June 5.

Editor's note: This section is similar to former § 8-20-507 as it existed prior to 1995.

8-20.5-209. Regulated substances releases - corrective actions. (1) If a release has occurred at a site where the owner or the operator cannot be identified, after the director of the division of oil and public safety or a designee has mitigated fire and safety hazards in accordance with section 8-20.5-208 and determined that a release exceeds reportable quantities, the director of the division of oil and public safety may initiate corrective action to mitigate any threat to subsurface soil, groundwater, or surface water and develop a plan for cleanup in accordance with subsection (3) of this section and shall recover costs pursuant to section 8-20.5-103.

(2) If the release has occurred at a site where the owner or the operator can be identified, and after fire and safety hazards have been mitigated in accordance with section 8-20.5-208 and the director of the division of oil and public safety has determined that the release exceeds reportable quantities, then the owner or the operator shall provide the director of the division of oil and public safety with a corrective action plan to clean up subsurface soil, groundwater, and surface water as a result of the release. In addition to the corrective action plan, the owner or operator shall prepare a summary of the costs associated with the preferred corrective action, taking into account economic and technological feasibility, in accordance with the rules promulgated pursuant to section 8-20.5-104 (4)(d) and shall submit the summary to the committee created in said section. The director of the division of oil and public safety shall review and approve or disapprove the plan and, if the plan is disapproved, shall provide the owner or the operator with a statement specifying the deficiencies in the plan. The owner or the operator shall submit a revised plan within twenty working days after receipt of the statement, and the owner or the operator shall be given an opportunity to take necessary and appropriate actions to clean up subsurface soils, groundwater, and surface water. If the owner or the operator is unable or unwilling to take such necessary and appropriate actions, the director of the division

of oil and public safety may conduct corrective action to the extent appropriate to protect subsurface soils, groundwater, or surface water as a result of that release. Such action shall be taken after consideration of the risks posed to the public health and shall be determined in light of current economic and technological feasibility.

(3) After the director of the division of oil and public safety mitigates the threat to subsurface soils, groundwater, and surface water as specified in subsections (1) and (2) of this section, and the owner or the operator of the tank from which petroleum has been released is identified, the owner or the operator shall pay the required costs pursuant to the financial responsibility requirements set forth in sections 8-20.5-206, 8-20.5-207, and 8-20.5-303, incurred in the investigation of the release and mitigation of threats to subsurface soils, groundwater, and surface water. The director of the division of oil and public safety may file suit in the district court for the judicial district in which the release occurred to recover such costs. The moneys obtained as a result of any suit brought pursuant to this section shall be credited to the petroleum storage tank fund created in section 8-20.5-103.

(4) The director of the division of oil and public safety may order the owner or the operator of an underground storage tank from which a regulated substance has been released to implement a corrective action plan approved under subsection (2) of this section. Such order shall be served personally or by certified mail, return receipt requested, upon the owner or the operator.

(5) If the director of the division of oil and public safety disapproves or fails to approve the plan within thirty days after the plan's submission, the director shall immediately provide a statement of findings of fact outlining the reasons for such disapproval or failure to approve, including the reasons the proposed plan fails to meet the criteria outlined in this section. The statement shall be provided by formal notice or by certified mail to the owner or the operator within ten days after the director's decision.

(6) The director of the division of oil and public safety may waive the requirement for such a plan if the director determines that reasonable steps have been taken to prevent further releases and that any previously released regulated substance has been cleaned up to the extent appropriate to protect subsurface soils, groundwater, or surface water as a result of that release at that specific location. Such action shall be taken after consideration of the risks posed to the public health and shall be determined in light of current economic and technological feasibility.

(7) Within ten days after notification of disapproval of the plan, the owner or the operator may file a written request with the director of the division of oil and public safety for an informal conference regarding the disapproval. Upon receipt of such a request, the director shall provide the owner or the operator with a written notice of the date, time, and place of the informal conference. The executive director of the department or a designee shall preside at the informal conference, during which the owner or the operator and the director or the director's designee may present information and arguments regarding the issues raised in the statement of findings of fact.

(8) Within twenty days after the conference, the owner or operator may resubmit a modified plan which addresses the deficiencies identified by the department in the original plan. The department shall review the modifications to the plan and, within twenty days, approve or disapprove the resubmitted plan. If, after the conference, the owner, the operator, or the department determines that the issues identified in the statement of findings of fact cannot be reasonably resolved, the owner, the operator, or the department may request that the committee,

created in section 8-20.5-104, schedule and hold a hearing within thirty days to resolve the issues identified in the statement of findings of fact.

(9) At any time after the receipt of the statement of findings of fact, the owner, the operator, or the department may request, in writing, a formal hearing before the committee created in section 8-20.5-104. Upon such request, the committee shall meet and review the initial plan and statement of findings of fact.

(10) The committee shall recommend such plan if any current release has been mitigated and if any regulated substance which has been released has been or will be cleaned up to the extent appropriate to protect subsurface soils, groundwater, or surface water as a result of the release at that specific location. The department shall give serious consideration to the recommendation of the committee. Such action shall be taken after consideration of the risks posed to the public and shall be determined in light of current economic and technological feasibility. If the committee finds that a current release has not been mitigated or that any regulated substance which has been released will not be cleaned up to the extent appropriate, the committee shall issue a statement of findings of fact and recommendations to the department for revisions to the plan. Such revisions, if approved by the department, shall be incorporated into the plan by the department, and the revised plan shall then be approved as provided in subsection (2) of this section.

(11) Within thirty days following mitigation and cleanup, the department shall notify the owner or the operator, in writing, that the owner or the operator has complied with the requirements for mitigation and cleanup as outlined in this section.

(12) For the purpose of implementing the provisions of this section, the department or its designee is authorized for justifiable cause:

(a) To enter the property, premises, or place where a release or suspected release from an underground storage tank is located;

(b) To monitor or test or require the owner or the operator to monitor or test an underground storage tank or any surrounding soils, groundwater, or surface water where a suspected release from an underground storage tank has occurred. A duplicate sample taken for testing shall be provided to any owner or operator who the department reasonably believes may be responsible for the violation upon request of such person. A duplicate copy of the analytical report pertaining to the samples taken pursuant to this paragraph (b) shall be provided as soon as practicable to any person the department or its designee reasonably believes may be responsible for the violation. When such tests are performed, the department shall notify, when possible, any person reasonably believed to be an owner or operator.

(13) If such entry or inspection is denied, the department shall obtain, from the district or county court for the judicial district or county in which such property, premises, or place is located, a warrant to enter and inspect any such property, premises, or place prior to entry and inspection. The district and county courts of the state of Colorado are authorized to issue such warrants upon proper showing of the need for such entry and inspection.

(14) If requested by the department or its designee, the owner or operator of an underground storage tank shall provide any information in such owner's or operator's possession regarding the tank.

(15) The department may consider water quality standards adopted by the water quality control commission as guidelines for cleanup but must assure that cleanup requirements are appropriate, in light of economic and technical feasibility and after consideration of the risks to

public health, to protect subsurface soils, groundwater, or surface water as a result of a release at a specific location.

(16) The department shall, if necessary, negotiate and enter into memoranda of agreement with and apply for and receive grants from the United States environmental protection agency pursuant to the provisions of this article.

Source: L. 95: Entire article added, p. 407, § 1, effective July 1. **L. 96:** (4) amended, p. 712, § 7, effective May 15. **L. 2001:** (1) to (7) amended, p. 1130, § 52, effective June 5.

Editor's note: This section is similar to former § 25-18-104 as it existed prior to 1995.

PART 3

ABOVEGROUND STORAGE TANKS

8-20.5-301. Legislative declaration. The general assembly hereby finds and declares that the rising expense of operating and maintaining aboveground storage tanks, including but not limited to the cost of liability insurance, has resulted in the discontinuance of business by several small gasoline service station operators and imposes an increasing hardship on those service stations still in operation. The general assembly further finds that the viability of aboveground storage tanks is being recognized and that rules and regulations for aboveground storage tanks have been promulgated and endorsed by the western fire chiefs association's uniform fire code committee and the national fire protection association's automotive and service station code committee. The general assembly further finds that aboveground storage tanks for fuel products are feasible and economical and should be permitted under certain narrowly drawn circumstances.

Source: L. 95: Entire article added, p. 411, § 1, effective July 1.

Editor's note: This section is similar to former § 8-20-701 as it existed prior to 1995.

8-20.5-302. Duties of director of division of oil and public safety - rules. (1) The director of the division of oil and public safety shall make, promulgate, and enforce rules for aboveground storage tanks installed before July 1, 1993, which rules shall be no more stringent than the rules in place on the date of installation, except as mandated by federal spill prevention, control, and countermeasures regulations promulgated by the United States environmental protection agency.

(2) The director of the division of oil and public safety shall make, promulgate, and enforce rules concerning the design, construction, installation, and operation of aboveground storage tanks permitted to be used and installed on or after July 1, 1993, which rules shall be no more stringent, either substantially or procedurally, than the requirements contained in the current edition of the national fire code published by the national fire protection association, as revised by the association from time to time, and in spill prevention control and countermeasures regulations promulgated by the United States environmental protection agency.

(3) Within one hundred twenty days after January 1, 2008, the director of the division of oil and public safety shall promulgate, and the division shall enforce, rules concerning the placement of aboveground storage tanks that contain renewable fuels. Such rules shall be promulgated with the purpose of developing a uniform statewide standard of issuing permits for aboveground storage tanks to promote the use of renewable fuels so that the process of obtaining a permit for an aboveground storage tank that contains renewable fuels may be more efficient and affordable.

Source: L. 95: Entire article added, p. 411, § 1, effective July 1. **L. 2001:** Entire section amended, p. 1132, § 53, effective June 5. **L. 2007:** (3) added, p. 1760, § 6, effective June 1.

Editor's note: This section is similar to former § 8-20-703 as it existed prior to 1995.

8-20.5-303. Financial responsibility for aboveground storage tanks. (1) (a) Moneys in the petroleum storage tank fund, created pursuant to section 8-20.5-103 and referred to in this section as the "fund", may be used by certain owners and operators of aboveground storage tanks. Any owner or operator of an aboveground storage tank with a capacity of at least six hundred sixty gallons and less than forty thousand gallons shall be eligible to participate in the fund.

(b) After payment is made from the fund for remediation expenses, the owner or operator on whose behalf the payment was made shall pay to the fund the remediation amount or ten thousand dollars, whichever is less.

(c) After payment is made from the fund for personal injury or property damage after a court judgment or a settlement agreed to by the attorney general's office, or a combination of both, the owner or operator on whose behalf the payment was made shall pay to the fund the aggregate settlement payment amount or twenty-five thousand dollars, whichever is less.

(d) Moneys in the fund shall not be used for any remediation activity at a location that is within a site identified by the national priorities list, or where a response action by this state has begun pursuant to the federal "Comprehensive Environmental Response, Compensation, and Liability Act of 1980".

(e) If an owner or operator cannot meet the financial requirements of this subsection (1), another approved financial assurance mechanism shall be identified for such owner or operator to remain in substantial compliance with this section and to be allowed to continue operation of an aboveground storage tank.

(2) The maximum amount of liability of the fund under this section shall be three million dollars aggregate during a fiscal year for multiple occurrences involving tanks that are the responsibility of an individual owner or operator, but in no event shall the liability of the fund exceed two million dollars per occurrence. For purposes of this section, an "occurrence" means the period of time from identification through remediation of a leak, spill, or release of a petroleum product from an aboveground storage tank. In the event the cost of remediation or third-party claims exceeds the amount available to pay such costs, such costs and claims shall be paid on a pro rata basis as determined by the committee created in section 8-20.5-104. Any balance owed shall be paid as moneys become available in the fund. Any excess costs that are not paid by the fund shall be paid by and are the sole responsibility of the responsible owner or operator.

(3) Moneys in the fund shall be available to pay required cleanup costs and third-party liability payments with no deductibles for the following applicants who are deemed to bear no responsibility for the release:

(a) A current or former property owner who has never owned, operated, leased, or managed aboveground storage tanks at the property where the release occurred, provided such property was acquired on or before June 3, 1992, and in the case of a preexisting release, the property owner had no reason to know that a release had occurred prior to acquiring the property;

(b) When an orphan or abandoned aboveground storage tank is involved and the applicant is a current or former owner, operator, or property owner who has never operated the tank or tanks and had no reason to know that a release had occurred prior to acquiring the property;

(c) A current owner or operator of aboveground storage tanks if, at the time the owner or operator acquired such tanks, such owner or operator had no reason to know that a release had already occurred, if such owner or operator has operated the tanks in accordance with sections 8-20.5-202 and 8-20.5-302;

(d) Any mortgagee or holder of an evidence of debt secured by a deed of trust who, through foreclosure of the mortgage or deed of trust or through receipt of a deed to the property in lieu of foreclosure, acquires property on which an aboveground storage tank is located, and such mortgage or deed of trust is dated on or before January 1, 1993; or

(e) (I) Any mortgagee or holder of an evidence of debt secured by a deed of trust who, through foreclosure of the mortgage or deed of trust or through receipt of a deed to the property in lieu of foreclosure, acquires property on which an aboveground storage tank is located, and such mortgage or deed of trust is dated after January 1, 1993, and the mortgagee or holder of an evidence of debt secured by a deed of trust has obtained a certificate of eligibility regarding the property in accordance with the rules of the director of the division of oil and public safety. The director of the division of oil and public safety shall promulgate rules necessary to implement this program.

(II) Any mortgagee or holder of an evidence of debt as described in subparagraph (I) of this paragraph (e) who sells the property on which an aboveground storage tank is located in lieu of remediating such property and transfers the certificate of eligibility to the purchaser. Such purchaser may receive funds pursuant to this subsection (3).

(4) In lieu of seeking reimbursement directly from the fund, an owner, operator, or current property owner who bears no responsibility for the release as set forth in subsection (3) of this section may request that the department perform the cleanup using moneys from the petroleum storage tank fund without further proving eligibility for such use. In addition to any purpose provided for in section 8-20.5-103, moneys in the petroleum storage tank fund may be appropriated by the general assembly to the department for the purpose of providing for the cleanup authorized in this section.

(5) An owner or operator of an aboveground storage tank or a person deemed to bear no responsibility for the release pursuant to subsection (3) of this section shall be eligible to participate in the fund if eligibility requirements established by the petroleum storage tank committee, created pursuant to section 8-20.5-104, are met.

(6) Aboveground storage tanks containing petroleum or other regulated substances that are owned or operated by, or are on property owned or leased by, an Indian tribe or the federal

government or an agency or subcontractor performing services on behalf of the federal government shall be subject to federal financial responsibility regulations. Any financial responsibility requirements for damages caused by such tanks are not the responsibility of the fund unless such tanks are owned or operated by a person, other than the federal government or such agency or subcontractor, and located on property that is leased from or otherwise occupied pursuant to a permit or other agreement with the United States or any agency thereof other than the department of defense or the department of energy.

(7) Nothing in this article shall create any liability for the state of Colorado that exceeds the amount available in the fund.

(8) Subject to subsection (6) of this section, owners and operators of aboveground storage tanks that are on fee lands may use the fund to demonstrate compliance with the financial responsibility requirements in federal regulations if the owners and operators have registered such tanks pursuant to section 8-20.5-102.

Source: L. 95: Entire article added, p. 411, § 1, effective July 1. **L. 96:** (1)(a), (2), (3)(b), (3)(c), (5), and (7) amended, p. 713, § 8, effective May 15. **L. 2001:** (3)(e)(I) amended, p. 1132, § 54, effective June 5. **L. 2005:** (2), IP(3), (3)(a), and (3)(b) amended, p. 1327, § 4, effective July 1; (6) amended and (8) added, p. 417, § 3, effective July 1.

Editor's note: This section is similar to former § 8-20-705 as it existed prior to 1995.

Cross references: For the "Comprehensive Environmental Response, Compensation, and Liability Act of 1980", see Pub.L. 96-510, codified at 42 U.S.C. § 9601 et seq.

8-20.5-304. Regulated substances releases - corrective actions. (1) If a release has occurred at a site where the owner or operator cannot be identified, after the director of the division of oil and public safety or a designee has mitigated fire and safety hazards in accordance with section 8-20.5-208 and determined that a release exceeds reportable quantities, the director of the division of oil and public safety may initiate corrective action to mitigate any threat to subsurface soil, groundwater, or surface water and develop a plan for cleanup in accordance with subsection (3) of this section and shall recover costs pursuant to section 8-20.5-103.

(2) If a release has occurred at a site where the owner or operator can be identified, and after fire and safety hazards have been mitigated in accordance with section 8-20.5-208 and the director of the division of oil and public safety has determined that the release exceeds reportable quantities, then the owner or operator shall provide the director of the division of oil and public safety with a corrective action plan to clean up subsurface soil, groundwater, and surface water as a result of the release. In addition to the corrective action plan, the owner or operator shall prepare a summary of the costs associated with the preferred corrective action, taking into account economic and technological feasibility, in accordance with the rules promulgated pursuant to section 8-20.5-104 (4)(d) and shall submit the summary to the committee created in said section. The director of the division of oil and public safety shall review and approve or disapprove the plan and, if the plan is disapproved, the director shall provide the owner or operator with a statement specifying the deficiencies in the plan. Within twenty working days after receiving such statements, the owner or operator shall submit a revised plan and shall be given an opportunity to take necessary and appropriate actions to clean up subsurface soils,

groundwater, and surface water. If the owner or operator is unable or unwilling to take such necessary and appropriate actions, the director of the division of oil and public safety may conduct corrective action to the extent appropriate to protect subsurface soils, groundwater, or surface water as a result of that release. Such action shall be taken after consideration of the risks posed to the public health and shall be determined in light of current economic and technological feasibility.

(3) After the director of the division of oil and public safety mitigates the threat to subsurface soils, groundwater, and surface water as specified in subsections (1) and (2) of this section, and the owner or operator of the tank from which petroleum has been released is identified, the owner or operator shall pay the required costs of investigation and mitigation pursuant to the financial responsibility requirements set forth in sections 8-20.5-206, 8-20.5-207, and 8-20.5-303. The director of the division of oil and public safety may file suit in the district court for the judicial district in which the release occurred to recover such costs. The moneys obtained as a result of any suit brought pursuant to this section shall be credited to the petroleum storage tank fund created in section 8-20.5-103.

(4) The director of the division of oil and public safety may order the owner or operator of an aboveground storage tank from which a regulated substance has been released to implement a corrective action plan approved under subsection (2) of this section. Such order shall be served personally or by certified mail, return receipt requested, upon the owner or operator.

(5) (a) If the director of the division of oil and public safety disapproves or fails to approve the plan within thirty days following its submission, the director shall immediately provide a statement of findings of fact outlining the reasons for such disapproval or failure to approve, including the reasons the proposed plan fails to meet the criteria outlined in this section. The statement shall be provided by formal notice or by certified mail to the owner or operator within ten days after the director's decision.

(b) The director of the division of oil and public safety may waive the requirement for such a plan if the director determines that reasonable steps have been taken to prevent further releases and that any previously released regulated substance has been cleaned up to the extent appropriate to protect subsurface soils, groundwater, or surface water as a result of that release at that specific location. Such action shall be taken after consideration of the risks posed to the public health and shall be determined in light of current economic and technological feasibility.

(6) (a) Within ten days after notification of disapproval of the plan, the owner or operator may file a written request with the director of the division of oil and public safety for an informal conference regarding the disapproval. Upon receipt of such a request, the director shall provide the owner or operator with a written notice of the date, time, and place of the informal conference. The executive director of the department or a designee shall preside at the informal conference, during which the owner or operator and the director or the director's designee may present information and arguments regarding the issues raised in the statement of findings of fact.

(b) Within twenty days after the conference, the owner or operator may resubmit a modified plan which addresses the deficiencies identified by the department in the original plan. The department shall review the modifications to the plan and, within twenty days, approve or disapprove the resubmitted plan. If, after the conference, the owner or operator or the department determines that the issues identified in the statement of findings of fact cannot be reasonably

resolved, the owner or operator or the department may request that the committee, created in section 8-20.5-104, schedule and hold a hearing within thirty days to resolve the issues identified in the statement of findings of fact.

(7) (a) At any time after receiving the statement of findings of fact, the owner or operator or the department may request, in writing, a formal hearing before the committee created in section 8-20.5-104. Upon such request, the committee shall meet and review the initial plan and statement of findings of fact.

(b) The committee shall recommend such plan if any current release has been mitigated and if any regulated substance which has been released has been or will be cleaned up to the extent appropriate to protect subsurface soils, groundwater, or surface water as a result of the release at that specific location. The department shall give serious consideration to the recommendation of the committee. Such action shall be taken after consideration of the risks posed to the public and shall be determined in light of current economic and technological feasibility. If the committee finds that a current release has not been mitigated or that any regulated substance which has been released will not be cleaned up to the extent appropriate, the committee shall issue a statement of findings of fact and recommendations to the department for revisions to the plan. Such revisions, if approved by the department, shall be incorporated into the plan by the department, and the revised plan shall then be approved as provided in subsection (2) of this section.

(8) Within thirty days following mitigation and cleanup, the department shall notify the owner or operator, in writing, that the owner or operator has complied with the requirements for mitigation and cleanup as outlined in this section.

(9) (a) For the purpose of implementing the provisions of this section, the department or its designee is authorized for justifiable cause:

(I) To enter the property, premises, or place where a release or suspected release from an aboveground storage tank is located;

(II) To monitor or test or require the owner or operator to monitor or test an aboveground storage tank or any surrounding soils, groundwater, or surface water where a suspected release from an aboveground storage tank has occurred. A duplicate sample taken for testing shall be provided to any owner or operator who the department reasonably believes may be responsible for the violation upon request of such person. A duplicate copy of the analytical report pertaining to the samples taken pursuant to this subparagraph (II) shall be provided as soon as practicable to any person the department or its designee reasonably believes may be responsible for the violation. When such tests are performed, the department shall notify, when possible, any person reasonably believed to be an owner or operator.

(b) If such entry or inspection is denied, the department shall obtain, from the district or county court for the judicial district or county in which such property, premises, or place is located, a warrant to enter and inspect any such property, premises, or place prior to entry and inspection. The district and county courts of the state of Colorado are authorized to issue such warrants upon proper showing of the need for such entry and inspection.

(c) If requested by the department or its designee, the owner or operator of an aboveground storage tank shall provide any information in such owner's or operator's possession regarding the tank.

(10) (a) The department may consider water quality standards adopted by the water quality control commission as guidelines for cleanup but shall assure that cleanup requirements

are appropriate, in light of economic and technical feasibility and after consideration of the risks to public health, to protect subsurface soils, groundwater, or surface water as a result of a release at a specific location.

(b) The department shall, if necessary, negotiate and enter into memoranda of agreement with and apply for and receive grants from the United States environmental protection agency.

Source: L. 96: Entire section added, p. 714, § 9, effective May 15. **L. 2001:** (1) to (5) and (6)(a) amended, p. 1133, § 55, effective June 5.

PART 4

UNDERGROUND STORAGE TANKS INSTALLERS

8-20.5-401 to 8-20.5-407. (Repealed)

Editor's note: (1) This part 4 was added with relocations in 1995 containing relocated provisions of some sections formerly located in part 6 of article 20 of this title and was not amended prior to its repeal in 1996. For the text of this part 4 prior to 1996, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

(2) Section 8-20.5-407 provided for the repeal of this part 4, effective July 1, 1996. (See L. 95, p. 418.)

LABOR II - WORKERS' COMPENSATION AND RELATED PROVISIONS

Workers' Compensation

Editor's note: Prior to July 1, 1990, the "Workmen's Compensation Act of Colorado" was located in articles 40 to 54 of this title.

Cross references: For the "Workers' Compensation Cost Containment Act", see article 14.5 of this title.

ARTICLE 40

General Provisions

Editor's note: This article was numbered as article 1 of chapter 81, C.R.S. 1963. The substantive provisions of this article were repealed and reenacted in 1990, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this article prior to 1990, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume. Former C.R.S. section numbers are shown in

editors' notes following those sections that were relocated. For a detailed comparison of this article, see the comparative tables located in the back of the index.

Cross references: For application of workers' compensation law to volunteer civil defense workers, see part 8 of article 33.5 of title 24.

Law reviews: For article, "1991 Update on Workers' Compensation Law", see 10 Colo. Law. 223 (1991); for article, "The Colorado Worker's Compensation Act and the ADA: An Incompatible Combination", see 21 Colo. Law. 2391 (1992); for article, "State Laws: A Growing Minefield for Employers", see 23 Colo. Law. 1089 (1984); for article, "Workers' Compensation, the ADA and the FMLA: The Top Ten Questions Most Commonly Asked by Colorado Employers", see 24 Colo. Law. 2293 (1995); for article, "Recent Workers' Compensation Decisions: An Update", see 24 Colo. Law. 2375 (1995); for article, "Recent Appellate Decisions in Workers' Compensation Law - Part I", see 26 Colo. Law. 79 (April 1997); for article, "Recent Appellate Decisions in Workers' Compensation Law - Part II", see 26 Colo. Law. 103 (May 1997); for article, "Recent Appellate Decisions in Workers' Compensation Law", see 26 Colo. Law. 51 (Dec. 1997); for article, "Recent Colorado Appellate Decisions in Workers' Compensation Law", see 27 Colo. Law. 107 (Sept. 1998); for article, "Update of Colorado Appellate Decisions in Workers' Compensation Law", see 28 Colo. Law. 83 (Jan. 1999); for article, "Update on Colorado Appellate Decisions in Workers' Compensation", see 28 Colo. Law. 77 (May 1999); for article, "Update on Colorado Appellate Decisions in Workers' Compensation", see 28 Colo. Law. 71 (Dec. 1999); for article, "Update on Colorado Appellate Decisions In Workers' Compensation Law", see 29 Colo. Law. 83 (June 2000); for article, "Update on Colorado Appellate Decisions In Workers' Compensation Law", see 29 Colo. Law. 97 (Sept. 2000); for article, "Update on Colorado Appellate Decisions In Workers' Compensation Law", see 30 Colo. Law. 65 (Jan. 2001); for article, "Personal Injury and Workers' Compensation Settlements for Incapacitated Persons: Part II", see 30 Colo. Law. 56 (Feb. 2001); for article, "Update on Colorado Appellate Decisions in Workers' Compensation Law", see 31 Colo. Law. 89 (Sept. 2002); for article, "Update on Colorado Appellate Decisions In Workers' Compensation Law", see 32 Colo. Law. 87 (March 2003); for article, "Workers' Compensation: Rules, Rules, Rules, and More Rules", see 39 Colo. Law. 41 (Dec. 2010); for article, "Advising Colorado Employers in Response to Threats of Workplace Violence", see 42 Colo. Law. 47 (April 2013); for article, "Distributing Personal Injury Settlements and Workers' Compensation Awards in Divorce", see 45 Colo. Law. 25 (Oct. 2016); for article, "Über Problems: Ride-Sharing Exclusions in Personal Automobile Insurance Policies", see 47 Colo. Law. 46 (Aug.-Sept. 2018).

PART 1

SHORT TITLE - LEGISLATIVE DECLARATION

8-40-101. Short title. Articles 40 to 47 of this title shall be known and may be cited as the "Workers' Compensation Act of Colorado".

Source: L. 90: Entire article R&RE, p. 468, § 1, effective July 1.

Editor's note: This section is similar to former § 8-40-101 as it existed prior to 1990.

8-40-102. Legislative declaration. (1) It is the intent of the general assembly that the "Workers' Compensation Act of Colorado" be interpreted so as to assure the quick and efficient delivery of disability and medical benefits to injured workers at a reasonable cost to employers, without the necessity of any litigation, recognizing that the workers' compensation system in Colorado is based on a mutual renunciation of common law rights and defenses by employers and employees alike.

(2) The general assembly hereby finds that the determination of whether an individual is an employee for purposes of the "Workers' Compensation Act of Colorado" is subject to a great deal of speculation and litigation. It is the intent of the general assembly to provide an easily ascertainable standard for determining whether an individual is an employee. In order to further this objective, the test for determining whether an individual is an employee for the purposes of the "Workers' Compensation Act of Colorado" shall be based on the nine criteria found in section 8-40-202 (2)(b)(II) which shall supersede the common law. The fact that an individual performs services exclusively or primarily for another shall not be conclusive evidence that the individual is an employee.

Source: L. 90: Entire article R&RE, p. 468, § 1, effective July 1. **L. 91:** Entire section amended, p. 1291, § 3, effective July 1. **L. 93:** Entire section amended, p. 355, § 1, effective April 12. **L. 95:** (2) amended, p. 343, § 1, effective July 1.

Editor's note: This section is similar to former § 8-40-101.5 as it existed prior to 1990.

PART 2

DEFINITIONS

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

(1) "Accident" means an unforeseen event occurring without the will or design of the person whose mere act causes it; an unexpected, unusual, or undesigned occurrence; or the effect of an unknown cause or, the cause, being known, an unprecedented consequence of it.

(2) "Accident", "injury", or "injuries" includes disability or death resulting from accident or occupational disease as defined in subsection (14) of this section.

(2.5) Repealed.

(3) "Board" means the board of directors of Pinnacol Assurance.

(3.4) "Chief executive officer" means the chief executive officer of Pinnacol Assurance.

(3.5) Repealed.

(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.

(4) "Division" means the division of workers' compensation in the department of labor and employment.

(5) "Director" means the director of the division of workers' compensation.

(6) "Employee" has the meaning set forth in section 8-40-202 and the scope of such term is set forth in section 8-40-301.

(7) "Employer" has the meaning set forth in section 8-40-203 and the scope of such term is set forth in section 8-40-302.

(8) "Employment" means any trade, occupation, job, position, or process of manufacture or any method of carrying on any trade, occupation, job, position, or process of manufacture in which any person may be engaged; except that it shall not include participation in a ridesharing arrangement, as defined in section 39-22-509 (1)(a)(II), C.R.S., and participation in such a ridesharing arrangement shall not affect the wages paid to or hours or conditions of employment of an employee; nor shall it include the employee's participation in a voluntary recreational activity or program, regardless of whether the employer promoted, sponsored, or supported the recreational activity or program.

(9) "Examiner" means one of the industrial claim appeals examiners appointed to the industrial claim appeals panel in the industrial claim appeals office.

(10) "Executive director" means the executive director of the department of labor and employment.

(11) (Deleted by amendment, L. 2002, p. 1882, § 27, effective July 1, 2002.)

(11.5) "Maximum medical improvement" means a point in time when any medically determinable physical or mental impairment as a result of injury has become stable and when no further treatment is reasonably expected to improve the condition. The requirement for future medical maintenance which will not significantly improve the condition or the possibility of improvement or deterioration resulting from the passage of time shall not affect a finding of maximum medical improvement. The possibility of improvement or deterioration resulting from the passage of time alone shall not affect a finding of maximum medical improvement.

(12) "Mediation" means a process through which parties involved in a dispute concerning matters arising under articles 40 to 47 of this title meet with a mediator to discuss such matter or matters, defining and articulating the issues and their positions on such issues, with a goal of resolving such dispute or disputes.

(13) "Mediator" means an individual who is trained to assist disputants in reaching a mutually acceptable resolution of their disputes through the identification and evaluation of alternatives.

(13.5) Repealed.

(14) "Occupational disease" means a disease which results directly from the employment or the conditions under which work was performed, which can be seen to have followed as a natural incident of the work and as a result of the exposure occasioned by the nature of the employment, and which can be fairly traced to the employment as a proximate cause and which does not come from a hazard to which the worker would have been equally exposed outside of the employment.

(15) "Order" means and includes any decision, finding and award, direction, rule, regulation, or other determination arrived at by the director or an administrative law judge.

(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.

(16) "Panel" means the industrial claim appeals panel that conducts administrative appellate review pursuant to articles 40 to 47 of this title.

(16.5) (a) "Permanent total disability" means the employee is unable to earn any wages in the same or other employment. Except as provided in paragraph (b) of this subsection (16.5), the burden of proof shall be on the employee to prove that the employee is unable to earn any wages in the same or other employment.

(b) Total loss of or total loss of use of both hands, or both arms, or both feet, or both legs, or both eyes, or any two thereof shall create a rebuttable presumption of permanent total disability. "Total loss of use" shall be a medical determination, based upon objective findings, made by an independent medical examiner who is a level II accredited physician in the appropriate field.

(17) "Place of employment" means every place whether indoors, outdoors, or underground and the premises, workplaces, works, and plants appertaining thereto or used in connection therewith where either temporarily or permanently any industry, trade, or business is carried on; or where any process or operation directly or indirectly relating to any industry, trade, or business is carried on; or where any person is directly or indirectly employed by another for direct or indirect gain or profit.

(18) "State" includes any state or territory of the United States, the District of Columbia, and any province of Canada.

(18.5) "Temporary help contracting firm" means any person who is in the business of employing individuals and, for compensation from a third party, providing those individuals to perform work for the third party, under the supervision of the third party.

(19) (a) "Wages" shall be construed to mean the money rate at which the services rendered are recompensed under the contract of hire in force at the time of the injury, either express or implied.

(b) The term "wages" includes the amount of the employee's cost of continuing the employer's group health insurance plan and, upon termination of the continuation, the employee's cost of conversion to a similar or lesser insurance plan, and gratuities reported to the federal internal revenue service by or for the worker for purposes of filing federal income tax returns and the reasonable value of board, rent, housing, and lodging received from the employer, the reasonable value of which shall be fixed and determined from the facts by the division in each particular case, but does not include any similar advantage or fringe benefit not specifically enumerated in this subsection (19). If, after the injury, the employer continues to pay any advantage or fringe benefit specifically enumerated in this subsection (19), including the cost of health insurance coverage or the cost of the conversion of health insurance coverage, that advantage or benefit shall not be included in the determination of the employee's wages so long as the employer continues to make payment. Medicaid and other indigent health care programs are not health insurance plans for the purposes of this section.

(c) No per diem payment shall be considered wages under this subsection (19) unless it is also considered wages for federal income tax purposes.

Source: L. 90: Entire article R&RE, p. 469, § 1, effective July 1; (6) and (7) amended, p. 1843, § 28, effective July 1. **L. 91:** (2.5), (3.5), (11.5), (13.5), and (16.5) added and (4), (5), (8), (12), (15), and (19) amended, p. 1292, § 4, effective July 1. **L. 94:** (19) amended, p. 1285, § 1, effective May 22; (16.5) amended, p. 2000, § 1, effective July 1. **L. 95:** (2.5) and (3.5) amended, p. 12, § 1, effective March 9. **L. 96:** (2.5) amended, p. 151, § 1, effective July 1; (18.5) added, p. 827, § 1, effective July 1. **L. 97:** (3.6) and (15.5) added, p. 112, § 1, effective July 1. **L. 98:** (13.5) amended, p. 168, § 1, effective April 6. **L. 2002:** (3) and (11) amended and (3.4) added, p. 1882, § 27, effective July 1. **L. 2003:** (2.5) and (13.5) amended, p. 917, § 1, effective July 1. **L. 2004:** (8) amended, p. 904, § 26, effective May 21. **L. 2010:** (19)(b) amended, (SB 10-187), ch. 310, p. 1456, § 1, effective July 1.

Editor's note: (1) The provisions of this section are similar to provisions of several former sections as they existed prior to 1990. For a detailed comparison, see the comparative tables located in the back of the index.

(2) Subsection (3.5)(b)(I) provided for the repeal of subsection (3.5), effective July 1, 1996. (See L. 95, p. 12.)

(3) Subsection (3.4) was originally numbered as (3.5) in House Bill 02-1135 but has been renumbered on revision for ease of location.

(4) Subsections (2.5)(b)(I) and (13.5)(b)(I) provided for the repeal of subsections (2.5) and (13.5), respectively, effective July 1, 2014. (See L. 2003, p. 917.)

8-40-202. Employee. (1) "Employee" means:

(a) (I) (A) Every person in the service of the state, or of any county, city, town, or irrigation, drainage, or school district or any other taxing district therein, or of any public institution or administrative board thereof under any appointment or contract of hire, express or implied; and every elective official of the state, or of any county, city, town, or irrigation, drainage, or school district or any other taxing district therein, or of any public institution or administrative board thereof; and every member of the military forces of the state of Colorado while engaged in active service on behalf of the state under orders from competent authority. Police officers and firefighters who are regularly employed shall be deemed employees within the meaning of this paragraph (a), as shall also sheriffs and deputy sheriffs, regularly employed, and all persons called to serve upon any posse in pursuance of the provisions of section 30-10-516, C.R.S., during the period of their service upon such posse, and all members of volunteer fire departments, including any person receiving a retirement pension under section 31-30-1122, C.R.S., who serves as an active volunteer firefighter of a fire department subsequent to retirement pursuant to section 31-30-1132, C.R.S., or any person ordered by the chief or a designee of the chief's at the scene of an emergency or during the period of an emergency to become a member of that department for the duration of an emergency, and to perform the duties of a firefighter, and only if the person who is so ordered reports any claim within ten days of the cessation of the emergency, volunteer rescue teams or groups, volunteer disaster teams, volunteer ambulance teams or groups, and volunteer search teams in any county, city, town, municipality, or legally organized fire protection district or ambulance district in the state of Colorado, and all members of the civil air patrol, Colorado wing, while said persons are actually performing duties as volunteer firefighters or as members of such volunteer rescue teams or groups, volunteer disaster teams, volunteer ambulance teams or groups, or volunteer search

teams or as members of the civil air patrol, Colorado wing, and while engaged in organized drills, practice, or training necessary or proper for the performance of such duties. Members of volunteer police departments, volunteer police reserves, and volunteer police teams or groups in any county, city, town, or municipality, while actually performing duties as volunteer police officers, may be deemed employees within the meaning of this paragraph (a) at the option of the governing body of such county or municipality.

(B) Notwithstanding the provisions of sub-subparagraph (A) of this subparagraph (I), any elected or appointed official of any county, city, town, or irrigation, drainage, or school district or taxing district who receives no compensation for service rendered as such an official, other than reimbursement of actual expenses, may be deemed not to be an employee within the meaning of this paragraph (a) at the option of the governing body of such county, city, town, or district. The option to exclude such officials as employees within the meaning of this paragraph (a) may be exercised as to any category of officials or as to any combination of categories of officials. Any such option may be exercised for any policy year by the filing of a statement with the division not less than forty-five days before the start of the policy year for which the option is to be exercised. If such a statement is in effect as to any category of such uncompensated officials, no official in said category shall be deemed an employee within the meaning of this paragraph (a). The governing body shall notify each official of such action promptly at the time such election to exclude is exercised.

(II) The rate of compensation of such persons accidentally injured, or, if killed, the rate of compensation for their dependents, while serving upon such posse or as volunteer firefighters or as members of such volunteer police departments, volunteer police reserves, or volunteer police teams or groups or as members of such volunteer rescue teams or groups, volunteer disaster teams, volunteer ambulance teams or groups, or volunteer search teams or as members of the civil air patrol, Colorado wing, and of every nonsalaried person in the service of the state, or of any county, city, town, or irrigation, drainage, or school district therein, or of any public institution or administrative board thereof under any appointment or contract of hire, express or implied, including nonsalaried elective officials of the state, and of all members of the military forces of the state of Colorado shall be at the maximum rate provided by articles 40 to 47 of this title; except that this subparagraph (II) shall apply to an official described in sub-subparagraph (B) of subparagraph (I) of this paragraph (a) only if no statement exercising the option to exclude such official as an employee within the meaning of this paragraph (a) is in effect.

(III) Any person who, as part of a rehabilitation program of the department of human or social services of any county or city and county, is placed with a private employer for the purpose of training or learning trades or occupations is deemed while so engaged to be an employee of such private employer. Any person who receives a work experience assignment to a position in any department or agency of any county or municipality, in any school district, in the office of any state agency or political subdivision thereof, or in any private for-profit or any nonprofit agency pursuant to the provisions of part 7 of article 2 of title 26 is deemed while so assigned to be an employee of the respective department, agency, office, political subdivision, private for profit or nonprofit agency, or school district to which said person is assigned or, if so negotiated between the county and the entity to which the person is assigned, of the county arranging the work experience assignment. Any person who receives a work experience assignment to a position in any federal office or agency pursuant to part 7 of article 2 of title 26 is deemed while so assigned to be an employee of the county arranging the work experience

assignment. The rate of compensation for such persons if accidentally injured or, if killed, for their dependents is based upon the wages normally paid in the community in which they reside for the type of work in which they are engaged at the time of such injury or death; except that, if any such person is a minor, compensation to such minor for permanent disability, if any, or death benefits to such minor's dependents must be paid at the maximum rate of compensation payable under articles 40 to 47 of this title 8 at the time of the determination of such disability or of such death.

(IV) Except as provided in section 8-40-301 (3) and section 8-40-302 (7)(a), any person who may at any time be receiving training under any work or job training or rehabilitation program sponsored by any department, board, commission, or institution of the state of Colorado or of any county, city and county, city, town, school district, or private or parochial school or college and who, as part of any such work or job training or rehabilitation program of any department, board, commission, or institution of the state of Colorado or of any county, city and county, city, town, school district, or private or parochial school or college, is placed with any employer for the purpose of training or learning trades or occupations shall be deemed while so engaged to be an employee of the respective department, board, commission, or institution of the state of Colorado or of the county, city and county, city, town, school district, or private or parochial school or college sponsoring such training or rehabilitation program unless the following conditions are met, in which case the placed person shall be deemed an employee of the employer with whom he or she is placed:

(A) The sponsoring entity and the employer agree that the employer shall cover the placed person under the employer's workers' compensation insurance;

(B) The employer does in fact insure and keep insured its liability for workers' compensation as provided in articles 40 to 47 of this title and does in fact cover the placed person under such insurance; and

(C) With respect to agreements between sponsoring entities and employers entered into after April 1, 1991, the employer has been provided with notice of the provisions of this subparagraph (IV) and of subparagraphs (V) and (VI) of this paragraph (a).

(V) In the event a person placed with an employer is deemed an employee of the employer pursuant to subparagraph (IV) of this paragraph (a), the sponsoring entity shall not be subject to any liability for or on account of the death of or personal injury to the person so placed. In the event such person is deemed an employee of the sponsoring entity pursuant to the said subparagraph (IV), the employer shall not be subject to any liability for or on account of the death of or personal injury to the person and shall not be required to carry workers' compensation insurance or to pay premiums for workers' compensation insurance with respect to the person.

(VI) The rate of compensation for a person placed pursuant to subparagraph (IV) of this paragraph (a) if accidentally injured or, if killed, for dependents of such person shall be based upon the wages normally paid in the community in which such person resides or in the community where said work or job training or rehabilitation program is being conducted for the type of work in which the person is engaged at the time of such injury or death, as determined by the director; except that, if any such person is a minor, compensation for such minor for permanent disability, if any, or death benefits to such minor's dependents shall be paid at the maximum rate of compensation payable under articles 40 to 47 of this title at the time of the determination of such disability or death.

(b) Every person in the service of any person, association of persons, firm, or private corporation, including any public service corporation, personal representative, assignee, trustee, or receiver, under any contract of hire, express or implied, including aliens and also including minors, whether lawfully or unlawfully employed, who for the purpose of articles 40 to 47 of this title are considered the same and have the same power of contracting with respect to their employment as adult employees, but not including any persons who are expressly excluded from articles 40 to 47 of this title or whose employment is but casual and not in the usual course of the trade, business, profession, or occupation of the employer. The following persons shall also be deemed employees and entitled to benefits at the maximum rate provided by said articles, and, in the event of injury or death, their dependents shall likewise be entitled to such maximum benefits, if and when the association, team, group, or organization to which they belong has elected to become subject to articles 40 to 47 of this title and has insured its liability under said articles: All members of privately organized volunteer fire departments, volunteer rescue teams or groups, volunteer disaster teams, volunteer ambulance teams or groups, and volunteer search teams and organizations while performing their respective duties as members of such privately organized volunteer fire departments, volunteer rescue teams or groups, volunteer disaster teams, volunteer ambulance teams or groups, and volunteer search teams and organizations and while engaged in organized drills, practice, or training necessary or proper for the performance of their respective duties.

(2) (a) Notwithstanding any other provision of this section, any individual who performs services for pay for another shall be deemed to be an employee, irrespective of whether the common-law relationship of master and servant exists, unless such individual is free from control and direction in the performance of the service, both under the contract for performance of service and in fact and such individual is customarily engaged in an independent trade, occupation, profession, or business related to the service performed. For purposes of this section, the degree of control exercised by the person for whom the service is performed over the performance of the service or over the individual performing the service shall not be considered if such control is exercised pursuant to the requirements of any state or federal statute or regulation.

(b) (I) To prove that an individual is engaged in an independent trade, occupation, profession, or business and is free from control and direction in the performance of the service, the individual and the person for whom services are performed may show by a preponderance of the evidence that the conditions set forth in paragraph (a) of this subsection (2) have been satisfied. The parties may also prove independence through a written document.

(II) To prove independence it must be shown that the person for whom services are performed does not:

(A) Require the individual to work exclusively for the person for whom services are performed; except that the individual may choose to work exclusively for such person for a finite period of time specified in the document;

(B) Establish a quality standard for the individual; except that the person may provide plans and specifications regarding the work but cannot oversee the actual work or instruct the individual as to how the work will be performed;

(C) Pay a salary or at an hourly rate instead of at a fixed or contract rate;

(D) Terminate the work of the service provider during the contract period unless such service provider violates the terms of the contract or fails to produce a result that meets the specifications of the contract;

(E) Provide more than minimal training for the individual;

(F) Provide tools or benefits to the individual; except that materials and equipment may be supplied;

(G) Dictate the time of performance; except that a completion schedule and a range of negotiated and mutually agreeable work hours may be established;

(H) Pay the service provider personally instead of making checks payable to the trade or business name of such service provider; and

(I) Combine the business operations of the person for whom service is provided in any way with the business operations of the service provider instead of maintaining all such operations separately and distinctly.

(III) A document may satisfy the requirements of this paragraph (b) if such document demonstrates by a preponderance of the evidence the existence of the factors listed in subparagraph (II) of this paragraph (b) as are appropriate to the parties' situation. The existence of any one of these factors is not conclusive evidence that the individual is an employee.

(IV) If the parties use a written document pursuant to this paragraph (b), such document must be signed by both parties and may be the contract for performance of service or a separate document. Such document shall create a rebuttable presumption of an independent contractor relationship between the parties where such document contains a disclosure, in type which is larger than the other provisions in the document or in bold-faced or underlined type, that the independent contractor is not entitled to workers' compensation benefits and that the independent contractor is obligated to pay federal and state income tax on any moneys earned pursuant to the contract relationship. All signatures on any such document must be duly notarized.

(V) If the parties use a written document pursuant to this paragraph (b) and one of the parties is a professional whose license to practice a particular occupation under the laws of the state of Colorado requires such professional to exercise a supervisory function with regard to an entire project such supervisory role shall not affect such professional's status as part of the independent contractor relationship.

(c) Nothing in this section shall be construed to conflict with section 8-40-301 or to relieve any obligations imposed pursuant thereto.

(d) Nothing in this section shall be construed to remove the claimant's burden of proving the existence of an employer-employee relationship for purposes of receiving benefits pursuant to articles 40 to 47 of this title.

(e) (I) Notwithstanding any other provision of this section, a written agreement between a nonprofit youth sports organization and a coach, specifying that the coach is an independent contractor and not an employee of the nonprofit youth sports organization and otherwise satisfying the requirements of this paragraph (e), shall be conclusive evidence that the relationship between the nonprofit youth sports organization and the coach is an independent contractor relationship rather than an employment relationship and that the nonprofit youth sports organization is not obligated to secure compensation for the coach in accordance with the "Workers' Compensation Act of Colorado".

(II) The written agreement shall contain a disclosure, in bold-faced, underlined, or large type, in a conspicuous location, and acknowledged by the parties by signature, initials, or other

means demonstrating that the parties have read and understand the disclosure, indicating that the coach:

(A) Is an independent contractor and not an employee of the nonprofit youth sports organization;

(B) Is not entitled to workers' compensation benefits in connection with his or her contract with the nonprofit youth sports organization; and

(C) Is obligated to pay federal and state income tax on any moneys paid pursuant to the contract for coaching services and that the nonprofit youth sports organization will not withhold any amounts from the coach for purposes of satisfying the coach's income tax liability.

(III) A written agreement between a nonprofit youth sports organization and a coach in accordance with this paragraph (e) shall not be conclusive evidence of an independent contractor relationship for purposes of any civil action instituted by a third party.

(IV) As used in this paragraph (e), "nonprofit youth sports organization" means an organization that is exempt from federal taxation under section 501 (c)(3) of the federal "Internal Revenue Code of 1986", as amended, and is primarily engaged in conducting organized sports programs for persons under twenty-one years of age.

(3) Notwithstanding any other provision of this section, "employee" includes a person who participates in a property tax work-off program established pursuant to article 3.7 of title 39, C.R.S.

Source: L. 90: Entire article R&RE, p. 470, § 1, effective July 1. **L. 91:** (1)(a)(IV) amended, p. 1364, § 1, effective April 20; (1)(a)(III) amended, p. 1870, § 23, effective July 1. **L. 93:** (2) added, p. 356, § 2, effective April 12. **L. 94:** (1)(a)(III) amended, p. 452, § 2, effective March 29. **L. 95:** IP(2)(b)(II), (2)(b)(III), and (2)(b)(IV) amended, pp. 343, 344, § 2, effective July 1. **L. 97:** (1)(a)(I)(A) amended, p. 170, § 3, effective March 28; (1)(a)(III) amended, p. 1239, § 35, effective July 1; (1)(a)(I)(A) and (1)(a)(II) amended, p. 1005, § 2, effective August 6. **L. 2010:** (2)(e) added, (HB 10-1108), ch. 119, p. 400, § 2, effective April 15; (3) added, (HB 10-1076), ch. 162, p. 566, § 1, effective August 11. **L. 2018:** (1)(a)(III) amended, (SB 18-092), ch. 38, p. 396, § 2, effective August 8.

Editor's note: (1) This section is similar to former § 8-41-106 as it existed prior to 1990.

(2) Amendments to subsection (1)(a)(I)(A) by House Bill 97-1220 and Senate Bill 97-166 were harmonized.

Cross references: (1) For the scope of the term "employee", see § 8-40-301.

(2) For the legislative declaration in the 2010 act adding subsection (2)(e), see section 1 of chapter 119, Session Laws of Colorado 2010.

(3) For the legislative declaration in SB 18-092, see section 1 of chapter 38, Session Laws of Colorado 2018.

8-40-203. Employer. (1) "Employer" means:

(a) The state, and every county, city, town, and irrigation, drainage, and school district and all other taxing districts therein, and all public institutions and administrative boards thereof without regard to the number of persons in the service of any such public employer. All such

public employers shall be at all times subject to the compensation provisions of articles 40 to 47 of this title.

(b) Every person, association of persons, firm, and private corporation, including any public service corporation, personal representative, assignee, trustee, or receiver, who has one or more persons engaged in the same business or employment, except as otherwise expressly provided in articles 40 to 47 of this title, in service under any contract of hire, express or implied.

(c) Repealed.

Source: L. 90: Entire article R&RE, p. 473, § 1, effective July 1. **L. 91:** (1)(c) repealed, p. 1294, § 5, effective July 1.

Editor's note: This section is similar to former § 8-41-105 as it existed prior to 1990.

Cross references: For the scope of the term "employer", see § 8-40-302.

PART 3

SCOPE AND APPLICABILITY

8-40-301. Scope of term "employee" - definition. (1) (a) "Employee" excludes any person employed by a passenger tramway area operator, as defined in section 12-150-103 (1), or other employer, while participating in recreational activity, who at such time is relieved of and is not performing any duties of employment, regardless of whether such person is utilizing, by discount or otherwise, a pass, ticket, license, permit, or other device as an emolument of employment.

(b) (I) "Employee" excludes any person employed by an out-of-state employer performing incidental work in Colorado where the employee is covered at the time of injury under the workers' compensation act of another state regardless of where the contract for employment was created.

(II) For purposes of this section, "incidental work" means work that is randomly or fortuitously in Colorado.

(III) This section only applies to a workers' compensation act of another state that includes a reciprocal provision exempting Colorado employers from liability under the other state's act for incidental work.

(2) "Employee" excludes any person who is a licensed real estate sales agent or a licensed real estate broker associated with another real estate broker if:

(a) Substantially all of the sales agent's or associated broker's remuneration from real estate brokerage is derived from real estate commissions; and

(b) The services of the sales agent or associated broker are performed under a written contract specifying that the sales agent or associated broker is an independent contractor; and

(c) Such contract provides that the sales agent or associated broker shall not be treated as an employee for federal income tax purposes.

(3) (a) Notwithstanding the provisions of section 8-40-202 (1)(a)(IV), "employee" excludes any person who is confined to a city or county jail or any department of corrections facility as an inmate and who, as a part of such confinement, is working, performing services, or

participating in a training or rehabilitation or work release program; except that "employee" includes an inmate of a department of corrections facility or a city, county, or city and county jail who is working, performing services, or participating in a training, rehabilitation, or work release program that has been certified by the federal prison industry enhancement certification program pursuant to the federal "Justice System Improvement Act of 1979", 18 U.S.C. sec. 1761 (c). For the purposes of articles 40 to 47 of this title, an inmate participating in a program certified by the federal prison industry enhancement certification program is an employee of that certified program, which certified program shall carry workers' compensation insurance pursuant to articles 40 to 47 of this title. No inmate participating in a certified program shall be deemed to be an employee of the state, city, county, or city and county that owns, operates, or contracts for the operation of the facility or jail in which the inmate is incarcerated.

(b) The provisions of paragraph (a) of this subsection (3) do not apply to an inmate who is working for a private employer under a contract of hire wherein the private employer is required to maintain workers' compensation insurance for its employees pursuant to articles 40 to 47 of this title. Such inmate shall be an employee of such private employer for purposes of articles 40 to 47 of this title.

(c) The provisions of paragraph (a) of this subsection (3) do not apply to an inmate working for a joint venture established pursuant to the provisions of section 17-24-119 or 17-24-121, C.R.S. Such inmate shall be an employee of such joint venture for purposes of articles 40 to 47 of this title.

(d) The provisions of paragraph (a) of this subsection (3) do not apply to an inmate working for a private person or entity pursuant to the provisions of section 17-24-122, C.R.S. Such inmate shall be an employee of such private person or entity for purposes of articles 40 to 47 of this title.

(4) "Employee" excludes any person who volunteers time or services for a ski area operator, as defined in section 33-44-103 (7), C.R.S., or for a ski area sponsored program or activity, notwithstanding the fact that such person may receive noncash remuneration for such person or such person's designee in conjunction with such person's status as a volunteer. No contract of hire, express or implied, is created between any volunteer pursuant to this section and a ski area operator. Notice shall be given to such volunteer in writing that the volunteering of time or services under this subsection (4) does not constitute employment for purposes of the "Workers' Compensation Act of Colorado" and that such person is not entitled to benefits pursuant to said act.

(5) "Employee" excludes any person who is working as a driver under a lease agreement pursuant to section 40-11.5-102, C.R.S., with a common carrier or contract carrier.

(6) Any person working as a driver with a common carrier or contract carrier as described in this section shall be eligible for and shall be offered workers' compensation insurance coverage by Pinnacol Assurance or similar coverage consistent with the requirements set forth in section 40-11.5-102 (5), C.R.S.

(7) Persons who provide host home services as part of residential services and supports, as described in section 25.5-10-206 (1)(e), C.R.S., for an eligible person, as defined in section 25.5-6-403 (2)(a), C.R.S., pursuant to the "Home- and Community-based Services for Persons with Developmental Disabilities Act", part 4 of article 6 of title 25.5, C.R.S., and pursuant to a contract with a community-centered board designated pursuant to section 25.5-10-209, C.R.S.,

or a contract with a service agency as defined in section 25.5-10-202, C.R.S., shall not be considered employees of the community-centered board or the service agency.

(8) For the purposes of articles 40 to 47 of this title 8, "employee" excludes any person who performs services for more than one employer at a race meet as defined by section 44-32-102 (20) or at a horse track as defined by section 44-32-102 (8).

(9) Notwithstanding any other provision of this section, "employee" includes a person who participates in a property tax work-off program established pursuant to article 3.7 of title 39, C.R.S.

Source: L. 90: Entire article R&RE, p. 473, § 1, effective July 1. **L. 92:** (5) and (6) added, p. 1798, § 1, effective June 6. **L. 93:** (3) amended, p. 2129, § 3, effective September 1. **L. 94:** (4) amended, p. 1288, § 1, effective July 1. **L. 95:** (1) and (3)(c) amended, p. 1091, § 1, effective May 31. **L. 97:** (3)(c) amended, p. 1031, § 66, effective August 6. **L. 2000:** (7) added, p. 1497, § 1, effective August 2. **L. 2002:** (6) amended, p. 1882, § 28, effective July 1. **L. 2003:** (8) added, p. 728, § 1, effective March 20. **L. 2006:** (7) amended, p. 1998, § 30, effective July 1. **L. 2010:** (3)(a) amended, (HB 10-1109), ch. 171, p. 606, § 1, effective August 11; (9) added, (HB 10-1076), ch. 162, p. 566, § 2, effective August 11. **L. 2013:** (7) amended, (HB 13-1314), ch. 323, p. 1800, § 17, effective March 1, 2014. **L. 2017:** (1) amended, (HB 17-1119), ch. 317, p. 1705, § 2, effective July 1. **L. 2018:** (8) amended, (HB 18-1024), ch. 26, p. 321, § 4, effective October 1. **L. 2019:** (1)(a) amended, (HB 19-1172), ch. 136, p. 1647, § 20, effective October 1.

Editor's note: This section is similar to former § 8-41-106 as it existed prior to 1990.

8-40-302. Scope of term "employer".

(1) Repealed.

(2) Articles 40 to 47 of this title are not intended to apply to employees of eleemosynary, charitable, fraternal, religious, or social employers who are elected or appointed to serve in an advisory capacity and receive an annual salary or an amount not in excess of seven hundred fifty dollars and are not otherwise subject to the "Workers' Compensation Act of Colorado".

(3) Articles 40 to 47 of this title are not intended to apply to employers of casual farm and ranch labor or employers of persons who do casual maintenance, repair, remodeling, yard, lawn, tree, or shrub planting or trimming, or similar work about the place of business, trade, or profession of the employer if such employers have no other employees subject to said articles 40 to 47, if such employments are casual and are not within the course of the trade, business, or profession of said employers, if the amounts expended for wages paid by the employers to casual persons employed to do maintenance, repair, remodeling, yard, lawn, tree, or shrub planting or trimming, or similar work about the place of business, trade, or profession of the employer do not exceed the sum of two thousand dollars for any calendar year, and if the amounts expended for wages by the employer of casual farm and ranch labor do not exceed the sum of two thousand dollars for any calendar year.

(4) Articles 40 to 47 of this title are not intended to apply to employers of persons who do domestic work or maintenance, repair, remodeling, yard, lawn, tree, or shrub planting or trimming, or similar work about the private home of the employer if such employers have no other employees subject to said articles 40 to 47 and if such employments are not within the course of the trade, business, or profession of said employers. This exemption shall not apply to

such employers if the persons who perform the work are regularly employed by such employers on a full-time basis. For purposes of this subsection (4), "full-time" means work performed for forty hours or more a week or on five days or more a week.

(5) (a) Any employer excluded under this section may elect to accept the provisions of articles 40 to 47 of this title by purchasing and keeping in force a policy of workers' compensation insurance covering said employees.

(b) Notwithstanding any other provision of articles 40 to 47 of this title, any working general partner or sole proprietor actively engaged in the business may elect to be included by endorsement as an employee of the insured and shall be entitled to elect coverage regardless of whether such working general partner or sole proprietor employs any other person under any contract of hire.

(6) Articles 40 to 47 of this title are intended to apply to officers of agricultural corporations; but effective July 1, 1977, any such agricultural corporation may elect to reject the provisions of articles 40 to 47 of this title for any or all of said officers.

(7) (a) Any employer, as defined in section 8-40-203, who enters into a bona fide cooperative education or student internship program sponsored by an educational institution for the purpose of providing on-the-job training for students shall be deemed an employer of such students for the purposes of workers' compensation and liability insurance pursuant to articles 40 to 47 of this title.

(b) If the student placed in an on-the-job training program does not receive any pay or remuneration from the employer, the educational institution sponsoring the student in the cooperative education or student internship program shall insure the student through the institution's workers' compensation and liability insurance or enter into negotiations with the employer for the purpose of arriving at a reasonable level of compensation to the employer for the employer's expense of providing workers' compensation and liability insurance while such student is participating in on-the-job training with said employer. This paragraph (b) shall not apply to a student teacher participating in a program authorized pursuant to article 62 of title 22, C.R.S.

(c) As used in this subsection (7), "cooperative education or student internship program" means a program sponsored by an educational institution in which a student is taught through a coordinated combination of specialized in-the-school instruction provided through an educational institution by qualified teachers and on-the-job training provided through a local business, agency, or organization or any governmental agency in cooperation with the educational institution.

Source: L. 90: Entire article R&RE, p. 474, § 1, effective July 1. **L. 91:** (1) repealed, p. 1294, § 6, effective July 1. **L. 93:** (5) amended, p. 455, § 1, effective April 19.

Editor's note: This section is similar to former § 8-41-105 as it existed prior to 1990.

ARTICLE 41

Coverage and Liability

Editor's note: This article was numbered as article 2 of chapter 81, C.R.S. 1963. The substantive provisions of this article were repealed and reenacted in 1990, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this article prior to 1990, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume. Former C.R.S. section numbers are shown in editors' notes following those sections that were relocated. For a detailed comparison of this article, see the comparative tables located in the back of the index.

Cross references: For damages for death by negligence, see part 2 of article 21 of title 13.

PART 1

ABROGATION OF DEFENSE

8-41-101. Assumption of risk - negligence of employee or fellow servant. (1) In an action to recover damages for a personal injury sustained by an employee while engaged in the line of duty, or for death resulting from personal injuries so sustained, in which recovery is sought upon the ground of want of ordinary care of the employer, or of the officer, agent, or servant of the employer, it shall not be a defense:

(a) That the employee, either expressly or impliedly, assumed the risk of the hazard complained of as due to the employer's negligence;

(b) That the injury or death was caused, in whole or in part, by the want of ordinary care of a fellow servant;

(c) That the injury or death was caused, in whole or in part, by the want of ordinary care of the injured employee where such want of care was not willful.

Source: L. 90: Entire article R&RE, p. 476, § 1, effective July 1.

Editor's note: This section is similar to former § 8-42-101 as it existed prior to 1990.

8-41-102. Liability of employer complying. An employer who has complied with the provisions of articles 40 to 47 of this title, including the provisions relating to insurance, shall not be subject to the provisions of section 8-41-101; nor shall such employer or the insurance carrier, if any, insuring the employer's liability under said articles be subject to any other liability for the death of or personal injury to any employee, except as provided in said articles; and all causes of action, actions at law, suits in equity, proceedings, and statutory and common law rights and remedies for and on account of such death of or personal injury to any such employee and accruing to any person are abolished except as provided in said articles.

Source: L. 90: Entire article R&RE, p. 476, § 1, effective July 1.

Editor's note: This section is similar to former § 8-42-102 as it existed prior to 1990.

8-41-103. Availability of common-law defenses. If an employer has complied with the provisions of articles 40 to 47 of this title, including the provisions thereof relating to insurance, and an action is brought against such employer or such employer's insurance carrier to recover damages for personal injuries or death sustained by an employee who has elected not to come under said articles, such employer and such employer's insurance carrier shall have all the defenses to the action which they would have had if said articles and part 2 of article 2 of this title had not been enacted.

Source: L. 90: Entire article R&RE, p. 476, § 1, effective July 1.

Editor's note: This section is similar to former § 8-42-103 as it existed prior to 1990.

8-41-104. Acceptance as surrender of other remedies. An election under the provisions of section 8-40-302 (5) and in compliance with the provisions of articles 40 to 47 of this title, including the provisions for insurance, shall be construed to be a surrender by the employer, such employer's insurance carrier, and the employee of their rights to any method, form, or amount of compensation or determination thereof or to any cause of action, action at law, suit in equity, or statutory or common-law right, remedy, or proceeding for or on account of such personal injuries or death of such employee other than as provided in said articles, and shall be an acceptance of all the provisions of said articles, and shall bind the employee personally, and, for compensation for such employee's death, the employee's personal representatives, surviving spouse, and next of kin, as well as the employer, such employer's insurance carrier, and those conducting their business during bankruptcy or insolvency.

Source: L. 90: Entire article R&RE, p. 476, § 1, effective July 1.

Editor's note: This section is similar to former § 8-43-104 as it existed prior to 1990.

PART 2

COVERAGE

8-41-201. Not applicable to common carriers. The provisions of articles 40 to 47 of this title shall not apply to common carriers by railroad but shall apply to all other employers as defined in said articles engaged in intrastate or interstate commerce, or both, except those employers, other than the Colorado division of civil air patrol, for whom a rule of liability is established by the laws of the United States.

Source: L. 90: Entire article R&RE, p. 477, § 1, effective July 1.

Editor's note: This section is similar to former § 8-41-107 as it existed prior to 1990.

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 worker's 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.

(2) A corporate officer's or member's election to reject the provisions of articles 40 to 47 of this title shall continue in effect so long as the corporation's or company's insurance policy is in effect or until said officer or member, by written notice to the insurer, revokes the election to reject said provisions.

(3) Nothing in this section shall be construed to limit the responsibility of corporations or limited liability companies to provide coverage for their employees as required under articles 40 to 47 of this title. An election to reject coverage pursuant to this section may not be made a condition of employment.

(4) For the purposes of this section:

(a) "Corporate officer" means the 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 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.

Source: L. 90: Entire article R&RE, p. 477, § 1, effective July 1. **L. 93:** Entire section amended, p. 386, § 1, effective April 19. **L. 96:** (1) and (4) amended, p. 646, § 1, effective May 1.

Editor's note: This section is similar to former § 8-41-106.5 as it existed prior to 1990.

8-41-203. Negligence of stranger - remedies - subrogation - actions - compromise. (1) (a) If any employee entitled to compensation under articles 40 to 47 of this title is injured or killed by the negligence or wrong of another not in the same employ, such injured employee or, in case of death, such employee's dependents, may take compensation under said articles and may also pursue a remedy against the other person to recover any damages in excess of the compensation available under said articles.

(b) The payment of compensation pursuant to articles 40 to 47 of this title shall operate as and be an assignment of the cause of action against such other person to Pinnacol Assurance, the medical disaster insurance fund, the major medical insurance fund, or the subsequent injury fund, if compensation is payable from said funds, and otherwise to the person, association, corporation, or insurance carrier liable for the payment of such compensation. Said insurance carrier shall not be entitled to recover any sum in excess of the amount of compensation for which said carrier is liable under said articles to the injured employee, but to that extent said carrier shall be subrogated to the rights of the injured employee against said third party causing the injury. If the injured employee proceeds against such other person, then Pinnacol Assurance, the medical disaster insurance fund, the major medical insurance fund, the subsequent injury

fund, or such other person, association, corporation, or insurance carrier, as the case may be, shall contribute only the deficiency, if any, between the amount of the recovery against such other person actually collected and the compensation provided by said articles in such case.

(c) The right of subrogation provided by this section shall apply to and include all compensation and all medical, hospital, dental, funeral, and other benefits and expenses to which the employee or, if the employee is deceased, the employee's dependents are entitled under the provisions of said articles, including parts 2 and 3 of article 46 of this title, or for which the employee's employer or insurance carrier is liable or has assumed liability.

(d) The assigned and subrogated cause of action provided by this section, together with the right to recover future benefits:

(I) Shall extend to all moneys collected from the third party causing the injury for all:

(A) Economic damages; and

(B) Physical impairment and disfigurement damages; except that, to the extent the trier of fact makes a separate award for disfigurement damages, the right of the beneficiary of the assigned interest to recover from such disfigurement damages shall be limited to the amount the beneficiary of the assigned interest paid, or is obligated to pay, in disfigurement damages pursuant to articles 40 to 47 of this title; and

(II) Shall not extend to moneys collected for noneconomic damages awarded for pain and suffering, inconvenience, emotional stress, or impairment of quality of life.

(e) (I) Except as otherwise provided in subparagraph (II) of this paragraph (e), the amount of the assigned and subrogated cause of action shall be reduced by an amount equal to the reasonable attorney fees and costs paid by the injured employee or, if the employee is deceased, the employee's dependents, in pursuing the recovery of the assigned and subrogated cause of action and the collection of such recovery.

(II) If the beneficiary of the assigned and subrogated cause of action elects to independently pursue such assigned cause of action, any recovery by such beneficiary shall not be reduced by any attorney fees and costs incurred by the employee. If the beneficiary of the assigned and subrogated cause of action elects to intervene within ninety days after receiving the notice required by paragraph (c) of subsection (4) of this section, any recovery by such beneficiary shall not be reduced by any attorney fees and costs incurred by the employee. If such beneficiary elects to intervene after the expiration of such ninety-day period, the court may reduce the beneficiary's recovery by a reasonable amount for any attorney fees and costs incurred by the employee after the end of such ninety-day period and before receiving notice that the beneficiary intends to intervene.

(f) Nothing in this section shall be construed as limiting in any way the right of the injured employee to take compensation under articles 40 to 47 of this title and also proceed against the third party causing the injury to recover any damages in excess of the subrogation rights described in this section.

(2) Such a cause of action assigned to Pinnacol Assurance may be prosecuted or compromised by it. A compromise of any such cause of action by the employee or, if the employee is deceased, the employee's dependents at an amount less than the compensation provided for by articles 40 to 47 of this title shall be made only with the written approval of the chief executive officer of Pinnacol Assurance, if the deficiency of compensation would be payable from the Pinnacol Assurance fund, and otherwise with the written approval of the person, association, corporation, or insurance carrier liable to pay the same. Such written

approval shall not be unreasonably withheld. Failure to obtain such written approval shall entitle the party responsible for paying workers' compensation benefits to be reimbursed for all benefits paid from, and offset any future liability under articles 40 to 47 of this title against, the entire proceeds recovered without any credit for reasonable attorney fees and costs as provided in paragraph (e) of subsection (1) of this section. If such approval is not obtained, the employee or, if the employee is deceased, the employee's dependents shall not be liable for any plaintiff's attorney fees for the third-party recovery on that portion of any recovery equal to the assigned and subrogated interest and are not subject to any action for refusal to pay such plaintiff's attorney fees resulting from the third-party case.

(3) If an employee is killed by the negligence or wrong of another not in the same employ and the dependents of such employee who are entitled to compensation under articles 40 to 47 of this title are minors, the decision to pursue or compromise any claim against a third party shall be made by such minor or shall be made on the minor's behalf by a parent of such minor or by the minor's next friend or duly appointed guardian, as the director of the division of workers' compensation may determine by rule in each case. Once such decision is made, the person who made the decision shall also bear the responsibility to provide all notices required by this section.

(4) (a) (I) If the employee or, if the employee is deceased, the employee's dependents make a demand upon or a request of a person or entity not in the same employ as the employee to seek recovery for damages arising from actions of such other person or entity, the employee or dependents shall also give written notice, within ten days, to the division of workers' compensation and to all parties who may be responsible for paying benefits to the employee or dependents under articles 40 to 47 of this title.

(II) If the party responsible for paying workers' compensation benefits under articles 40 to 47 of this title to the employee or, if the employee is deceased, the employee's dependents, makes a demand upon or a request of a person or entity not in the same employ as the employee to seek recovery for damages arising from actions of the other person or entity, the party responsible for paying the workers' compensation benefits shall also give written notice, within ten days, to the division of workers' compensation and to the employee or, if the employee is deceased, to the employee's dependents.

(III) The notice requirements of this paragraph (a) shall not apply to demands or requests seeking the recovery of medical payments only, and not seeking the recovery of any other type of damage or loss.

(b) The notice required by this subsection (4) shall contain the following:

(I) A description of the claim;

(II) The names and addresses of any and all other persons believed to be negligent;

(III) The name and address of any attorney representing the employee or dependents;

(IV) The name and address of any attorney representing other persons believed to be negligent; and

(V) The name, address, and telephone number of the insurance company or third-party administrator.

(c) (I) Except as provided in subparagraph (II) of this paragraph (c), at least twenty days before commencing a lawsuit or arbitration proceeding to recover damages arising from actions of another person or entity, the party initiating such lawsuit or arbitration shall give written notice to all parties who may be responsible for paying benefits to the employee or dependents

under articles 40 to 47 of this title and to the employee or, if the employee is deceased, the employee's dependents. Such notice shall contain all of the information set out in paragraph (b) of this subsection (4) and shall be accompanied by a draft copy of the complaint.

(II) If any applicable statutory limitation period would expire before such twenty days have passed, the party initiating such lawsuit or arbitration may file or serve the complaint, or otherwise act to toll the running of such limitation period, before such twenty days have passed. The party initiating the lawsuit or arbitration shall provide the notice required by subparagraph (I) of this paragraph (c) within twenty days after commencing such action.

(d) If the employee or dependents fail to provide the written notice required pursuant to subparagraph (I) of paragraph (a) of this subsection (4):

(I) The party responsible for paying workers' compensation benefits shall be entitled to reimbursement from all moneys collected from the third party for all economic damages and for all physical impairment and disfigurement damages, without any credit for reasonable attorney fees as provided in paragraph (e) of subsection (1) of this section. If the trier of fact makes a separate award for disfigurement damages, reimbursement from such disfigurement damage award shall be limited to the amount the party paying workers' compensation benefits paid, or is obligated to pay, in disfigurement damages pursuant to articles 40 to 47 of this title. Such rights shall not extend to moneys collected for noneconomic damages awarded for pain and suffering, inconvenience, emotional stress, or impairment of quality of life.

(II) The employee or dependents shall not be liable for any plaintiff's attorney fees for the third-party recovery on that portion of any recovery equal to the assigned and subrogated interest and are not subject to any action for refusal to pay such plaintiff's attorney fees resulting from the third-party case.

(e) If the party responsible for paying workers' compensation benefits under articles 40 to 47 of this title fails to provide the written notice required pursuant to subparagraph (II) of paragraph (a) of this subsection (4), the amount of the claim shall be reduced by fifty dollars for each day such notice was not given to the employee or, if the employee is deceased, the employee's dependents, in an amount not to exceed twenty percent of the amount of the total assigned interest at the time such notice should have been given. The failure to provide such notice shall be a reassignment of a portion of the claim to the employee or, if the employee is deceased, the employee's dependents, in an amount equal to the penalty.

Source: L. 90: Entire article R&RE, p. 477, § 1, effective July 1; (1) amended, p. 1843, § 29, effective July 1. **L. 2002:** (1) and (2) amended, p. 1882, § 29, effective July 1. **L. 2003:** Entire section amended, p. 2613, § 1, effective July 1. **L. 2004:** (4) amended, p. 77, § 1, effective August 4.

Editor's note: This section is similar to former § 8-52-108 as it existed prior to 1990.

8-41-204. Injury outside of state - benefits in accordance with state law. If an employee who has been hired or is regularly employed in this state receives personal injuries in an accident or an occupational disease arising out of and in the course of such employment outside of this state, the employee, or such employee's dependents in case of death, shall be entitled to compensation according to the law of this state. This provision shall apply only to those injuries received by the employee within six months after leaving this state, unless, prior to

the expiration of such six-month period, the employer has filed with the division notice that the employer has elected to extend such coverage for a greater period of time.

Source: L. 90: Entire article R&RE, p. 478, § 1, effective July 1.

Editor's note: This section is similar to former § 8-46-204 as it existed prior to 1990.

8-41-205. Waiver of compensation by employee - approval required - exception. No waiver of compensation or medical benefits by an employee for aggravation of any preexisting condition or disease shall be allowed under articles 40 to 47 of this title. This section, however, shall not invalidate any such waiver so filed and approved prior to March 1, 1977, under the provisions of the "Colorado Occupational Disease Disability Act", which was repealed effective September 1, 1975.

Source: L. 90: Entire article R&RE, p. 479, § 1, effective July 1.

Editor's note: This section is similar to former § 8-51-113 as it existed prior to 1990.

Cross references: For the historical record of the "Colorado Occupational Disease Disability Act", see article 60 of this title, as contained in the original Volume 3, Colorado Revised Statutes 1973, as amended through L. 75.

8-41-206. Disability beginning five years after injury. Any disability beginning more than five years after the date of injury shall be conclusively presumed not to be due to the injury, except in cases of disability or death resulting from exposure to radioactive materials, substances, or machines or to fissionable materials, or any type of malignancy caused thereby, or from poisoning by uranium or its compounds, or from asbestosis, silicosis, or anthracosis.

Source: L. 90: Entire article R&RE, p. 479, § 1, effective July 1.

Editor's note: This section is similar to former § 8-52-106 as it existed prior to 1990.

8-41-207. Death after two years. In case death occurs more than two years after the date of receiving any injury, such death shall be prima facie presumed not to be due to such injury; such presumption shall not apply in cases of silicosis, asbestosis, anthracosis, or disability or death resulting from exposure to radioactive materials, substances, or machines or to fissionable materials, or any type of malignancy caused thereby, or from poisoning by uranium or its compounds. In all other cases, such presumption may be rebutted by competent evidence.

Source: L. 90: Entire article R&RE, p. 479, § 1, effective July 1.

Editor's note: This section is similar to former § 8-50-110 as it existed prior to 1990.

8-41-208. Coverage for job-related exposure to or contraction of hepatitis C. (1) The exposure to or contraction of hepatitis C by a firefighter, emergency services provider, or

peace officer, as described in section 16-2.5-101, C.R.S., shall be presumed to be within the course and scope of employment if the following conditions are satisfied:

(a) A baseline test shall be provided by the employer, or if insured, by the insurer, to be performed within five days after the employee reports the on-the-job exposure. The employee must report the exposure within two days after the employee knew or reasonably should have known of the exposure;

(b) The baseline test establishes that the employee was not infected with hepatitis C at the time of the on-the-job exposure;

(c) The employee complies with reasonable and necessary medical procedures set forth in section 8-42-101 (1)(c);

(d) The employee is determined to have hepatitis C within twenty-four months after the on-the-job exposure to the known or possible source.

(2) The exposure to or contraction of hepatitis C by a firefighter, emergency services provider, or peace officer, as described in section 16-2.5-101, C.R.S., shall not be deemed to be within the course and scope of employment if an employer or insurer shows by a preponderance of the evidence that such exposure or contraction did not occur on the job.

Source: L. 2002: Entire section added, p. 440, § 1, effective May 16. **L. 2003:** IP(1) and (2) amended, p. 1613, § 3, effective August 6.

8-41-209. Coverage for occupational diseases contracted by firefighters. (1) Death, disability, or impairment of health of a firefighter of any political subdivision who has completed five or more years of employment as a firefighter, caused by cancer of the brain, skin, digestive system, hematological system, or genitourinary system and resulting from his or her employment as a firefighter, shall be considered an occupational disease.

(2) Any condition or impairment of health described in subsection (1) of this section:

(a) Shall be presumed to result from a firefighter's employment if, at the time of becoming a firefighter or thereafter, the firefighter underwent a physical examination that failed to reveal substantial evidence of such condition or impairment of health that preexisted his or her employment as a firefighter; and

(b) Shall not be deemed to result from the firefighter's employment if the firefighter's employer or insurer shows by a preponderance of the medical evidence that such condition or impairment did not occur on the job.

(3) Repealed.

(4) An employer who participates in the voluntary firefighter cancer benefits program created in part 4 of article 5 of title 29 is not subject to this section unless the employer ends participation in that program.

Source: L. 2007: Entire section added, p. 962, § 1, effective May 17. **L. 2017:** (4) added, (SB 17-214), ch. 187, p. 684, § 2, effective May 3.

Editor's note: Subsection (3)(b) provided for the repeal of subsection (3), effective March 1, 2009. (See L. 2007, p. 962.)

8-41-210. Coverage for property tax work-off program participants. Notwithstanding any provision of law to the contrary, a governmental entity or private nonprofit or for-profit entity that has a contract with a governmental entity that is self-insured under articles 40 to 47 of this title may purchase workers' compensation insurance from any insurer authorized to transact the business of workers' compensation insurance in this state for the express purpose of covering participants in the property tax work-off program established pursuant to article 3.7 of title 39, C.R.S.

Source: L. 2010: Entire section added, (HB 10-1076), ch. 162, p. 566, § 3, effective August 11.

8-41-211. Transportation network company drivers - rules. On June 5, 2014, the director, upon consideration of existing Colorado statutory and case law, may by rule determine whether or not transportation network companies have an obligation under existing Colorado law to provide or offer for purchase workers' compensation insurance coverage to transportation network company drivers.

Source: L. 2014: Entire section added, (SB 14-125), ch. 323, p. 1420, § 7, effective June 5.

8-41-212. Exemptions - laws of other state furnish exclusive remedy - definitions. (1) An employee who was hired or is regularly employed outside of Colorado by an out-of-state employer and the out-of-state employer of the employee are exempt from articles 40 to 47 of this title 8 while the employee is temporarily working for the out-of-state employer within Colorado if:

(a) The out-of-state employer has furnished coverage pursuant to the workers' compensation laws of the state in which the employee was hired or is regularly employed, which coverage applies to the employee while temporarily working in Colorado; and

(b) The state in which the employee is furnished coverage:

(I) Is contiguous to Colorado; and

(II) Recognizes this section and provides the same exemption from the application of its workers' compensation laws for Colorado employers whose employees are temporarily working in the contiguous state.

(2) For an out-of-state employee and out-of-state employer to which this section applies, the benefits provided under the workers' compensation laws of the state in which the employee is furnished coverage are the exclusive remedy against the out-of-state employer for any injury, whether resulting in death or not, that the employee incurs while working for the out-of-state employer in Colorado.

(3) The division may enter into an agreement with any workers' compensation division or similar agency of a contiguous state to promulgate rules consistent with this section to carry out the extraterritorial application of the workers' compensation or similar law of the agreeing state.

(4) Nothing in this section contravenes the legal obligations of Colorado employers to provide workers' compensation to their employees in compliance with articles 40 to 47 of this title 8.

(5) As used in this section:
(a) "Out-of-state employer" means an employer that is domiciled in another state.
(b) "Temporarily" or "temporarily working" means:
(I) A period of sustained work that does not exceed six months; or
(II) Engaging in the interstate movement of goods or commodities.

Source: L. 2018: Entire section added, (HB 18-1308), ch. 182, p. 1235, § 1, effective April 30.

PART 3

LIABILITY

8-41-301. Conditions of recovery - definitions. (1) The right to the compensation provided for in articles 40 to 47 of this title, in lieu of any other liability to any person for any personal injury or death resulting therefrom, shall obtain in all cases where the following conditions occur:

(a) Where, at the time of the injury, both employer and employee are subject to the provisions of said articles and where the employer has complied with the provisions thereof regarding insurance;

(b) Where, at the time of the injury, the employee is performing service arising out of and in the course of the employee's employment;

(c) Where the injury or death is proximately caused by an injury or occupational disease arising out of and in the course of the employee's employment and is not intentionally self-inflicted.

(2) (a) A claim of mental impairment must be proven by evidence supported by the testimony of a licensed psychiatrist or psychologist. A mental impairment shall not be considered to arise out of and in the course of employment if it results from a disciplinary action, work evaluation, job transfer, lay-off, demotion, promotion, termination, retirement, or similar action taken in good faith by the employer. The mental impairment that is the basis of the claim must have arisen primarily from the claimant's then occupation and place of employment in order to be compensable.

(a.5) Repealed.

(b) Notwithstanding any other provision of articles 40 to 47 of this title, where a claim is by reason of mental impairment, the claimant shall be limited to twelve weeks of medical impairment benefits, which shall be in an amount not less than one hundred fifty dollars per week and not more than fifty percent of the state average weekly wage, inclusive of any temporary disability benefits; except that this limitation shall not apply to any victim of a crime of violence, without regard to the intent of the perpetrator of the crime, nor to the victim of a physical injury or occupational disease that causes neurological brain damage; and nothing in this section shall limit the determination of the percentage of impairment pursuant to section 8-42-107 (8) for the purposes of establishing the applicable cap on benefits pursuant to section 8-42-107.5.

(c) The claim of mental impairment cannot be based, in whole or in part, upon facts and circumstances that are common to all fields of employment.

(d) The mental impairment which is the basis of the claim must be, in and of itself, either sufficient to render the employee temporarily or permanently disabled from pursuing the occupation from which the claim arose or to require medical or psychological treatment.

(3) For the purposes of this section:

(a) "Mental impairment" means a recognized, permanent disability arising from an accidental injury arising out of and in the course of employment when the accidental injury involves no physical injury and consists of a psychologically traumatic event. "Mental impairment" also includes a disability arising from an accidental physical injury that leads to a recognized permanent psychological disability.

(b) (I) "Psychologically traumatic event" means an event that is generally outside of a worker's usual experience and would evoke significant symptoms of distress in a worker in similar circumstances.

(II) "Psychologically traumatic event" also includes an event that is within a worker's usual experience only when the worker is diagnosed with post-traumatic stress disorder by a licensed psychiatrist or psychologist after the worker experienced exposure to one or more of the following events:

(A) The worker is the subject of an attempt by another person to cause the worker serious bodily injury or death through the use of deadly force, and the worker reasonably believes the worker is the subject of the attempt;

(B) The worker visually or audibly, or both visually and audibly, witnesses a death, or the immediate aftermath of the death, of one or more people as the result of a violent event; or

(C) The worker repeatedly and either visually or audibly, or both visually and audibly, witnesses the serious bodily injury, or the immediate aftermath of the serious bodily injury, of one or more people as the result of the intentional act of another person or an accident.

(c) "Serious bodily injury" means bodily injury that, either at the time of the actual injury or a later time, involves a substantial risk of death, a substantial risk of serious permanent disfigurement, or a substantial risk of protracted loss or impairment of the function of any part or organ of the body.

Source: L. 90: Entire article R&RE, p. 479, § 1, effective July 1. **L. 91:** (2) amended, p. 1294, § 7, effective July 1. **L. 99:** (2)(a) and (2)(b) amended and (2)(a.5) added, p. 299, § 2, effective July 1. **L. 2006:** (2)(b) amended, p. 98, § 1, effective July 1. **L. 2009:** (2)(b) amended, (SB 09-243), ch. 269, p. 1222, § 1, effective July 1. **L. 2017:** (2)(a) amended and (3) added, (HB 17-1229), ch. 328, p. 1756, § 1, effective July 1, 2018; (2)(a.5)(II) added by revision, (HB 17-1229), pp. 1756, 1757, §§ 1, 2. **L. 2020:** (3)(b)(II)(B) and (3)(b)(II)(C) amended, (SB 20-026), ch. 142, p. 619, § 1, effective September 14.

Editor's note: (1) This section is similar to former § 8-52-102 as it existed prior to 1990.

(2) Subsection (2)(a.5)(II) provided for the repeal of subsection (2)(a.5), effective July 1, 2018. (See L. 2017, pp. 1756, 1757.)

8-41-302. Scope of terms - "accident" - "injury" - "occupational disease". (1) "Accident", "injury", and "occupational disease" shall not be construed to include disability or death caused by or resulting from mental or emotional stress unless it is shown by competent

evidence that such mental or emotional stress is proximately caused solely by hazards to which the worker would not have been equally exposed outside the employment.

(2) "Accident", "injury", and "occupational disease" shall not be construed to include disability or death caused by heart attack unless it is shown by competent evidence that such heart attack was proximately caused by an unusual exertion arising out of and within the course of the employment.

Source: L. 90: Entire article R&RE, p. 480, § 1, effective July 1.

Editor's note: This section is similar to former § 8-41-108 as it existed prior to 1990.

8-41-303. Loaning employer liable for compensation. Where an employer, who has accepted the provisions of articles 40 to 47 of this title and has complied therewith, loans the service of any of the employer's employees who have accepted the provisions of said articles to any third person, the employer shall be liable for any compensation thereafter for any injuries or death of said employee as provided in said articles, unless it appears from the evidence in said case that said loaning constitutes a new contract of hire, express or implied, between the employee whose services were loaned and the person to whom the employee was loaned.

Source: L. 90: Entire article R&RE, p. 480, § 1, effective July 1.

Editor's note: This section is similar to former § 8-52-101 as it existed prior to 1990.

8-41-304. Last employer liable - exception. (1) Where compensation is payable for an occupational disease, the employer in whose employment the employee was last injuriously exposed to the hazards of such disease and suffered a substantial permanent aggravation thereof and the insurance carrier, if any, on the risk when such employee was last so exposed under such employer shall alone be liable therefor, without right to contribution from any prior employer or insurance carrier. In the case of silicosis, asbestosis, or anthracosis, the only employer and insurance carrier liable shall be the last employer in whose employment the employee was last exposed to harmful quantities of silicon dioxide (SiO_2) dust, asbestos dust, or coal dust on each of at least sixty days or more and the insurance carrier, if any, on the risk when the employee was last so exposed under such employer.

(2) In any case where an employee of an employer becomes disabled from silicosis, asbestosis, anthracosis, or poisoning or disease caused by exposure to radioactive materials, substances, or machines or to fissionable materials, or any type of malignancy caused thereby, or in the event death results from silicosis, asbestosis, anthracosis, or poisoning or disease caused by exposure to radioactive materials, substances, or machines or to fissionable materials, or any type of malignancy caused thereby, and, if such employee has been injuriously exposed to such diseases while in the employ of another employer during the employee's lifetime, the last employer or that employer's insurance carrier, if any, shall be liable for compensation and medical benefits as provided by articles 40 to 47 of this title, including funeral expenses and death benefits.

Source: L. 90: Entire article R&RE, p. 480, § 1, effective July 1. **L. 91:** (1) amended, p. 1295, § 8, effective July 1. **L. 93:** (2) amended, p. 2140, § 1, effective April 1, 1994.

Editor's note: This section is similar to former § 8-51-112 as it existed prior to 1990.

PART 4

CONTRACTORS AND LESSEES

8-41-401. Lessor contractor-out deemed employer - liability - recovery. (1) (a) (I) 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 as otherwise provided in subsection (3) of this section.

(II) Notwithstanding subparagraph (I) of this paragraph (a) and any other provision of law to the contrary, it is presumed that a buyer of goods is not liable as a statutory employer when a lessee, sublessee, contractor, or subcontractor, or their employee who is delivering the goods to the buyer injures himself or herself while not on the buyer's premises. The presumption may be overcome by a showing that the lessee, sublessee, contractor, or subcontractor, or their employee was performing a job function that would normally be performed by an employee of the buyer of the goods being delivered. Nothing in this subparagraph (II) creates a presumption of a statutory employer-employee relationship when an injury occurs on the buyer's premises.

(III) For the purposes of this section, a "statutory employer" is an employer who is responsible to pay workers' compensation benefits pursuant to subparagraph (I) of this paragraph (a).

(a.5) The general assembly hereby finds and determines that the decision of the Colorado court of appeals in the case of *Newsom v. Frank M. Hall & Co.,* No. 02CA1375 (February 26, 2004), in which the court held that an independent contractor may be an entity other than a natural person, did not accurately reflect the intent of the general assembly when it passed Senate Bill 93-132 and Senate Bill 95-072. The general assembly hereby declares that the term "individual", as used in this section and in section 8-40-202, means a natural person.

(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.

(2) If said lessee, sublessee, contractor, or subcontractor is also an employer in the doing of such work and, before commencing such work, insures and keeps insured its liability for compensation as provided in articles 40 to 47 of this title, neither said lessee, sublessee, contractor, or subcontractor, its employees, or its insurer shall have any right of contribution or

action of any kind, including actions under section 8-41-203, against the 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, or against its employees, servants, or agents.

(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 a working general partner or sole proprietor who is not covered under a policy of workers' compensation insurance, 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 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.

(4) (a) Notwithstanding any provision of this section to the contrary, any person, company, or corporation who contracts with a landowner or lessee of a farm or ranch to perform a specified farming or ranching operation shall, prior to entering into such contract, provide for and maintain, for the period of such contract, workers' compensation coverage pursuant to articles 40 to 47 of this title covering all the employees and laborers to be utilized under such contract. Proof of such coverage on forms or certificates issued by the insurer shall be provided to the person, company, or corporation contracting for the labor prior to performing such contract.

(b) Any person, company, or corporation contracting with a landowner or lessee of a farm or ranch to provide a specified farming or ranching operation who fails to provide coverage pursuant to subsection (1) of this section or who fails to maintain such coverage for the term of the contract is guilty of a misdemeanor and, upon conviction thereof, shall be punished by imprisonment in the county jail for not more than sixty days, or by a fine of not more than five hundred dollars, or by both such fine and imprisonment.

(c) Notwithstanding any provision of this section to the contrary, no person, company, or corporation contracting with a landowner or lessee of a farm or ranch operation to perform a specified farming or ranching operation nor any employee of such person, company, or corporation required to be covered by workers' compensation pursuant to this subsection (4) shall have any right of contribution from, or any action of any kind, including actions under section 8-41-203, against, the person, company, or corporation contracting to have such agricultural labor performed.

(d) (I) If any person, company, or corporation contracting to provide labor to perform specified farming or ranching operations and required to provide workers' compensation coverage pursuant to articles 40 to 47 of this title fails to provide such coverage and the person, company, or corporation for whom the labor is provided incurs any liability thereby, the person, company, or corporation providing the labor shall be subject to a cause of action for said liability and for reasonable attorney fees.

(II) If the person, company, or corporation for whom the labor for the performance of a specified farming or ranching operation is provided is sued by the injured employee, said person,

company, or corporation may join the person, company, or corporation providing the labor as a third-party defendant in lieu of filing an independent action.

(5) The provisions of this section shall not apply to licensed real estate brokers and licensed real estate sales agents, as regulated in article 10 of title 12, who are excluded from the definition of employee pursuant to section 8-40-301 (2).

(6) Notwithstanding any provision of this section to the contrary, any person, company, or corporation operating a commercial vehicle as defined in section 42-4-235 (1)(a), C.R.S., who holds oneself or itself out as an independent contractor only to perform for-hire transportation, including loading and unloading, and who contracts to perform a specific transportation job, transportation task, or transportation delivery for another person, company, or corporation is not entering into an employee and employer relationship for purposes of workers' compensation coverage pursuant to articles 40 to 47 of this title. Nothing in this subsection (6) shall be construed to prohibit a determination that an individual is excluded from the definition of employee pursuant to section 8-40-202 (2) if such individual is operating a commercial vehicle as defined in section 42-4-235 (1)(a), C.R.S.

(7) This section shall not apply to any person excluded from the definition of "employee" pursuant to section 8-40-301 (5) or (7).

Source: L. 90: Entire article R&RE, p. 481, § 1, effective July 1. **L. 92:** (7) added, p. 1798, § 2, effective June 6. **L. 93:** (3) amended, p. 357, § 3, effective April 12; (6) amended, p. 1861, § 1, effective June 6. **L. 94:** (6) amended, p. 2544, § 16, effective January 1, 1995. **L. 95:** (1) and (3) amended, p. 344, § 3, effective July 1. **L. 96:** (1) and (3) amended, p. 647, § 2, effective May 1. **L. 2000:** (7) amended, p. 1497, § 2, effective August 2. **L. 2004:** (1)(a) amended and (1)(a.5) added, p. 1078, § 1, effective May 21. **L. 2013:** (1)(a) amended, (SB 13-147), ch. 389, p. 2262, § 1, effective June 5. **L. 2019:** (5) amended, (HB 19-1172), ch. 136, p. 1647, § 21, effective October 1.

Editor's note: This section is similar to former § 8-48-101 as it existed prior to 1990.

8-41-402. Repairs to real property - exception for liability of occupant of residential real property. (1) Every person, company, or corporation owning any real property or improvements thereon and contracting out any work done on and to said property to any contractor, subcontractor, or person who hires or uses employees in the doing of such work shall be deemed to be an employer under the terms of articles 40 to 47 of this title. Every such contractor, subcontractor, or person, as well as such contractor's, subcontractor's, and person's employees, shall be deemed to be an employee, and such employer shall be liable as provided in said articles to pay compensation for injury or death resulting therefrom to said contractor, subcontractor, or person and said employees or employees' dependents and, before commencing said work, shall insure and keep insured all liability as provided in said articles. Such employer shall be entitled to recover the cost of such insurance from said contractor, subcontractor, or person and may withhold and deduct the same from the contract price or any royalties or other money due, owing, or to become due to said contractor, subcontractor, or person. Articles 40 to 47 of this title shall not apply to the owner or occupant, or both, of residential real property which 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 property,

unless the person performing the work is otherwise an employee of the owner or occupant, or both, of the property.

(2) If said contractor, subcontractor, or person doing or undertaking to do any work for an owner of property, as provided in subsection (1) of this section, is also an employer in the doing of such work and, before commencing such work, insures and keeps insured all liability for compensation as provided in articles 40 to 47 of this title, neither said contractor, subcontractor, or person nor any employees or insurers thereof shall have any right of contribution or action of any kind, including actions under section 8-41-203, against the person, company, or corporation owning real property and improvements thereon which contracts out work done on said property, or against its employees, servants, or agents.

(3) (Deleted by amendment, L. 91, p. 1295, § 9, effective July 1, 1991.)

Source: L. 90: Entire article R&RE, p. 483, § 1, effective July 1. **L. 91:** Entire section amended, p. 1295, § 9, effective July 1.

Editor's note: This section is similar to former § 8-48-102 as it existed prior to 1990.

8-41-403. Exemption of certain lessors of real property. (1) The provisions of this part 4 shall not apply to any lessor or sublessor of real property who rents or leases real property to any lessee or sublessee for the purpose of conducting the business of such lessee or sublessee, whether as a franchise holder, independent agent, or consignee or in any other separate capacity and whether or not such person is an employer, as defined in section 8-40-203, but in no event where such lessee or sublessee is an employee, as defined in section 8-40-202.

(2) No such lessee or sublessee, or any employee or insurer thereof, shall have any right of contribution from or action against such lessor or sublessor under articles 40 to 47 of this title.

(3) The provisions of this part 4 shall not apply to any lessor or sublessor of real property who leases or rents real property to any lessee or sublessee for the purpose of conducting any agricultural production business of such lessee or sublessee, and no such lessee or sublessee, or any employee or insurer thereof, shall have any right of contribution from or action against such lessor or sublessor under articles 40 to 47 of this title.

Source: L. 90: Entire article R&RE, p. 483, § 1, effective July 1. **L. 93:** (1) and (3) amended, p. 1771, § 22, effective June 6.

Editor's note: This section is similar to former § 8-48-103 as it existed prior to 1990.

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 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 Colorado uninsured employer fund created in section 8-67-105.

(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.

Source: L. 2007: Entire section added, p. 2070, § 1, effective June 1. **L. 2017:** (3) amended, (HB 17-1119), ch. 317, p. 1705, § 3, effective July 1.

Cross references: For the federal "Internal Revenue Code of 1986", see title 26 of the United States Code.

PART 5

DEPENDENCY

8-41-501. Persons presumed wholly dependent. (1) For the purposes of articles 40 to 47 of this title, the following described persons shall be presumed to be wholly dependent (however, such presumption may be rebutted by competent evidence):

(a) Widow or widower, unless it is shown that she or he was voluntarily separated and living apart from the spouse at the time of the injury or death or was not dependent in whole or in part on the deceased for support;

(a.5) A person who is designated in a designated beneficiary agreement for purposes of receiving workers' compensation benefits in accordance with the provisions of article 22 of title 15, C.R.S., unless it is shown that the designated beneficiary was voluntarily separated and living apart from the other designated beneficiary at the time of the injury or death or was not dependent in whole or in part on the deceased for support;

(b) Minor children of the deceased under the age of eighteen years, including posthumous or legally adopted children;

(c) Minor children of the deceased who are eighteen years or over and under the age of twenty-one years if it is shown that:

(I) At the time of the decedent's death they were actually dependent upon the deceased for support; and

(II) Either at the time of the decedent's death or at the time they attained the age of eighteen years they were engaged in courses of study as full-time students at any accredited school. The period of presumed dependency of such persons shall continue until they attain the age of twenty-one years or until they cease to be engaged in courses of study as full-time students at an accredited school, whichever occurs first.

Source: L. 90: Entire article R&RE, p. 484, § 1, effective July 1. **L. 91:** Entire section amended, p. 1350, § 1, effective May 29. **L. 2009:** (1) amended, (HB 09-1260), ch. 107, p. 439, § 2, effective July 1.

Editor's note: This section is similar to former § 8-50-101 as it existed prior to 1990.

8-41-502. Other dependents - temporary dependency. Except as otherwise provided in section 8-41-501 (1)(c), a child eighteen years of age or over and a mother, father, grandmother, grandfather, sister, brother, or grandchild who was wholly or partially supported by the deceased employee at the time of death and for a reasonable period of time immediately prior thereto is considered an actual dependent. To be entitled to compensation, such dependents, except as provided in section 8-41-501 (1)(c), must prove that they were incapable of or actually disabled from earning their own living. If said incapacity or disability is temporary only, compensation shall be paid only during the period of such temporary incapacity or disability.

Source: L. 90: Entire article R&RE, p. 484, § 1, effective July 1.

Editor's note: This section is similar to former § 8-50-102 as it existed prior to 1990.

8-41-503. Dependency and extent determined - how. (1) Dependents and the extent of their dependency shall be determined as of the date of the injury to the injured employee, and the right to death benefits shall become fixed as of said date irrespective of any subsequent change in conditions except as provided in section 8-41-501 (1)(c). Death benefits shall be directly payable to the dependents entitled thereto or to such person legally entitled thereto as the director may designate.

(2) In case an employee or claimant entitled to compensation dies leaving dependents, any accrued and unpaid portion of the compensation or benefits up to the time of the death of such employee or claimant shall be paid to such dependents as may be ordered by the director and not to the legal representative as such of said decedent. In case the injured employee or claimant leaves no dependents, the director may order the application of any accrued and unpaid benefits up to the time of the death of such employee or claimant paid upon the expenses of the last sickness or funeral of such decedent, the preference in such payment to be to funeral expenses.

(3) In case an injured employee or dependent of a deceased employee entitled to benefits under articles 40 to 47 of this title is declared incompetent or insane, any benefits accrued or to accrue may be paid to the conservator of the estate, if any, or to any dependents, or to the party or institution having custody of the person of such injured employee or dependent of a deceased employee as may be ordered by the director in the director's discretion.

Source: L. 90: Entire article R&RE, p. 484, § 1, effective July 1. **L. 91:** (1) amended, p. 1351, § 2, effective May 29.

Editor's note: This section is similar to former § 8-50-105 as it existed prior to 1990.

8-41-504. Action by injured employee - dependents not parties in interest. No dependent of an injured employee, during the life of the employee, shall be deemed a party in interest to any proceeding by said employee for the enforcement of any claim for compensation nor with respect to any settlement thereof by said employee.

Source: L. 90: Entire article R&RE, p. 485, § 1, effective July 1.

Editor's note: This section is similar to former § 8-50-108 as it existed prior to 1990.

8-41-505. Minor children. A minor child of a deceased putative father is entitled to compensation when it is proved to the satisfaction of the director that the father, during his lifetime, has acknowledged the child as his and has regularly contributed to his or her support and maintenance for a reasonable period of time prior to his death.

Source: L. 90: Entire article R&RE, p. 485, § 1, effective July 1. **L. 2018:** Entire section amended, (SB 18-095), ch. 96, p. 752, § 2, effective August 8.

Editor's note: This section is similar to former § 8-50-109 as it existed prior to 1990.

Cross references: For the legislative declaration in SB 18-095, see section 1 of chapter 96, Session Laws of Colorado 2018.

ARTICLE 42

Benefits

Editor's note: This article was numbered as articles 3 and 5 of chapter 81, C.R.S. 1963. The substantive provisions of this article were repealed and reenacted in 1990, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this article prior to 1990, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume. Former C.R.S. section numbers are shown in editors' notes following those sections that were relocated. For a detailed comparison of this article, see the comparative tables located in the back of the index.

8-42-101. Employer must furnish medical aid - approval of plan - fee schedule - contracting for treatment - no recovery from employee - medical treatment guidelines - accreditation of physicians and other medical providers - rules - repeal. (1) (a) Every employer, regardless of said employer's method of insurance, shall furnish such medical, surgical, dental, nursing, and hospital treatment, medical, hospital, and surgical supplies, crutches, and apparatus as may reasonably be needed at the time of the injury or occupational disease and thereafter during the disability to cure and relieve the employee from the effects of the injury.

(b) In all cases where the injury results in the loss of a member or part of the employee's body, loss of teeth, loss of vision or hearing, or damage to an existing prosthetic device, the employer shall furnish within the limits of the medical benefits provided in paragraph (a) of this subsection (1) artificial members, glasses, hearing aids, braces, and other external prosthetic devices, including dentures, which are reasonably required to replace or improve the function of each member or part of the body or prosthetic device so affected or to improve the employee's vision or hearing. The employee may petition the division for a replacement of any artificial member, glasses, hearing aid, brace, or other external prosthetic device, including dentures, upon grounds that the employee has undergone an anatomical change since the previous device was

furnished or for other good cause shown, that the anatomical change or good cause is directly related to and caused by the injury, and that the replacement is necessary to improve the function of each member or part of the body so affected or to relieve pain and discomfort. Implants or devices necessary to regulate the operation of, or to replace, with implantable devices, internal organs or structures of the body may be replaced when the authorized treating physician deems it necessary. Every employer subject to the terms and provisions of articles 40 to 47 of this title must insure against liability for the medical, surgical, and hospital expenses provided for in this article, unless permission is given by the director to such employer to operate under a medical plan, as set forth in subsection (2) of this section.

(c) In any case in which a firefighter, emergency medical services provider, or peace officer, as described in section 16-2.5-101, C.R.S., is exposed during the course and within the scope of employment to a known or possible source of hepatitis C, the employer, or if insured, the insurer, shall, at their expense, provide for baseline testing within the period of time specified in section 8-41-208 (1)(a) to determine whether the employee was free of hepatitis C at the time of the on-the-job exposure. The employer, or if insured, the insurer, shall pay for all reasonable and necessary medical procedures and treatment for exposure to hepatitis C during the period of time set forth in section 8-41-208 (1)(d).

(2) Every such plan, which is agreed to between the employer and employee, for the furnishing of medical, surgical, and hospital treatment, whether or not the employee is to pay any part of the expense of such treatment, before being put into effect, shall receive the approval of the director. The director has full power to formulate the terms and conditions under which any such plan may operate and the essentials thereof, and at any time the director may order modifications or changes in any such plan or withdraw prior approval thereof. No plan shall be approved by the director which relieves the employer from the burden of assuming and paying for any part of the medical, surgical, and hospital services and supplies required.

(3) (a) (I) The director shall establish a schedule fixing the fees for which all surgical, hospital, dental, nursing, vocational rehabilitation, and medical services, whether related to treatment or not, pertaining to injured employees under this section shall be compensated. It is unlawful, void, and unenforceable as a debt for any physician, chiropractor, hospital, person, expert witness, reviewer, evaluator, or institution to contract with, bill, or charge any party for services, rendered in connection with injuries coming within the purview of this article or an applicable fee schedule, which are or may be in excess of said fee schedule unless such charges are approved by the director. Fee schedules shall be reviewed on or before July 1 of each year by the director, and appropriate health care practitioners shall be given a reasonable opportunity to be heard as required pursuant to section 24-4-103, C.R.S., prior to fixing the fees, impairment rating guidelines, which shall be based on the revised third edition of the "American Medical Association Guides to the Evaluation of Permanent Impairment", in effect as of July 1, 1991, and medical treatment guidelines and utilization standards. Fee schedules established pursuant to this subparagraph (I) shall take effect on January 1. The director shall promulgate rules concerning reporting requirements, penalties for failure to report correctly or in a timely manner, utilization control requirements for services provided under this section, and the accreditation process in subsection (3.6) of this section. The fee schedule shall apply to all surgical, hospital, dental, nursing, vocational rehabilitation, and medical services and to expert witness, expert reviewer, or expert evaluator services, whether related to treatment or not, provided after any final order, final admission, or full or partial settlement of the claim.

(II) Notwithstanding the provisions of subparagraph (I) of this paragraph (a) the fees set forth in the schedule established pursuant to subparagraph (I) of this paragraph (a) shall be those fees in effect immediately prior to July 1, 1991, and such fees shall remain in effect until July 1, 1995.

(III) Notwithstanding the provisions of subparagraph (I) of this paragraph (a), until the impairment rating guidelines and medical treatment guidelines and utilization standards required by subparagraph (I) of this paragraph (a) and subsection (3.5) of this section are adopted and level I accreditation is received, compensation for fees for chiropractic treatments shall not be made more than ninety days after the first of such treatments nor after the twelfth such treatment, whichever first occurs, unless the chiropractor has received level I accreditation.

(b) Medical treatment guidelines and utilization standards, developed by the director, shall be used by health care practitioners for compliance with this section.

(3.5) (a) (I) (A) "Physician" means, for the purposes of the level I and level II accreditation programs, a physician licensed under the "Colorado Medical Practice Act". For the purposes of level I accreditation only and not level II accreditation, "physician" means a dentist licensed under the "Dental Practice Act", article 220 of title 12; a podiatrist licensed under article 290 of title 12; and a chiropractor licensed under article 215 of title 12.

(B) A physician assistant licensed under the "Colorado Medical Practice Act", article 240 of title 12, may receive level I accreditation. In order for a level I accredited physician assistant to perform medical services requiring level I accreditation, a level I accredited physician must delegate the performance of those medical services to the level I accredited physician assistant.

(C) A physician shall not be deemed accredited under either level I or level II solely by reason of being licensed.

(D) An advanced practice nurse with prescriptive authority pursuant to section 12-255-112 may receive level I accreditation for purposes of receiving one hundred percent reimbursement under the medical fee schedule created in accordance with subsection (3) of this section.

(E) Nothing in this subsection (3.5)(a) grants any person other than a physician licensed under the "Colorado Medical Practice Act" the authority to determine that no permanent medical impairment has resulted from the injury pursuant to subsection (3.6)(b) of this section or that a claimant has attained maximum medical improvement pursuant to section 8-42-107 (8)(b)(I).

(II) The director shall promulgate rules establishing a system for the determination of medical treatment guidelines and utilization standards and medical impairment rating guidelines for impairment ratings as a percent of the whole person or affected body part based on the revised third edition of the "American Medical Association Guides to the Evaluation of Permanent Impairment", in effect as of July 1, 1991.

(b) A medical impairment rating system shall be maintained by the director.

(c) (I) This subsection (3.5) is repealed, effective September 1, 2025.

(II) Prior to such repeal the accreditation process created by this subsection (3.5) and subsection (3.6) of this section shall be reviewed as provided for in section 24-34-104, C.R.S.

(3.6) The two-tier accreditation system shall comprise the following programs:

(a) (I) A program establishing the accreditation requirements for physicians providing primary care to patients who have, as a result of their injury, been unable to return to work for more than three working days, referred to in this section as "time-loss injuries", which program

shall be voluntary except in the case of chiropractors, for whom it shall be mandatory, and which shall be known as level I accreditation; and

(II) A program establishing the accreditation requirements for physicians providing impairment evaluation of injured workers, which program shall be known as level II accreditation.

(b) A physician who provides impairment evaluation of injured workers shall complete and must have received accreditation under the level II accreditation program. However, the authorized treating physician providing primary care need not be level II accredited to determine that no permanent medical impairment has resulted from the injury. Specialists who do not render primary care to injured workers and who do not perform impairment evaluations do not require accreditation. The facility where a physician provides such services cannot be accredited.

(c) Both the level I and level II accreditation programs shall be implemented and available to physicians. All physicians who are required to be accredited shall complete the level II accreditation program or programs.

(d) The level I and level II accreditation programs shall operate in such a manner that the costs of the program are fully met by registration fees paid by the physicians. The registration fee for each program must cover the cost of all accreditation course work and materials.

(e) The accreditation system shall be established so as to provide physicians with an understanding of the administrative, legal, and medical roles and in such a manner that accreditation is accessible to every licensed physician, with consideration of specialty and geographic diversity.

(f) Initial accreditation shall be for a three-year period and may be renewed for successive three-year periods. The director by regulation may determine any additional training program required prior to accreditation renewal.

(g) The director shall, upon good cause shown, revoke the accreditation of any physician who violates the provisions of this subsection (3.6) or any rule promulgated by the director pursuant to this subsection (3.6), following a hearing on the merits before an administrative law judge, subject to review by the industrial claim appeals office and the court of appeals, in accordance with all applicable provisions of article 43 of this title.

(h) If a physician whose accreditation has been revoked submits a claim for payment for services rendered subsequent to such revocation, the physician shall be considered in violation of section 10-1-128, C.R.S., and neither an insurance carrier nor a self-insured employer shall be under any obligation to pay such claim.

(i) A physician who provides treatment for nontime loss injuries need not be accredited to be reimbursed for the costs of such treatment pursuant to the provisions of the "Workers' Compensation Act of Colorado".

(j) (Deleted by amendment, L. 96, p. 151, § 2, effective July 1, 1996.)

(k) The division shall make available to insurers, claimants, and employers a list of all accredited physicians and a list of all physicians whose accreditation has been revoked. Such lists shall be updated on a monthly basis.

(l) The registration fees collected pursuant to paragraph (d) of this subsection (3.6) shall be transmitted to the state treasurer, who shall credit the same to the physicians accreditation program cash fund, which is hereby created in the state treasury. Moneys in the physicians accreditation program cash fund are hereby continuously appropriated for the payment of the direct costs of providing the level I and level II accreditation courses and materials.

(m) All administrative costs associated with the level I and level II accreditation programs shall be paid out of the workers' compensation cash fund in accordance with appropriations made pursuant to section 8-44-112 (7).

(n) The director shall contract with the medical school of the university of Colorado for the services of a medical director to advise the director on issues of accreditation, impairment rating guidelines, medical treatment guidelines and utilization standards, and case management and to consult with the director on peer review activities as specified in this subsection (3.6) and section 8-43-501. The medical director shall be a medical doctor licensed to practice in this state with experience in occupational medicine. The director may contract with an appropriate private organization that meets the definition of a quality improvement organization as set forth in 42 U.S.C. sec. 1320c-1 to conduct peer review activities under this subsection (3.6) and section 8-43-501 and to recommend whether or not adverse action is warranted.

(o) Except as provided in this subsection (3.6), neither an insurance carrier nor a self-insured employer or injured worker shall be liable for costs incurred for an impairment evaluation rendered by a physician where there is a determination of permanent medical impairment if such physician is not level II accredited pursuant to the provisions of this subsection (3.6).

(p) (I) For purposes of this paragraph (p):

(A) "Case management" means a system developed by the insurance carrier in which the carrier shall assign a person knowledgeable in workers' compensation health care to communicate with the employer, employee, and treating physician to assure that appropriate and timely medical care is being provided.

(B) "Managed care" means the provision of medical services through a recognized organization authorized under the provisions of parts 1, 3, and 4 of article 16 of title 10, C.R.S., or a network of medical providers accredited to practice workers' compensation under this subsection (3.6).

(II) Every employer or its insurance carrier shall offer at least managed care or medical case management in the counties of Denver, Adams, Jefferson, Arapahoe, Douglas, Boulder, Larimer, Weld, El Paso, Pueblo, and Mesa and shall offer medical case management in all other counties of the state.

(q) The division is authorized to accept moneys from any governmental unit as well as grants, gifts, and donations from individuals, private organizations, and foundations; except that no grant, gift, or donation may be accepted by the division if it is subject to conditions which are inconsistent with this article or any other laws of this state or which require expenditures from the workers' compensation cash fund which have not been approved by the general assembly. All moneys accepted by the division shall be transmitted to the state treasurer for credit to the workers' compensation cash fund.

(r) (I) This subsection (3.6) is repealed, effective September 1, 2025.

(II) Prior to such repeal the accreditation process created by subsection (3.5) of this section and this subsection (3.6) shall be reviewed as provided for in section 24-34-104, C.R.S.

(3.7) On and after July 1, 1991, all physical impairment ratings used under articles 40 to 47 of this title shall be based on the revised third edition of the "American Medical Association Guides to the Evaluation of Permanent Impairment", in effect as of July 1, 1991. For purposes of determining levels of medical impairment pursuant to articles 40 to 47 of this title a physician

shall not render a medical impairment rating based on chronic pain without anatomic or physiologic correlation. Anatomic correlation must be based on objective findings.

(4) Once there has been an admission of liability or the entry of a final order finding that an employer or insurance carrier is liable for the payment of an employee's medical costs or fees, a medical provider shall under no circumstances seek to recover such costs or fees from the employee.

(5) If any party files an application for hearing on whether the claimant is entitled to medical maintenance benefits recommended by an authorized treating physician that are unpaid and contested, and any requested medical maintenance benefit is admitted fewer than twenty days before the hearing or ordered after application for hearing is filed, the court shall award the claimant all reasonable costs incurred in pursuing the medical benefit. Such costs do not include attorney fees.

(6) (a) If an employer receives notice of injury and the employer or, if insured, the employer's insurance carrier, after notice of the injury, fails to furnish reasonable and necessary medical treatment to the injured worker for a claim that is admitted or found to be compensable, the employer or carrier shall reimburse the claimant, or any insurer or governmental program that pays for related medical treatment, for the costs of reasonable and necessary treatment that was provided. An employer, insurer, carrier, or provider may not recover the cost of care from a claimant where the employer or carrier has furnished medical treatment except in the case of fraud.

(b) If a claimant has paid for medical treatment that is admitted or found to be compensable and that costs more than the amount specified in the workers' compensation fee schedule, the employer or, if insured, the employer's insurance carrier, shall reimburse the claimant for the full amount paid. The employer or carrier is entitled to reimbursement from the medical providers for the amount in excess of the amount specified in the worker's compensation fee schedule.

Source: L. 90: Entire article R&RE, p. 485, § 1, effective July 1. **L. 91:** (3)(b) repealed, p. 694, § 4, effective April 20; (1)(b) and (3) amended and (3.5), (3.6), and (3.7) added, p. 1296, § 10, effective July 1. **L. 92:** (3.5)(a)(II) amended, p. 2165, § 1, effective June 2; (3.6)(p)(I)(B) amended, p. 1723, § 2, effective July 1. **L. 94:** (1)(b) amended, p. 311, § 1, effective March 22; (3.5)(k) and (3.6)(r) amended, p. 1457, § 7, effective May 25; (3)(a)(II) amended, p. 2001, § 2, effective July 1. **L. 95:** (3.6)(g) amended, p. 234, § 1, effective April 17. **L. 96:** (3.6)(b) and (3.6)(o) amended, p. 268, § 1, effective April 8; (3)(a)(I), (3)(b), (3.5), and (3.6) amended, p. 151, § 2, effective July 1. **L. 2002:** (1)(c) added, p. 441, § 2, effective May 16. **L. 2003:** (3.5)(c)(I) and (3.6)(r)(I) amended, p. 918, § 2, effective July 1; IP(3.6) and (3.6)(h) amended, p. 614, § 4, effective July 1; (1)(c) amended, p. 1613, § 4, effective August 6. **L. 2004:** (3)(a)(I) amended, p. 396, § 4, effective August 4. **L. 2007:** (3)(a)(I) and (3.6)(k) amended, p. 1471, § 1, effective May 30. **L. 2008:** (1)(b) and (3)(a)(I) amended, p. 1675, § 1, effective July 1. **L. 2009:** (3)(a)(I) amended, (SB 09-243), ch. 269, p. 1222, § 2, effective July 1. **L. 2010:** (5) added, (SB 10-187), ch. 310, p. 1456, § 2, effective July 1. **L. 2013:** (6) added, (SB 13-285), ch. 301, p. 1593, § 1, effective July 1. **L. 2014:** (3.5)(a)(I) amended, (HB 14-1227), ch. 363, p. 1735, § 36, effective July 1; (3.5)(c)(I), (3.6)(d), and (3.6)(r)(I) amended, (HB 14-1278), ch. 293, pp. 1197, 1198, §§ 1, 3, effective July 1. **L. 2015:** (2)(b) added, (SB 15-264), ch. 259, p. 942, § 8, effective August 5. **L. 2016:** (3.5)(a)(I) amended, (SB 16-158), ch. 204, p. 720, § 3, effective August 10.

L. 2019: (3.5)(a)(I)(D) and (3.5)(a)(I)(E) added, (HB 19-1105), ch. 77, p. 281, § 1, effective August 2; (3.6)(n) amended, (SB 19-241), ch. 390, p. 3463, § 3, effective August 2; (3.5)(a)(I)(A) and (3.5)(a)(I)(B) amended, (HB 19-1172), ch. 136, p. 1647, § 22, effective October 1.

Editor's note: (1) This section is similar to former § 8-49-101 as it existed prior to 1990.

(2) Although subsection (3)(b) was repealed by House Bill 91-1100, the repeal was harmonized with the amendments to the entire subsection (3) by Senate Bill 91-218.

(3) Amendments to subsection (3.6) by House Bill 96-1040 and House Bill 96-1126 were harmonized.

Cross references: (1) For the "Colorado Medical Practice Act", see article 240 of title 12; for the "Dental Practice Law of Colorado", see article 220 of title 12.

(2) For the legislative declaration in SB 16-158, see section 1 of chapter 204, Session Laws of Colorado 2016.

8-42-102. Basis of compensation - "wages" defined - average weekly wage - "at the time of injury" clarified. (1) The average weekly wage of an injured employee shall be taken as the basis upon which to compute compensation payments.

(2) Average weekly wages for the purpose of computing benefits provided in articles 40 to 47 of this title, except as provided in this section, shall be calculated upon the monthly, weekly, daily, hourly, or other remuneration which the injured or deceased employee was receiving at the time of the injury, and in the following manner; except that any portion of such remuneration representing a per diem payment shall be excluded from the calculation unless such payment is considered wages for federal income tax purposes:

(a) Where the employee is being paid by the month for services under a contract of hire, the weekly wage shall be determined by multiplying the monthly wage or salary at the time of the accident by twelve and dividing by fifty-two.

(b) Where the employee is being paid by the week for services under a contract of hire, said weekly remuneration at the time of the injury shall be deemed to be the weekly wage for the purposes of articles 40 to 47 of this title.

(c) Where the employee is rendering service on a per diem basis, the weekly wage shall be determined by multiplying the daily wage by the number of days and fractions of days in the week during which the employee under a contract of hire was working at the time of the injury or would have worked if the injury had not intervened.

(d) Where the employee is being paid by the hour, the weekly wage shall be determined by multiplying the hourly rate by the number of hours in a day during which the employee was working at the time of the injury or would have worked if the injury had not intervened, to determine the daily wage; then the weekly wage shall be determined from said daily wage in the manner set forth in paragraph (c) of this subsection (2).

(e) Where the employee is paid on a piecework, tonnage, commission, or basis other than a monthly, weekly, daily, or hourly wage and where the employment is but casual and in the usual course of the trade, business, profession, or occupation of his employer, the total amount earned by the injured or killed employee in the twelve months preceding the injury shall be

computed, which sum shall be divided by the number of pay periods the injured person was employed during the twelve months immediately preceding the injury, and the result thus ascertained shall be considered the average wage of said employee per pay period.

(f) Where the employee is being paid by the mile, the weekly wage shall be determined by multiplying the rate per mile by the average number of miles per day the employee drove in the service of the employer in the sixty working days immediately preceding the date of the injury, to arrive at a daily wage; then the weekly wage shall be determined from the said daily wage in the manner set forth in paragraph (c) of this subsection (2). If, on the date of the injury, the employee has worked for the employer less than sixty days, the average daily wage shall be based on the average miles driven per working day during such period.

(3) Where the foregoing methods of computing the average weekly wage of the employee, by reason of the nature of the employment or the fact that the injured employee has not worked a sufficient length of time to enable earnings to be fairly computed thereunder or has been ill or has been self-employed or for any other reason, will not fairly compute the average weekly wage, the division, in each particular case, may compute the average weekly wage of said employee in such other manner and by such other method as will, in the opinion of the director based upon the facts presented, fairly determine such employee's average weekly wage.

(4) Where an employee is a minor and the disability is temporary, the average weekly wage of such minor shall be determined by the division as in cases of disability of adults. Where the disability of such minor is permanent or if benefits under articles 40 to 47 of this title accrue because of the death of such minor, compensation to said minor or death benefits to said minor's dependents shall be paid at the maximum rate of compensation payable under said articles at the time of the determination of such permanency or of such death.

(5) (a) The general assembly hereby finds that the phrase "at the time of injury" in subsection (2) of this section refers to the date of the employee's accident. When subsection (2) of this section is used to determine a worker's average weekly wage, the wage on the date of the accident shall be used.

(b) Nothing in this subsection (5) alters the discretion of the division or the director to fairly determine a worker's average weekly wage in accordance with subsection (3) of this section.

Source: L. 90: Entire article R&RE, p. 486, § 1, effective July 1. **L. 91:** IP(2), (2)(c), and (2)(d) amended, p. 1304, § 11, effective July 1. **L. 94:** IP(2) amended and (2)(f) added, p. 1286, § 2, effective May 22. **L. 2010:** (5) added, (SB 10-187), ch. 310, p. 1457, § 3, effective July 1.

Editor's note: This section is similar to former § 8-47-101 as it existed prior to 1990.

8-42-103. Disability indemnity payable as wages - period of disability. (1) If the injury or occupational disease causes disability, a disability indemnity shall be payable as wages pursuant to section 8-42-105 (2)(a) subject to the following limitations:

(a) If the period of disability does not last longer than three days from the day the employee leaves work as a result of the injury, no disability indemnity shall be recoverable except the disbursement provided in articles 40 to 47 of this title for medical, surgical, nursing, and hospital services, apparatus, and supplies, nor in any case unless the division has actual knowledge of the injury or is notified thereof within the period specified in said articles.

(b) If the period of disability lasts longer than two weeks from the day the injured employee leaves work as the result of the injury, disability indemnity shall be recoverable from the day the injured employee leaves work.

(c) (I) In cases where it is determined that periodic disability benefits granted by the federal "Old-Age, Survivors, and Disability Insurance Amendments of 1965", Pub.L. 89-97, are payable to an individual and the individual's dependents, the aggregate benefits payable for temporary total disability, temporary partial disability, and permanent total disability pursuant to this section shall be reduced, but not below zero, by an amount equal as nearly as practical to one-half the federal periodic benefits; but, if the federal "Old-Age, Survivors, and Disability Insurance Amendments of 1965", Pub.L. 89-97, is amended to provide for a reduction of an individual's disability benefits thereunder because of compensation benefits payable under articles 40 to 47 of this title, the reduction of compensation benefits provided in said articles shall be decreased by an amount equal to the federal reduction. Upon request of the insurer or employer, the employee shall apply for such federal periodic disability benefits and respond to requests from the insurer or employer as to the status of such application. Failure to comply with this section constitutes cause for suspension of benefits.

(II) In cases where it is determined that periodic benefits granted by the federal old-age, survivors, and disability insurance act or employer-paid retirement benefits are payable to an individual and the individual's dependents, the aggregate benefits payable for permanent total disability pursuant to this section shall be reduced, but not below zero:

(A) By an amount equal as nearly as practical to one-half such federal benefits; except that this reduction for the periodic benefits granted by the federal old-age, survivors, and disability insurance act shall not exceed the reduction specified in subparagraph (I) of this paragraph (c) for the periodic disability benefits payable to an individual;

(B) By an amount determined as a percentage of the employer-paid retirement benefits, said percentage to be determined by a weighted average of the employer's contributions during the period of covered employment divided by the total contributions during the period of covered employment; except that in permanent total disability cases all contributions made by the employer pursuant to a collective bargaining agreement with the employee's representative shall be considered to have been made by the employee.

(II.5) In cases where an employer does not participate in federal old-age, survivors, and disability insurance, and it is determined that employer-paid retirement benefits are payable to an individual and the individual's dependents, the aggregate benefits payable for permanent total disability pursuant to this section shall be reduced, but not below zero by an amount determined as a percentage of the employer-paid retirement benefits, said percentage to be determined by a weighted average of the employer's contributions during the period of covered employment divided by the total contributions during the period of covered employment.

(III) Notwithstanding sub-subparagraph (A) of subparagraph (II) of this paragraph (c), if the federal "Old-Age, Survivors, and Disability Insurance Amendments of 1965", Pub.L. 89-97, is amended to provide for a reduction of an individual's periodic benefits thereunder because of compensation benefits payable under articles 40 to 47 of this title, the reduction of compensation benefits provided in said articles shall be decreased by an amount equal to the federal reduction.

(IV) The provisions of subparagraphs (II) and (III) of this paragraph (c) shall apply only if the injury on which the award for permanent total disability was based occurred after the claimant reached forty-five years of age.

(d) (I) In cases where it is determined that periodic disability benefits are payable to an employee under a pension or disability plan financed in whole or in part by the employer, hereinafter called "employer pension or disability plan", the aggregate benefits payable for temporary total disability, temporary partial disability, and permanent total disability pursuant to this section shall be reduced, but not below zero, by an amount equal as nearly as practical to the employer pension or disability plan benefits, with the following limitations:

(A) Where the employee has contributed to the employer pension or disability plan, benefits shall be reduced under this section only in an amount proportional to the employer's percentage of total contributions to the employer pension or disability plan.

(B) Where the employer pension or disability plan provides by its terms that benefits are precluded thereunder in whole or in part if benefits are awarded under articles 40 to 47 of this title, the reduction provided in this paragraph (d) shall not be applicable to the extent of the amount so precluded.

(II) Upon request of the insurer or employer, the employee shall apply for such periodic disability benefits and respond to requests from the insurer or employer as to the status of such application. Failure to comply with this section shall be cause for suspension of benefits.

(III) The provisions of this paragraph (d) shall apply to a disability pension paid pursuant to article 30.5 or 31 of title 31, C.R.S.; except that said reduction shall not reduce the combined weekly disability benefits below a sum equal to one hundred percent of the state average weekly wage as defined in section 8-47-106 and applicable to the year in which the weekly disability benefits are being paid.

(IV) If the disability benefits awarded pursuant to articles 40 to 47 of this title are paid in a lump sum pursuant to section 8-43-406, the weekly benefit attributed to such workers' compensation benefits, for the purpose of calculating the combined weekly disability benefit specified in subparagraph (III) of this paragraph (d), shall be calculated by assuming that the employee is receiving the weekly disability benefits payments such employee would have received had such weekly disability payments not been reduced and paid as a lump sum.

(e) In cases where it is determined that periodic disability benefits are payable to an individual and said individual's dependents pursuant to a workers' compensation act of another state or of the federal government, the aggregate benefits payable for temporary total disability, temporary partial disability, permanent partial disability, and permanent total disability pursuant to this section shall be reduced, but not below zero, by an amount equal to the benefits payable pursuant to such other workers' compensation act.

(f) In cases where it is determined that unemployment compensation benefits are payable to an employee, the aggregate benefits payable for permanent total disability pursuant to this section shall be reduced, but not below zero, by an amount equal as nearly as practical to such unemployment compensation benefits. In cases where it is determined that unemployment insurance benefits are payable to an employee, compensation for temporary disability shall be reduced, but not below zero, by the amount of unemployment insurance benefits received, unless the unemployment insurance amount has already been reduced by the temporary disability benefit amount and except that temporary total disability shall not be reduced by unemployment insurance benefits received pursuant to section 8-73-112.

(g) In cases where it is determined that a temporarily disabled employee is responsible for termination of employment, the resulting wage loss shall not be attributable to the on-the-job injury.

(h) Unless the offset provisions of section 29-5-403 (10) have already been taken, in cases where it is determined that a firefighter has received an award of benefits for a cancer diagnosis pursuant to section 29-5-403 (3)(b) to (3)(k), the aggregate benefits payable for temporary total disability, temporary partial disability, permanent partial disability, and permanent total disability shall be reduced, but not below zero, by an amount equal to the total amount of such cancer diagnosis benefits. In cases where it is determined that a covered individual has received cosmetic disfigurement benefits pursuant to section 29-5-403 (4)(b), benefits for disfigurement payable pursuant to section 8-42-108 shall be reduced, but not below zero, by an amount equal to such cosmetic disfigurement benefits.

(2) Within fifteen days after receipt of written notice by the employer or, if insured, the employer's workers' compensation insurance carrier or third-party administrator of the termination of a fringe benefit or advantage enumerated in section 8-40-201 (19)(b), and the effective date of the termination and cost of conversion, the employer or, if insured, the employer's workers' compensation insurance carrier or third-party administrator shall recalculate the applicable average weekly wage and begin payment of benefits in accordance with the recalculation with interest beginning on the date the benefit was terminated.

Source: L. 90: Entire article R&RE, p. 487, § 1 effective July 1; (1)(d)(IV) amended, p. 1844, § 30, effective July 1. **L. 92:** IP(1) amended, p. 1824, § 1, effective April 29. **L. 94:** (1)(c)(II) amended and (1)(c)(II.5) added, p. 2001, § 3, effective July 1. **L. 96:** (1)(d)(III) amended, p. 940, § 2, effective May 23. **L. 99:** (1)(g) added, p. 266, § 1, effective July 1. **L. 2000:** IP(1)(c)(II), (1)(c)(II.5), and (1)(c)(III) amended, p. 1762, § 1, effective June 1. **L. 2010:** IP(1), (1)(c)(I), (1)(c)(III), and IP(1)(d)(I) amended, (SB 10-187), ch. 310, p. 1457, § 4, effective July 1. **L. 2013:** (2) added, (SB 13-285), ch. 301, p. 1594, § 2, effective July 1. **L. 2017:** (1)(h) added, (SB 17-214), ch. 187, p. 684, § 3, effective May 3.

Editor's note: This section is similar to former § 8-51-101 as it existed prior to 1990.

8-42-104. Effect of previous injury or compensation. (1) The fact that an employee has suffered a previous disability or impairment or received compensation therefor shall not preclude compensation for a later injury or for death, but, in determining compensation benefits payable for the later injury or death, the employee's average weekly earnings at the time of the later injury shall be used in determining the compensation payable to the employee or such employee's dependents. Notwithstanding any other provision of articles 40 to 47 of this title, no claimant may receive concurrent permanent total disability awards from injuries occurring in this state or any other state.

(2) (Deleted by amendment, L. 2008, p. 1676, § 2, effective July 1, 2008.)

(3) An employee's temporary total disability, temporary partial disability, or medical benefits shall not be reduced based on a previous injury.

(4) An employee's recovery of permanent total disability shall not be reduced when the disability is the result of work-related injury or work-related injury combined with genetic, congenital, or similar conditions; except that this subsection (4) shall not apply to reductions in recovery or apportionments allowed pursuant to the Colorado supreme court's decision in the case denominated *Anderson v. Brinkhoff,* 859 P.2d 819 (Colo. 1993).

(5) In cases of permanent medical impairment, the employee's award or settlement shall be reduced:

(a) When an employee has suffered more than one permanent medical impairment to the same body part and has received an award or settlement under the "Workers' Compensation Act of Colorado" or a similar act from another state. The permanent medical impairment rating applicable to the previous injury to the same body part, established by award or settlement, shall be deducted from the permanent medical impairment rating for the subsequent injury to the same body part.

(b) When an employee has a nonwork-related previous permanent medical impairment to the same body part that has been identified, treated, and, at the time of the subsequent compensable injury, is independently disabling. The percentage of the nonwork-related permanent medical impairment existing at the time of the subsequent injury to the same body part shall be deducted from the permanent medical impairment rating for the subsequent compensable injury.

(6) Nothing in this section shall be construed to preclude employers or insurers from seeking contribution or reimbursement, as permitted by law, from other employers or insurers for benefits paid to or for an injured employee as long as the employee's benefits are not reduced or otherwise affected by such contribution or reimbursement.

Source: L. 90: Entire article R&RE, p. 490, § 1, effective July 1. **L. 91:** (1) amended, p. 1304, § 12, effective July 1. **L. 99:** Entire section amended, p. 410, § 1, effective July 1. **L. 2008:** (2) amended and (3) to (6) added, p. 1676, § 2, effective July 1.

Editor's note: This section is similar to former § 8-47-102 as it existed prior to 1990.

8-42-105. Temporary total disability. (1) In case of temporary total disability of more than three regular working days' duration, the employee shall receive sixty-six and two-thirds percent of said employee's average weekly wages so long as such disability is total, not to exceed a maximum of ninety-one percent of the state average weekly wage per week. Except where vocational rehabilitation is offered and accepted as provided in section 8-42-111 (3), temporary total disability payments shall cease upon the occurrence of any of the events enumerated in subsection (3) of this section. If vocational rehabilitation is offered and accepted, any party may at any time terminate vocational rehabilitation upon fourteen days' written notice to the other parties and the director. For purposes of this section, termination of vocational rehabilitation shall be the same as if vocational rehabilitation had never been offered and accepted, and the employer or insurance carrier shall not be entitled to recover any temporary total disability benefits paid during the period that vocational rehabilitation was provided.

(2) (a) The first installment of compensation shall be paid no later than the date that liability for the claim is admitted by the insurance carrier or self-insured employer. 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 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 paragraph (a), the time schedule for hearing the matter shall be as set forth in section 8-43-209. Compensation shall be paid at least once every two weeks, except where the director determines that payment in installments should be made at some other interval. The director may by rule convert monthly benefit schedules to weekly or other periodic schedules.

(b) Temporary disability compensation is not due and payable for any period of time for which the insurer or self-insured employer has requested from the employee's attending physician verification of the employee's inability to work resulting from the claimed injury or disease and the physician cannot verify the employee's inability to work, unless the employee has been unable to receive treatment for reasons beyond the employee's control. Failure of the physician to submit such verification, through no fault of the employee, shall not affect the payment of temporary disability compensation under this section.

(c) If an employee fails to appear at an appointment with the employee's attending physician, the insurer or self-insured employer shall notify the employee by certified mail that temporary disability benefits may be suspended after the employee fails to appear at a rescheduled appointment. If the employee fails to appear at a rescheduled appointment, the insurer or self-insured employer may, without a prior hearing, suspend payment of temporary disability benefits to the employee until the employee appears at a subsequent rescheduled appointment.

(d) If the insurer or self-insured employer has requested and failed to receive from the employee's attending physician verification of the employee's inability to work resulting from the claimed injury or disease, medical services provided by the attending physician are not compensable until the attending physician submits such verification.

(3) Temporary total disability benefits shall continue until the first occurrence of any one of the following:

(a) The employee reaches maximum medical improvement;

(b) The employee returns to regular or modified employment;

(c) The attending physician gives the employee a written release to return to regular employment; or

(d) (I) The attending physician gives the employee a written release to return to modified employment, such employment is offered to the employee in writing, and the employee fails to begin such employment.

(II) In the case of employment by a temporary help contracting firm, once the employee has received one written offer of modified employment meeting the requirements of subparagraph (III) of this paragraph (d), the employee shall be deemed to be on notice that modified employment is available. Subsequent offers of modified employment need not be in writing so long as the job requirements of such modified employment are within the restrictions given the employee by the employee's attending physician and the employee is allowed a period of at least twenty-four hours, not including any part of a Saturday, Sunday, or legal holiday, within which to respond to any such offer.

(III) A written offer of modified employment under subparagraph (II) of this paragraph (d) shall clearly state:

(A) That future offers of employment need not be in writing;

(B) The policy of the temporary help contracting firm regarding how and when employees are expected to learn of such future offers; and

(C) That benefits under this section will be terminated if an employee fails to respond to an offer of modified employment.

(4) (a) In cases where it is determined that a temporarily disabled employee is responsible for termination of employment, the resulting wage loss shall not be attributable to the on-the-job injury.

(b) The claimant's refusal to accept an offer of modified employment under either of the following conditions does not constitute responsibility for termination:

(I) The offer of modified employment would require the claimant to travel a distance of greater than fifty miles one way more than the claimant's preinjury commute; or

(II) An administrative law judge determines that the claimant's rejection of the offer of modified employment was reasonable considering the totality of the claimant's circumstances, including accounting for:

(A) The consequences of the industrial injury;

(B) The financial hardship that would be imposed on the claimant in order to accept the offer of modified employment; or

(C) Any other reasons that would, in the opinion of the administrative law judge, make it impracticable for the claimant to accept the offer of modified employment.

(c) The circumstances described in paragraph (b) of this subsection (4) are not exhaustive.

Source: L. 90: Entire article R&RE, p. 490, § 1, effective July 1. **L. 91:** Entire section amended, p. 1304, § 13, effective July 1. **L. 92:** (2)(a) amended, p. 1824, § 2, effective April 29. **L. 96:** (3) amended, p. 827, § 2, effective July 1. **L. 99:** (4) added, p. 266, § 2, effective July 1. **L. 2009:** (2)(a) amended, (SB 09-070), ch. 49, p. 175, § 1, effective August 5. **L. 2010:** (4) amended, (SB 10-187), ch. 310, p. 1458, § 5, effective July 1.

Editor's note: This section is similar to former § 8-51-102 as it existed prior to 1990.

8-42-106. Temporary partial disability. (1) In case of temporary partial disability, the employee shall receive sixty-six and two-thirds percent of the difference between the employee's average weekly wage at the time of the injury and the employee's average weekly wage during the continuance of the temporary partial disability, not to exceed a maximum of ninety-one percent of the state average weekly wage per week. Temporary partial disability shall be paid at least once every two weeks.

(2) Temporary partial disability payments shall continue until the first occurrence of either one of the following:

(a) The employee reaches maximum medical improvement; or

(b) (I) The attending physician gives the employee a written release to return to modified employment, such employment is offered to the employee in writing, and the employee fails to begin such employment.

(II) In the case of employment by a temporary help contracting firm, once the employee has received one written offer of modified employment meeting the requirements of subparagraph (III) of this paragraph (b), the employee shall be deemed to be on notice that modified employment is available. Subsequent offers of modified employment need not be in writing so long as the job requirements of such modified employment are within the restrictions

given the employee by the employee's attending physician and the employee is allowed a period of at least twenty-four hours, not including any part of a Saturday, Sunday, or legal holiday, within which to respond to any such offer.

(III) A written offer of modified employment under subparagraph (II) of this paragraph (b) shall clearly state:

(A) That future offers of employment need not be in writing;

(B) The policy of the temporary help contracting firm regarding how and when employees are expected to learn of such future offers; and

(C) That benefits under this section will be terminated if an employee fails to respond to an offer of modified employment.

Source: L. 90: Entire article R&RE, p. 491, § 1, effective July 1. **L. 91:** Entire section amended, p. 1306, § 14, effective July 1. **L. 96:** Entire section amended, p. 828, § 3, effective July 1. **L. 2013:** (1) amended, (SB 13-285), ch. 301, p. 1594, § 3, effective July 1.

Editor's note: This section is similar to former § 8-51-103 as it existed prior to 1990.

8-42-107. Permanent partial disability benefits - schedule - medical impairment benefits - how determined. (1) **Benefits available.** (a) When an injury results in permanent medical impairment, and the employee has an injury or injuries enumerated in the schedule set forth in subsection (2) of this section, the employee shall be limited to medical impairment benefits as specified in subsection (2) of this section.

(b) When an injury results in permanent medical impairment and the employee has an injury or injuries not on the schedule specified in subsection (2) of this section, the employee shall be limited to medical impairment benefits as specified in subsection (8) of this section.

(2) **Scheduled injuries.** In case an injury results in a loss set forth in the following schedule, the injured employee, in addition to compensation to be paid for temporary disability, shall receive compensation for the period as specified:

(a) The loss of an arm at the shoulder208 weeks

(a.5) The loss of an arm above the hand including the wrist208 weeks

(b) (Deleted by amendment, L. 94, p. 2002, § 4, effective July 1, 1994.)

(c) The loss of a hand below the wrist104 weeks

(d) The loss of a thumb and the metacarpal bone thereof50 weeks

(e) The loss of a thumb at the proximal joint35 weeks

(f) The loss of a thumb at the second or distal joint18 weeks

(g) The loss of an index finger and the metacarpal bone thereof26 weeks

(h) The loss of an index finger at the proximal joint18 weeks

(i) Loss of an index finger at the second joint13 weeks

(j) Loss of an index finger at the distal joint9 weeks

(k) Loss of a second finger and the metacarpal bone thereof18 weeks

(l) Loss of a middle finger at the proximal joint13 weeks

(m) Loss of a middle finger at the second joint9 weeks

(n) Loss of a middle finger at the distal joint5 weeks

(o) Loss of a third or ring finger and the metacarpal bone thereof11 weeks

(p) Loss of a ring finger at the proximal joint7 weeks

(q) Loss of a ring finger at the second joint7 weeks
(r) Loss of a ring finger at the distal joint4 weeks
(s) Loss of a little finger and the metacarpal bone thereof13 weeks
(t) Loss of a little finger at the proximal joint9 weeks
(u) Loss of a little finger at the second joint9 weeks
(v) Loss of a little finger at the distal joint4 weeks
(w) Loss of a leg at the hip joint or so near thereto as to preclude the use of an artificial limb208 weeks
(w.5) The loss of a leg above the foot including the ankle208 weeks
(x) (Deleted by amendment, L. 94, p. 2002, § 4, effective July 1, 1994.)
(y) The loss of a foot below the ankle104 weeks
(z) The loss of a great toe with the metatarsal bone thereof26 weeks
(aa) The loss of a great toe at the proximal joint18 weeks
(bb) The loss of a great toe at the second or distal joint9 weeks
(cc) The loss of any other toe with the metatarsal bone thereof11 weeks
(dd) The loss of any other toe at the proximal joint4 weeks
(ee) The loss of any other toe at the second or distal joint4 weeks
(ff) The loss of a tooth6 weeks
(gg) Total blindness of one eye104 weeks
(hh) Total deafness of both ears139 weeks
(ii) Total deafness of one ear35 weeks
(jj) Where worker prior to injury has suffered a total loss of hearing in one ear, and as a result of the accident loses total hearing in remaining ear139 weeks

(3) Temporary disability terminates as to injuries coming under any provision of this section upon the occurrence of any of the events enumerated in section 8-42-105 (3).

(4) For the purpose of this schedule, permanent and complete paralysis of any member as the proximate result of accidental injury shall be deemed equivalent to the loss thereof.

(5) If amputation is made between any two joints mentioned in this schedule, except amputation between the knee and the hip joint, the resulting loss shall be estimated as if the amputation had been made at the joint nearest thereto. If any portion of the bone of the distal joint of any finger, thumb, or toe is amputated, the amount paid therefor shall be the amount allowed for amputation at said distal joint.

(6) (a) The amounts specified in subsections (1) to (5) of this section shall be at the compensation rate of one hundred seventy-six dollars per week.

(b) On July 1, 2000, and on each succeeding July 1 thereafter, the compensation rate established in this subsection (6) shall be modified for claims arising on and after such date by the same percentage increase or decrease as the state average weekly wage as determined by the director when the director establishes the state average weekly wage pursuant to section 8-47-106.

(7) (a) When an injured employee sustains two or more injuries coming under this schedule, the disabilities specified in subsections (1) to (5) of this section shall be added, and the injured employee shall receive the sum total thereof; except that, where the injury results in the loss or partial loss of use of the index finger and thumb of the same hand or of more than two digits of any one hand or foot, the disability, in the discretion of the director, may be

compensated on the basis of the partial loss of use of said hand or foot, measured respectively from the wrist or ankle.

(b) (I) The general assembly finds, determines, and declares that the rating organization that studied the impact of the changes in Senate Bill 91-218, enacted at the first regular session of the fifty-eighth general assembly, assumed that scheduled injuries would remain on the schedule and nonscheduled injuries would be compensated as medical impairment benefits. Therefore, the general assembly finds, determines, and declares that the purpose of changing the provisions of subparagraph (II) of this paragraph (b), as amended by House Bill 99-1157, enacted at the first regular session of the sixty-second general assembly, is to clarify that scheduled injuries shall be compensated as provided on the schedule and nonscheduled injuries shall be compensated as medical impairment benefits, and that, when an injured worker sustains both scheduled and nonscheduled injuries, the losses shall be compensated on the schedule for scheduled injuries and the nonscheduled injuries shall be compensated as medical impairment benefits. The general assembly further determines and declares that mental or emotional stress shall be compensated pursuant to section 8-41-301 (2) and shall not be combined with a scheduled or a nonscheduled injury.

(II) Except as provided in subsection (8) of this section, where an injury causes the loss of, loss of use of, or partial loss of use of any member specified in the foregoing schedule, the amount of permanent partial disability shall be the proportionate share of the amount stated in the above schedule for the total loss of a member, and such amount shall be in addition to compensation for temporary disability. Where an injury causes a loss set forth in the schedule in subsection (2) of this section and a loss set forth for medical impairment benefits in subsection (8) of this section, the loss set forth in the schedule found in said subsection (2) shall be compensated solely on the basis of such schedule and the loss set forth in said subsection (8) shall be compensated solely on the basis for such medical impairment benefits specified in said subsection (8).

(III) Mental or emotional stress shall be compensated pursuant to section 8-41-301 (2) and shall not be combined with a scheduled or a nonscheduled injury, except for the purposes of calculating a claimant's impairment rating to determine the applicable cap for benefits pursuant to section 8-42-107.5.

(8) **Medical impairment benefits - determination of MMI for scheduled and nonscheduled injuries.** (a) When an injury results in permanent medical impairment not set forth in the schedule in subsection (2) of this section, the employee shall be limited to medical impairment benefits calculated as provided in this subsection (8). The procedures for determination of maximum medical improvement set forth in paragraph (b) of this subsection (8) shall be available in cases of injuries set forth in the schedule in subsection (2) of this section and also in cases of injuries that are not set forth in said schedule.

(b) (I) An authorized treating physician shall make a determination as to when the injured employee reaches maximum medical improvement as defined in section 8-40-201 (11.5).

(II) If either party disputes a determination by an authorized treating physician on the question of whether the injured worker has or has not reached maximum medical improvement, an independent medical examiner may be selected in accordance with section 8-42-107.2; except that, if an authorized treating physician has not determined that the employee has reached maximum medical improvement, the employer or insurer may only request the selection of an independent medical examiner if all of the following conditions are met:

(A) At least twenty-four months have passed since the date of injury;

(B) A party has requested in writing that an authorized treating physician determine whether the employee has reached maximum medical improvement;

(C) Such authorized treating physician has not determined that the employee has reached maximum medical improvement; and

(D) A physician other than such authorized treating physician has determined that the employee has reached maximum medical improvement.

(III) Notwithstanding paragraph (c) of this subsection (8), if the independent medical examiner selected pursuant to subparagraph (II) of this paragraph (b) finds that the injured worker has reached maximum medical improvement, the independent medical examiner shall also determine the injured worker's permanent medical impairment rating. The finding regarding maximum medical improvement and permanent medical impairment of an independent medical examiner in a dispute arising under subparagraph (II) of this paragraph (b) may be overcome only by clear and convincing evidence. A hearing on this matter shall not take place until the finding of the independent medical examiner has been filed with the division.

(b.5) When an authorized treating physician providing primary care who is not accredited under the level II accreditation program pursuant to section 8-42-101 (3.5) makes a determination that an employee has reached maximum medical improvement, the following procedures shall apply:

(I) (A) If the employee is not a state resident upon reaching maximum medical improvement, such physician shall, within twenty days after the determination of maximum medical improvement, determine whether the employee has sustained any permanent impairment. If the employee has sustained any permanent impairment, such physician shall conduct such tests as are required by the revised third edition of the "American Medical Association Guides to the Evaluation of Permanent Impairment" to determine such employee's medical impairment rating and shall transmit to the self-insured employer or insurer all test results and all relevant medical information.

(B) However, if the employee chooses not to have the authorized treating physician perform such tests, or if the information is not transmitted in a timely manner, the self-insured employer or insurer shall arrange and pay for the employee to return to Colorado for examination, testing, and rating, at the expense of the self-insured employer or insurer. If the employee refuses to return to Colorado for examination, no permanent disability benefits shall be awarded.

(C) The self-insured employer or insurer shall, within twenty days after receipt of the medical information described in sub-subparagraph (A) of this subparagraph (I), appoint a level II accredited physician to determine the employee's medical impairment rating. If the employee was treated by an authorized level II accredited physician in Colorado for the same injury for which a medical impairment rating is being sought, the self-insured employer or insurer shall request such physician to determine the claimant's medical impairment rating. At the same time as such rating is transmitted to the self-insured employer or insurer, the level II physician shall transmit a copy of the same to the authorized treating physician and the employee.

(D) If the employee, insurer, or self-insured employer disputes a medical impairment rating, including a finding that there is no medical impairment, made pursuant to sub-subparagraph (A) of this subparagraph (I), the parties to the dispute may select an independent medical examiner in accordance with section 8-42-107.2 to review the rating. The cost of such

independent medical examination shall be borne by the requesting party. The finding of such independent medical examiner shall be overcome only by clear and convincing evidence. Any review by an independent medical examiner shall be based on the employee's written medical records only, without further examination, unless a party to the dispute requests that such review include a physical examination by the independent medical examiner. Except when the provisions of section 8-42-107.2 (5)(b) apply, the party requesting a physical examination shall pay all additional costs, including, if applicable, the reasonable cost of returning the employee to Colorado.

(II) If the employee is a state resident, such physician shall, within twenty days after the determination of maximum medical improvement, determine whether the employee has sustained any permanent impairment. If the employee has sustained any permanent impairment, such physician shall refer such employee to a level II accredited physician for a medical impairment rating, which shall be based on the revised third edition of the "American Medical Association Guides to the Evaluation of Permanent Impairment". If the referral is not timely made by the authorized treating physician, the insurer or self-insured employer shall refer the employee to a level II accredited physician within forty days after the determination of maximum medical improvement. If the employee, insurer, or self-insured employer disputes the finding regarding permanent medical impairment, including a finding that there is no permanent medical impairment, the parties to the dispute may select an independent medical examiner in accordance with section 8-42-107.2. The finding of any such independent medical examiner shall be overcome only by clear and convincing evidence.

(c) When the injured employee's date of maximum medical improvement has been determined pursuant to subparagraph (I) of paragraph (b) of this subsection (8), and there is a determination that permanent medical impairment has resulted from the injury, the authorized treating physician shall determine a medical impairment rating as a percentage of the whole person based on the revised third edition of the "American Medical Association Guides to the Evaluation of Permanent Impairment", in effect as of July 1, 1991. Except for a determination by the authorized treating physician providing primary care that no permanent medical impairment has resulted from the injury, any physician who determines a medical impairment rating shall have received accreditation under the level II accreditation program pursuant to section 8-42-101. For purposes of determining levels of medical impairment, the physician shall not render a medical impairment rating based on chronic pain without anatomic or physiologic correlation. Anatomic correlation must be based on objective findings. If either party disputes the authorized treating physician's finding of medical impairment, including a finding that there is no permanent medical impairment, the parties may select an independent medical examiner in accordance with section 8-42-107.2. The finding of the independent medical examiner may be overcome only by clear and convincing evidence. A hearing on this matter shall not take place until the finding of the independent medical examiner has been filed with the division.

(c.5) When an injury results in the total loss or total loss of use of an arm at the shoulder, a forearm at the elbow, a hand at the wrist, a leg at the hip or so near thereto as to preclude the use of an artificial limb, the loss of a leg at or above the knee where the stump remains sufficient to permit the use of an artificial limb, a foot at the ankle, an eye, or a combination of any such losses, the benefits for such loss shall be determined pursuant to this subsection (8).

(d) Medical impairment benefits shall be determined by multiplying the medical impairment rating determined pursuant to paragraph (c) of this subsection (8) by the age factor

determined pursuant to paragraph (e) of this subsection (8) and by four hundred weeks and shall be calculated at the temporary total disability rate specified in section 8-42-105. Up to ten thousand dollars of the total amount of any such award or scheduled award shall be automatically paid in a lump sum less the discount as calculated in section 8-43-406 upon the injured employee's written request to the employer or, if insured, to the employer's insurance carrier. The remaining periodic payments of any such award, after subtracting the total amount of the lump sum requested by the employee without subtracting the discount calculated in section 8-43-406, shall be paid at the temporary total disability rate but not less than one hundred fifty dollars per week and not more than fifty percent of the state average weekly wage, beginning on the date of maximum medical improvement.

(e) The age factor for use in calculating medical impairment benefits pursuant to this subsection (8) is as follows:

AGE	**FACTOR**
20 or younger	1.80
21	1.78
22	1.76
23	1.74
24	1.72
25	1.70
26	1.68
27	1.66
28	1.64
29	1.62
30	1.60
31	1.58
32	1.56
33	1.54
34	1.52
35	1.50
36	1.48
37	1.46
38	1.44
39	1.42
40	1.40
41	1.38
42	1.36
43	1.34
44	1.32
45	1.30
46	1.28
47	1.26
48	1.24
49	1.22

50	1.20
51	1.18
52	1.16
53	1.14
54	1.12
55	1.10
56	1.08
57	1.06
58	1.04
59	1.02
60 or older	1.00

(f) In all claims in which an authorized treating physician recommends medical benefits after maximum medical improvement, and there is no contrary medical opinion in the record, the employer shall, in a final admission of liability, admit liability for related reasonable and necessary medical benefits by an authorized treating physician.

Source: L. 90: Entire article R&RE, p. 491, § 1, effective July 1. **L. 91:** Entire section amended, p. 1306, § 15, effective July 1. **L. 92:** (8)(d) amended, p. 1827, § 1, effective April 29; (7)(b) amended and (8)(c.5) added, p. 1833, §§ 1, 2, effective May 26. **L. 93:** (8)(c) amended, p. 365, § 1, effective April 12. **L. 94:** (2)(b), (2)(c), (2)(x), (2)(y), and (7)(b) amended and (2)(a.5) and (2)(w.5) added, p. 2002, § 4, effective July 1. **L. 96:** (8)(b.5) added and (8)(c) amended, p. 269, § 2, effective April 8; (8)(a) and (8)(b) amended, p. 456, § 1, effective July 1. **L. 98:** IP(8)(b)(II), (8)(b)(III), (8)(b.5)(I)(D), (8)(b.5)(II), and (8)(c) amended, p. 1429, § 2, effective August 5. **L. 99:** (6) and (7) amended, p. 298, § 1, effective July 1. **L. 2003:** (8)(b.5)(I)(D), (8)(b.5)(II), and (8)(c) amended, p. 1711, § 1, effective August 6. **L. 2007:** (8)(d) amended, p. 1472, § 2, effective May 30. **L. 2009:** (7)(b)(III) amended, (SB 09-243), ch. 269, p. 1223, § 3, effective July 1. **L. 2010:** (2)(ff) amended, (SB 10-187), ch. 310, p. 1459, § 6, effective July 1. **L. 2011:** (8)(f) added, (SB 11-199), ch. 196, p. 759, § 1, effective May 23. **L. 2013:** (8)(b)(II)(A), (8)(b)(III), and (8)(c) amended, (SB 13-285), ch. 301, p. 1595, § 6, effective July 1.

Editor's note: This section is similar to former §§ 8-51-104 and 8-51-108 as they existed prior to 1990.

8-42-107.2. Selection of independent medical examiner - procedure - time - disclosures regarding physician relationships with insurers, self-insured employers, or claimants - rules - applicability. (1) This section governs the selection of an independent medical examiner, also referred to in this section as an "IME", to resolve disputes arising under section 8-42-107.

(2) (a) (I) Except as otherwise provided in subparagraph (II) of this paragraph (a), the time for selection of an IME commences as follows, depending on which party initiates the dispute:

(A) For the claimant, the time for selection of an IME commences with the date of mailing of a final admission of liability by the insurer or self-insured employer that includes an impairment rating issued in accordance with section 8-42-107.

(B) For the insurer or self-insured employer, the time for selection of an IME commences with the date on which the disputed finding or determination is mailed or physically delivered to the insurer or self-insured employer.

(II) If, as of the date on which the time for selection of an IME would otherwise commence, a medical condition is not yet ratable because of a provision in the medical treatment guidelines or in the revised third edition of the "American Medical Association Guides to the Evaluation of Permanent Impairment", the time for selection of an IME shall commence on the date on which an impairment rating is mailed or physically delivered.

(b) If any party disputes a finding or determination of the authorized treating physician, such party shall request the selection of an IME. The requesting party shall notify all other parties in writing of the request, on a form prescribed by the division by rule, and shall propose one or more acceptable candidates for the purpose of entering into negotiations for the selection of an IME. Such notice and proposal is effective upon mailing via United States mail, first-class postage paid, addressed to the division and to the last-known address of each of the other parties. Unless such notice and proposal are given within thirty days after the date of mailing of the final admission of liability or the date of mailing or delivery of the disputed finding or determination, as applicable pursuant to paragraph (a) of this subsection (2), the authorized treating physician's findings and determinations shall be binding on all parties and on the division.

(c) If the insurer or self-insured employer requests an IME and the examination is conducted before the insurer or self-insured employer admits liability pursuant to section 8-43-203 (2)(b), the claimant may not request a second independent medical examination on that issue but may appeal the IME's decision, as set forth in section 8-43-203 (2)(b)(II).

(3) (a) Upon receiving the requesting party's notice and proposal pursuant to subsection (2) of this section, the other parties have until the end of the thirtieth day after the date of mailing of such notice and proposal within which to negotiate and select an IME. If the parties agree on an IME on or before such thirtieth day, the requesting party shall promptly notify the IME in writing that he or she has been selected. If, within such time, the parties are unable to agree or the requesting party receives no response to the notice and proposal, the insurer or self-insured employer shall give written notice of such fact to the division within thirty days via United States mail, first-class postage paid. The division shall then, within ten days after receiving such written notice, select three physicians by a revolving selection process established by the division from the list of physicians maintained by the division. The division shall administer the list in such fashion as to ensure that the names of candidates to serve as IME in each pending case remain confidential until the IME is selected. The director of the division shall promulgate rules to implement the process of selecting a panel of three physicians from which the parties may select a physician to conduct a division independent medical examination. The selection of a physician panel shall be based on various factors, including, but not limited to, the designation by rule of the fields of specialization authorized to perform independent medical examinations for conditions listed under each medical treatment guideline and measures to prevent the over-utilization of physicians or specialists. The requesting party shall have the opportunity to strike one of the three physicians from the list, followed by the opposing party who shall then be given the opportunity to strike one physician from the list. The remaining IME physician shall be designated by the division to conduct the IME. If one or neither party strikes a physician from the list, the division shall select the physician to conduct the IME from the remaining physicians on the list.

(b) Upon selection of the IME, the insurance carrier shall provide to the IME and all other parties a complete copy of all medical records in its possession pertaining to the subject injury, postmarked or hand-delivered within fourteen days prior to the independent medical examination. If the insurance carrier or its representative fails to timely submit such medical records, the claimant may request that the division cancel the independent medical examination or the claimant may submit all the medical records he or she has available within ten days prior to the independent medical examination, or as otherwise arranged by the division with the IME. If the claimant submits medical records, the defaulting party may supplement such records pursuant to rules of the division. This paragraph (b) shall not be construed to prohibit an independent medical examination from being rescheduled.

(c) Any supplemental medical records shall be prepared according to the rules of the division and shall be submitted to the IME and all other parties no later than seven days prior to the independent medical examination.

(d) (I) The IME shall neither contact any of the authorized treating physicians or any examining or reviewing physician nor request a claimant to undergo repeat testing when the testing results were valid and the IME has resolved any disparity in testing results.

(II) Subparagraph (I) of this paragraph (d), as enacted by Senate Bill 09-168, enacted in 2009, is declared to be procedural and was intended to and shall apply to all workers' compensation claims, regardless of the date the claim was filed.

(3.5) (a) Prior to making a determination to strike a physician from the list of IME physicians provided by the division in accordance with paragraph (a) of subsection (3) of this section, a party may request and shall be entitled to obtain and review a summary disclosure pertaining to any business, financial, employment, or advisory relationship between a listed physician, or any entity affiliated with the physician, and the insurer, self-insured employer, or claimant who is a party to the claim. The party shall not be required to make its determination to strike a physician from the list until he or she has received and has had a reasonable opportunity to review the summary disclosure.

(b) The director shall adopt rules as necessary to implement this subsection (3.5). At a minimum, the rules shall:

(I) Require physicians to disclose the requested business, financial, employment, or advisory relationship information in a summarized format;

(II) Detail the form and manner in which the summary disclosure is to be provided;

(III) Set parameters regarding the period within which a requesting party is allowed to review the summary disclosure prior to making a determination to strike a physician from the list; and

(IV) Prohibit a physician who fails to disclose the requested summarized information from conducting an independent medical examination until he or she complies with the request.

(4) (a) Upon receipt of the IME's report, the division has five business days to review the report and either:

(I) Issue a notice to all parties that the division has received the IME's report; or

(II) Notify the IME of any deficiencies in the report by letter and send copies to all parties.

(b) Upon notification of any deficiencies identified in the IME's report, the IME has twenty days to remedy the deficiencies and resubmit the report. After the report has been resubmitted, the division shall comply with paragraph (a) of this subsection (4). If the IME fails

to timely respond to the notification of deficiencies, the division shall issue a notice that it has received the IME's report and the insurer or self-insured employer shall comply with paragraph (c) of this subsection (4).

(c) Within twenty days after the date of the mailing of the division's notice that it has received the IME's report, the insurer or self-insured employer shall either file its admission of liability pursuant to section 8-43-203 or request a hearing before the division contesting one or more of the IME's findings or determinations contained in such report.

(5) (a) Except as provided in paragraph (b) of this subsection (5), the requesting party shall advance the full cost of the independent medical examination to the IME at least ten days before the appointed time for the examination.

(b) A claimant who has established that he or she is indigent shall receive an independent medical examination without having to advance the cost to the independent medical examiner. The director of the division of workers' compensation shall promulgate rules to establish a procedure to determine indigence.

(6) This section was enacted by House Bill 98-1062, as enacted at the second regular session of the sixty-first general assembly, as a remedial statute and is procedural in nature. The purpose of this section is to improve and simplify remedies already existing for the enforcement of rights and the redress of injuries under the workers' compensation laws of Colorado. This section effected procedures related to the selection of an IME and shall be applicable to all open cases with a date of injury on or after July 1, 1991, for which a division IME has not been requested, pursuant to section 8-42-107.

Source: L. 98: Entire section added, p. 1427, § 1, effective August 5. **L. 99:** (3) amended and (6) added, p. 254, § 1, effective September 1. **L. 2003:** (3) and (5) amended, p. 1712, § 2, effective August 6. **L. 2007:** (3)(a) amended, p. 1472, § 3, effective May 30. **L. 2009:** (3)(d) added, (SB 09-168), ch. 184, p. 806, § 1, effective August 5. **L. 2010:** (3)(d) amended, (SB 10-163), ch. 66, p. 231, § 1, effective March 31; (3.5) added, (SB 10-011), ch. 302, p. 1431, § 1, effective July 1. **L. 2013:** (4) amended, (SB 13-249), ch. 267, p. 1408, § 1, effective August 7.

8-42-107.5. Limits on temporary disability payments and permanent partial disability payments. No claimant whose impairment rating is twenty-five percent or less may receive more than seventy-five thousand dollars from combined temporary disability payments and permanent partial disability payments. No claimant whose impairment rating is greater than twenty-five percent may receive more than one hundred fifty thousand dollars from combined temporary disability payments and permanent partial disability payments. For the purposes of this section, any mental impairment rating shall be combined with the physical impairment rating to establish a claimant's impairment rating for determining the applicable cap. For injuries sustained on and after January 1, 2012, the director shall adjust these limits on the amount of compensation for combined temporary disability payments and permanent partial disability payments on July 1, 2011, and each July 1 thereafter, by the percentage of adjustment made by the director to the state average weekly wage pursuant to section 8-47-106.

Source: L. 91: Entire section added, p. 1311, § 16, effective July 1. **L. 2005:** Entire section amended, p. 1505, § 1, effective January 1, 2006. **L. 2009:** Entire section amended, (SB

09-243), ch. 269, p. 1223, § 4, effective July 1. **L. 2010:** Entire section amended, (SB 10-187), ch. 310, p. 1459, § 7, effective January 1, 2011.

8-42-107.6. Premium dividend for employing injured employees. The commissioner of insurance shall include within the premium dividends specified in rules and regulations promulgated pursuant to section 10-4-408 (5), C.R.S., a premium dividend of up to ten percent if an employer reemploys injured employees at their preinjury wages including any wage increases to which such employees would have been entitled had the employee not been injured. The total amount of the premium dividend shall be determined on a pro rata basis, taking into account the total number of employees injured during the period of time the insurance policy was in effect and the total number of injured employees who have sustained permanent partial disability as a result of their injuries and who have been rehired by such employer.

Source: L. 91: Entire section added, p. 1311, § 17, effective July 1.

8-42-108. Disfigurement - additional compensation. (1) If an employee is seriously, permanently disfigured about the head, face, or parts of the body normally exposed to public view, in addition to all other compensation benefits provided in this article and except as provided in subsection (2) of this section, the director may allow compensation not to exceed four thousand dollars to the employee who suffers such disfigurement.

(2) If an employee sustains any of the following disfigurements, the director may allow up to eight thousand dollars as compensation to the employee in addition to all other compensation benefits provided in this article other than compensation allowed under subsection (1) of this section:

(a) Extensive facial scars or facial burn scars;

(b) Extensive body scars or burn scars; or

(c) Stumps due to loss or partial loss of limbs.

(3) The director shall adjust the limits on the amount of compensation for disfigurement specified in this section on July 1, 2008, and each July 1 thereafter by the percentage of adjustment made by the director to the state average weekly wage pursuant to section 8-47-106.

Source: L. 90: Entire article R&RE, p. 493, § 1, effective July 1. **L. 2007:** Entire section amended, p. 640, § 2, effective July 1.

Editor's note: This section is similar to former § 8-51-105 as it existed prior to 1990.

Cross references: For the legislative declaration contained in the 2007 act amending this section, see section 1 of chapter 174, Session Laws of Colorado 2007.

8-42-109. Added compensation for additional injuries. Where an injured employee sustains an injury covered by sections 8-42-107, 8-42-108, and 8-46-101 but in addition thereto receives other injuries which are sufficient in their nature to alone cause temporary total disability, said employee shall receive, in addition to the amounts specified in said schedule, compensation for temporary total disability as long as said disability is found to exist as a result of said other injuries.

Source: L. 90: Entire article R&RE, p. 493, § 1, effective July 1.

Editor's note: This section is similar to former § 8-51-109 as it existed prior to 1990.

8-42-110. Permanent partial disability - how determined. (Repealed)

Source: L. 90: Entire article R&RE, p. 493, § 1, effective July 1. **L. 91:** Entire section repealed, p. 1312, § 18, effective July 1.

Editor's note: (1) Before its repeal in 1991, this section was similar to former § 8-51-108 as it existed prior to 1990.

(2) The current provisions pertaining to the determination of permanent partial disability are contained in § 8-42-107.

8-42-111. Award for permanent total disability. (1) In cases of permanent total disability, the award shall be sixty-six and two-thirds percent of the average weekly wages of the injured employee and shall continue until death of such person so totally disabled but not in excess of the weekly maximum benefits specified in this article for injuries causing temporary total disability.

(2) (Deleted by amendment, L. 91, p. 1313, § 19, effective July 1, 1991.)

(3) A disabled employee capable of rehabilitation which would enable the employee to earn any wages in the same or other employment, who refuses an offer of employment by the same or other employer or an offer of vocational rehabilitation paid for by the employer shall not be awarded permanent total disability.

(4) For injuries occurring on and after July 1, 1991, and before July 1, 1994, the average weekly wage of injured employees used for computing compensation paid for awards pursuant to subsection (1) of this section shall be increased by two percent per year effective July 1 of each year, and such increased compensation shall be payable for the subsequent twelve months.

(5) Repealed.

Source: L. 90: Entire article R&RE, p. 494, § 1, effective July 1. **L. 91:** (2) and (3) amended and (4) and (5) added, p. 1313, § 19, effective July 1. **L. 94:** (4) and (5) amended, p. 2002, § 5, effective July 1. **L. 2009:** (5) repealed, (SB 09-070), ch. 49, p. 175, § 2, effective August 5.

Editor's note: This section is similar to former § 8-51-107 as it existed prior to 1990.

8-42-112. Acts of employees reducing compensation. (1) The compensation provided for in articles 40 to 47 of this title shall be reduced fifty percent:

(a) Where injury is caused by the willful failure of the employee to use safety devices provided by the employer;

(b) Where injury results from the employee's willful failure to obey any reasonable rule adopted by the employer for the safety of the employee; or

(c) (Deleted by amendment, L. 99, p. 581, § 2, effective July 1, 1999.)

(d) Where the employee willfully misleads an employer concerning the employee's physical ability to perform the job, and the employee is subsequently injured on the job as a result of the physical ability about which the employee willfully misled the employer. Notwithstanding any other provisions of articles 40 to 47 of this title, the provisions of this paragraph (d) shall apply in addition to any other penalty that may be imposed under section 8-43-402.

(2) In the event the claimant or dependent is receiving periodic disability benefits for which a reduction in Colorado workers' compensation benefits has been made pursuant to section 8-42-103, the fifty percent reduction provided for in subsection (1) of this section shall be computed according to the rate of benefits received by the claimant or dependent after, and not before, such other reduction has been made.

(3) An admission of liability reducing compensation under this section must include a statement by a representative of the employer listing the specific facts on which the reduction is based.

(4) If the insurer or self-insured employer admits liability for the claim, any party may request an expedited hearing on the issue of whether the employer or insurer may reduce compensation under this section if the application for hearing is filed within forty-five days after the date of the admission reducing compensation under this section. The director shall set any expedited matter for hearing within sixty days after the date of the application. The time schedule for an expedited hearing is subject to the extensions set forth in section 8-43-209. If the party elects not to request an expedited hearing under this subsection (4), the time schedule for hearing the matter is as set forth in section 8-43-209.

(5) Nothing in this section limits the right of a party to submit evidence at a hearing scheduled under this section or section 8-43-209.

(6) Nothing in this section precludes a party from requesting a hearing pursuant to the time schedule set forth in section 8-43-209.

Source: L. 90: Entire article R&RE, p. 494, § 1, effective July 1. **L. 91:** (2) added, p. 1351, § 3, effective May 29. **L. 99:** (1) amended, p. 581, § 2, effective July 1; (1)(d) added, p. 406, § 1, effective September 1. **L. 2016:** (3) to (6) added, (SB 16-217), ch. 272, p. 1127, § 2, effective July 1.

Editor's note: This section is similar to former § 8-52-104 as it existed prior to 1990.

Cross references: For the legislative declaration in SB 16-217, see section 1 of chapter 272, Session Laws of Colorado 2016.

8-42-112.5. Limitation on payments - use of controlled substances. (1) Nonmedical benefits otherwise payable to an injured worker are reduced fifty percent where the injury results from the presence in the worker's system, during working hours, of controlled substances, as defined in section 18-18-102 (5), C.R.S., that are not medically prescribed or of a blood alcohol level at or above 0.10 percent, or at or above an applicable lower level as set forth by federal statute or regulation, as evidenced by a forensic drug or alcohol test conducted by a medical facility or laboratory licensed or certified to conduct such tests. A duplicate sample from any test conducted must be preserved and made available to the worker for purposes of a second test to

be conducted at the worker's expense. If the test indicates the presence of such substances or of alcohol at such level, it is presumed that the employee was intoxicated and that the injury was due to the intoxication. This presumption may be overcome by clear and convincing evidence.

(2) As used in this section, "nonmedical benefits" means all benefits provided for in articles 40 to 47 of this title other than disbursements for medical, surgical, nursing, and hospital services, apparatus, and supplies.

Source: L. 99: Entire section added, p. 580, § 1, effective July 1. **L. 2012:** (1) amended, (HB 12-1311), ch. 281, p. 1608, § 7, effective July 1.

8-42-113. Limitations on payments to prisoners - incentives to sheriffs and department of corrections. (1) Notwithstanding any other provision of law to the contrary except as provided in subsection (4) of this section, any individual who is otherwise entitled to benefits under articles 40 to 47 of this title shall neither receive nor be entitled to such benefits for any week following conviction during which such individual is confined in a jail, prison, or any department of corrections facility.

(1.5) (a) In the event the identifying information transmitted to the department of labor and employment pursuant to section 17-26-118.5 (2), C.R.S., results in the termination of workers' compensation benefits pursuant to subsection (1) of this section, the employer or the insurance carrier, if any, shall pay to the sheriff a reward equal to ten percent of one week's benefit to which the ineligible individual would otherwise be eligible to receive.

(b) An individual who is ineligible pursuant to subsection (1) of this section shall repay to the employer or the insurance carrier, if any, any amounts received while not eligible.

(2) After such individual's release from confinement, the individual shall be restored to the same position with respect to entitlement to benefits under articles 40 to 47 of this title as said individual would otherwise have enjoyed at the point in time of such release from confinement. However, except as provided in subsection (3) of this section, said individual shall not be able to recover, recoup, or otherwise be retroactively entitled to any of the benefits to which the individual would have been entitled without the limitation specified in subsection (1) of this section.

(3) If upon appeal such conviction is overturned, such individual shall be entitled to recover the benefits to which such individual would have been entitled except for the operation of subsection (1) of this section.

(4) This section shall not apply to benefits under articles 40 to 47 of this title to which an inmate of a department of corrections facility or a city, county, or city and county jail is entitled for injury or occupational disease arising out of and in the course of the inmate working, performing services, or participating in a training, rehabilitation, or work release program that has been certified by the federal prison industry enhancement certification program pursuant to the federal "Justice System Improvement Act of 1979", 18 U.S.C. sec. 1761 (c). The inmate shall be entitled to benefits in accordance with section 8-40-301 (3)(a).

Source: L. 90: Entire article R&RE, p. 495, § 1, effective July 1. **L. 99:** (1.5) added, p. 553, § 3, effective August 4. **L. 2010:** (1) amended and (4) added, (HB 10-1109), ch. 171, p. 606, § 2, effective August 11.

Editor's note: This section is similar to former § 8-52-104.5 as it existed prior to 1990.

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.

(b.5) (I) After the filing of a final admission of liability, except in cases of fraud, any attempt to recover an overpayment shall be asserted within one year after the time the requester knew of the existence of the overpayment.

(II) Subparagraph (I) of this paragraph (b.5), as enacted by Senate Bill 09-168, enacted in 2009, is declared to be procedural and was intended to and shall apply to all workers' compensation claims, regardless of the date the claim was filed.

(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.

Source: L. 97: Entire section added, p. 113, § 2, effective July 1. **L. 2009:** (1)(b.5) added, (SB 09-168), ch. 184, p. 806, § 2, effective August 5. **L. 2010:** (1)(b.5) amended, (SB 10-163), ch. 66, p. 231, § 2, effective March 31.

8-42-114. Death benefits. In case of death, the dependents of the deceased entitled thereto shall receive as compensation or death benefits sixty-six and two-thirds percent of the deceased employee's average weekly wages, not to exceed a maximum of ninety-one percent of the state average weekly wage per week for accidents occurring on or after July 1, 1989, and not less than a minimum of twenty-five percent of the applicable maximum per week. In cases

where it is determined that periodic death benefits granted by the federal old age, survivors, and disability insurance act or a workers' compensation act of another state or of the federal government are payable to an individual and the individual's dependents, the aggregate benefits payable for death pursuant to this section shall be reduced, but not below zero, by an amount equal to fifty percent of such periodic benefits.

Source: L. 90: Entire article R&RE, p. 495, § 1, effective July 1. **L. 91:** Entire section amended, p. 1351, § 4, effective May 29.

Editor's note: This section is similar to former § 8-50-103 as it existed prior to 1990.

8-42-115. Death from injury - benefits. (1) In case death proximately results from the injury, the benefits shall be in the amount and to the persons following:

(a) If there are no dependents, compensation shall be limited to the expenses provided for medical, hospital, and funeral expense of the deceased, together with such sums as may have accrued or been paid to the deceased during the deceased's lifetime for disability, and any amount or payment which is due under section 8-46-101.

(b) If there are wholly dependent persons at the time of death, the payment shall be in accordance with the provisions of section 8-42-114.

(c) If there are partially dependent persons at the time of death, the payment shall not exceed sixty-six and two-thirds percent of the average weekly wages, subject to the limitations of articles 40 to 47 of this title as to maximum and minimum weekly amounts, to continue for such period after the date of death as is required to pay, at the weekly rate, the total amount awarded by the director to be paid to such partially dependent persons.

Source: L. 90: Entire article R&RE, p. 495, § 1, effective July 1. **L. 2000:** (1)(a) amended, p. 821, § 1, effective May 24.

Editor's note: This section is similar to former § 8-50-111 as it existed prior to 1990.

8-42-116. When death not proximate result - benefits. (1) If death occurs to an injured employee, other than as a proximate result of any injury, before disability indemnity ceases and the deceased leaves persons wholly dependent upon the deceased for support, death benefits shall be as follows:

(a) Where the injury proximately caused permanent total disability, the death benefit shall consist of the unpaid and unaccrued portion of the permanent total disability benefit which the employee would have received had the employee lived until receiving compensation at the employee's regular rate for a period of six years.

(b) Where the injury proximately caused permanent partial disability, the death benefit shall consist of the unpaid and unaccrued portion of the permanent partial disability benefit which the employee would have received had he lived.

Source: L. 90: Entire article R&RE, p. 496, § 1, effective July 1.

Editor's note: This section is similar to former § 8-50-112 as it existed prior to 1990.

8-42-117. Benefits to partial dependents. (1) If death occurs to an injured employee, other than as a proximate result of the injury, before disability indemnity ceases and the deceased leaves persons partially dependent upon the deceased for support, death benefits shall be as follows:

(a) Where the injury proximately caused permanent total disability, the death benefit shall consist of that proportion of the unpaid and unaccrued portion of the permanent total disability benefit which the employee would have received had the employee lived until said employee had received compensation at the employee's regular rate for a period of six years as the amount devoted by the deceased to the support of such persons for the year immediately prior to the injury bears to the total income of the persons during said year.

(b) Where the injury caused permanent partial disability, the death benefit shall consist of that proportion of the unpaid and unaccrued portion of the permanent partial disability benefit which the employee would have received if the employee had lived as the amount devoted by the deceased to the support of such persons for the year immediately prior to the injury bears to the total income of the persons during said year.

Source: L. 90: Entire article R&RE, p. 496, § 1, effective July 1.

Editor's note: This section is similar to former § 8-50-113 as it existed prior to 1990.

8-42-118. Applicability of repeal of death benefits to nonresident dependents. The repeal of section 8-50-114, as said section existed prior to July 1, 1983, shall not affect the payments of death benefits which are being paid before July 1, 1983.

Source: L. 90: Entire article R&RE, p. 496, § 1, effective July 1.

Editor's note: This section is similar to former § 8-50-114.1 as it existed prior to 1990.

8-42-119. Partial dependents - compensation. Partial dependents shall be entitled to receive only that portion of the benefits provided for those wholly dependent which the average amount of the wages regularly contributed by the deceased to such partial dependents at and for a reasonable time immediately prior to the injury bore to the total income of the dependents during the same time. The director has power and discretion to determine the proper elements to be considered as income of said dependents in each particular case. Where there are persons both wholly dependent and partially dependent, only those wholly dependent shall be entitled to compensation.

Source: L. 90: Entire article R&RE, p. 496, § 1, effective July 1.

Editor's note: This section is similar to former § 8-50-104 as it existed prior to 1990.

8-42-120. Termination of right to benefits. Death benefits shall be paid to a dependent widow or widower for life or until remarriage, and, if there are no dependent children, as defined in section 8-41-501 (1)(b) and (1)(c), at the time of remarriage, a two-year lump-sum benefit without discount, less any lump sums previously paid, shall be paid to such widow or widower.

Death benefits shall terminate upon the happening of any of the following contingencies and shall thereupon survive to the remaining dependents, if any: Upon the death of any dependent; when a child or brother or sister of the deceased reaches the age of eighteen years, except as otherwise provided in sections 8-41-501 (1)(b) and (1)(c) and 8-41-502; and upon the expiration of six years from the date of the death of the injured employee in the case of partial dependents.

Source: L. 90: Entire article R&RE, p. 497, § 1, effective July 1. **L. 91:** Entire section amended, p. 1352, § 5, effective May 29.

Editor's note: This section is similar to former § 8-50-106 as it existed prior to 1990.

8-42-121. Director to determine and apportion benefits. Death benefits shall be paid to such one or more of the dependents of the decedent, for the benefit of all the dependents entitled to such compensation, as may be determined by the director, who may apportion the benefits among such dependents in such manner as the director may deem just and equitable. Payment to a dependent subsequent in right may be made, if the director deems it proper, which payment shall operate to discharge all other claims therefor. The dependents or persons to whom benefits are paid shall apply the same to the use of the several beneficiaries thereof according to their respective claims upon the decedent for support in compliance with the finding and direction of the director.

Source: L. 90: Entire article R&RE, p. 497, § 1, effective July 1.

Editor's note: This section is similar to former § 8-50-115 as it existed prior to 1990.

8-42-122. Minor dependents - safeguarding payments. In all cases of death where the dependents are minor children, it shall be sufficient for the surviving spouse or a friend to make application and claim on behalf of the minor children. The director, for the purpose of protecting the rights and interests of any dependents whom the director deems incapable of fully protecting their own interests, may deposit the payments in any type of account in state or national banks insured by the federal deposit insurance corporation or its successor, savings and loan associations that are insured by the federal deposit insurance corporation or its successor, or credit unions that are insured by the national credit union share insurance fund and may otherwise provide for the manner and method of safeguarding the payments due such dependents in such manner as the director sees fit.

Source: L. 90: Entire article R&RE, p. 497, § 1, effective July 1. **L. 2004:** Entire section amended, p. 148, § 50, effective July 1.

Editor's note: This section is similar to former § 8-50-116 as it existed prior to 1990.

8-42-123. Burial expenses. When, as a proximate result of an injury, death occurs to an injured employee, there shall be paid in one lump sum within thirty days after death a sum not to exceed seven thousand dollars for reasonable funeral and burial expenses. Said sum may be paid to the undertaker, cemetery, or any other person who has paid the funeral and burial costs, if the

director so orders. If the employee leaves no dependents, compensation shall be limited to said sum and the compensation, if any, which has accrued to date of death and the medical, surgical, and hospital expenses provided in articles 40 to 47 of this title. If the deceased employee leaves dependents, said sum shall be paid in addition to all other sums of compensation provided for in this article.

Source: L. 90: Entire article R&RE, p. 497, § 1, effective July 1. **L. 91:** Entire section amended, p. 1313, § 20, effective July 1. **L. 2000:** Entire section amended, p. 431, § 1, effective April 17.

Editor's note: This section is similar to former § 8-50-107 as it existed prior to 1990.

8-42-124. Assignability and exemption of claims - payment to employers - when. (1) Except for amounts due under court-ordered support or for a judgment for a debt for fraudulently obtained public assistance, fraudulently obtained overpayments of public assistance, or excess public assistance paid for which the recipient was ineligible, claims for compensation or benefits due, or any proceeds thereof, under articles 40 to 47 of this title shall not be assigned, released, or commuted except as provided in said articles and shall be exempt from all claims of creditors and from levy, execution, and attachment or other remedy or recovery or collection of a debt, which exemption may not be waived.

(2) The power given in any power of attorney or other authority from any injured employee or the dependents of any killed employee purporting to authorize any other person to receive, be paid, or receipt for any compensation benefits awarded any such claimant shall be wholly void and illegal and of no force and effect; except that:

(a) Any employer who is subject to the provisions of articles 40 to 47 of this title and who, by separate agreement, working agreement, contract of hire, or any other procedure, continues to pay a sum in excess of the temporary total disability benefits prescribed by articles 40 to 47 of this title to any employee temporarily disabled as a result of any injury arising out of and in the course of such employee's employment and has not charged the employee with any earned vacation leave, sick leave, or other similar benefits shall be reimbursed if insured by an insurance carrier or shall take credit if self-insured to the extent of all moneys that such employee may be eligible to receive as compensation or benefits for temporary partial or temporary total disability under the provisions of said articles, subject to the approval of the director. If the employee is injured while under a fixed duration contract of employment, all salary and wages paid pursuant to that contract shall be prorated over the duration of the contract in determining whether in any given week the employer paid a sum in excess of the temporary total disability benefit.

(b) This subsection (2) shall not apply to an attorney licensed to practice law in this state and acting in accordance with a power of attorney given by the claimant solely for the purpose of distributing funds pursuant to an admission of liability or an order of the division.

(3) Such payments shall be paid directly to the employer during the period of time that such employer continues to pay a sum in excess of the temporary total disability benefits prescribed by articles 40 to 47 of this title and has not charged any earned vacation leave, sick leave, or other similar benefits to any employee so disabled and for so long as such employee is eligible for temporary disability benefits under the provisions of articles 40 to 47 of this title.

The payment of such moneys to an employer shall constitute the payment of compensation or benefits to the employee in accordance with the provisions of section 8-42-103.

(4) When the payment by an employer to any such disabled employee is reduced to a sum equal to or less than the temporary total disability benefits prescribed by articles 40 to 47 of this title, or when the employer has charged the employee with any earned vacation leave, sick leave, or other similar benefits for any reason, the rights of the employee to receive direct payment of any award for temporary partial or temporary total disability that said employee may be entitled to on and after the effective date of such reduction shall be reinstated in accordance with the provisions of articles 40 to 47 of this title.

(5) Any employer subject to the provisions of articles 40 to 47 of this title and otherwise qualifying for direct payment of employee benefits as provided in this section shall notify the division and the insurance carrier of such employer's eligibility to receive such moneys. The director shall approve such direct payment after the filing of such information by the employer as the director may require.

(6) Nothing in this section shall be construed to limit in any way the right of any employee to full payment of any award which may be granted to said employee for permanent partial or permanent total disability under the provisions of articles 40 to 47 of this title; except that benefits for permanent total disability and permanent partial disability shall be subject to wage assignment or income assignment as wages pursuant to section 14-14-102 (9), C.R.S., and subject to garnishment as earnings pursuant to section 13-54.5-101 (2)(b), C.R.S., and subject to administrative lien and attachment pursuant to section 26-13-122, C.R.S., for purposes of enforcement of court-ordered child support and subject to garnishment as earnings pursuant to sections 13-54-104 (1)(b)(IV) and 13-54.5-101 (2)(d), C.R.S., for purposes of enforcement of a judgment for a debt for fraudulently obtained public assistance, fraudulently obtained overpayments of public assistance, or excess public assistance paid for which the recipient was ineligible.

(7) Following an injury, any injured employee may authorize in writing the continuation of any payroll deduction which the employee had authorized or could have authorized before the injury, which authorization shall be legal and may be honored by the employer to the extent that proceeds of compensation of claims are available to the employer or are made available to the employer by the employer's insurance carrier for this purpose until the authorization is revoked in writing by the injured employee.

(8) If any employer who pays to an injured employee a sum in excess of the temporary total disability benefits prescribed by articles 40 to 47 of this title and who has not charged the employee with any earned vacation leave, sick leave, or other similar benefits seeks to have assigned the compensation benefits otherwise due the injured employee as provided in this section, the employer shall notify the employee of said request at the same time the employer makes the request of the director or insurance carrier or both.

Source: L. 90: Entire article R&RE, p. 498, § 1, effective July 1. **L. 92:** (6) amended, p. 218, § 22, effective August 1. **L. 94:** (6) amended, p. 2048, § 6, effective June 3. **L. 96:** (6) amended, p. 621, § 29, effective July 1. **L. 2000:** (2) amended, p. 224, § 1, effective July 1. **L. 2001:** (6) amended, p. 720, § 1, effective May 31. **L. 2006:** (1) and (6) amended, p. 948, § 6, effective August 7. **L. 2007:** (1) amended, p. 879, § 9, effective May 14.

Editor's note: (1) This section is similar to former § 8-52-107 as it existed prior to 1990.

(2) Section 9 of chapter 208, Session Laws of Colorado 2006, provides that the act amending subsections (1) and (6) applies to judgments entered prior to, on, or after August 7, 2006.

Cross references: For the legislative intent contained in the 2006 act amending subsections (1) and (6), see section 8(2) of chapter 208, Session Laws of Colorado 2006. For the legislative declaration contained in the 2007 act amending subsection (1), see section 1 of chapter 226, Session Laws of Colorado 2007.

8-42-125. Data gathering on workers' compensation system. The governor and the leader of the opposing party in the house of representatives and the leader of the opposing party in the senate shall contract with a person or entity for obtaining information on the workers' compensation system. The person or entity gathering the information shall work solely at the unanimous direction of the governor and the opposition leadership. Issues or topics that will be subject to the information gathering process shall be determined by unanimous decision of the governor and the opposition leadership. The contractor for the gathering of the information shall have complete access to all records of and files in the division of workers' compensation and the office of administrative courts. Such contractor shall guarantee that any information gathered on any individual shall be kept confidential.

Source: L. 94: Entire section added, p. 2003, § 6, effective July 1. **L. 2005:** Entire section amended, p. 853, § 9, effective June 1.

ARTICLE 43

Procedure

Editor's note: This article was numbered as article 4 of chapter 81, C.R.S. 1963. The substantive provisions of this article were repealed and reenacted in 1990, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this article prior to 1990, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume. Former C.R.S. section numbers are shown in editors' notes following those sections that were relocated. For a detailed comparison of this article, see the comparative tables located in the back of the index.

PART 1

NOTICES AND REPORTS

8-43-101. Record of injuries - occupational disease - reported to division - rules. (1) Every employer shall keep a record of all injuries 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, upon forms prescribed by the division for that purpose, report said occupational disease, 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 that result in 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 and exposure the insurer shall report only by monthly summary form to or as otherwise requested by the division.

Source: L. 90: Entire article R&RE, p. 499, § 1, effective July 1. **L. 2005:** Entire section amended, p. 200, § 3, effective July 1. **L. 2006:** (2) amended, p. 1489, § 5, effective June 1.

Editor's note: This section is similar to former § 8-45-101 as it existed prior to 1990.

8-43-102. Notice to employer of injury - notice to employees of requirement - failure to report. (1) (a) Every employee who sustains an injury resulting from an accident shall notify said employee's employer in writing of the injury within four days of the occurrence of the injury. If the employee is physically or mentally unable to provide said notice, the employee's foreman, superintendent, manager, or any other person in charge who has notice of said injury shall submit such written notice to the employer. Any other person who has notice of said injury may submit a written notice to the said person in charge or to the employer, and in that event the injured employee shall be relieved of the obligation to give such notice. Otherwise, if said employee fails to report said injury in writing, said employee may lose up to one day's compensation for each day's failure to so report. If, at the time of said injury, the employer has failed to display the notice specified in paragraph (b) of this subsection (1), the time period allotted to the employee shall be tolled for the duration of such failure.

(b) Every employer shall display at all times in a prominent place on the workplace premises a printed card with a minimum height of fourteen inches and a width of eleven inches with each letter to be a minimum of one-half inch in height, which shall read as follows:

WARNING

IF YOU ARE INJURED ON THE JOB, WRITTEN NOTICE OF YOUR INJURY MUST BE GIVEN TO YOUR EMPLOYER WITHIN FOUR WORKING DAYS AFTER THE ACCIDENT, PURSUANT TO SECTION 8-43-102 (1), COLORADO REVISED STATUTES.

IF THE INJURY RESULTS FROM YOUR USE OF ALCOHOL OR CONTROLLED SUBSTANCES, YOUR WORKERS' COMPENSATION DISABILITY

BENEFITS MAY BE REDUCED BY ONE-HALF IN ACCORDANCE WITH SECTION 8-42-112.5, COLORADO REVISED STATUTES.

(1.5) (a) Every employee of an employer who has permission to be its own insurance carrier pursuant to section 8-44-201 or of an employer who participates in a public entity self-insurance pool pursuant to section 8-44-204 who sustains an injury resulting from an accident shall notify his employer in writing of said injury within four working days of the occurrence of the injury, unless the employer, or the employee's foreman, superintendent, or manager has written notice of said injury. If the employee is physically or mentally unable to provide said notice, the employee's foreman, superintendent, or manager, or any other person in charge who has written notice of said injury, shall submit such written notice to the employer. If said employee fails to report said injury in writing, such employee may lose up to one day's compensation for each day's failure to so report. Any other person who has notice of said injury may submit a written notice to the employer which report shall relieve the injured employee from reporting the accident. Any employer receiving written notice of an injury pursuant to this subsection (1.5) shall affix thereon the date and time of receipt of such notice and shall make a copy of such notice available to the injured employee within two working days following receipt of such notice.

(b) Every employer who has permission to be its own insurance carrier pursuant to section 8-44-201 or who participates in a public entity self-insurance pool pursuant to section 8-44-204 shall display at all times in a prominent place on the workplace premises a printed card with a minimum height of fourteen inches and a width of eleven inches with each letter to be a minimum of one-half inch in height, which shall read as follows:

WARNING

IF YOU ARE INJURED ON THE JOB, WRITTEN NOTICE OF YOUR INJURY MUST BE GIVEN TO YOUR EMPLOYER WITHIN FOUR WORKING DAYS AFTER THE ACCIDENT, PURSUANT TO SECTION 8-43-102 (1.5), COLORADO REVISED STATUTES.

IF THE INJURY RESULTS FROM YOUR USE OF ALCOHOL OR CONTROLLED SUBSTANCES, YOUR WORKERS' COMPENSATION DISABILITY BENEFITS MAY BE REDUCED BY ONE-HALF IN ACCORDANCE WITH SECTION 8-42-112.5, COLORADO REVISED STATUTES.

(2) Written notice of the contraction of an occupational disease shall be given to the employer by the affected employee or by someone on behalf of the affected employee within thirty days after the first distinct manifestation thereof. In the event of death from such occupational disease, written notice thereof shall be given to the employer within thirty days after such death. Failure to give either of such notices shall be deemed waived unless objection is made at a hearing on the claim prior to any award or decision thereon. Actual knowledge by an employer in whose employment an employee was last injuriously exposed to an occupational disease of the contraction of such disease by such employee and of exposure to the conditions causing it shall be deemed notice of its contraction. If the notice required in this section is not given as provided and within the time fixed, the director may reduce the compensation that would otherwise have been payable in such manner and to such extent as the director deems just, reasonable, and proper under the existing circumstances.

Source: L. 90: Entire article R&RE, p. 499, § 1, effective July 1; (1.5) added, p. 577, § 1, effective July 1. **L. 91:** Entire section amended, p. 1314, § 21, effective July 1. **L. 99:** (1)(b) and (1.5)(b) amended, p. 581, § 3, effective July 1.

Editor's note: This section is similar to former § 8-45-102 as it existed prior to 1990.

8-43-103. Notice of injury - time limit. (1) Notice of an injury, for which compensation and benefits are payable, shall be given by the employer to the division and insurance carrier, unless the employer is self-insured, within ten days after the injury, and, in case of the death of any employee resulting from any such injury or any accident in which three or more employees are injured, the employer shall give immediate notice thereof to the director. If no such notice is given by the employer, as required by articles 40 to 47 of this title, such notice may be given by any person. Any notice required to be filed by an injured employee or, if deceased, by said employee's dependents may be made and filed by anyone on behalf of such claimant and shall be considered as done by such claimant if not specifically disclaimed or objected to by such claimant in writing filed with the division within a reasonable time. Such notice shall be in writing and upon forms prescribed by the division for that purpose and served upon the division by delivering to, or by mailing by registered mail two copies thereof addressed to, the division at its office in Denver, Colorado. Upon receipt of such notice from a claimant, the division shall immediately mail one copy thereof to said employer or said employer's agent or insurance carrier.

(2) The director and administrative law judges employed by the office of administrative courts shall have jurisdiction at all times to hear and determine and make findings and awards on all cases of injury for which compensation or benefits are provided by articles 40 to 47 of this title. Except in cases of disability or death resulting from exposure to radioactive materials, substances, or machines or to fissionable materials, or any type of malignancy caused thereby, or from poisoning by uranium or its compounds, or from asbestosis, silicosis, and anthracosis, the right to compensation and benefits provided by said articles shall be barred unless, within two years after the injury or after death resulting therefrom, a notice claiming compensation is filed with the division. This limitation shall not apply to any claimant to whom compensation has been paid or if it is established to the satisfaction of the director within three years after the injury or death that a reasonable excuse exists for the failure to file such notice claiming compensation and if the employer's rights have not been prejudiced thereby, and the furnishing of medical, surgical, or hospital treatment by the employer shall not be considered payment of compensation or benefits within the meaning of this section; but, in all cases in which the employer has been given notice of an injury and fails, neglects, or refuses to report said injury to the division as required by the provisions of said articles, this statute of limitations shall not begin to run against the claim of the injured employee or said employee's dependents in the event of death until the required report has been filed with the division.

(3) In cases of disability or death resulting from exposure to radioactive materials, substances, or machines or to fissionable materials, or any type of malignancy caused thereby, or from poisoning by uranium or its compounds, or from asbestosis, silicosis, or anthracosis, the right to compensation and benefits shall be barred unless, within five years after the commencement of disability or death, a notice claiming compensation is filed with the division.

Source: L. 90: Entire article R&RE, p. 500, § 1, effective July 1. **L. 92:** (1) amended, p. 1825, § 3, effective April 29. **L. 94:** (2) amended, p. 1873, § 1, effective June 1. **L. 2005:** (2) amended, p. 854, § 10, effective June 1.

Editor's note: This section is similar to former § 8-52-105 as it existed prior to 1990.

8-43-104. Electronic filings - rules. (1) The rejection for technical errors by the division of any document, form, or notice that is filed electronically shall not affect the validity of the notice to the claimant or any other party.

(2) The director may promulgate rules concerning electronic filing of documents, forms, or notices in accordance with article 4 of title 24, C.R.S. Such rules shall be consistent with any policies, standards, and guidelines set forth by the office of information technology, created in section 24-37.5-103, C.R.S.

Source: L. 2003: Entire section added, p. 837, § 1, effective August 6. **L. 2007:** (2) amended, p. 910, § 1, effective May 17.

PART 2

SETTLEMENT AND HEARING PROCEDURES

8-43-201. Disputes arising under "Workers' Compensation Act of Colorado". (1) The director and administrative law judges employed by the office of administrative courts in the department of personnel shall have original jurisdiction to hear and decide all matters arising under articles 40 to 47 of this title; except that the following principles shall apply: A claimant in a workers' compensation claim shall have the burden of proving entitlement to benefits by a preponderance of the evidence; the facts in a workers' compensation case shall not be interpreted liberally in favor of either the rights of the injured worker or the rights of the employer; a workers' compensation case shall be decided on its merits; and a party seeking to modify an issue determined by a general or final admission, a summary order, or a full order shall bear the burden of proof for any such modification.

(2) The amendments made to subsection (1) of this section by Senate Bill 09-168, enacted in 2009, are declared to be procedural and were intended to and shall apply to all workers' compensation claims, regardless of the date the claim was filed.

(3) It is appropriate for the director or an administrative law judge to consider the medical treatment guidelines adopted under section 8-42-101 (3) in determining whether certain medical treatment is reasonable, necessary, and related to an industrial injury or occupational disease. The director or administrative law judge is not required to utilize the medical treatment guidelines as the sole basis for such determinations.

Source: L. 90: Entire article R&RE, p. 501, § 1, effective July 1. **L. 91:** Entire section amended, p. 1315, § 22, effective July 1. **L. 95:** Entire section amended, p. 635, § 13, effective July 1. **L. 2005:** Entire section amended, p. 854, § 11, effective June 1. **L. 2009:** Entire section amended, (SB 09-168), ch. 184, p. 807, § 3, effective August 5. **L. 2010:** Entire section

amended, (SB 10-163), ch. 66, p. 232, § 3, effective March 31. **L. 2014:** (3) added, (SB 14-191), ch. 316, p. 1371, § 1, effective July 1.

Editor's note: This section is similar to former § 8-53-101 as it existed prior to 1990.

Cross references: For judicial review of findings by the director, see § 8-1-130.

8-43-202. Director may refer taking of evidence in cases to appropriate officials of other states. The director, after notice to the parties in interest, may refer the taking of any evidence to any commission, court, or board administering in another state the compensation laws thereof, and such commission, court, or board of such other state, after notifying the parties in interest of the time and place of holding such hearing, shall hold hearings and take such evidence in the same manner and by the officers as authorized by the laws of such state, and all such proceedings shall be certified and return thereof made as prescribed by the director.

Source: L. 90: Entire article R&RE, p. 501, § 1, effective July 1. **L. 91:** Entire section amended, p. 1316, § 23, effective July 1. **L. 94:** Entire section amended, p. 1874, § 2, effective June 1.

Editor's note: This section is similar to former § 8-53-104 as it existed prior to 1990.

8-43-203. Notice concerning liability - notice to claimants - notice of rights and claims process - 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 a report is, or should have been, filed with the division pursuant to section 8-43-101, whether liability is admitted or contested; 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 sixty 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.

(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.

(1.5) (Deleted by amendment, L. 92, p. 1825, § 4, effective April 29, 1992.)

(2) (a) If such notice is not filed as provided in subsection (1) of this section, the employer or, if insured, the employer's insurance carrier, as the case may be, may become liable

to the claimant, if the claimant is successful on the claim for compensation, for up to one day's compensation for each day's failure to so notify; except that the employer or, if insured, the employer's insurance carrier shall not be liable for more than the aggregate amount of three hundred sixty-five days' compensation for failure to timely admit or deny liability. Fifty percent of any penalty paid pursuant to this subsection (2) shall be paid to the subsequent injury fund, created in section 8-46-101, and fifty percent to the claimant.

(b) (I) If the employer or, if insured, the employer's insurance carrier admits liability, such notice shall specify the amount of compensation to be paid, to whom compensation will be paid, the period for which compensation will be paid, and the disability for which compensation will be paid, and payment thereon shall be made immediately.

(II) (A) An admission of liability for final payment of compensation must include a statement that this is the final admission by the workers' compensation insurance carrier in the case, that the claimant may contest this admission if the claimant feels entitled to more compensation, to whom the claimant should provide written objection, and notice to the claimant that the case will be automatically closed as to the issues admitted in the final admission if the claimant does not, within thirty days after the date of the final admission, contest the final admission in writing and request a hearing on any disputed issues that are ripe for hearing, including the selection of an independent medical examiner pursuant to section 8-42-107.2 if an independent medical examination has not already been conducted. If an independent medical examination is requested pursuant to section 8-42-107.2, the claimant is not required to file a request for hearing on disputed issues that are ripe for hearing until the division's independent medical examination process is terminated for any reason. Any issue for which a hearing or an application for a hearing is pending at the time that the final admission of liability is filed shall proceed to the hearing without the need for the applicant to refile an application for hearing on the issue. This information must also be included in the admission of liability for final payment of compensation. The respondents have twenty days after the date of mailing of the notice from the division of the receipt of the IME's report to file an admission or to file an application for hearing. The claimant has thirty days after the date respondents file the admission or application for hearing to file an application for hearing, or a response to the respondents' application for hearing, as applicable, on any disputed issues that are ripe for hearing. The revised final admission, if any, must contain the statement required by this subparagraph (II), and the provisions relating to contesting the revised final admission apply. When the final admission is predicated upon medical reports, the reports must accompany the final admission.

(B) The amendments made to sub-subparagraph (A) of this subparagraph (II) by Senate Bill 09-168, enacted in 2009, are declared to be procedural and were intended to and shall apply to all workers' compensation claims, regardless of the date the claim was filed.

(c) No penalty may be assessed under this subsection (2) for failure to timely admit or deny liability if a request for such penalty is filed more than seven years after the alleged violation. The division shall retain original claim records filed with the division for at least seven years after closure of the case. Seven years after a case is closed, the records may only be used for reopening a settlement on the grounds of fraud or mutual mistake of material fact.

(d) Once a case is closed pursuant to this subsection (2), the issues closed may only be reopened pursuant to section 8-43-303. Upon proper showing in writing made within said times fixed therefor, the director may extend the time for filing such admission of liability or notice of

contest, but not exceeding ten days at any one time. Hearings may be set to determine any matter, but, if any liability is admitted, payments shall continue according to admitted liability.

(3) In addition to any other notice required by this section, at the time that the employer or, if insured, the employer's insurance carrier provides the notice required by subsection (1) of this section, the employer or insurance carrier shall provide to the claimant a brochure written in easily understood language, in a form developed by the director after consultation with employers, insurance carriers, and representatives of injured workers, describing the claims process and informing the claimant of his or her rights. If the claimant has previously authorized the employer or, if insured, the employer's insurance carrier to communicate with the claimant through electronic transmission, the brochure may be sent to the claimant electronically. The brochure shall, at a minimum, contain the following information:

(a) Who the claimant may contact with questions concerning the claim, the claims process, and assistance with the claim, including:

(I) The insurance carrier or employer;

(II) The division and the website for the division;

(III) The office of administrative courts and the website for the office; and

(IV) An attorney hired at the expense of the claimant;

(b) The claimant's right to receive medical care for work-related injuries or occupational diseases paid for by the employer or the employer's insurance carrier including:

(I) That most claimants have a right to choose from a list of at least two different doctors;

(II) That most claimants have a right to change doctors one time within ninety days after the injury and all claimants have the right to request a change of doctor at other times under certain other circumstances;

(III) The claimant's doctor's right to refer the claimant to other medical providers and specialists to provide the reasonable and necessary medical care that the claimant's work-related injuries or illness require;

(IV) The claimant's right to discuss with his or her doctor who should be present during a claimant's medical appointment, and the right to refuse to have a nurse case manager employed on the claimant's claim present at the claimant's medical appointment;

(V) The claimant's right to see and have copies of all of the claimant's medical records related to the medical care the claimant received for his or her work-related injury or illness;

(VI) The claimant's right to seek medical care and medical opinions about the claimant's work-related injury at the claimant's own expense;

(VII) The claimant's right to a medical examination by a doctor chosen by the claimant or by the division at the claimant's expense;

(VIII) The claimant's right to a permanent impairment evaluation after the claimant's treating doctors determine that the claimant has reached maximum medical improvement; and

(IX) The claimant's right to be informed whether medical care after maximum medical improvement will be provided and to receive reasonable continued medical care if it is necessary to maintain maximum medical improvement;

(c) A description of the claimant's right to receive benefit payments, including the claimant's right to receive:

(I) Wage replacement payments in the form of temporary total disability payments or temporary partial disability payments;

(II) Permanent impairment benefits if the claimant is left with a permanent impairment as a result of a work-related injury or disease;

(III) Disfigurement payments for permanent scarring or disfigurement caused by the claimant's work-related injury or surgery required because of the claimant's work-related injury; and

(IV) Mileage expenses for travel to and from work-related medical care and to and from pharmacies to obtain medical prescriptions for work-related medical care;

(d) A description of how the claims process works, including:

(I) The claimant's right to file a claim for workers' compensation with the division within two years after the date of the claimant's injury or occupational disease;

(II) The claimant's right to receive a general admission of liability or notice of contest once the claim has been properly reported to the division;

(III) The claimant's right to verify that the claimant's average weekly wage payments for temporary total disability have been properly calculated by the claimant's employer or the employer's insurance carrier;

(IV) The claimant's right to prehearings and hearings on disputed issues;

(V) The claimant's right to present evidence, testify, introduce medical and other records, present witnesses, and make arguments at any hearing;

(VI) The claimant's right to object to and request a hearing on any final admission of liability within thirty days after the mailing of the admission in order to retain certain rights;

(VII) The claimant's right to challenge a finding of an impairment rating or maximum medical improvement in a final admission of liability within thirty days after the mailing of the admission in order to retain certain rights;

(VIII) The claimant's right to pursue penalties for violations of the law including late payment of benefits or improper refusal to pay benefits;

(IX) The claimant's right, subject to certain requirements, to reopen a claim within six years after the date of the injury or illness or within two years after the date of the last receipt of medical or wage benefits; and

(X) A description of other rights conferred upon a claimant pursuant to law or rule.

(4) Within fifteen days after the mailing of a written request for a copy of the claim file, the employer or, if insured, the employer's insurance carrier or third-party administrator shall provide to the claimant or his or her representative a complete copy of the claim file that includes all medical records, pleadings, correspondence, investigation files, investigation reports, witness statements, information addressing designation of the authorized treating physician, and wage and fringe benefit information for the twelve months leading up to the date of injury and thereafter, regardless of the format. If a privilege or other protection is claimed for any materials, the materials must be detailed in an accompanying privilege log.

Source: L. 90: Entire article R&RE, p. 501, § 1, effective July 1. **L. 91:** (1.5) added, p. 1316, § 24, effective July 1. **L. 92:** (1) and (1.5) amended, p. 1825, § 4, effective April 29. **L. 96:** (2) amended, p. 830, § 1, effective July 1. **L. 97:** (1) amended, p. 113, § 3, effective July 1. **L. 98:** (2)(b) amended, p. 1431, § 3, effective August 5. **L. 2001:** (2)(b)(II) amended, p. 49, § 1, effective March 11. **L. 2003:** (2)(b)(II) amended, p. 1956, § 1, effective May 22; (1)(a) amended, p. 837, § 2, effective August 6. **L. 2005:** (1)(a) amended, p. 200, § 4, effective July 1. **L. 2009:** (2)(b)(II) amended, (SB 09-168), ch. 184, p. 807, § 4, effective August 5. **L. 2010:** (2)(b)(II)

amended, (SB 10-163), ch. 66, p. 232, § 4, effective March 31; (3) added, (HB 10-1038), ch. 275, p. 1258, § 1, effective May 26. **L. 2013:** (4) added, (SB 13-285), ch. 301, p. 1594, § 4, effective July 1; (2)(b)(II)(A) amended, (SB 13-249), ch. 267, p.1409, § 2, effective August 7. **L. 2016:** (1)(a) amended, (SB 16-217), ch. 272, p. 1128, § 3, effective July 1.

Editor's note: This section is similar to former § 8-53-102 as it existed prior to 1990.

Cross references: For the legislative declaration in SB 16-217, see section 1 of chapter 272, Session Laws of Colorado 2016.

8-43-204. Settlements - rules. (1) An injured employee may settle all or part of any claim for compensation, benefits, penalties, or interest. If such settlement provides by its terms that the employee's claim or award shall not be reopened, such settlement shall not be subject to being reopened under any provisions of articles 40 to 47 of this title other than on the ground of fraud or mutual mistake of material fact.

(2) Such a settlement shall be in writing and shall be signed by a representative of the employer or insurer and signed and sworn to by the injured employee. For claims that have a settlement amount of seventy-five thousand dollars or more, a written notice of the settlement agreement shall be provided to the employer.

(3) The settlement shall be reviewed in person with the injured employee and approved in writing by an administrative law judge or the director of the division prior to the finalization of such settlement. The settlement shall be filed with the division as a part of the injured employee's permanent record.

(4) If an employee owes child support and a garnishment has been filed pursuant to section 13-54.5-101, C.R.S., or the state child support enforcement agency has filed a notice of administrative lien and attachment pursuant to section 26-13-122, C.R.S., with the insurer or self-insured employer, all proceeds of any award, lump sum settlement, and the indemnity portion of any structured settlement shall be subject to said garnishment or administrative lien and attachment. Proceeds up to the amount of the garnishment or administrative lien and attachment shall be paid as directed on the notice to the obligee or to the state child support enforcement agency on behalf of the obligee to whom support is owed.

(5) If an employee owes a debt for which a writ is issued as a result of a judgment for fraudulently obtained public assistance, fraudulently obtained overpayments of public assistance, or excess public assistance paid for which the recipient was ineligible and a garnishment has been filed pursuant to section 13-54-104 or 13-54.5-101 with the insurer or self-insured employer, all proceeds of any award, lump sum settlement, and the indemnity portion of any structured settlement are subject to the garnishment. Proceeds up to the amount of the garnishment shall be paid as directed by the county department of human or social services responsible for administering the state public assistance programs.

(6) To aid in settlement, the director shall review mortality tables from the United States government and private industry and issue rules establishing a single life expectancy table on July 1 in every even-numbered year, commencing July 1, 2010. The director may adopt current mortality tables used by medicare. Nothing in this subsection (6) shall be construed to limit the use of rated ages.

(7) Any lump sum payable as a full or partial settlement shall be paid to the claimant or the claimant's attorney within fifteen calendar days after the date the executed settlement order is received by the carrier or the noninsured or self-insured employer.

(8) The director shall adopt rules as necessary to implement the procedure to review and approve settlement documents. At a minimum, the rules must:

(a) Allow a represented claimant to submit settlement documents for approval by electronic mail;

(b) Provide for the approval of settlement documents if the claimant's signature is not an original but is notarized; and

(c) Require the division to electronically mail to counsel of record, or to the insurance carrier or self-insured employer if not represented, a copy of the division's order approving the settlement agreement of the parties.

Source: L. 90: Entire article R&RE, p. 502, § 1, effective July 1. **L. 98:** Entire section amended, p. 530, § 1, effective April 30. **L. 2001:** Entire section amended, p. 720, § 2, effective May 31. **L. 2006:** (5) added, p. 949, § 7, effective August 7. **L. 2010:** (6) and (7) added, (SB 10-163), ch. 66, p. 233, § 5, effective March 31. **L. 2014:** (8) added, (SB 14-191), ch. 316, p. 1371, § 2, effective July 1. **L. 2018:** (5) amended, (SB 18-092), ch. 38, p. 397, § 3, effective August 8.

Editor's note: (1) This section is similar to former § 8-53-105 as it existed prior to 1990.

(2) Section 9 of chapter 208, Session Laws of Colorado 2006, provides that the act enacting subsection (5) applies to judgments entered prior to, on, or after August 7, 2006.

Cross references: (1) For the legislative intent contained in the 2006 act enacting subsection (5), see section 8(2) of chapter 208, Session Laws of Colorado 2006.

(2) For the legislative declaration in SB 18-092, see section 1 of chapter 38, Session Laws of Colorado 2018.

8-43-205. Mediation. (1) Any party involved in a claim arising under articles 40 to 47 of this title may request mediation services by filing a request for mediation services with the division. However, mediation shall be entirely voluntary and shall not be conducted without the consent of all parties to the claim. If a request for mediation services is made after an application for a hearing has been filed, the administrative law judge hearing the dispute shall approve, on motion of the parties, the submission of the dispute to mediation prior to hearing the matter. An application for mediation services shall be filed on a form prescribed by the director. Upon receiving the application for mediation services, the director shall cause a mediation conference to occur within thirty days thereafter. At a mediation conference, the claimant may be represented by the claimant, counsel, or any other agent of the claimant's choice. Mediators need not be attorneys.

(2) Mediation proceedings conducted pursuant to this section shall be considered to be settlement negotiations and are confidential. No admission, representation, or statement made in the course of such mediation proceedings that is not otherwise subject to discovery or otherwise obtainable under the procedures established in articles 40 to 47 of this title shall be admissible as evidence or subject to discovery under said articles. No mediator who participates in mediation

proceedings conducted pursuant to this section shall be compelled or permitted to testify about any matter discussed or revealed during such proceedings in any other proceeding under articles 40 to 47 of this title.

(3) The division shall develop a program to implement the provisions of this section. Such program shall be a simple, nonadversarial method for the mediation of disputes arising under articles 40 to 47 of this title. Such program shall provide for the use of neutral mediators and the conduct of proceedings in an informal setting. The director shall adopt rules and regulations to implement such program.

Source: L. 90: Entire article R&RE, p. 502, § 1, effective July 1. **L. 91:** (1) amended, p. 1316, § 25, effective July 1. **L. 94:** (1) amended, p. 1874, § 3, effective June 1.

Editor's note: This section is similar to former § 8-53-105.5 as it existed prior to 1990.

8-43-206. Settlement conference procedures. (1) Any employee, insurer, or employer, if self-insured, involved in a dispute arising under articles 40 to 47 of this title may request settlement conference services from the director or the office of administrative courts in the department of personnel. However, such settlement procedures are optional and entirely voluntary, and no such procedures shall be conducted without the consent of both parties to the dispute.

(2) Settlement conferences shall be conducted by a settlement conference officer who may be a prehearing administrative law judge or an administrative law judge in the office of administrative courts in the department of personnel appointed pursuant to section 24-30-1003, C.R.S., and assigned to hear disputes arising under articles 40 to 47 of this title. The parties may agree on the selection of a settlement conference officer; except that such officer shall not be the administrative law judge who is regularly assigned to hear the employee's case. If the parties fail to agree on the selection of such officer, they may apply to the director or to the office of administrative courts for the designation of a settlement conference officer who shall not be the administrative law judge who is regularly assigned to hear the employee's case.

(3) Settlement conference proceedings conducted pursuant to this section shall be considered to be settlement negotiations and are confidential. No admission, representation, or statement made in the course of such settlement conference proceedings that is not otherwise subject to discovery or otherwise obtainable under the procedures established in articles 40 to 47 of this title shall be admissible as evidence or subject to discovery under said articles. No settlement conference officer who participates in settlement conference proceedings conducted pursuant to this section shall be compelled or permitted to testify about any matter discussed or revealed during such proceedings in any other proceeding under articles 40 to 47 of this title.

(4) The executive director of the department of personnel shall adopt rules and regulations to implement the provisions of this section. Such rules and regulations shall be consistent with the provisions of section 8-43-204.

(5) The director of the division of workers' compensation shall adopt rules and regulations to implement the provisions of this section. Such rules and regulations shall be consistent with the provisions of section 8-43-204.

Source: L. 90: Entire article R&RE, p. 503, § 1, effective July 1. **L. 94:** (1) and (2) amended and (5) added, p. 1875, § 4, effective June 1. **L. 95:** (1), (2), and (4) amended, p. 635, § 14, effective July 1. **L. 2005:** (1) and (2) amended, p. 854, § 12, effective June 1.

Editor's note: This section is similar to former § 8-53-105.6 as it existed prior to 1990.

8-43-206.5. Right to binding arbitration for resolution of disputes under articles 40 to 47. At any time prior to a hearing, the parties may agree to submit any dispute under articles 40 to 47 of this title to binding arbitration. Said arbitration shall be by an administrative law judge of the parties' choice or pursuant to arbitration procedures as provided by the Colorado rules of civil procedure. Any arbitration award pursuant to the provisions of this section shall be binding upon the parties, and no other procedure contained in this article shall be available to the parties for the further review of such award.

Source: L. 91: Entire section added, p. 1317, § 26, effective July 1. **L. 94:** Entire section amended, p. 1875, § 5, effective June 1.

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:

(a) In the name of the division, issue subpoenas for witnesses and documentary evidence which shall be served in the same manner as subpoenas in the district court;

(b) Administer oaths;

(c) Make evidentiary rulings;

(d) Limit or exclude cumulative or repetitive proof or examination;

(e) Upon written motion and for good cause shown, permit parties to engage in discovery; except that permission need not be sought if each party is represented by an attorney. The director or administrative law judge may rule on discovery matters and impose the sanctions provided in the rules of civil procedure in the district courts for willful failure to comply with permitted discovery.

(f) Upon written motion and for good cause shown, conduct prehearing conferences for the settlement or simplification of issues;

(g) Dispose of procedural requests upon written motion or on written briefs or oral arguments as determined appropriate;

(h) Control the course of the hearing and the conduct of persons in the hearing room;

(i) Upon written motion and for good cause shown, grant reasonable extensions of time for the taking of any action contained in this article;

(j) Upon good cause shown, adjourn any hearing to a later date for the taking of additional evidence;

(k) Issue orders;

(l) Appoint guardians ad litem, as appropriate, in matters involving dependents' claims, and assess the reasonable fees and costs, therefore, from one or more of the parties;

(m) Determine the competency of witnesses who testify in a workers' compensation hearing or proceeding and the competency of parties that have entered into settlement

agreements pursuant to section 8-43-204. Such competency determinations shall only be for the purpose of the particular workers' compensation proceeding.

(n) Dismiss all issues in the case except as to resolved issues and except as to benefits already received, upon thirty days notice to all the parties, for failure to prosecute the case unless good cause is shown why such issues should not be dismissed. For purposes of this paragraph (n), it shall be deemed a failure to prosecute if there has been no activity by the parties in the case for a period of at least six months.

(o) Set aside all or any part of any fee for medical services rendered pursuant to articles 40 to 47 of this title if an administrative law judge determines after a hearing that, based upon a review of the medical necessity and appropriateness of care provided pursuant to said articles, any such fee is excessive or that the treatment rendered was not necessary or appropriate under the circumstances. If all or part of any fee for medical services is set aside pursuant to this paragraph (o), the provider of any such services shall not contract with, bill, or charge the claimant for such fees and shall not attempt in any way to collect any such charges from the claimant. No fee for medical services shall be set aside pursuant to this paragraph (o) if the treatment was authorized in writing by the insurer or employer.

(p) Impose the sanctions provided in the Colorado rules of civil procedure, except for civil contempt pursuant to rule 107 thereof, for willful failure to comply with any order of an administrative law judge issued pursuant to articles 40 to 47 of this title;

(q) Require repayment of overpayments.

Source: L. 90: Entire article R&RE, p. 504, § 1, effective July 1. **L. 91:** (1)(e) and(1)(n) amended and (1)(o) and (1)(p) added, p. 1317, § 27, effective July 1. **L. 97:** (1)(q) added, p. 114, § 4, effective July 1. **L. 98:** (1)(e) amended, p. 147, § 1, effective April 2. **L. 2011:** (1)(e) amended, (SB 11-199), ch. 196, p. 759, § 2, effective May 23.

Editor's note: This section is similar to former § 8-53-103 as it existed prior to 1990.

8-43-207.5. Prehearing conferences. (1) Notwithstanding any provision of articles 40 to 47 of this title to the contrary, at any time not less than ten days prior to the formal adjudication on the record of any issue before the director or an administrative law judge in the office of administrative courts, any party to a claim may request a prehearing conference before a prehearing administrative law judge in the division of workers' compensation for the speedy resolution of or simplification of any issues and to determine the general readiness of remaining issues for formal adjudication on the record. The issues addressed in such prehearing conference shall be limited to: Ripeness of legal, but not factual, issues for formal adjudication on the record before the director or an administrative law judge in the office of administrative courts; discovery matters; and evidentiary disputes. The filing of an application for hearing with the office of administrative courts shall not be a prerequisite to a request for a prehearing conference under this section. The director and the administrative law judges in the office of administrative courts may also request a prehearing conference under this section.

(2) "Prehearing administrative law judge" means a qualified person appointed by the director pursuant to section 8-47-101 to preside over prehearing conferences pursuant to this section, to approve settlements pursuant to section 8-43-204, to conduct settlement conferences pursuant to section 8-43-206, and to conduct arbitrations pursuant to section 8-43-206.5. Such

prehearing administrative law judges shall have authority to: Order any party to participate in a prehearing conference; issue interlocutory orders; issue subpoenas in the name of the division for production of documentary evidence which shall be served in the same manner as subpoenas in the district court; make evidentiary rulings; permit parties to cause depositions to be taken; determine the competency of any party to a claim to enter into a settlement agreement; and strike the application for hearing of a party for failure to comply with any provision of this section.

(3) An order entered by a prehearing administrative law judge shall be an order of the director and binding on the parties. Such an order shall be interlocutory. Prehearing conferences need not be held on the record; however, any party to a claim may request in advance that a record be made of the prehearing conference, either taken verbatim by a court reporter provided and paid for by the requesting party or electronically recorded by the division.

(4) The director shall adopt rules and regulations as may be necessary to implement the provisions of this section.

Source: L. 94: Entire section added, p. 1875, § 6, effective June 1. **L. 2005:** (1) amended, p. 855, § 13, effective June 1.

8-43-208. Investigations. (1) For the purpose of making any investigation with regard to any matter contemplated by the provisions of articles 40 to 47 of this title, the director shall have power to appoint, with the approval of the executive director by an order in writing, any competent person as an agent whose duties shall be prescribed in such order.

(2) (Deleted by amendment, L. 94, p. 1876, § 7, effective June 1, 1994.)

(3) The director may conduct any number of such investigations contemporaneously through different agents.

Source: L. 90: Entire article R&RE, p. 505, § 1, effective July 1. **L. 94:** Entire section amended, p. 1876, § 7, effective June 1.

Editor's note: This section is similar to former § 8-46-107 as it existed prior to 1990.

8-43-209. Time schedule for hearings - establishment. (1) Hearings must commence within one hundred twenty days from the date of the notice of setting by the director pursuant to section 8-43-211 (2)(a) or of the date shown on the certificate of service accompanying the request, notice, or application by a party or the party's attorney pursuant to section 8-43-211 (2)(b) or (2)(c). Upon agreement of the parties, an administrative law judge shall grant one extension of time, not exceeding sixty days, to commence the hearing.

(2) One extension of time to commence the hearing of no more than sixty days may be granted by an administrative law judge upon written request by any party to the case and for good cause shown, in the following cases: When pulmonary lung disease, cancer, cardiovascular disease, or stroke is alleged as the cause of the disability; when the subsequent injury fund is a party; when permanent total disability is alleged; upon agreement of the parties; or when compensability of the injury is contested. In all other cases, extensions of time to commence the hearing of no more than twenty days may be granted by an administrative law judge upon written request by any party to the case and for good cause shown.

(3) Once the hearing is commenced, the administrative law judge may, for good cause shown, continue the hearing to a date certain to take additional testimony, to file an additional medical report, to file the transcript of a deposition, or to file a position statement. Except upon the agreement of all parties or for good cause shown, a continuance to complete a hearing shall not exceed thirty calendar days.

Source: L. 90: Entire article R&RE, p. 505, § 1, effective July 1. **L. 91:** Entire section amended, p. 1318, § 28, effective July 1. **L. 94:** Entire section amended, p. 1877, § 8, effective June 1. **L. 2003:** Entire section amended, p. 1957, § 2, effective May 22. **L. 2005:** (1) amended, p. 855, § 14, effective June 1. **L. 2007:** Entire section amended, p. 1473, § 4, effective May 30. **L. 2014:** (1) amended, (SB 14-191), ch. 316, p. 1372, § 3, effective July 1.

Editor's note: This section is similar to former § 8-53-130 as it existed prior to 1990.

8-43-210. Evidence. Notwithstanding section 24-4-105, C.R.S., the Colorado rules of evidence and requirements of proof for civil nonjury cases in the district courts shall apply in all hearings; except that medical and hospital records, physicians' reports, vocational reports, and records of the employer are admissible as evidence and can be filed in the record as evidence without formal identification if relevant to any issue in the case. Depositions may be substituted for testimony upon good cause shown. Convictions for alcohol-related offenses, pursuant to titles 18 and 42, C.R.S., the transcripts of proceedings leading to such convictions, and the court files relating to such convictions may be admissible in all hearings conducted under the "Workers' Compensation Act of Colorado", articles 40 to 47 of this title, where such conviction resulted from the same occurrence, accident, or injury occurring on the job that forms the basis for the workers' compensation claim. All relevant medical records, vocational reports, expert witness reports, and employer records shall be exchanged with all other parties at least twenty days prior to the hearing date.

Source: L. 90: Entire article R&RE, p. 505, § 1, effective July 1; entire section amended, p. 578, § 2, effective July 1. **L. 99:** Entire section amended, p. 994, § 1, effective May 29. **L. 2007:** Entire section amended, p. 1473, § 5, effective May 30.

Editor's note: This section is similar to former § 8-53-115 as it existed prior to 1990.

8-43-211. Notice - request for hearing. (1) At least thirty days before any hearing, the office of administrative courts in the department of personnel shall send written notice to all parties by regular or electronic mail or by facsimile. The notice must:

(a) Give the time, date, and place of the hearing;

(b) Inform the parties that they must be prepared to present their evidence concerning the issues to be heard;

(c) Inform the parties that they have the right to be represented by an attorney or other person of their choice at the hearing.

(2) Hearings shall be set by the office of administrative courts in the department of personnel within eighty to one hundred twenty days after any of the following occur:

(a) The director sets any issue for hearing. The director may expedite the hearing for good cause shown.

(b) Any party requests a hearing on issues ripe for adjudication by filing a written request with the office of administrative courts in the department of personnel on forms provided by the office. The request shall be mailed to all parties at the time they are filed with the office of administrative courts. After the filing of the requests, the office of administrative courts in the department of personnel shall set the matter for hearing insofar as is practicable in the order in which requests are received by the office of administrative courts.

(c) Any party or the attorney of such party sends notice to set a hearing on issues ripe for adjudication to opposing parties or their attorneys. The director of the office of administrative courts shall determine the place and time or times during which settings can be made. At such setting, the party requesting the setting shall submit a completed request for hearing form. Any notice to set shall be mailed to opposing parties at least ten days prior to the setting date.

(3) If an attorney requests a hearing or files a notice to set a hearing on an issue that is not ripe for adjudication at the time the request or filing is made, the attorney may be assessed the reasonable attorney fees and costs of the opposing party in preparing for the hearing or setting. The requesting party must prove its attempt to have an unripe issue stricken by a prehearing administrative law judge to request fees or costs. Requested fees or costs incurred after a prehearing conference may only be awarded if they are directly caused by the listing of the unripe issue.

(4) Except in claims in which compensability is contested or a hearing is requested in response to a final admission of liability or to overcome a conclusion in a division-sponsored independent medical examination, the party filing an application for a hearing shall certify on the application that the party attempted to resolve with the other parties all issues listed in the application for a hearing.

Source: L. 90: Entire article R&RE, p. 505, § 1, effective July 1. **L. 91:** Entire section amended, p. 1319, § 29, effective July 1. **L. 95:** IP(1), IP(2), and (2)(b) amended, p. 636, § 15, effective July 1. **L. 2003:** (2)(e) added, p. 1957, § 3, effective May 22. **L. 2005:** IP(1), IP(2), (2)(b), and (2)(c) amended, p. 855, § 15, effective June 1. **L. 2007:** (2)(e) amended, p. 1474, § 6, effective May 30. **L. 2009:** IP(1) amended, (HB 09-1150), ch. 309, p. 1665, § 1, effective August 5. **L. 2013:** (2)(d) amended, (SB 13-285), ch. 301, p. 1594, § 5, effective July 1. **L. 2014:** Entire section amended, (SB 14-191), ch. 316, p. 1372, § 4, effective July 1.

Editor's note: This section is similar to former § 8-53-109 as it existed prior to 1990.

8-43-212. Compulsion of testimony. When any person upon whom a subpoena issued in the name of the division has been served fails or refuses to appear, the party who requested the subpoena may apply to the district court in the county in which the person served resides for an order compelling attendance before the division of the witness or the production of the documents subpoenaed. Violation of such an order shall be treated as contempt of the court issuing the order.

Source: L. 90: Entire article R&RE, p. 506, § 1, effective July 1.

Editor's note: This section is similar to former § 8-53-108 as it existed prior to 1990.

8-43-213. Transcripts. (1) All testimony and argument of all hearings held pursuant to section 8-43-207 concerning any issue arising under articles 40 to 47 of this title shall either be taken verbatim by a hearing reporter or shall be electronically recorded by the division.

(2) Any party in interest may order a transcript at any time from a hearing reporter, a court reporter provided by any party, or, if the hearing is recorded, from the division. For purposes of a petition to review, a transcript shall be all testimony taken that is relevant to the issue being appealed. In the preparation of transcripts, hearing reporters shall give preference to transcripts as part of the record in a petition to review; except that all transcripts shall be prepared and filed with the office of administrative courts within twenty-five working days after the date they were ordered. Hearing reporters shall be paid for transcripts and copies at the rate set by the supreme court for reporters in courts of record. If a court reporter is unable to meet the time limit specified in this section, any party, at its own expense, or the administrative law judge may contract with another court reporter to ensure the timely preparation of transcripts.

(3) Upon a satisfactory showing to the director in writing that a party petitioning to review is indigent and unable to pay for the preparation of the transcript, the director may order a transcript to be prepared at the division's expense, and, if the transcript was prepared by a hearing reporter, the division shall pay the hearing reporter the fee therefor.

(4) When a transcript is ordered as part of the record on a petition to review, the original of the transcript shall be filed with the division where it shall be available to all parties in interest.

Source: L. 90: Entire article R&RE, p. 506, § 1, effective July 1. **L. 91:** (2) amended, p. 1320, § 30, effective July 1. **L. 2005:** (2) amended, p. 856, § 16, effective June 1.

Editor's note: This section is similar to former § 8-53-106 as it existed prior to 1990.

8-43-214. Transcript certified - evidence. A transcribed copy of the evidence and proceedings, or any specific part thereof, of any investigation or hearing which was prepared at the direction of the director shall be certified by the hearing reporter, or the division if the hearing was recorded, to be a true and correct transcript of the testimony on the investigation or hearing of a particular witness, or a specific part thereof, carefully compared to original notes or to the original recording, and to be a correct statement of the evidence and proceedings had on such investigation or hearing. A transcribed copy which is so certified may be received as evidence by the director, the panel, and any court with the same effect as if the person who prepared the transcript were present and testified to the facts so certified.

Source: L. 90: Entire article R&RE, p. 506, § 1, effective July 1.

Editor's note: This section is similar to former § 8-53-107 as it existed prior to 1990.

8-43-215. Orders. (1) No more than fifteen working days after the conclusion of a hearing, the administrative law judge or director shall issue a written order allowing or denying the claim. The written order must either be a summary order or a full order. A full order must

contain specific findings of fact and conclusions of law. If compensation benefits are granted, the written order must specify the amounts thereof, the disability for which compensation benefits are granted, by whom and to whom such benefits are to be paid, and the method and time of the payments. A certificate of mailing and a copy of the written order shall be served by regular or electronic mail or by facsimile to each of the parties in interest or their representatives, the original of which is a part of the records in the case. If an administrative law judge has issued a summary order, a party dissatisfied with the order may make a written request for a full order within ten working days after the date of mailing of the summary order. The request is a prerequisite to review under section 8-43-301. If a request for a full order is made, the administrative law judge has ten working days after receipt of the request to issue the order. A full order shall be entered as the final award of the administrative law judge or director subject to review as provided in this article.

(2) Repealed.

Source: L. 90: Entire article R&RE, p. 507, § 1, effective July 1. **L. 91:** Entire section amended, p. 1320, § 31, effective July 1. **L. 92:** Entire section amended, p. 1804, § 1, effective April 16. **L. 94:** Entire section amended, p. 1877, § 9, effective June 1. **L. 2000:** Entire section amended, p. 480, § 1, effective April 28. **L. 2007:** (1) amended, p. 1474, § 7, effective May 30. **L. 2008:** (1) amended, p. 1880, § 9, effective August 5. **L. 2014:** (1) amended, (SB 14-191), ch. 316, p. 1373, § 5, effective July 1.

Editor's note: (1) This section is similar to former § 8-53-110 as it existed prior to 1990.

(2) Subsection (2)(b) provided for the repeal of subsection (2), effective July 1, 2004. (See L. 2000, p. 480.)

8-43-216. Frivolous claims for compensation - repeal. (Repealed)

Source: L. 91: Entire section added, p. 1321, § 32, effective July 1.

Editor's note: Subsection (3) provided for the repeal of this section, effective March 1, 1996. (See L. 91, p. 1321.)

8-43-217. Claims management - legislative declaration. The general assembly hereby finds, determines, and declares that active management of workers' compensation claims should be practiced in order to expedite and simplify the processing of claims, reduce litigation, and better serve the public.

Source: L. 91: Entire section added, p. 1321, § 32, effective July 1.

8-43-218. Authority of director. (1) The director shall have authority to appoint claims managers to review, audit, and close cases, to educate, inform, and assist the public as to the workers' compensation system, to promote speedy and uncomplicated problem resolution of workers' compensation matters, and to otherwise manage claims.

(2) The director may require any party to a workers' compensation claim to attend, cooperate, and comply with the efforts of claims managers in managing claims or complaints received by the division.

(3) Any party willfully refusing to cooperate or comply with claims management efforts of the division shall be subject to the penalty provisions set forth in section 8-43-304 and to the denial or vacation of a hearing date.

(4) Any violation of any provision of this section shall be cause for the rejection of an application for hearing or a response thereto until such time as the violation is cured.

Source: L. 91: Entire section added, p. 1321, § 32, effective July 1.

8-43-219. Not a limitation on rights or privileges. Nothing in section 8-43-217 or 8-43-218 shall be construed to limit any party's rights or privileges as provided by law.

Source: L. 91: Entire section added, p. 1321, § 32, effective July 1.

8-43-220. Injured worker exit survey. (1) Upon closure of a claim, each insurer shall survey the claimant or, if deceased, the decedent's dependents regarding the claimant's satisfaction with the insurer for claims that are reported to the division pursuant to section 8-43-101. The survey shall be conducted in a form and manner as prescribed by the director. The director shall develop the form and manner of the survey with input from insurers that provide workers' compensation policies pursuant to articles 40 to 55 of this title, and with the least administrative burden as possible. The survey shall include questions regarding courtesy, promptness of medical care, promptness of handling the claim, promptness of resolving the claim, and overall satisfaction with the experience with the insurer. An employer or an insurer shall not take disciplinary action or otherwise retaliate against a claimant or his or her dependents for completing the survey.

(2) The insurer shall report the survey results annually to the division. The director shall post the results of the surveys on the division's website.

Source: L. 2010: Entire section added, (SB 10-013), ch. 303, p. 1434, § 1, effective July 1.

PART 3

REVIEW PROCEDURES

Law reviews: For article, "Worker's Compensation Appeals", see 19 Colo. Law. 1853 (1990).

8-43-301. Petitions to review. (1) Any order, corrected order, or supplemental order is final unless a petition to review or appeal has been filed in accordance with this article.

(2) Any party dissatisfied with an order that requires any party to pay a penalty or benefits or denies a claimant any benefit or penalty may file a petition to review with the division, if the order was entered by the director, or at the Denver office of the office of

administrative courts in the department of personnel, if the order was entered by an administrative law judge, and serve the same by mail on all the parties. The petition shall be filed within twenty days after the date of the certificate of mailing of the order, and, unless so filed, the order shall be final. The petition to review may be filed by mail, and shall be deemed filed upon the date of mailing, as determined by the certificate of mailing, if the certificate of mailing indicates that the petition to review was mailed to the division or to the Denver office of the office of administrative courts in the department of personnel, as appropriate. The petition to review shall be in writing and shall set forth in detail the particular errors and objections of the petitioner. A petitioner shall, at the same time, order any transcript relied upon for the petition to review, arrange with the hearing reporter to pay for the same, and notify opposing parties of the transcript ordered. Opposing parties shall have twenty days after the date of the certificate of mailing of the petition to review to order any other transcript not ordered by the petitioner and arrange with the hearing reporter to pay for the same.

(3) If transcripts of hearings are ordered as part of the record in a petition to review, the director or administrative law judge cannot rule on the petition until the transcripts are lodged with the division.

(4) When the record upon which a petition to review has been filed is complete, the parties shall be notified in writing. The petitioner shall have twenty days after the date of the certificate of mailing of the notice to file a brief in support of the petition. The opposing parties shall have twenty days after the date of the certificate of mailing of the petitioner's brief to file briefs in opposition thereto. After the briefs are filed or the time for filing has run, the director or administrative law judge shall have thirty days to enter a supplemental order or transmit the file to the industrial claim appeals office for review.

(5) In ruling on a petition to review, the director or administrative law judge may issue a supplemental order labeled as such limited to the matters raised in the petition to review, and, as to those matters, the director or administrative law judge may amend or alter the original order or set the matter for further hearing. In any event, if it has not already been done, the administrative law judge or director, following a petition to review an order, shall make findings of fact and conclusions of law necessary to support such order.

(6) A party dissatisfied with a supplemental order may file a petition for review by the panel. The petition shall be filed with the division if the supplemental order was issued by the director or at the Denver office of the office of administrative courts in the department of personnel if the supplemental order was issued by an administrative law judge. The petition shall be filed within twenty days after the date of the certificate of mailing of the supplemental order. The petition shall be in writing, shall set forth in detail the particular errors and objections relied upon, and shall be accompanied by a brief in support thereof. The petition and brief shall be mailed by petitioner to all other parties at the time the petition is filed. All parties, except the petitioner, shall be deemed opposing parties and shall have twenty days after the date of the certificate of mailing of the petition and brief to file with the division or the Denver office of the office of administrative courts, as appropriate, briefs in opposition to the petition.

(7) When any petition for review by the panel is filed, the division or the Denver office of the office of administrative courts shall, when all briefs are submitted to the division or the Denver office of the office of administrative courts or within fifteen days after the date briefs were due, certify and transmit the record to the industrial claim appeals office along with the petitions and briefs. The division or the Denver office of the office of administrative courts, as

appropriate, shall simultaneously send notice to the parties including the date that the record has been transmitted to the industrial claim appeals office.

(8) The industrial claim appeals office shall have sixty days after receipt of the certified record to enter its order. The panel may issue a summary order affirming the order of the administrative law judge or director. The panel may correct, set aside, or remand any order but only upon the following grounds: That the findings of fact are not sufficient to permit appellate review; that conflicts in the evidence are not resolved in the record; that the findings of fact are not supported by the evidence; that the findings of fact do not support the order; or that the award or denial of benefits is not supported by applicable law. If the findings of fact entered by the director or administrative law judge are supported by substantial evidence, they shall not be altered by the panel.

(9) The panel shall have the power to issue such procedural orders as may be necessary to carry out its appellate review under subsection (7) of this section, including but not limited to, orders concerning completion of the record and filing of briefs. In those cases where the parties file a stipulated motion requesting that consideration of the appeal be deferred pending ongoing settlement negotiations, the panel may extend the time for entry of its order up to a maximum of thirty days.

(10) The panel's order must be mailed to all parties of record. Any party dissatisfied with the panel's order has twenty-one days after the date of the certificate of mailing of such order to commence an action for judicial review in the court of appeals.

(11) If the panel has failed to enter its order within sixty days of the receipt of the certified record, the order of the director or administrative law judge is deemed the order of the panel and final unless, within thirty-five days after the end of the sixty-day period, the petitioner commences an action for judicial review in the court of appeals. If the panel has not acted on the sixtieth day, the industrial claim appeals office shall send a written notice to all parties stating that the parties have thirty-five days after the date of the certificate of mailing of the notice to commence such an action.

(12) If a petition to review is filed, a hearing may be held and orders entered on any other issue in the case during the pendency of the petition to review. If the order which is under petition to review concerns compensability, orders entered on these later issues are final and appealable when entered, but not enforceable until the review of the order on compensability is completed.

(13) If the order which is under petition to review does not concern compensability, but concerns the respective liability of two or more employers or insurance carriers, and the injury or illness was found compensable in a hearing held pursuant to section 8-43-215, the employer or insurance carrier found liable by the director or administrative law judge shall pay benefits in accordance with the order under review until the review process is completed, at which time it shall be reimbursed by the other employer or carrier if reimbursement is necessary to comply with the final order.

(14) The signature of an attorney on a petition to review or brief in support thereof constitutes a certificate by the attorney that such attorney has read the petition or brief; that, to the best of the attorney's knowledge, information, or belief formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass, cause delay, or unnecessarily increase the cost of litigation. If a

petition or brief is signed in violation of this subsection (14), the director, the administrative law judge, or the panel shall award reasonable attorney fees and costs to the party incurring the fees and costs as a result of the improper actions.

Source: L. 90: Entire article R&RE, p. 507, § 1, effective July 1. **L. 91:** (10) and (11) amended and (14) added, p. 1322, § 33, effective July 1. **L. 92:** (2) amended, p. 1803, § 1, effective April 16. **L. 94:** (14) amended, p. 1878, § 10, effective June 1. **L. 95:** (10) and (11) amended, p. 234, § 2, effective April 17. **L. 2009:** (2), (6), and (7) amended, (SB 09-070), ch. 49, p. 176, § 3, effective August 5. **L. 2010:** (6) and (7) amended, (HB 10-1422), ch. 419, p. 2064, § 11, effective August 11. **L. 2014:** (10) and (11) amended, (HB 14-1347), ch. 208, p. 768, § 1, effective July 1.

Editor's note: This section is similar to former § 8-53-111 as it existed prior to 1990.

8-43-302. Corrected orders. (1) The director, an administrative law judge, or the panel may issue a corrected order:

(a) At any time within thirty days after the entry of an order, to correct any clerical errors in the order. Clerical errors are grammatical or computational errors.

(b) At any time within thirty days of the entry of an order, to correct any errors caused by mistake or inadvertence.

(2) Any order corrected for clerical error, mistake, or inadvertence shall be labeled "corrected order" and mailed by the division. Any corrected order may be appealed in the manner provided in this article for any other order.

Source: L. 90: Entire article R&RE, p. 509, § 1, effective July 1.

Editor's note: This section is similar to former § 8-53-112 as it existed prior to 1990.

8-43-303. Reopening. (1) At any time within six years 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.

(b) At any time within two years after the date the last medical benefits become due and payable, the director or an administrative law judge may, after notice to all parties, review and reopen an award only as to medical benefits on the ground of 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. If an award is reopened under this paragraph (b), medical benefits previously ordered may be ended, diminished, maintained, or increased. No such reopening shall affect the earlier award as to moneys already paid. Any order entered under this paragraph (b) shall be subject to review in the same manner as other orders.

(3) In cases where a claimant is determined to be permanently totally disabled, any such case may be reopened at any time to determine if the claimant has returned to employment. If the claimant has returned to employment and is earning in excess of four thousand dollars per year or has participated in activities which indicate that the claimant has the ability to return to employment, such claimant's permanent total disability award shall cease and the claimant shall not be entitled to further permanent total disability benefits as a result of the injury or occupational disease which led to the original permanent total disability award. Any subsequent permanent partial disability benefits awarded for the same injury or occupational disease shall be decreased by the amount of permanent total disability benefits previously received by the employee.

(4) The party attempting to reopen an issue or claim shall bear the burden of proof as to any issues sought to be reopened.

Source: L. 90: Entire article R&RE, p. 509, § 1, effective July 1. **L. 91:** (3) added, p. 1323, § 34, effective July 1. **L. 97:** (1) and (2)(a) amended, p. 114, § 5, effective July 1. **L. 2007:** (4) added, p. 1474, § 8, effective May 30.

Editor's note: This section is similar to former § 8-53-113 as it existed prior to 1990.

8-43-304. Violations - penalty - offset for benefits obtained through fraud - rules. (1) Any employer or insurer, or any officer or agent of either, or any employee, or any other person who violates articles 40 to 47 of this title 8, or does any act prohibited thereby, or fails or refuses to perform any duty lawfully enjoined within the time prescribed by the director or panel, for which no penalty has been specifically provided, or fails, neglects, or refuses to obey any lawful

order made by the director or panel or any judgment or decree made by any court as provided by the articles shall be subject to such order being reduced to judgment by a court of competent jurisdiction and shall also be punished by a fine of not more than one thousand dollars per day for each offense, to be apportioned, in whole or part, at the discretion of the director or administrative law judge, between the aggrieved party and the Colorado uninsured employer fund created in section 8-67-105; except that the amount apportioned to the aggrieved party shall be a minimum of twenty-five percent of any penalty assessed.

(1.5) (a) (I) 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 office of administrative courts 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):

(A) The circumstances pursuant to which the director may issue an order imposing a fine; and

(B) Criteria for determining the amount of the fine.

(II) If the division determines, as part of a compliance audit of an insurer or self-insured pool, that an injury or occupational disease was not reported to the division within the time specified in sections 8-43-101 and 8-43-103 because the insurer or self-insured pool did not have notice or knowledge of the injury, occupational disease, or fatality within a period of time that would allow the information to be reported to the division within the time specified in sections 8-43-101 and 8-43-103, the director shall not impose a fine for late reporting under this subsection (1.5). The director may impose a fine under this subsection (1.5) for late reporting under sections 8-43-101 and 8-43-103 as part of findings from a compliance audit if the director finds that the late reporting constituted a knowing or repeated pattern of noncompliance with the reporting requirements of sections 8-43-101 and 8-43-103 and was not caused by the insurer or self-insured pool's lack of notice or knowledge of the injury, occupational disease, or fatality within a period of time that would allow the information to be reported to the division within the time specified in sections 8-43-101 and 8-43-103.

(b) Fines imposed pursuant to this subsection (1.5) on or after July 1, 2018, shall be transmitted to the state treasurer, who shall credit the fines to the Colorado uninsured employer fund created in section 8-67-105.

(2) An insurer or self-insured employer may take a credit or offset of previously paid workers' compensation benefits or payments against any further workers' compensation benefits or payments due a worker when the worker admits to having obtained the previously paid benefits or payments through fraud, or a civil judgment or criminal conviction is entered against the worker for having obtained the previously paid benefits through fraud. Benefits or payments obtained through fraud by a worker shall not be included in any data used for rate-making or individual employer rating or dividend calculations by any insurer or by Pinnacol Assurance.

(3) The director and each administrative law judge shall report to the division each time a penalty is imposed pursuant to this section. Each such report shall include the amount of the penalty, the name of the administrative law judge awarding the penalty, if applicable, and the name of the offending party.

(4) In any application for hearing for any penalty pursuant to subsection (1) of this section, the applicant shall state with specificity the grounds on which the penalty is being asserted. After the date of mailing of such an application, an alleged violator shall have twenty

days to cure the violation. If the violator cures the violation within such twenty-day period, and the party seeking such penalty fails to prove by clear and convincing evidence that the alleged violator knew or reasonably should have known such person was in violation, no penalty shall be assessed. The curing of the violation within the twenty-day period shall not establish that the violator knew or should have known that such person was in violation.

(5) A request for penalties shall be filed with the director or administrative law judge within one year after the date that the requesting party first knew or reasonably should have known the facts giving rise to a possible penalty.

Source: L. 90: Entire article R&RE, p. 510, § 1, effective July 1. **L. 91:** Entire section amended, p. 1323, § 35, effective July 1. **L. 92:** (1) amended, p. 1828, § 1, effective May 19. **L. 94:** (3), (4), and (5) added, p. 1878, § 11, effective June 1. **L. 97:** (3) amended, p. 1474, § 9, effective June 3. **L. 2002:** (2) amended, p. 1883, § 30, effective July 1. **L. 2005:** (1.5) added, p. 199, § 2, effective July 1. **L. 2006:** IP(1.5)(a) amended, p. 1489, § 6, effective June 1. **L. 2010:** (1) amended, (SB 10-012), ch. 287, p. 1340, § 1, effective August 11. **L. 2012:** (1.5)(a) amended, (HB 12-1033), ch. 43, p. 147, § 1, effective August 8. **L. 2017:** (1) and (1.5)(b) amended, (HB 17-1119), ch. 317, p. 1706, § 4, effective July 1.

Editor's note: This section is similar to former § 8-53-116 as it existed prior to 1990.

8-43-304.5. Penalties in rate-making. For purposes of rate-making under sections 10-4-401, 10-4-402, and 10-4-403, C.R.S., insurers shall not include, nor shall the insurance commissioner consider, any penalties paid under section 8-43-304 or any damages awarded in suits founded upon breach of duty in handling a claim for compensation under section 8-41-102.

Source: L. 91: Entire section added, p. 1324, § 36, effective July 1.

8-43-305. Each day separate offense. Every day during which any employer or insurer, or officer or agent of either, or any employee, or any other person fails to comply with any lawful order of an administrative law judge, the director, or the panel or fails to perform any duty imposed by articles 40 to 47 of this title shall constitute a separate and distinct violation thereof. In any action brought to enforce the same or to enforce any penalty provided for in said articles, such violation shall be considered cumulative and may be joined in such action.

Source: L. 90: Entire article R&RE, p. 510, § 1, effective July 1. **L. 94:** Entire section amended, p. 1879, § 12, effective June 1.

Editor's note: This section is similar to former § 8-53-117 as it existed prior to 1990.

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.

(2) All penalties, when collected, are payable to the division and transmitted through the state treasurer for credit to the Colorado uninsured employer fund created in section 8-67-105.

Source: L. 90: Entire article R&RE, p. 510, § 1, effective July 1. **L. 97:** (1) amended, p. 115, § 6, effective July 1. **L. 2017:** (2) amended, (HB 17-1119), ch. 317, p. 1706, § 5, effective July 1.

Editor's note: This section is similar to former § 8-53-118 as it existed prior to 1990.

8-43-307. Appeals to court of appeals. (1) The final order of the director or the panel shall constitute the final order of the division. Any person in interest, including Pinnacol Assurance, being dissatisfied with any final order of the division, may commence an action in the court of appeals against the industrial claim appeals office as defendant to modify or vacate any such order on the grounds set forth in section 8-43-308.

(2) All such actions shall have precedence over any civil cause of a different nature pending in such court, and the court of appeals shall always be deemed open for the trial thereof, and such actions shall be tried and determined by the court of appeals in the manner provided for other civil actions.

(3) (Deleted by amendment, L. 95, p. 235, § 3, effective April 17, 1995.)

(4) In any case before the court of appeals pursuant to this section, the court may apply the sanctions of rule 38 of the Colorado appellate rules if the court finds such application to be appropriate.

Source: L. 90: Entire article R&RE, p. 511, § 1, effective July 1. **L. 91:** (1) and (3) amended and (4) added, p. 1324, § 37, effective July 1. **L. 95:** (1) and (3) amended, p. 235, § 3, effective April 17. **L. 2002:** (1) amended, p. 1883, § 31, effective July 1.

Editor's note: This section is similar to former § 8-53-119 as it existed prior to 1990.

8-43-308. Causes for setting aside award. Upon hearing the action, the court of appeals may affirm or set aside such order, but only upon the following grounds: That the findings of fact are not sufficient to permit appellate review; that conflicts in the evidence are not resolved in the record; that the findings of fact are not supported by the evidence; that the findings of fact do not support the order; or that the award or denial of benefits is not supported by applicable

law. If the findings of fact entered by the director or administrative law judge are supported by substantial evidence, they shall not be altered by the court of appeals.

Source: L. 90: Entire article R&RE, p. 511, § 1, effective July 1.

Editor's note: This section is similar to former § 8-53-120 as it existed prior to 1990.

8-43-309. Actions in court tried within thirty days. Any such action commenced in the court of appeals to set aside or modify any order shall be heard within thirty days after issue shall be joined, unless continued on order of the court for good cause shown. No continuance shall be for longer than thirty days at one time.

Source: L. 90: Entire article R&RE, p. 511, § 1, effective July 1.

Editor's note: This section is similar to former § 8-53-121 as it existed prior to 1990.

8-43-310. Error disregarded unless prejudicial. The appeal shall be upon the record returned to the court by the industrial claim appeals office. Upon the hearing of any such action, the court shall disregard any irregularity or error of the director or the panel unless it affirmatively appears that the party complaining was damaged thereby.

Source: L. 90: Entire article R&RE, p. 511, § 1, effective July 1.

Editor's note: This section is similar to former § 8-53-122 as it existed prior to 1990.

8-43-311. Court record transmitted to industrial claim appeals office - when. It is the duty of the clerk of the court of appeals, without order of court or application of the panel, to transmit the record in any case to the industrial claim appeals office within twenty-five days after the order or judgment of the court unless in the meantime further appellate review is granted by the supreme court. If the supreme court grants further appellate review, the clerk shall return the record immediately upon receipt of remittitur from the supreme court, unless the order of the supreme court requires further action by the court of appeals, and then within twenty-five days after such further action.

Source: L. 90: Entire article R&RE, p. 511, § 1, effective July 1.

Editor's note: This section is similar to former § 8-53-123 as it existed prior to 1990.

8-43-312. Court may remand case or order entry of award. Upon setting aside of any order, the court may recommit the controversy and remand the record in the case for further hearing or proceedings by the director, administrative law judge, or panel, or it may order entry of a proper award upon the findings as the nature of the case shall demand. In no event shall such order for award be for a greater amount of compensation than allowed by articles 40 to 47 of this title, or in any manner conflict with the provisions thereof.

Source: L. 90: Entire article R&RE, p. 512, § 1, effective July 1.

Editor's note: This section is similar to former § 8-53-124 as it existed prior to 1990.

8-43-313. Summary review by supreme court. Any affected party dissatisfied with the decision of the court of appeals may seek review by writ of certiorari in the supreme court. If the supreme court reviews the judgment of the court of appeals, such review shall be limited to a summary review of questions of law. Any such action shall be advanced upon the calendar of the supreme court, and a final decision shall be rendered within sixty days after the date the supreme court grants further appellate review. The director, an administrative law judge, the industrial claim appeals office, or any other aggrieved party shall not be required to file any undertaking or other security upon review by the supreme court.

Source: L. 90: Entire article R&RE, p. 512, § 1, effective July 1. **L. 91:** Entire section amended, p. 1325, § 38, effective July 1. **L. 94:** Entire section amended, p. 1879, § 13, effective June 1.

Editor's note: This section is similar to former § 8-53-125 as it existed prior to 1990.

8-43-314. Fees - costs - duty of district attorneys and attorney general. No fee shall be charged by the clerk of any court for the performance of any official service required by articles 40 to 47 of this title. On proceedings to review any order or award, costs as between the parties shall be allowed in the discretion of the court, but no costs shall be taxed against said director or industrial claim appeals office. In any action for the review of any order or award and upon any review thereof by the supreme court, it is the duty of the district attorney in the county wherein said action is pending, or of the attorney general if requested by the director or industrial claim appeals office, to appear on behalf of either or both, whether any other party defendant should have appeared or been represented in the action.

Source: L. 90: Entire article R&RE, p. 512, § 1, effective July 1.

Editor's note: This section is similar to former § 8-53-126 as it existed prior to 1990.

8-43-315. Witnesses and testimony - mileage - fees - costs. (1) The director or any agent, deputy, or administrative law judge may issue subpoenas to compel the attendance of witnesses or parties and the production of books, papers, or records and to administer oaths. Any person who serves a subpoena shall receive the same fee as the sheriff. Each witness who is subpoenaed on behalf of the director and who appears in obedience thereto shall receive for attendance the fees and mileage provided for witnesses in civil cases in the district court, which are audited and paid from the state treasury in the same manner as other expenses are audited and paid, upon the presentation of a proper voucher approved by the director. The director has the discretion to assess the cost of attendance and mileage of witnesses subpoenaed by either party to any proceeding against another party to the proceeding when, in the director's judgment, the necessity of subpoenaing the witnesses arises out of the raising of any incompetent, irrelevant, or sham issues by the other party.

(2) The director, an agent, deputy, or administrative law judge of the division, or an administrative law judge from the office of administrative courts, may, upon a showing of good cause, order the attendance at a hearing or deposition of any party, or of an officer, director, employee, or agent of any party, who is located in another state. A witness so ordered shall appear as indicated in the order or shall be available by telephone at the time and place set forth in the order.

(3) If a party or an officer, director, employee, or agent of a party fails, in the absence of a reasonable excuse, to obey an order issued pursuant to subsection (2) of this section, the party, officer, director, employee, or agent is liable for penalties as specified in section 8-43-304 (1).

Source: L. 90: Entire article R&RE, p. 512, § 1, effective July 1. **L. 91:** Entire section amended, p. 1325, § 39, effective July 1. **L. 2014:** Entire section amended, (SB 14-191), ch. 316, p. 1373, § 6, effective July 1.

Editor's note: This section is similar to former § 8-53-127 as it existed prior to 1990.

Cross references: For sheriff's fees, see § 30-1-104; for witness and mileage fees, see §§ 13-33-102 and 13-33-103.

8-43-316. Appearance by officer for closely held entity. An officer of a closely held entity as defined in section 13-1-127 (1)(a) may appear on behalf of any such closely held entity, which has obtained coverage as required by articles 40 to 47 of this title 8 in proceedings authorized under the "Workers' Compensation Act of Colorado", articles 40 to 47 of this title 8, where the amount at issue does not exceed ten thousand dollars, except in proceedings before the industrial claim appeals office under this part 3, appeals to the court of appeals under section 8-43-307, and summary reviews by the supreme court under section 8-43-313.

Source: L. 91: Entire section added, p. 1285, § 2, effective April 14. **L. 2017:** Entire section amended, (SB 17-294), ch. 264, p. 1384, § 6, effective May 25.

8-43-317. Service of documents. All documents that are required to be exchanged under articles 40 to 47 of this title shall be transmitted or served in the same manner or by the same means to all required recipients.

Source: L. 2010: Entire section added, (SB 10-163), ch. 66, p. 233, § 6, effective March 31.

8-43-318. Remand of case or order - time limit for further proceedings consistent with ruling on appeal. If a case or order is appealed to the panel, the court of appeals, or the supreme court, and the case or order is remanded with directions, the director, administrative law judge, or panel, as the case may be, shall issue an order consistent with those directions within thirty days from receipt of the remand. The remanding tribunal has continuing jurisdiction to enforce the remand order.

Source: L. 2014: Entire section added, (SB 14-191), ch. 316, p. 1374, § 7, effective July 1.

PART 4

ENFORCEMENT AND PENALTIES

8-43-401. District attorney or attorney of division to act for director or office - penalties for failure of insurer to pay benefits. (1) Upon the request of the director or the industrial claim appeals office, the district attorney of any district or any attorney-at-law employed by the division shall institute and prosecute the necessary actions or proceedings for the enforcement of any of the provisions of articles 40 to 47 of this title, or any award or order of the director, an administrative law judge, or the industrial claim appeals office, or for the recovery of any money due to Pinnacol Assurance, or any penalty provided in said articles, and shall defend in like manner all suits, actions, or proceedings brought against the director, an administrative law judge, or the industrial claim appeals office.

(2) (a) After all appeals have been exhausted or in cases where there have been no appeals, all insurers and self-insured employers shall pay benefits within thirty days after any benefits are due. If any insurer or self-insured employer knowingly delays payment of medical benefits for more than thirty days or knowingly stops payments, such insurer or self-insured employer shall pay a penalty of eight percent of the amount of wrongfully withheld benefits; except that no penalty is due if the insurer or self-insured employer proves that the delay was the result of excusable neglect. If any insurer or self-insured employer willfully withholds permanent partial disability benefits within thirty days of when due, the insurer or self-insured employer shall pay a penalty to the division of ten percent of the amount of such benefits due. The penalties shall be apportioned, in whole or part, at the discretion of the director or administrative law judge, among the aggrieved party, the medical services provider, and the workers' compensation cash fund created in section 8-44-112 (7)(a).

(b) All money collected as penalties by the division pursuant to this subsection (2) shall be transmitted to the state treasurer, who shall credit it to the Colorado uninsured employer fund created in section 8-67-105.

Source: L. 90: Entire article R&RE, p. 513, § 1, effective July 1. **L. 91:** Entire section amended, p. 1325, § 40, effective July 1. **L. 94:** (1) amended, p. 1879, § 14, effective June 1. **L. 2002:** (1) amended, p. 1883, § 32, effective July 1. **L. 2010:** (2)(a) amended, (SB 10-012), ch. 287, p. 1340, § 2, effective August 11. **L. 2012:** (1) amended, (SB 12-110), ch. 158, p. 560, § 3, effective July 1. **L. 2017:** (2)(b) amended, (HB 17-1119), ch. 317, p. 1706, § 6, effective July 1.

Editor's note: This section is similar to former § 8-53-128 as it existed prior to 1990.

Cross references: For Pinnacol Assurance and for the Pinnacol Assurance fund, see §§ 8-45-101 and 8-45-102.

8-43-401.5. Financial incentives to deny or delay claim or medical care - prohibition - penalties. (1) No insurer, employee or contractor of an insurer, self-insured employer,

employee or contractor of a self-insured employer, health care provider, or employee or contractor of a health care provider treating an injured worker under the provisions of articles 40 to 47 of this title shall pay or receive any form of financial remuneration that is based on any of the following:

(a) The number of days to maximum medical improvement;

(b) The rate of claims approval or denial;

(c) The number of medical procedures, diagnostic procedures, or treatment appointments approved; or

(d) Any other criteria designed or intended to encourage a violation of any provision of articles 40 to 47 of this title.

(2) (a) Payment of remuneration in violation of this section constitutes an unfair act or practice in the business of insurance, and the insurer or self-insured employer who pays or directs the payment of the remuneration shall be subject to penalties in accordance with part 11 of article 3 of title 10, C.R.S.

(b) In addition to, or as an alternative to, any penalties imposed pursuant to paragraph (a) of this subsection (2), an insurer or self-insured employer who is found to have violated subsection (1) of this section may be subject to fines as determined by the director pursuant to section 8-43-304 (1.5).

(3) Nothing in this section:

(a) Restricts or limits the ability of a claims adjuster or employee or contracted claims personnel to investigate, detect, or prevent fraud; or

(b) Limits the payment or receipt of financial incentives for any other lawful purpose.

Source: L. 2010: Entire section added, (SB 10-011), ch. 302, p. 1432, § 2, effective May 27.

8-43-402. False statement - felony. If, for the purpose of obtaining any order, benefit, award, compensation, or payment under the provisions of articles 40 to 47 of this title, either for self-gain or for the benefit of any other person, anyone willfully makes a false statement or representation material to the claim, such person commits a class 5 felony and shall be punished as provided in section 18-1.3-401, C.R.S., and shall forfeit all right to compensation under said articles upon conviction of such offense.

Source: L. 90: Entire article R&RE, p. 513, § 1, effective July 1. **L. 2002:** Entire section amended, p. 1467, § 20, effective October 1.

Editor's note: This section is similar to former § 8-53-129 as it existed prior to 1990.

Cross references: For the legislative declaration contained in the 2002 act amending this section, see section 1 of chapter 318, Session Laws of Colorado 2002.

8-43-403. Attorney fees. (1) No contingent fee shall be applied to any medical benefits that have been previously incurred and will be paid to the claimant or directly to the medical care provider, in a permanent disability award, either by admission or settlement. In the event that medical benefits are the only contested issue, the fee agreement shall provide for reasonable fees

calculated on a per-hour basis or, subject to approval by the director, may provide for a contingent fee not to exceed the limitations imposed by this section. On unappealed contested cases, a contingent fee exceeding twenty percent of the amount of contested benefits shall be presumed to be unreasonable. At the request of either an employee or the employee's attorney, the director shall determine what portion of the benefits awarded were contested, or the reasonableness of the fee charged by such attorney, or both. At the request of the employer or its insurance carrier or the attorney for either of them, the director shall determine the reasonableness of the fee charged by the attorney for the insurance carrier. No request for determination of the reasonableness of fees shall be considered by the director if received later than one hundred eighty days after the issuance of the final order, judgment, or opinion disposing of the last material issue in the case and the expiration of any right to review or appeal therefrom. In making this determination, the director shall consider fees normally charged by attorneys for cases requiring the same amount of time and skill and may decrease or increase the fee payable to such attorney. If the director finds that a review by the industrial claim appeals office or an appeal to the court of appeals or to the supreme court was perfected or if the director finds that such attorney reasonably devoted an extraordinary amount of time to the case, the director may award or approve a contingent fee or other fee in a percentage or amount that exceeds twenty percent of the amount of contested benefits. In determining the reasonableness of fees charged by an attorney for an employer or employer's insurance carrier, the director shall compare the fees of such attorney with the fees charged by the claimant's attorney in the same case and shall not approve an amount substantially greater than the reasonable amount charged by the said claimant's attorney or, if the claimant did not prevail, the reasonable amount the said claimant's attorney would have charged had the claimant prevailed, unless the director finds, based on a showing by the attorney for the employer or carrier, that higher fees are objectively justifiable. Legal costs not found reasonable shall not be allowed as an expense in fixing premium rates by the commissioner of insurance.

(2) Any attorney who represents any party in a workers' compensation case shall provide the party with a written fee agreement which sets forth, in full, the attorney's specific fee arrangement, including the criteria upon which the attorney bases his hourly or set fee and the circumstances in which any modifications or adjustments to such fee will be made, and specifying whether the client will be charged for the attorney's expenses or advances made by the attorney on behalf of the party, including without limitation costs of copying, research, telephone calls, postage, and any other expenses incident to the litigation which the attorney may be ethically bound to undertake on behalf of the party pursuant to law or pursuant to any court rule including the code of professional responsibility as adopted by the supreme court of Colorado. Contingent fee agreements shall be in conformity with all applicable provisions of the said code or of rules of the supreme court, and, in addition, such agreements shall set forth the provisions of this section in easy to understand language in at least ten-point bold-faced type. No such fee agreement may be enforced against any party unless it complies with the requirements of this section and is signed by both parties. Any attempt by an attorney who intentionally does not comply with this section and who seeks to enforce a fee agreement which does not comply with the requirements of this section shall be presumed to be a violation of the code of professional responsibility as adopted by the supreme court of Colorado.

(3) Repealed.

Source: L. 90: Entire article R&RE, p. 513, § 1, effective July 1. **L. 91:** Entire section amended, p. 1369, § 1, effective May 29.

Editor's note: (1) This section is similar to former § 8-52-115 as it existed prior to 1990.

(2) Subsection (3)(d) provided for the repeal of subsection (3), effective July 1, 1993. (See L. 91, p. 1369.)

8-43-404. Examination - refusal - personal responsibility - physicians to testify and furnish results - injured worker right to select treating physicians - injured worker right to third-party communications - definitions - rules. (1) (a) If in case of injury the right to compensation under articles 40 to 47 of this title exists in favor of an employee, upon the written request of the employee's employer or the insurer carrying such risk, the employee shall from time to time submit to examination by a physician or surgeon or to a vocational evaluation, which shall be provided and paid for by the employer or insurer, and the employee shall likewise submit to examination from time to time by any regular physician selected and paid for by the division.

(b) (I) At least three business days in advance of an examination under paragraph (a) of this subsection (1), if requested by the claimant, the employer or insurer shall pay to the claimant the claimant's estimated expenses of attending the examination, including transportation, mileage, food, and hotel costs. In addition, if the claimant verifies that he or she will incur uncompensated wage losses as a result of attending the examination, the employer or insurer shall reimburse the claimant at the rate of seventy-five dollars per day. Failure to provide payment in accordance with this subparagraph (I) constitutes grounds for the claimant to refuse to attend the examination.

(II) If an employer pays estimated expenses under this paragraph (b) and the claimant does not attend the examination, the employer or insurer may recover the costs paid for the employee's expenses from future indemnity benefits.

(2) (a) The employee shall be entitled to have a physician, provided and paid for by the employee, present at any such examination. If an employee is examined by a chiropractor at the request of the employer, the employee shall be entitled to have a chiropractor provided and paid for by the employee present at any such examination. After any examination conducted under this section, the examiner shall prepare a written report giving a description of the examination performed, the written documents or any other materials reviewed, and all findings or conclusions of the examiner. The employee shall be entitled to receive from the examining physician or chiropractor a copy of any report that the physician or chiropractor makes to the employer, insurer, or division upon the examination, and the copy shall be furnished to the employee at the same time it is furnished to the employer, insurer, or division. The employee shall also be entitled to receive reports from any physician selected by the employer to treat the employee upon the same terms and conditions and at the same time the reports are furnished by the physician to the employer. All such examinations shall be recorded in audio in their entirety and retained by the examining physician until requested by any party. Prior to commencing the audio recording, the examining physician shall disclose to the employee the fact that the exam is being recorded. If requested, an exact copy of the recording shall be provided to the parties. Nothing in this subsection (2) shall be construed to prevent any party to the claim from making

an audio recording of the examination. The division shall promulgate rules regarding such recordings that shall include provisions for the protection of the audio recordings and the privacy of information contained in such recordings. The employer shall be entitled to receive reports from any physician or chiropractor selected by the employee to treat or examine the employee in connection with such injury upon the same terms and at the same time the reports are furnished by the physician or chiropractor to the employee.

(b) The amendments made to paragraph (a) of this subsection (2) by Senate Bill 09-168, enacted in 2009, are declared to be procedural and were intended to and shall apply to all workers' compensation claims, regardless of the date the claim was filed.

(3) So long as the employee, after written request by the employer or insurer, refuses to submit to medical examination or vocational evaluation or in any way obstructs the same, all right to collect, or to begin or maintain any proceeding for the collection of, compensation shall be suspended. If the employee refuses to submit to such examination after direction by the director or any agent, referee, or administrative law judge of the division appointed pursuant to section 8-43-208 (1) or in any way obstructs the same, all right to weekly indemnity which accrues and becomes payable during the period of such refusal or obstruction shall be barred. If any employee persists in any unsanitary or injurious practice which tends to imperil or retard recovery or refuses to submit to such medical or surgical treatment or vocational evaluation as is reasonably essential to promote recovery, the director shall have the discretion to reduce or suspend the compensation of any such injured employee.

(4) Any physician or chiropractor who makes or is present at any such examination may be required to testify as to the results thereof. Any physician or chiropractor having attended an employee in a professional capacity may be required to testify before the division when it so directs. A physician or chiropractor will not be required to disclose confidential communications imparted to said physician or chiropractor for the purpose of treatment and which are unnecessary to a proper understanding of the case.

(5) (a) (I) (A) In all cases of injury, the employer or insurer shall provide a list of at least four physicians or four corporate medical providers or at least two physicians and two corporate medical providers or a combination thereof where available, in the first instance, from which list an injured employee may select the physician who attends the injured employee. At least one of the four designated physicians or corporate medical providers offered must be at a distinct location from the other three designated physicians or corporate medical providers without common ownership. If there are not at least two physicians or corporate medical providers at distinct locations without common ownership within thirty miles of the employer's place of business, then an employer may designate physicians or corporate medical providers at the same location or with shared ownership interests. Upon request by an interested party to the workers' compensation claim, a designated provider on the employer's list shall provide a list of ownership interests and employment relationships, if any, to the requesting party within five days of the receipt of the request. If the services of a physician are not tendered at the time of injury, the employee shall have the right to select a physician or chiropractor. For purposes of this section, "corporate medical provider" means a medical organization in business as a sole proprietorship, professional corporation, or partnership.

(B) If there are fewer than four physicians or corporate medical providers within thirty miles of the employer's place of business who are willing to treat an injured employee, the employer or insurer may instead designate one physician or one corporate medical provider, and

subparagraphs (III) and (IV) of this paragraph (a) shall not apply. A physician is presumed willing to treat injured workers unless he or she indicates to the employer or insurer to the contrary.

(C) If there are more than three physicians or corporate medical providers, but fewer than nine physicians or corporate medical providers within thirty miles of the employer's place of business who are willing to treat an injured employee, the employer or insurer may instead designate two physicians or two corporate medical providers or any combination thereof. The two designated providers shall be at two distinct locations without common ownership. If there are not two providers at two distinct locations without common ownership within thirty miles of the employer's place of business, then an employer may designate two providers at the same location or with shared ownership interests. Upon request by an interested party to the workers' compensation claim, a designated provider on the employer's list shall provide a list of ownership interests and employment relationships, if any, to the requesting party within five days of the receipt of the request.

(D) Except as otherwise provided by sub-subparagraph (E) of this subparagraph (I), any party may request an expedited hearing on the issue of whether the employer or insurer provided a list in compliance with this subsection (5) if the application for expedited hearing is filed within forty-five days after the claimant provides notice of the injury to the employer.

(E) If the insurer or self-insured employer admits liability for the claim, any party may request an expedited hearing on the issue of whether the employer or insurer provided a list in compliance with this subsection (5) if the application for expedited hearing is filed within forty-five days after the initial admission of liability for the claim. The director shall set any expedited matter for hearing within sixty days after the date of the application. The time schedule for an expedited hearing is subject to the extensions set forth in section 8-43-209. If the party elects not to request an expedited hearing under this subsection (5), the time schedule for hearing the matter is as set forth in section 8-43-209.

(II) (A) If the employer is a health care provider or a governmental entity that currently has its own occupational health care provider system, the employer may designate health care providers from within its own system and is not required to provide an alternative physician or corporate medical provider from outside its own system.

(B) If the employer has its own on-site health care facility, the employer may designate such on-site health care facility as the authorized treating physician, but the employer shall comply with subparagraph (III) of this paragraph (a). For purposes of this sub-subparagraph (B), "on-site health care facility" means an entity that meets all applicable state requirements to provide health care services on the employer's premises.

(III) An employee may obtain a one-time change in the designated authorized treating physician under this section by providing notice that meets the following requirements:

(A) The notice is provided within ninety days after the date of the injury, but before the injured worker reaches maximum medical improvement;

(B) The notice is in writing and submitted on a form designated by the director. The notice provided in this subparagraph (III) shall also simultaneously serve as a request and authorization to the initially authorized treating physician to release all relevant medical records to the newly authorized treating physician.

(C) The notice is directed to the insurance carrier or to the employer's authorized representative, if self-insured, and to the initially authorized treating physician and is deposited

in the United States mail or hand-delivered to the employer, who shall notify the insurance carrier, if necessary, and the initially authorized treating physician;

(D) The new physician is on the employer's designated list or provides medical services for a designated corporate medical provider on the list;

(E) The transfer of medical care does not pose a threat to the health or safety of the injured employee;

(F) An insurance carrier, or an employer's authorized representative if the employer is self-insured, shall track how often injured employees change their authorized treating physician pursuant to this subparagraph (III) and shall report such information to the division upon request.

(IV) (A) When an injured employee changes his or her designated authorized treating physician, the newly authorized treating physician shall make a reasonable effort to avoid any unnecessary duplication of medical services.

(B) The originally authorized treating physician shall send all medical records in his or her possession pertaining to the injured employee to the newly authorized treating physician within seven calendar days after receiving a request for medical records from the newly authorized treating physician.

(C) The originally authorized treating physician shall continue as the authorized treating physician for the injured employee until the injured employee's initial visit with the newly authorized treating physician, at which time the treatment relationship with the initially authorized treating physician shall terminate.

(D) The opinion of the originally authorized treating physician regarding work restrictions and return to work shall control unless and until such opinion is expressly modified by the newly authorized treating physician.

(E) The newly authorized treating physician shall be presumed to have consented to treat the injured employee unless the newly authorized treating physician expressly refuses in writing within five days after the date of the notice to change authorized treating physicians. If the newly authorized treating physician refuses to treat the injured employee, the employee may return to the employer to request an alternative authorized treating physician. If the employer does not provide an alternative authorized treating physician within five days after the employee's request, rules established by the division shall control.

(V) If the authorized treating physician moves from one facility to another, or from one corporate medical provider to another, an injured employee may continue care with the authorized treating physician, and the original facility or corporate medical provider shall provide the injured employee's medical records to the authorized treating physician within seven days after receipt of a request for medical records from the authorized treating physician.

(VI) (A) In addition to the one-time change of physician allowed in subparagraph (III) of this paragraph (a), upon written request to the insurance carrier or to the employer's authorized representative if self-insured, an injured employee may procure written permission to have a personal physician or chiropractor treat the employee. The written request must be completed on a form that is prescribed by the director. If permission is neither granted nor refused within twenty days after the date of the certificate of service of the request form, the employer or insurance carrier shall be deemed to have waived any objection to the employee's request. Objection shall be in writing on a form prescribed by the director and shall be served on the employee or, if represented, the employee's authorized representative within twenty days after the date of the certificate of service of the request form. An insurance carrier, or an employer's

authorized representative if self-insured, shall track how often an injured employee requests to change his or her physician and how often such change is granted or denied and shall report such information to the division upon request. Upon the proper showing to the division, the employee may procure the division's permission at any time to have a physician of the employee's selection treat the employee, and in any nonsurgical case the employee, with such permission, in lieu of medical aid, may procure any nonmedical treatment recognized by the laws of this state as legal. The practitioner administering the treatment shall receive fees under the medical provisions of articles 40 to 47 of this title as specified by the division.

(B) If an injured employee is permitted to change physicians under sub-subparagraph (A) of this subparagraph (VI) resulting in a new authorized treating physician who will provide primary care for the injury, then the previously authorized treating physician providing primary care shall continue as the authorized treating physician providing primary care for the injured employee until the injured employee's initial visit with the newly authorized treating physician, at which time the treatment relationship with the previously authorized treating physician providing primary care is terminated.

(C) Nothing in this subparagraph (VI) precludes any former authorized treating physician from performing an examination under subsection (1) of this section.

(D) If an injured employee is permitted to change physicians pursuant to sub-subparagraph (A) of this subparagraph (VI) resulting in a new authorized treating physician who will provide primary care for the injury, then the opinion of the previously authorized treating physician providing primary care regarding work restrictions and return to work controls unless that opinion is expressly modified by the newly authorized treating physician.

(b) Any private insurer or self-insured employer acting as its own insurance carrier as provided in section 8-44-201 providing workers' compensation coverage shall pay for chiropractic care as provided in paragraph (a) of this subsection (5).

(c) A treating physician shall not communicate with the employer or insurer of an injured worker regarding that injured worker unless:

(I) The injured worker is present for the communication; or

(II) The treating physician makes an accurate written record of the communication, containing all relevant and material information that was communicated, and provides the injured worker access to the writing in the same manner as medical records disclosures as required by director rules.

(6) Application or prosecution of a claim for benefits shall be a waiver of any privilege concerning communications relating to all medical issues raised by the claim, for the purposes of a utilization review conducted pursuant to section 8-43-501.

(7) An employer or insurer shall not be liable for treatment provided pursuant to article 285 of title 12, unless such treatment has been prescribed by an authorized treating physician.

(8) Upon request by an employee who has not reached maximum medical improvement and whose authorized treating physician is not level II accredited, an insurer or self-insured employer shall select a level II accredited physician as the authorized treating physician.

(9) (a) Health care services provided shall be deemed authorized if the claim is found to be compensable when:

(I) Compensability of a claim is initially denied;

(II) The services of the physician selected by the employer are not tendered at the time of the injury; and

(III) The injured worker is treated:

(A) At a public health facility in the state;

(B) At a public health facility within one hundred fifty miles of the residence of the injured worker; or

(C) Through a publicly funded program.

(b) A claimant shall not be liable for payment for treatment by the provider under this subsection (9) if the treatment is reasonably needed and related to the injury.

(10) (a) If an authorized physician refuses to provide medical treatment to an injured employee or discharges an injured employee from medical care for nonmedical reasons when the injured employee requires medical treatment to cure or relieve the effects of the work injury, then the physician shall, within three business days from the refusal or discharge, provide written notice of the refusal or discharge by certified mail, return receipt requested, to the injured employee and the insurer or self-insured employer. The notice must explain the reasons for the refusal or discharge and must offer to transfer the injured employee's medical records to any new authorized physician upon receipt of a signed authorization to do so from the injured employee. The director or any administrative law judge of the office of administrative courts has jurisdiction to resolve disputes regarding whether a refusal to provide medical treatment or a discharge from medical care was for medical or nonmedical reasons.

(b) If the insurer or self-insured employer receives written notice pursuant to paragraph (a) of this subsection (10), or if the insurer or self-insured employer and the authorized treating physician receive written notice by certified mail, return receipt requested, from the injured employee or the injured employee's legal representative that an authorized physician refused to provide medical treatment to the injured employee or discharged the injured employee from medical care for nonmedical reasons when such injured employee requires medical treatment to cure or relieve the effects of the work injury, and there is no other authorized physician willing to provide medical treatment, then the insurer or self-insured employer shall, within fifteen calendar days from receiving the written notice, designate a new authorized physician willing to provide medical treatment. If the insurer or self-insured employer fails to designate a new physician pursuant to this paragraph (b), then the injured employee may select the physician who attends to the injured employee.

Source: L. 90: Entire article R&RE, p. 513, § 1, effective July 1; (6) amended, p. 1844, § 31, effective July 1. **L. 96:** (8) added, p. 271, § 3, effective April 8. **L. 2007:** (5)(a) amended, p. 763, § 1, effective January 1, 2008. **L. 2009:** (9) added, (SB 09-243), ch. 269, p. 1223, § 5, effective July 1; (2) amended, (SB 09-168), ch. 184, p. 807, § 5, effective August 5. **L. 2010:** (2) amended, (SB 10-163), ch. 66, p. 233, § 7, effective March 31; (5)(c) added, (SB 10-011), ch. 302, p. 1433, § 3, effective May 27. **L. 2011:** (1) amended, (SB 11-199), ch. 196, p. 760, § 3, effective May 23. **L. 2014:** (1)(b)(I) amended and (10) added, (SB 14-191), ch. 316, p. 1374, § 8, effective July 1; (5)(a)(I)(A) amended and (5)(a)(I)(C) added, ch. 324, p. 1422, § 1, effective April 1, 2015. **L. 2016:** (5)(a)(I)(D) and (5)(a)(I)(E) added and (5)(a)(VI) amended, (SB 16-217), ch. 272, p. 1128, § 4, effective July 1. **L. 2019:** (7) amended, (HB 19-1172), ch. 136, p. 1648, § 23, effective October 1.

Editor's note: This section is similar to former § 8-51-110 as it existed prior to 1990.

Cross references: For the legislative declaration in SB 16-217, see section 1 of chapter 272, Session Laws of Colorado 2016.

8-43-405. Payment as discharge of liability - conflicting claims. Payment of death benefits to one or more dependents shall protect and discharge to that extent all compensation under articles 40 to 47 of this title unless and until any other person claiming to be a dependent has given the division notice of said person's claim and until the division has notified the employer or the employer's insurance carrier of such claim. In such case, the director or an administrative law judge shall determine the respective rights of said rival claimants, and thereafter such death benefits shall be paid to such dependents as the director or the administrative law judge may find so entitled under the provisions of said articles.

Source: L. 90: Entire article R&RE, p. 515, § 1, effective July 1. **L. 94:** Entire section amended, p. 1880, § 15, effective June 1.

Editor's note: This section is similar to former § 8-50-117 as it existed prior to 1990.

8-43-406. Compensation in lump sum. (1) At any time after six months have elapsed from the date of injury, the claimant may elect to take all or any part of the compensation awarded in a lump sum by sending written notice of the election and the amount of benefits requested to the carrier or the noninsured or self-insured employer. The carrier or self-insured employer shall file the calculation of the lump sum due and notice that the lump sum has been paid to the claimant within ten days after the election. When the claimant is unrepresented, the director shall calculate amounts to be paid based on the present worth of partial payments, considering interest at four percent per annum, and less a deduction for the contingency of death. The director shall make the method of calculation of lump sums available to all parties at all times, including posting the information on the division's website. Neither the director nor an administrative law judge shall in any way attempt to condition the lump sum payment on the claimant waiving the right to pursue permanent total disability benefits.

(2) If a claimant who has been awarded compensation is the injured worker or the sole dependent of a deceased injured worker, the aggregate of all lump sums granted to the claimant must not exceed eighty thousand eight hundred sixty-eight dollars and ten cents.

(3) If a claimant who has been awarded compensation is one of multiple dependents of a deceased injured worker, the aggregate of all lump sums granted to the claimant must be a proportionate share, as determined by the director or administrative law judge, of an amount not to exceed one hundred sixty-one thousand seven hundred thirty-four dollars and fifteen cents.

(4) For injuries sustained on or after January 1, 2014, the director shall adjust the lump-sum limits set forth in subsections (2) and (3) of this section on July 1, 2014, and each July 1 thereafter, by the percentage of the adjustment made by the director to the state average weekly wage pursuant to section 8-47-106. A claimant who has received compensation under this section is not entitled to any further compensation under this section related to the claim as a result of an adjustment by the director pursuant to this subsection (4).

Source: L. 90: Entire article R&RE, p. 515, § 1, effective July 1. **L. 91:** (1) amended, p. 1352, § 6, effective May 29; (2) amended, p. 1326, § 41, effective July 1. **L. 2007:** Entire section

amended, p. 1474, § 9, effective May 30. **L. 2010:** (1) amended, (SB 10-187), ch. 310, p. 1459, § 8, effective July 1. **L. 2014:** (2) amended and (3) and (4) added, (SB 14-191), ch. 316, p. 1375, § 9, effective July 1.

Editor's note: This section is similar to former § 8-52-103 as it existed prior to 1990.

8-43-407. Election to waive vocational rehabilitation benefits and become subject to permanent partial disability provisions. In all cases arising under articles 40 to 47 of this title prior to July 1, 1987, the employee, the employer, and, if insured, the insurance carrier may elect, upon unanimous agreement, in writing to waive vocational rehabilitation which was awarded pursuant to section 8-49-101 as it existed prior to July 1, 1987, and become subject to the permanent partial disability provisions pursuant to section 8-42-110, as said section existed prior to July 1, 1991. Such election shall be made in a form prescribed by the director and shall not affect payments made prior to the filing of such agreement. Failure to agree to the options available under the provisions of this section shall not be evidence of bad faith in any future litigation by either party.

Source: L. 90: Entire article R&RE, p. 515, § 1, effective July 1. **L. 92:** Entire section amended, p. 2165, § 2, effective June 2.

Editor's note: This section is similar to former § 8-51-108.5 as it existed prior to 1990.

8-43-408. Default of employer - additional liability. (1) If an employer is subject to articles 40 to 47 of this title 8 and, at the time of an injury, has not complied with the insurance provisions of those articles or has allowed the required insurance to terminate, or has not effected a renewal thereof, the employee, if injured, or, if killed, the employee's dependents may claim the compensation and benefits provided in those articles.

(2) In all cases where compensation is awarded under the terms of this section, the director or an administrative law judge of the division shall compute and require the employer to pay to a trustee designated by the director or administrative law judge an amount equal to the present value of all unpaid compensation or benefits computed at the rate of four percent per annum; or, in lieu thereof, such employer, within ten days after the date of such order, shall file a bond with the director or administrative law judge signed by two or more responsible sureties to be approved by the director or by some surety company authorized to do business within the state of Colorado. The bond shall be in such form and amount as prescribed and fixed by the director and shall guarantee the payment of the compensation or benefits as awarded. The filing of any appeal, including a petition for review, shall not relieve the employer of the obligation under this subsection (2) to pay the designated sum to a trustee or to file a bond with the director or administrative law judge.

(3) A certified copy of any award of the director, administrative law judge, or panel ordering the payment of compensation entered in such case may be filed with the clerk of the district court of any county in this state at any time after the order of the administrative law judge awarding compensation, and the same shall be recorded by said clerk 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. Upon the reversal, setting aside, modification, or vacation of said order or award and upon payment to the trustee or furnishing of bond in accordance with the terms of this section, then, upon certification thereof by the director, administrative law judge, or panel, said record in the judgment book and the entry in the judgment docket shall be vacated, and any execution thereon shall be recalled.

(4) Any employer who fails to comply with a lawful order or judgment issued pursuant to subsection (2) or (3) of this section is liable to the employee, if injured, or, if killed, said employee's dependents, in addition to the amount in the order or judgment, for an amount equal to fifty percent of such order or judgment or one thousand dollars, whichever is greater, plus reasonable attorney fees incurred after entry of a judgment or order.

(5) In addition to any compensation paid or ordered in accordance with this section or articles 40 to 47 of this title 8, an employer who is not in compliance with the insurance provisions of those articles at the time an employee suffers a compensable injury or occupational disease shall pay an amount equal to twenty-five percent of the compensation or benefits to which the employee is entitled to the Colorado uninsured employer fund created in section 8-67-105.

(6) An employer who fails to comply with a lawful order or judgment issued pursuant to subsection (2) or (3) of this section shall be ordered to pay an amount equal to twenty-five percent of the compensation or benefits to which the employee is entitled to the Colorado uninsured employer fund created in section 8-67-105 in addition to any other amount ordered pursuant to this section or articles 40 to 47 of this title 8.

Source: L. 90: Entire article R&RE, p. 516, § 1, effective July 1. **L. 92:** (2) and (3) amended, p. 2166, § 3, effective June 2. **L. 2017:** (1) amended and (5) and (6) added, (HB 17-1119), ch. 317, p. 1706, § 7, effective July 1.

Editor's note: This section is similar to former § 8-44-107 as it existed prior to 1990.

8-43-409. Defaulting employers - penalties - enjoined from continuing business - fines - procedure - definition - repeal. (1) 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 such articles in force, allows the insurance to lapse, or fails to effect a renewal of the insurance shall not continue business operations while such default in effective insurance continues. Upon receiving information that an employer is in default of its insurance obligations, the director shall investigate and, if the information can be substantiated, 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 the carrier. Thereafter, if necessary, the director 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 its business operations during the period such default continues;

(b) 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, allows or has allowed the insurance to lapse, or fails or has failed to effect a renewal of such coverage, impose a fine of:

(I) Not more than two hundred fifty dollars for an initial violation; or

(II) 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.

(1.5) (a) A violation that occurs more than seven years after the date the preceding violation ended is subject to a fine up to the maximum amount permitted pursuant to subsection (1)(b)(I) of this section.

(b) After any fines have been imposed pursuant to subsection (1)(b)(I) or (1)(b)(II) of this section, the director has the discretion to enter into a settlement agreement and accept as consideration an amount less than the minimum fine allowed by subsection (1)(b)(II) of this section.

(c) Notwithstanding articles 40 to 47 of this title 8, fines pursuant to this section may be imposed only for periods that take place no more than three years prior to the date an employer is notified by the division of a potential violation of the requirements of articles 40 to 47 of this title 8.

(d) This subsection (1.5) is repealed, effective July 1, 2022. Before its repeal, this subsection (1.5) is scheduled for review in accordance with section 24-34-104.

(2) 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 reflect:

(a) The employer received notice of a hearing, when applicable;

(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 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.

(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, the imposition of a fine pursuant to subsection (1) of this section, 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.

(5) The director or administrative law judge shall report to the division each time a fine is imposed pursuant to subsection (1) of this section. Each such report shall include the amount of the fine and the name of the offending party.

(6) A certified copy of any final order of the director ordering the payment of a fine imposed pursuant to subsection (1) of this section 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 the court and entry thereof made in the judgment docket, and it shall thereafter have all the effect of and constitute a judgment of the district court, and execution may issue thereon from said court as in other cases. Any such order may be filed by and in the name of the director.

(7) Fines collected pursuant to this section on or after July 1, 2018, shall be transmitted to the state treasurer, who shall credit the total amount of the fine to the Colorado uninsured employer fund, created in section 8-67-105.

(8) For the purposes of this section, "construction site" means a location where a structure that is attached or will be attached to real property is constructed, altered, or remodeled.

Source: L. 90: Entire article R&RE, p. 516, § 1, effective July 1. **L. 91:** Entire section amended, p. 1326, § 42, effective July 1. **L. 93:** Entire section amended, p. 1279, § 1, effective June 6. **L. 98:** (1), (2), and (4) amended and (5) to (7) added, p. 161, § 1, effective April 6. **L. 2004:** IP(1) amended and (8) added, p. 614, § 1, effective August 4. **L. 2005:** (1), IP(2), (2)(c), (2)(d), and (7) amended, p. 198, § 1, effective July 1. **L. 2009:** IP(2) and (2)(a) amended, (SB 09-070), ch. 49, p. 176, § 4, effective August 5. **L. 2017:** (1.5) added and (7) amended, (HB 17-1119), ch. 317, p. 1707, § 8, effective July 1.

Editor's note: This section is similar to former § 8-52-110 as it existed prior to 1990.

8-43-410. Right to compensation operates as lien - interest on award. (1) The right of compensation granted by articles 40 to 47 of this title and any awards made thereunder shall have the same preference or lien without limit of amount against the assets of the employer or the employer's insurer or both as may be allowed by law for a claim for unpaid wages for labor.

(2) Every employer or insurance carrier of an employer shall pay interest at the rate of eight percent per annum upon all sums not paid upon the date fixed by the award of the director or administrative law judge for the payment thereof or the date the employer or insurance carrier became aware of an injury, whichever date is later. Upon application and satisfactory showing to

the director or administrative law judge of the valid reasons therefor, said director or administrative law judge, upon such terms or conditions as the director or administrative law judge may determine, may relieve such employer or insurer from the payment of interest after the date of the order therefor; and proof that payment of the amount fixed has been offered or tendered to the person designated by the award shall be such sufficient valid reason.

Source: L. 90: Entire article R&RE, p. 517, § 1, effective July 1. **L. 94:** (2) amended, p. 1880, § 16, effective June 1.

Editor's note: This section is similar to former § 8-52-109 as it existed prior to 1990.

PART 5

UTILIZATION REVIEW PROCESS -
INDEPENDENT MEDICAL EXAMINATIONS

8-43-501. Utilization review process - legislative declaration - cash fund. (1) The general assembly hereby finds and determines that insurers and self-insured employers should be required to pay for all medical services pursuant to this article which may be reasonably needed at the time of an injury or occupational disease to cure and relieve an employee from the effects of an on-the-job injury. However, insurers and self-insured employers should not be liable to pay for care unrelated to a compensable injury or services which are not reasonably necessary or not reasonably appropriate according to accepted professional standards. The general assembly, therefore, hereby declares that the purpose of the utilization review process authorized in this section is to provide a mechanism to review and remedy services rendered pursuant to this article which may not be reasonably necessary or reasonably appropriate according to accepted professional standards.

(2) (a) An insurer, self-insured employer, or claimant may request a review of services rendered pursuant to this article by a health care provider. Requests for utilization review shall be submitted on forms promulgated by the director by rule. At the time of submission of a review request, the requester shall pay the division a fee prescribed by the director by rule. Such fee shall cover the division's administrative costs and the costs of compensating utilization review committee members. If a claimant is successful in a utilization review case brought pursuant to this section, the division shall reimburse the fee charged pursuant to this paragraph (a) and assess it against the insurer or self-insured employer. The state treasurer shall credit fees collected pursuant to this section to the utilization review cash fund, which fund is hereby created. Moneys in the utilization review cash fund are continuously appropriated to the division for the purpose of administering the utilization review program and may not revert to the general fund at the end of any fiscal year. The division shall mail to any claimant, insurer, or self-insured employer a notice that a case is to be reviewed and that the claimant may be examined as a result of such review. The claimant, insurer, or self-insured employer has thirty days from the date of mailing of such notice to examine the medical records submitted by the party who requested the review and may add medical records to the utilization review file that the party believes may be relevant to the utilization review. The division shall maintain a special file for utilization review

cases. Such file shall be accessible only to interested parties in a utilization review case and shall not otherwise be open to any person.

(b) Prior to submitting a request for a utilization review pursuant to this section, an insurer, self-insured employer, or claimant shall hire a licensed medical professional to review the services rendered in the case. A report of the review shall be submitted with all necessary medical records, reports, and the request for utilization review.

(c) A claimant may request a utilization review pursuant to this section if the claimant has been refused a request pursuant to section 8-43-404 (5) to have a personal physician or chiropractor attend the claimant. A claimant requesting a utilization review pursuant to this paragraph (c) shall file the request on forms promulgated by the director by rule and shall pay the fee required by paragraph (a) of this subsection (2).

(d) For purposes of this section only, "medical records" means documents and transcripts of information obtained from a patient or his or her medical professional that are related to the patient's medical diagnosis, treatment, and care.

(e) When an insurer, self-insured employer, or claimant requests utilization review, no other party shall request a hearing pursuant to section 8-43-207 until the utilization review proceedings have become final, if such hearing request concerns issues about a change of physician or whether treatment is medically necessary and appropriate.

(f) Once a utilization review proceeding has become final and no longer subject to appeal, the final disposition of the issues in such proceeding shall be binding on the parties and preclude a contrary ruling on such issues in a subsequent hearing under section 8-43-207 unless a preponderance of evidence is shown.

(3) (a) The director, with input from the medical director serving pursuant to section 8-42-101 (3.6)(n), shall appoint members of utilization review committees for purposes of this section and section 8-42-101 (3.6). The director shall establish committees based on the different areas of health care practice for which requests for utilization review may be made. The director shall establish the qualifications for members of the different committees and the areas of health care practice in which each such committee shall conduct requested utilization reviews. Cases of requested utilization review shall be referred to committees appointed pursuant to this subsection (3) by the director based upon the areas of health care practice for which each committee is appointed.

(b) Each committee established pursuant to paragraph (a) of this subsection (3) shall be composed of three members. Committee members shall be compensated for their time by the division out of moneys in the utilization review cash fund, created in paragraph (a) of subsection (2) of this section. Any member of a committee appointed pursuant to this subsection (3) shall be immune from criminal liability and from suit in any civil action brought by any person based upon an action of such a committee, if such member acts in good faith within the scope of the function of the committee, has made reasonable effort to obtain the facts of the matter as to which action is taken, and acts in the reasonable belief that the action taken is warranted by the facts. The immunity provided by this paragraph (b) shall extend to any person participating in good faith in any investigative proceeding pursuant to this section.

(c) (I) For each case, a committee may recommend by majority vote of such committee that no change be ordered or that a change of provider be ordered.

(II) A committee may also, by unanimous vote, recommend that the director order that payment for fees charged for services in the case be retroactively denied.

(III) A committee may also, by unanimous vote, recommend that the director order that a physician's accreditation status under section 8-42-101 (3.6) be revoked.

(d) In preparing and issuing an order in any case, the director shall review and give great weight to the reports and recommendations of the committee.

(e) In appropriate cases pursuant to this section and section 8-42-101 (3.6), the director may order that an insurer, employer, or self-insured employer be permitted to deny reimbursement to a provider for any medical care or services rendered to a claimant; and such order may be effective for up to three years. Bills for services rendered during the effective period of any such order shall be unenforceable and shall not result in any debt of the claimant. In deciding whether to issue any such order, the director shall give great weight to the fact that:

(I) The provider has, within any two-year period, been the subject of two or more orders removing the provider from the role of authorized treating physician; or

(II) The provider has, within any two-year period, been the subject of two or more orders retroactively denying the payment of the provider's fees; or

(III) The provider has, within any two-year period, been the subject of two or more orders either retroactively denying the payment of the provider's fees or removing the provider from the role of authorized treating physician.

(4) If the director orders pursuant to subsection (3) of this section that a change of provider be made in a case or that the physician's accreditation status be revoked, the claimant, insurer, or self-insured employer shall have seven days from receipt of the director's order in which to agree upon a level I provider. If the claimant, insurer, or self-insured employer can not reach agreement within the seven day time period, the director shall select three providers. A new provider shall be chosen from the three providers so selected by the party who was successful in the request for review. If no appeal is filed, the successful party shall notify the division of the name of the new provider within seven days of the selection of the three potential providers. If the new health care provider is not selected within such seven days, the director shall select the provider.

(5) (a) Any party, including the health care provider, may appeal to an administrative law judge for review of an order specifying that no change occur or that a change of provider be made with respect to a case. Such review shall be limited to the record on appeal. The findings of a utilization review committee regarding the change of provider in a case shall be afforded great weight by the administrative law judge in any proceeding. A party disputing the finding of such utilization review committee shall have the burden of overcoming the finding by clear and convincing evidence.

(b) If the director has entered an order specifying that the payment of fees in the case be retroactively denied, or permitting an insurer, employer, or self-insured employer to deny payments for medical services or care rendered pursuant to subsection (3)(e) of this section, the health care provider may request a de novo hearing before an administrative law judge by filing an application for hearing within thirty days from the date of the certificate of mailing of the order. In a hearing held pursuant to this paragraph (b), the record upon which the director based the order shall be admissible in evidence. The findings of the utilization review committee regarding the retroactive denial of payment of fees in a case shall be afforded great weight by the administrative law judge in any proceeding. A party disputing the finding of such utilization review committee shall have the burden of overcoming the finding by clear and convincing evidence.

(c) Any appeal filed pursuant to this subsection (5) must be filed within forty days from the date of the certificate of mailing of the director's order.

(d) Any party dissatisfied with an order entered by an administrative law judge pursuant to paragraph (a) of this subsection (5) may file a petition to review the order pursuant to section 8-43-301.

(e) (Deleted by amendment, L. 91, p. 1326, § 43, effective July 1, 1991.)

Source: L. 90: Entire article R&RE, p. 517, § 1, effective July 1. **L. 91:** (2)(a), (2)(b), (3)(c), (5)(a), and (5)(b) amended and (5)(c) to (5)(e) added, p. 1355, § 1, effective May 29; entire section amended, p. 1326, § 43, effective July 1. **L. 92:** (5)(c) amended, p. 1802, § 1, effective April 11. **L. 94:** (2) amended, p. 2818, § 1, effective June 3.

Editor's note: This section is similar to former § 8-49-102 as it existed prior to 1990.

8-43-502. Independent medical examinations. (1) The director shall maintain a list of physicians which shall be known as the medical review panel. The director shall utilize public and private resources as are available and appropriate in determining standards and qualifications for the medical review panel members. It shall be the duty of the medical review panel to perform independent medical examinations at the request of the director or an administrative law judge.

(2) Any party to a workers' compensation proceeding has the right to obtain an independent medical examination with the physician selected by the director from the medical review panel. The requesting party, when submitting a request for the independent medical evaluation, shall specify the professional specialty of the physician to be selected by the director to perform the independent medical examination. The director shall select, through a revolving selection process established by the department, the physician from the medical review panel to perform the examination. The cost of such independent medical examination shall be borne by the requesting party. In no instance shall the independent examining physician become the authorized treating physician.

(3) Whenever the director or an administrative law judge deems it necessary to assist in resolving any issue of medical fact or opinion, the director or administrative law judge shall cause the employee to be examined by a physician or physicians from the medical review panel. The director or the administrative law judge shall have the authority and discretion to charge the cost of such examination to the employer or, if insured, the employer's insurance carrier. Transportation expenses and all expenses necessary, reasonable, and incidental to such examination shall be included in the cost of such examination.

(4) Nothing in this section shall preclude any party from obtaining an independent medical examination from a physician who is not a member of the medical review panel.

(5) Upon written request of the employer, or if insured, the insurer, the employee shall submit to a reasonable number of independent medical examinations as provided for in this section. The employee shall be entitled to have a physician, provided and paid for by such employee, present at any such independent medical examination. The employee shall be entitled to receive from the independent examining physician a copy of any report which said physician makes to the employer, insurer, or the division. Said copy shall be furnished to the employee at the same time it is furnished to the employer, insurer, or division.

(6) Members of the medical review panel and any person acting as a consultant, witness, or complainant shall be immune from liability in any civil action brought against said person for acts occurring while the person was acting as a panel member, consultant, witness, or complainant, respectively, if such person was acting in good faith within the scope of the respective capacity, made a reasonable effort to obtain the facts of the matter as to which action was taken, and acted in the reasonable belief that the action taken by such person was warranted by the facts.

(7) Any physician determining an impairment rating on an injured worker pursuant to this title shall be immune from civil liability in any action brought by any person based on said impairment rating, absent the showing of malice or bad faith on the part of the rating physician.

Source: L. 90: Entire section added, p. 579, § 1, effective July 1.

8-43-503. Utilization review of health care providers. (1) The general assembly hereby finds and determines that health care providers that provide medical care or health care services that are not reasonably necessary or not reasonably appropriate according to accepted professional standards should not be allowed to provide such services to workers' compensation claimants. The general assembly, therefore, hereby declares that the purpose of the utilization review process authorized in this section is to provide a mechanism to review medical care or health care services rendered pursuant to this article that may not be reasonably necessary or reasonably appropriate according to accepted professional standards and to provide a mechanism to prevent such health care providers from providing medical care or health care services.

(2) The provisions relating to the procedures for utilization review found in section 8-43-501 (2), (3), (4), (5)(a), (5)(c), and (5)(d) shall apply to utilization review under this section. A unanimous vote by the committee created in section 8-43-501 (3) shall be required for a recommendation to the director that a health care provider not be allowed to provide medical care or health care services to claimants.

(3) Employers, insurers, claimants, or their representatives shall not dictate to any physician the type or duration of treatment or degree of physical impairment. Nothing in this subsection (3) shall be construed to abrogate any managed care or cost containment measures authorized in articles 40 to 47 of this title.

Source: L. 94: Entire section added, p. 2003, § 7, effective July 1.

PART 6

PROVIDER REVIEW AND DISCLOSURE

8-43-601. Short title. This part 6 shall be known and may be cited as the "Provider Review and Disclosure Act".

Source: L. 2010: Entire part added, (SB 10-178), ch. 290, p. 1347, § 1, effective July 1.

8-43-602. Legislative declaration. The general assembly finds, determines, and declares that insurer performance programs are used in marketing, sales, and other efforts, and, as such,

may impact an employer's selection of an authorized health care provider. To protect patients, employers, and providers, and to avoid improper profiling, all performance programs must be fair, objective, consistently applied, and accord providers due process. Consistent with these goals, performance programs should align incentives not only with efficient operations, but also with cost-effective, high-quality care. Accordingly, the general assembly finds that requiring minimum standards and full disclosure of performance program data and methodologies will help improve the quality and efficiency of health care delivered to Colorado workers.

Source: L. 2010: Entire part added, (SB 10-178), ch. 290, p. 1347, § 1, effective July 1.

8-43-603. Definitions. As used in this part 6, unless the context otherwise requires:

(1) "Insurer" means an entity that provides workers' compensation insurance coverage required by article 44 of this title, including any third-party insurer or self-insured employer.

(2) "Methodology" means the method by which an assessment or measurement is determined, including algorithms or studies, evaluation of data, application of guidelines, or performance measures.

(3) "Patient" means a person who qualifies for health care benefits under articles 40 to 47 of this title.

(4) "Performance program" means any program, system, or process through which an insurer rates or recognizes the cost, efficiency, quality, or other assessment or measurement of a provider's care, whether through awards, payments, assignment, or characterization or representation that is disclosed to patients, other providers, employers, or the public.

(5) "Provider" means a physician licensed under the "Colorado Medical Practice Act", article 240 of title 12, or a clinic that provides health care pursuant to articles 40 to 47 of this title 8.

Source: L. 2010: Entire part added, (SB 10-178), ch. 290, p. 1348, § 1, effective July 1. **L. 2019:** (5) amended, (HB 19-1172), ch. 136, p. 1648, § 24, effective October 1.

8-43-604. Performance programs. (1) All performance programs shall include, at a minimum:

(a) A quality of care component that is satisfied by using standard treatment guidelines promulgated by the director pursuant to section 8-42-101 or evidence-based administrative, operational, or clinical performance measures that improve care;

(b) A clear representation of the weight given to the quality of care component in comparison with other factors, which weight shall be equal to or greater than any other factor;

(c) If a performance program includes an employer satisfaction element, a patient satisfaction element, which shall be weighted equal to or greater than the employer satisfaction element;

(d) Statistical analyses that are objective, accurate, valid, reliable, and verifiable;

(e) A period of assessment of data, pertinent to the performance program, which shall be updated at appropriate intervals;

(f) If claims data are used, accurate claims data appropriately attributed to the provider. When reasonably available, the insurer shall use aggregated data from other insurers to supplement its own claims data.

(g) The provider's responsibility for health care decisions and the financial consequences of those decisions, which shall be fairly and accurately attributed to the provider.

(2) Performance program results shall be reported to each provider reviewed in the program and shall include comparison of the provider's results to the results of the provider's peers.

(3) Any disclosure to patients, other providers, employers, or the public of the results of a performance program shall be accompanied by a conspicuous disclaimer written in bold-faced type stating that the information is intended only as a guide, should not be the sole factor in selecting a provider, has a risk of error, and should be discussed with the provider.

Source: L. 2010: Entire part added, (SB 10-178), ch. 290, p. 1348, § 1, effective July 1.

8-43-605. Due process. (1) At least forty-five days before disclosing the results of a performance program, an insurer shall give a provider written notice of the availability of the provider's individual result, specific instructions on how the provider can access the result, and a description of the implications to the provider. The written notice shall describe the procedures by which the provider may request:

(a) The information required to be disclosed under subsection (2) of this section; and

(b) An appeal of the result pursuant to subsection (3) of this section.

(2) (a) Within ten business days after receiving a request by or on behalf of a provider, an insurer shall disclose, in a manner that is reasonably understandable and that allows the provider to verify the data against his or her records, the methodology and all data upon which a provider's performance program result was calculated, with sufficient detail to allow the provider to determine the effect of the methodology on the data reviewed.

(b) An insurer shall not use the "Uniform Trade Secrets Act", article 74 of title 7, C.R.S., to avoid compliance with this section.

(3) Insurers shall establish procedures for providers to appeal the results of a performance program. Such procedures, in addition to the disclosures and the written notice furnished, shall provide:

(a) A reasonable method by which the provider may submit notice of the desire to appeal;

(b) The name, title, qualifications, and relationship to the insurer of any person responsible for deciding the appeal, who shall be authorized to uphold, modify, or reject results or require additional action to ensure that results are fair, reasonable, accurate, and comply with the requirements of this part 6;

(c) An opportunity for a provider to submit or have considered corrected data or other information relevant to the results or the appropriateness of the methodology used. If requested, a provider may appear at a face-to-face meeting with those responsible for the appeal decision at a location reasonably convenient to the provider or by teleconference. The provider shall submit in writing any corrected data or information in advance of the meeting.

(d) The provider's right to be assisted by a representative, including an attorney;

(e) A detailed written decision regarding the appeal that states the reasons for upholding, modifying, or rejecting the appeal;

(f) Resolution of the appeal within forty-five days after the date upon which the data and methodology are disclosed unless otherwise agreed to by the parties to the appeal; and

(g) A stay on the implementation, use, and disclosure of and action upon the individual results of the performance program until the appeal and any subsequent hearing requested pursuant to section 8-43-207 has become final.

Source: L. 2010: Entire part added, (SB 10-178), ch. 290, p. 1349, § 1, effective July 1.

8-43-606. Enforcement. (1) An insurer shall not limit, by contract or other means, the right of a provider to enforce this part 6.

(2) This part 6 may be enforced through a hearing pursuant to section 8-43-207 or in a civil action, and any remedies at law and in equity are available.

(3) A violation of this part 6 constitutes an unfair or deceptive act or practice under part 11 of article 3 of title 10, C.R.S.

Source: L. 2010: Entire part added, (SB 10-178), ch. 290, p. 1350, § 1, effective July 1.

8-43-607. Filing with director. At least thirty days before implementing any new or amended performance program, an insurer shall file a detailed description of the performance program with the director.

Source: L. 2010: Entire part added, (SB 10-178), ch. 290, p. 1350, § 1, effective July 1.

ARTICLE 44

Insurance

Editor's note: This article was numbered as article 5 of chapter 81, C.R.S. 1963. The substantive provisions of this article were repealed and reenacted in 1990, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this article prior to 1990, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume. Former C.R.S. section numbers are shown in editors' notes following those sections that were relocated. For a detailed comparison of this article, see the comparative tables located in the back of the index.

Cross references: For the extent to which workers' compensation insurance is subject to part 4 of article 4 of title 10, see § 10-4-401 (3)(b).

PART 1

GENERAL PROVISIONS

8-44-101. Insurance requirements. (1) Any employer subject to the provisions of articles 40 to 47 of this title shall secure compensation for all employees in one or more of the following ways, which shall be deemed to be compliance with the insurance requirements of said articles:

(a) By insuring and keeping insured the payment of such compensation in the Pinnacol Assurance fund;

(b) By insuring and keeping insured the payment of such compensation with any stock or mutual corporation authorized to transact the business of workers' compensation insurance in this state. If insurance is effected in such stock or mutual corporation, the employer or insurer shall forthwith file with the division, in form prescribed by it, a notice specifying the name of the insured and the insurer, the business and place of business of the insured, the effective and termination dates of the policy, and, when requested, a copy of the contract or policy of insurance.

(c) By procuring a self-insurance permit from the executive director as provided in section 8-44-201, except for public entity pools as described in section 8-44-204 (3), which shall procure self-insurance certificates of authority from the commissioner of insurance as provided in section 8-44-204;

(d) By procuring a self-insurance certificate of authority from the commissioner of insurance as provided in section 8-44-205.

(2) It shall be unlawful, except as provided in sections 8-41-401 and 8-41-402, for any employer, regardless of the method of insurance, to require an employee to pay all or any part of the cost of such insurance.

(3) (a) (I) Except as otherwise provided in subparagraph (II) of this paragraph (a), all public entities in the state shall insure and keep insured the payment of compensation by electing one of the methods provided in subsection (1) of this section. A public entity having an insured payroll of less than one million dollars annually shall not be eligible for self-insurance; except that public entities forming a pool pursuant to section 8-44-204 (3) shall be eligible if the total of all the payrolls of the public entities in the pool exceeds the required minimum.

(II) Any public entity in the state that is participating in the federal prison industry enhancement certification program pursuant to the federal "Justice System Improvement Act of 1979", 18 U.S.C. sec. 1761 (c), shall insure and keep insured the payment of compensation by electing one of the methods provided in subsection (1) of this section; except that the method for insuring the participants of such program need not be the same method selected by the public entity pursuant to subparagraph (I) of this paragraph (a).

(b) For purposes of this subsection (3), the department of human services, by virtue of the self-insurance program established pursuant to section 8-44-203, shall be considered a public entity of the state.

Source: L. 90: Entire article R&RE, p. 520, § 1, effective July 1. **L. 94:** (3)(b) amended, p. 2635, § 72, effective July 1. **L. 2002:** (1)(a) amended, p. 1884, § 33, effective July 1. **L. 2010:** (3)(a) amended, (HB 10-1109), ch. 171, p. 607, § 3, effective August 11.

Editor's note: This section is similar to former § 8-44-101 as it existed prior to 1990.

8-44-102. Contract for insurance subject to workers' compensation act. (1) Every contract for the insurance of compensation and benefits as provided in articles 40 to 47 of this title or against liability therefor is subject to articles 40 to 47 of this title, and all provisions in the contract for insurance inconsistent with those articles are void. Any contract of insurance issued under articles 40 to 47 of this title by any insurance carrier, including stock and mutual

corporations and Pinnacol Assurance, may include and cover any liability of the employer on account of personal injuries sustained by or death resulting therefrom to any employee.

(2) (a) (I) Except as specified in subparagraph (III) of this paragraph (a), every carrier providing workers' compensation insurance that is authorized to conduct business in Colorado shall submit an annual report to the commissioner of insurance listing any policy forms as may be requested by the commissioner. The listing must be submitted no later than July 1 of each year and must contain a certification by an officer of the carrier that, to the best of the officer's knowledge, each policy form in use complies with Colorado law. The commissioner shall determine the necessary elements of the certification.

(II) (A) An advisory organization as defined in section 10-4-402 (1), C.R.S., or a rating organization as defined in section 10-4-402 (3), C.R.S., shall submit an annual report to the commissioner of insurance listing any policy forms as may be requested by the commissioner. The listing must be submitted no later than July 1 of each year and must contain a certification by an officer of the organization that, to the best of the officer's knowledge, each policy form listed complies with Colorado law. The commissioner shall determine the necessary elements of the certification.

(B) As used in this section, "form" may include any endorsement, rider, letter, notice, or other document affecting an insurance policy or contract issued or delivered to any policyholder in Colorado.

(III) If a carrier uses, in their entirety and without modification, forms prepared by an advisory organization as defined in section 10-4-402 (1), C.R.S., or a rating organization as defined in section 10-4-402 (3), C.R.S., the carrier shall notify the commissioner of insurance that it adopts the annual report filed by the advisory organization or rating organization under subparagraph (II) of this paragraph (a) and, if it so notifies the commissioner, it need not submit the certification required by subparagraph (I) of this paragraph (a). If a carrier uses forms that deviate from the forms listed by the advisory organization or rating organization, or if it uses forms other than those listed by the advisory organization or rating organization, the carrier shall submit the annual listing of forms and certification as required by subparagraph (I) of this paragraph (a).

(b) In addition to submitting the documentation required under paragraph (a) of this subsection (2) and except as specified in subparagraph (III) of this paragraph (b):

(I) Every carrier providing workers' compensation insurance that is authorized to conduct business in Colorado, every advisory organization as defined in section 10-4-402 (1), C.R.S., and every rating organization as defined in section 10-4-402 (3), C.R.S., shall submit to the commissioner a list of any new or revised policy forms as may be requested by the commissioner at least thirty-one days before a carrier uses the forms. Unless a carrier notifies the division of insurance otherwise, policy forms submitted on behalf of a member of an advisory organization or rating organization are deemed to be automatically adopted by the carrier without modification.

(II) The listing must also contain a certification by an officer of the carrier or an officer of the advisory or rating organization that, to the best of the officer's knowledge, each new or revised policy form, endorsement, rider, letter, notice, or other document proposed to be used complies with Colorado law. The commissioner shall determine the necessary elements of the certification.

(III) If an advisory organization or rating organization certifies a form as required by subparagraph (II) of this paragraph (b) and a carrier is a member of that organization and uses the form in its entirety, the carrier need not list that form as required by subparagraph (I) of this paragraph (b) or submit a certification for that form as required by subparagraph (II) of this paragraph (b).

(c) The commissioner may examine and investigate workers' compensation carriers authorized to conduct business in Colorado to determine whether workers' compensation policy forms, as may be requested by the commissioner, comply with the certification of the carrier and statutory mandates.

Source: L. 90: Entire article R&RE, p. 521, § 1, effective July 1. **L. 93:** Entire section amended, p. 455, § 2, effective April 19. **L. 2002:** Entire section amended, p. 1884, § 34, effective July 1. **L. 2003:** Entire section amended, p. 2200, § 1, effective July 1. **L. 2014:** Entire section amended, (SB 14-137), ch. 78, p. 316, § 1, effective August 6. **L. 2016:** (2) amended, (SB 16-198), ch. 257, p. 1054, § 1, effective June 8.

Editor's note: (1) This section is similar to former § 8-44-102 as it existed prior to 1990.

(2) The provisions of Pinnacol Assurance are contained in article 45 of this title.

8-44-103. Insurers to file system of rating - approval. Every insurance carrier authorized to transact business in this state that insures employers against liability for compensation under the provisions of articles 40 to 47 of this title shall file with the commissioner of insurance its classification of risks, any premiums relating thereto, and any subsequent proposed classification of risks and premiums, together with all rates and any systems of rating.

Source: L. 90: Entire article R&RE, p. 521, § 1, effective July 1. **L. 2000:** Entire section amended, p. 470, § 10, effective August 2. **L. 2002:** Entire section amended, p. 1884, § 35, effective July 1. **L. 2003:** Entire section amended, p. 2201, § 2, effective July 1.

Editor's note: This section is similar to former § 8-44-103 as it existed prior to 1990.

Cross references: For the legislative declaration contained in the 2000 act amending this section, see section 1 of chapter 135, Session Laws of Colorado 2000.

8-44-104. Cutting rates - rebates - penalty. Every insurance carrier that writes compensation insurance shall write insurance at the rates filed with the commissioner of insurance. The cutting of rates, rebating, or any other method whereby, directly or indirectly, any employer is given the benefit of or obtains a rate lower than that approved by the commissioner of insurance is prohibited. The commissioner of insurance may suspend the license of any insurance carrier, agent, or broker who violates any provision of this section. Also, any insurance carrier, any employer, or any officer, agent, or employee thereof who violates any provision of this section is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than one hundred dollars for each such violation.

Source: L. 90: Entire article R&RE, p. 521, § 1, effective July 1. **L. 2000:** Entire section amended, p. 471, § 11, effective August 2. **L. 2002:** Entire section amended, p. 1884, § 36, effective July 1. **L. 2003:** Entire section amended, p. 2201, § 3, effective July 1.

Editor's note: This section is similar to former § 8-44-104 as it existed prior to 1990.

Cross references: For the legislative declaration contained in the 2000 act amending this section, see section 1 of chapter 135, Session Laws of Colorado 2000.

8-44-105. Provisions of policies - primary liability - notice of injury. Every contract insuring against liability for compensation or insurance policy evidencing the same shall contain a clause to the effect that the insurance carrier shall be directly and primarily liable to the employee and, in the event of death, to said employee's dependents to pay compensation, if any, for which the employer is liable, thereby discharging to the extent of such payment the obligations of the employer to the employee; that, as between the employee and the insurance carrier, notice or knowledge of the occurrence of the injury on the part of the employer shall be deemed notice or knowledge, as the case may be, on the part of the insurance carrier; that jurisdiction of the employer, for the purpose of articles 40 to 47 of this title, shall be jurisdiction of the insurance carrier; and that the insurance carrier, in all things, shall be bound by and subject to the orders, findings, decisions, or awards rendered against the employer under the provisions of said articles. Such policy shall also provide that the employee shall have a first lien upon any amount which becomes owing to the employer from the insurance carrier, and the insurance carrier shall pay the same directly to the employee or the employee's dependents, thereby discharging to the extent of such payment the obligation of the employer to the employee. The policy shall not contain any provisions relieving the insurance carrier from payment when the employer becomes legally incapable or insolvent or is discharged in bankruptcy or otherwise during the period that the policy is in operation or the compensation remains owing.

Source: L. 90: Entire article R&RE, p. 522, § 1, effective July 1.

Editor's note: This section is similar to former § 8-44-105 as it existed prior to 1990.

8-44-106. Insurer violation - suspension or revocation of license. If any insurance carrier intentionally, knowingly, or willfully violates any of the provisions of articles 40 to 47 of this title, the commissioner of insurance, on the request of the director, shall suspend or revoke the license or authority of such carrier to do a compensation business in this state.

Source: L. 90: Entire article R&RE, p. 522, § 1, effective July 1.

Editor's note: This section is similar to former § 8-44-106 as it existed prior to 1990.

8-44-107. Right of insurer to examine books of employer. Any insurance carrier operating under the workers' compensation act may apply to the commissioner of insurance for permission to examine any of the books, payrolls, or other documents of any employer insured

by such carrier or of any contractor, subcontractor, lessee, sublessee, or person covered by the employer's compensation insurance to determine the amount of wage expenditure of such employer or of any contractor, subcontractor, lessee, sublessee, or person during any period that such insureds were insured by the insurance carrier. The commissioner of insurance may grant such carrier authority in writing to make the investigation or may appoint any agents of the division of insurance to conduct the investigation.

Source: L. 90: Entire article R&RE, p. 522, § 1, effective July 1.

Editor's note: This section is similar to former § 8-44-108 as it existed prior to 1990.

8-44-108. Repayments for misclassifications. (1) Every insurance carrier authorized to transact business in this state, including Pinnacol Assurance, which insures employers against liability for compensation under the provisions of articles 40 to 47 of this title, is authorized to charge and collect any amount of money that should have been included in premiums paid by an insured but were not included in such premiums as a result of job misclassification. Upon written request by the employer, the issue of whether a job misclassification occurred shall be determined in writing by the insurance company. The employer's request shall be made within thirty working days after the anniversary date of the policy or the date of receipt by the employer of notice of a change in job classification. The insurance company's determination shall be made within thirty days after receipt of the employer's written request. An employer may appeal any determination of an insurance company made pursuant to this subsection (1) to the workers' compensation classification appeals board, pursuant to section 8-55-102. If it is determined that a job misclassification occurred and that such misclassification was caused by the failure of the insured to provide accurate or complete data in order to determine the proper classification as requested by the insurance carrier, the repayment may be collected during the term of the contract for such insurance plus an additional reasonable time not to exceed twelve months.

(2) Any employer who has purchased insurance against liability for compensation under the provisions of articles 40 to 47 of this title is authorized to recover any amount of money which should not have been included in premiums paid by the employer but which were included in such premiums as a result of job misclassification. The repayment may be collected during the term of the contract for such insurance plus an additional reasonable time not to exceed twelve months.

Source: L. 90: Entire article R&RE, p. 522, § 1, effective July 1. **L. 96:** (1) amended, p. 1143, § 2, effective October 1. **L. 2002:** (1) amended, p. 1885, § 37, effective July 1.

Editor's note: This section is similar to former § 8-44-113 as it existed prior to 1990.

8-44-109. Notice - change in rate by classification - policyholder's right to appeal classifications - availability of medical case management services. (1) Any insurance carrier authorized to transact business in this state, including Pinnacol Assurance, which insures employers against liability for compensation under the provisions of articles 40 to 47 of this title, shall supply information regarding a change in the rate by classification to any insured employer, if such employer has requested that such information be supplied. Such information shall be

supplied within thirty days following release of such information to such insurer by the authorized rating organization and following approval of such rate change by the division of insurance. As soon as reasonably possible after the division of insurance's approval of a change in rate by classification, the authorized rating organization shall disseminate notice of such approval and change in rate.

(2) Every insurance carrier authorized to transact business in Colorado, including Pinnacol Assurance, which insures employers against liability for compensation under the provisions of articles 40 to 47 of this title, shall clearly and conspicuously inform policyholders of their rights to appeal employee classification designations, the procedures to be used for such an appeal, and the types of medical case management that the carrier has available to employees to promote medical cost containment.

Source: L. 90: Entire article R&RE, p. 523, § 1, effective July 1. **L. 2002:** Entire section amended, p. 1885, § 38, effective July 1.

Editor's note: This section is similar to former § 8-44-115 as it existed prior to 1990.

8-44-110. Notice of cancellation. Every insurance carrier authorized to transact business in this state, including Pinnacol Assurance, which insures employers against liability for compensation under the provisions of articles 40 to 47 of this title, shall notify any employer insured by the carrier or Pinnacol Assurance, and any agent or representative of such employer, if applicable, by certified mail of any cancellation of such employer's insurance coverage. Such notice shall be sent at least thirty days prior to the effective date of the cancellation of the insurance. However, if the cancellation is based on one or more of the following reasons, then such notice may be sent less than thirty days prior to the effective date of the cancellation of the insurance: Fraud, material misrepresentation, nonpayment of premium, or any other reason approved by the commissioner of insurance.

Source: L. 90: Entire article R&RE, p. 523, § 1, effective July 1. **L. 2002:** Entire section amended, p. 1886, § 39, effective July 1. **L. 2003:** Entire section amended, p. 838, § 3, effective August 6.

Editor's note: This section is similar to former § 8-44-114 as it existed prior to 1990.

8-44-111. Workers' compensation insurance - deductibles - definition. (1) (a) Any employer may agree, as a condition of any contract for the insurance of compensation and benefits as provided in articles 40 to 47 of this title or against liability therefor, to pay an amount not to exceed the split point approved by the commissioner of insurance per claim toward the total amount of any claim payable under articles 40 to 47 of this title. The amount of premium to be paid by an employer who agrees to pay such deductible shall be reduced based upon such deductible in an amount determined by the insurance carrier.

(b) As used in this subsection (1), "split point" means the amount of each loss approved by the commissioner of insurance that an insurer may apply as the primary loss in each workers' compensation claim. The full amount of primary losses counts in each employer's experience modification calculation that determines the employer's percentage credit or surcharge on

workers' compensation coverage. The loss amount above the split point is excess loss and constitutes part of each employer's experience modification calculation.

(c) Nothing in this section abrogates an employer's responsibility to pay the full amount of any compensation and benefits due under articles 40 to 47 of this title. It is a violation of this title for an employer or, if insured, the insurer to require any employee to pay any part of the compensation and benefits due under articles 40 to 47 of this title.

(d) It is a violation of this title for an employer or, if insured, the insurer to require an employee to use any other type of insurance, regardless of whether it is provided as a benefit of employment, or any other employment benefit, to pay any portion of any compensation and benefits due under articles 40 to 47 of this title.

(e) Nothing in this subsection (1) allows a carrier to stop offering no-deductible policies.

(1.5) Whenever any insurer, including Pinnacol Assurance created in section 8-45-101, issues a workers' compensation policy in this state, and annually thereafter, the insurer must issue a policy including the deductible provision if requested by the insured employer; except that the commissioner shall promulgate rules establishing criteria to allow the insurer to deny a deductible policy to an employer based on financial inability to reimburse the insurer for the deductible plan selected.

(2) The existence of an insurance contract with a deductible or the fact of payment as a result of a deductible shall not affect the requirement of an employer to report an injury or death to the division as required in section 8-43-103 (1).

(3) The deductible amounts paid by any employer under the provisions of this section shall be excluded from consideration by insurance carriers authorized to transact business in Colorado, including Pinnacol Assurance, which insures employers against liability for compensation under the provisions of articles 40 to 47 of this title, in establishing the modification factors based upon experience used by such insurance carriers to determine premiums. For purposes of experience modifications, medical only claims shall be calculated in the same manner as claims with indemnity payments.

(4) Every insurance carrier authorized to transact business in Colorado, including Pinnacol Assurance, which insures employers against liability for compensation under the provisions of articles 40 to 47 of this title, shall clearly and conspicuously inform policyholders of the availability of the deductible option specified in subsection (1) of this section.

Source: L. 90: Entire article R&RE, p. 523, § 1, effective July 1. **L. 91:** (3) added, p. 1331, § 44, effective July 1. **L. 92:** Entire section amended, p. 1816, § 1, effective July 1. **L. 93:** (1.5) added, p. 2085, § 4, effective July 1. **L. 2002:** (1.5), (3), and (4) amended, p. 1886, § 40, effective July 1. **L. 2010:** (3) amended, (SB 10-112), ch. 52, p. 196, § 1, effective January 1, 2011. **L. 2013:** (1) amended, (HB 13-1025), ch. 140, p. 455, § 1, effective July 1.

Editor's note: This section is similar to former § 8-44-116 as it existed prior to 1990.

8-44-112. Surcharge on workers' compensation insurance premiums - workers' compensation cash fund. (1) (a) Notwithstanding the provisions of sections 10-3-209 (1)(c) and 10-6-128 (3), C.R.S., for the purpose of offsetting the direct and indirect costs of the administration of the workers' compensation system, every person, partnership, association, and corporation, whether organized under the laws of this state or of any other state or country, every

mutual company or association, every captive insurance company, and every other insurance carrier, including Pinnacol Assurance, insuring employers in this state against liability for personal injury to their employees or death caused thereby under the provisions of the "Workers' Compensation Act of Colorado" shall, as provided in this section, pay a surcharge upon the premiums received, whether in cash or not, in this state, or on account of business done in this state, for such insurance in this state, at a rate established by the director by rule, which surcharge shall be reviewed and adjusted annually based upon appropriations made for the direct and indirect costs of the administration of the workers' compensation system, as provided in subsection (7) of this section. Such insurance carriers shall be credited with all cancelled or returned premiums actually refunded during the year of such insurance.

(b) (I) For the purpose of funding the direct and indirect costs of the activities of the division related to the "Workers' Compensation Cost Containment Act", article 14.5 of this title, there shall be added to the surcharge imposed pursuant to paragraph (a) of this subsection (1) an increment not to exceed three-hundredths of one percent upon the premiums received, said surcharge to be reviewed and adjusted annually and paid over to the division in the same manner as specified in this section for the surcharge.

(II) Notwithstanding any other provisions of this section, no employer acting as a self-insurer under the provisions of the "Workers' Compensation Act of Colorado" shall be subject to the increment added to the surcharge pursuant to subparagraph (I) of this paragraph (b).

(III) All moneys collected pursuant to subparagraph (I) of this paragraph (b) shall be transmitted to the state treasurer, who shall credit the same to the cost containment fund, created in section 8-14.5-108.

(2) Every such insurance carrier shall, on July 1, 1987, and semiannually thereafter, make a return, verified by affidavits of its president and secretary, or other chief officers or agents, to the division of workers' compensation, stating the amount of all such premiums received and credits granted during the period covered by such return. Every insurance carrier required to make such return shall file the same with the division within thirty days after the close of the period covered thereby and shall, at the same time, pay to the division of workers' compensation a surcharge ascertained as provided in subsection (1) of this section, less return premiums on cancelled policies.

(3) Every employer acting as a self-insurer under the provisions of the "Workers' Compensation Act of Colorado" shall, under oath, report to the division of workers' compensation the business payroll in such form as may be prescribed by the director and at the times in this section provided for premium reports by insurance companies in subsection (2) of this section. The division shall assess against such payroll a surcharge for the purposes of this section ascertained as provided in subsection (2) of this section on the basic premiums chargeable against the same or most similar industry or business taken from the manual insurance rates, including any discount or experience modification allowed, chargeable by the Pinnacol Assurance fund, and, upon receipt of notice from the division of workers' compensation of the surcharge so assessed, every such self-insurer shall, within thirty days after the receipt of such notice, pay to the division of workers' compensation the surcharge so assessed.

(4) If any such insurance carrier or self-insurer fails or refuses to make the return required by this article, the director shall assess the surcharge against such insurance carrier or self-insurer at the rate provided for in this section on such amount of premium as the director may deem just, and the proceedings thereof shall be the same as if the return had been made.

(5) If any such insurance carrier or self-insurer withdraws from business in this state before the surcharge falls due as provided in this section, or fails or neglects to pay such surcharge, the director shall at once proceed to collect the same; and the director is authorized to employ such legal processes as may be necessary for that purpose. Suit shall be brought by the director in any of the courts of this state having jurisdiction.

(6) The director, in the enforcement of this section, shall have all of the powers granted to said director in the "Workers' Compensation Act of Colorado", and any insurance carrier or self-insurer violating any of the provisions of this section, or failing to pay the surcharge imposed in this section, is guilty of violation of said act and subject to the penalties therein prescribed.

(7) (a) All moneys collected pursuant to this section shall be transmitted to the state treasurer, who shall credit the same to the workers' compensation cash fund, which fund is hereby created. The moneys in the workers' compensation cash fund shall be subject to annual appropriation by the general assembly for the direct and indirect costs of the administration of the "Workers' Compensation Act of Colorado", articles 40 to 47 of this title. Any interest earned on the investment or deposit of moneys in the workers' compensation cash fund shall remain in the fund and shall not revert to the general fund of the state at the end of any fiscal year.

(b) Notwithstanding any provision of paragraph (a) of this subsection (7) to the contrary, on March 5, 2003, the state treasurer shall deduct six million dollars from the workers' compensation cash fund and transfer such sum to the general fund.

(c) Notwithstanding any provision of paragraph (a) of this subsection (7) to the contrary, on March 30, 2009, the state treasurer shall deduct fifteen million seven hundred thousand dollars from the workers' compensation cash fund and transfer such sum to the general fund.

(d) The workers' compensation cash fund is exempt from the limitations set forth in section 24-75-402.

(e) Notwithstanding subsection (7)(a) of this section, on June 30, 2020, the state treasurer shall transfer one million dollars from the workers' compensation cash fund to the general fund.

Source: L. 90: Entire article R&RE, p. 524, § 1, effective July 1. **L. 92:** (7) amended, p. 1828, § 2, effective May 19. **L. 93:** (1)(b) RC&RE, p. 1459, § 1, effective June 6; (1)(b) RC&RE, p. 1723, § 2, effective June 6. **L. 99:** (7) amended, p. 617, §4, effective August 4. **L. 2002:** (1)(a) and (3) amended, p. 1886, § 41, effective July 1. **L. 2003:** (7) amended, p. 454, § 2, effective March 5. **L. 2009:** (7)(c) added, (SB 09-208), ch. 149, p. 618, § 1, effective April 20. **L. 2018:** (7)(d) added, (HB 18-1429), ch. 398, p. 2362, § 1, effective June 6. **L. 2020:** (7)(e) added, (HB 20-1406), ch. 178, p. 811, § 2, effective June 29.

Editor's note: (1) This section is similar to former § 8-44-111 as it existed prior to 1990.

(2) Subsection (1)(b)(IV) provided for the repeal of subsection (1)(b), effective July 1, 1992. (See L. 90, p. 524.) Subsection (1)(b) has subsequently been reenacted.

(3) Subsection (7)(c) requires the state treasurer to transfer $15,700,000 from the workers' compensation cash fund to the general fund on March 30, 2009; however, Senate Bill 09-208, which enacted the provision did not take effect until April 20, 2009.

8-44-113. Data from insurance carriers and self-insured employers related to workers' compensation - studies related to workers' compensation system. (Repealed)

Source: L. 91: Entire section added, p. 1331, § 45, effective July 1. **L. 93:** (1), (2), (3), and (4) amended, p. 1276, § 1, effective June 6. **L. 97:** (4) RC&RE p. 529, § 1, effective April 24; (1)(b) repealed, p. 1475, § 10, effective June 3. **L. 2002:** (1)(a) amended, p. 1887, § 42, effective July 1; (1)(a) amended, p. 1467, § 21, effective October 1. **L. 2003:** (1)(a), (1)(c), and IP(4)(b) amended, p. 1556, § 1, effective May 1. **L. 2005:** Entire section repealed, p. 1248, § 1, effective July 1.

8-44-114. Determination of premium. The amount of the premium to be paid by an employer for a contract of insurance of compensation and benefits as provided in articles 40 to 47 of this title or against liability therefor shall be on the basis of the annual expenditure of money by said employer for the services of persons engaged in such employer's employment; except that no portion of such expenditure representing a per diem payment shall be considered unless such payment is considered wages for federal income tax purposes.

Source: L. 94: Entire section added, p. 1286, § 4, effective May 22.

8-44-115. Calculation of premium - motor vehicle accidents. (1) The amount by which an employer's experience rating is modified, if at all, as the result of a motor vehicle accident in which an employee is injured or killed shall be reduced in accordance with this section if:

(a) The employee is entitled to benefits under articles 40 to 47 of this title; and

(b) The accident was not caused, wholly or in part, by the employee or the employer; and

(c) The use of a motor vehicle is not an integral part of the employer's business, as determined under rules promulgated by the commissioner of insurance under section 10-4-408 (5)(e), C.R.S.

(2) (a) Any modification of an employer's experience rating resulting from an accident described in subsection (1) of this section shall reflect the deduction of a loss limitation, the amount of which shall be determined by the commissioner of insurance under rules adopted pursuant to section 10-4-408 (5)(e), C.R.S.

(b) All loss experience remaining after deduction of the loss limitation referred to in paragraph (a) of this subsection (2) shall be distributed among all workers' compensation classifications in use in the state as determined by the commissioner of insurance. For purposes of such distribution, classifications of businesses of which use of a motor vehicle is an integral part may be treated differently from classifications of businesses of which use of a motor vehicle is not an integral part.

(3) This section applies to all insurers, including Pinnacol Assurance created in section 8-45-101, offering workers' compensation insurance under articles 40 to 47 of this title. The provisions of this section shall be disclosed to all policyholders annually.

Source: L. 94: Entire section added, p. 1366, § 1, effective October 1. **L. 2002:** (3) amended, p. 1887, § 43, effective July 1.

8-44-116. Reversionary interests in indemnity benefits prohibited. No provision in a contract for insurance regulated by this article or any contract ancillary to such a contract, including specifically a contract setting up an annuity for indemnity benefits, shall establish a reversionary interest in the insurer for the indemnity benefits. Any such provision is void and unenforceable as against public policy.

Source: L. 2010: Entire section added, (SB 10-011), ch. 302, p. 1433, § 4, effective May 27.

PART 2

SELF-INSUREDS

8-44-201. Employer as own insurance carrier - revocation of permission. (1) The executive director has the discretion to grant to any employer who has accepted the provisions of articles 40 to 47 of this title permission to be its own insurance carrier for the payment of the compensation and benefits provided by said articles. Such permission may be granted by the executive director after the filing by an employer of such statement and the giving of such information as may be required by the executive director. The executive director has the sole power to prescribe the rules, regulations, orders, terms, and conditions upon which said permit shall be granted or continued. Permission for self-insurance may be revoked at any time by the executive director, and the employer, upon notice of revocation, shall immediately insure otherwise all liability.

(2) Notwithstanding the provisions of subsection (1) of this section, the executive director shall not prescribe or apply security requirements in granting or continuing permission for the self-insurance program of the department of human services established pursuant to section 8-44-203 but shall provide instead for alternatives to such security requirements including trust funds, surety bonds, excess insurance, or other security acceptable to the executive director. The alternative security requirements provided by this subsection (2) shall apply only to claims arising on or after July 1, 1985, and before July 1, 1990. The trust fund in existence on May 24, 1990, pursuant to the trust agreement between the department of human services, a third party administrator, and the state treasurer, dated June 27, 1985, shall remain in existence through June 30, 1990.

(3) Notwithstanding the provisions of subsection (1) of this section, the executive director shall not prescribe or apply security requirements in continuing permission for an employer which is acting as its own insurance carrier on July 1, 1986, which are in excess of those security requirements in effect on July 1, 1986, unless there is a substantial change in the economic condition or potential liability of such employer.

(4) Notwithstanding the provisions of subsection (1) of this section, the executive director shall not prescribe or apply security requirements in granting or continuing permission for a self-insurance program established by the state pursuant to section 24-30-1510.7, C.R.S.

Source: L. 90: Entire article R&RE, p. 525, § 1, effective July 1; (2) amended, p. 1199, § 12, effective July 1. **L. 94:** (2) amended, p. 2635, § 73, effective July 1. **L. 97:** (4) added, p. 51, § 1, effective July 1.

Editor's note: This section is similar to former § 8-44-109 as it existed prior to 1990.

8-44-202. Workers' compensation self-insurance fund - created. (1) The executive director shall establish and collect such fees as the executive director determines are necessary to administer this section, which fees shall not supplant funding for any other function of the department of labor and employment. The fees established pursuant to this subsection (1) shall not exceed two thousand dollars for an initial application or for an annual review of any employer acting as a self-insurer under this section.

(2) The executive director shall transmit any moneys received pursuant to subsection (1) of this section to the state treasurer, who shall place such moneys in the workers' compensation self-insurance fund, which fund is hereby created. The general assembly shall make appropriations from such fund for the purposes of administering this section.

Source: L. 90: Entire article R&RE, p. 526, § 1, effective July 1; (1) amended, p. 583, § 2, effective July 1.

Editor's note: This section is similar to former § 8-44-109 as it existed prior to 1990.

8-44-203. Department of human services - self-insurance program. The general assembly hereby finds and declares that a program shall be established by the department of human services and the department of labor and employment to provide for a self-insurance program for the department of human services, which shall apply only to claims arising on or after July 1, 1985, and before July 1, 1990.

Source: L. 90: Entire article R&RE, p. 526, § 1, effective July 1; entire section amended, p. 1200, § 13, effective July 1. **L. 94:** Entire section amended, p. 2636, § 74, effective July 1.

Editor's note: This section is similar to former § 8-44-109 as it existed prior to 1990.

8-44-204. Public entities - self-insurance authorized for workers' compensation - pooled insurance - definition. (1) "Public entity", as used in this section, means and includes any county, municipality, school district, and any other type of district or authority organized pursuant to law.

(2) A public entity may, after receiving permission pursuant to section 8-44-101 (1)(c), act as its own insurance carrier for compensation and benefits. Any public entity other than a school district may establish and maintain an insurance reserve fund for self-insurance purposes and may include in the annual tax levy of the public entity such amounts as are determined by its governing body to be necessary for the uses and purposes of the insurance reserve fund, subject to the limitations imposed by section 29-1-301, C.R.S. School districts may establish and maintain an insurance reserve fund in accordance with the provisions of section 22-45-103 (1)(e), C.R.S., using moneys allocated thereto pursuant to the provisions of section 22-54-105 (2), C.R.S. In the event that a public entity has no annual tax levy, it may appropriate from any unexpended balance in the general fund such amounts as the governing body shall deem necessary for the purposes and uses of the insurance reserve fund.

(3) Public entities may cooperate with one another to form a self-insurance pool to provide the insurance coverage required by this article for the cooperating public entities. Any such insurance pool shall be formed pursuant to the provisions of part 2 of article 1 of title 29, C.R.S. The provisions of articles 10.5 and 47 of title 11, C.R.S., shall apply to moneys of such self-insurance pool.

(4) Any self-insurance pool authorized by subsection (3) of this section shall not be construed to be an insurance company nor otherwise subject to the laws of this state regulating insurance or insurance companies; except that the pool shall comply with the applicable provisions of sections 10-1-203 and 10-1-204 (1) to (5).

(5) Prior to the formation of a self-insurance pool, there shall be submitted to the commissioner of insurance a complete written proposal of the pool's operation, including, but not limited to, the administration, claims adjusting, membership, plan for reinsurance, and capitalization of the pool. The commissioner shall review the proposal within thirty days after receipt to assure that proper insurance techniques and procedures are included in the proposal. After such review, the commissioner shall have the right to approve or disapprove the proposal. If the commissioner approves the proposal, the commissioner shall issue a certificate of authority. The costs of such review shall be paid by the public entities desiring to form such a pool.

(6) Each self-insurance pool for public entities created in this state shall file, with the commissioner of insurance on or before March 30 of each year, a written report in a form prescribed by the commissioner, signed and verified by its chief executive officer as to its condition.

(7) The commissioner of insurance, or any person authorized by the commissioner of insurance, shall conduct an insurance examination at least once a year to determine that proper underwriting techniques and sound funding, loss reserves, and claims procedures are being followed. This examination shall be paid for by the self-insurance pool out of its funds at the same rate as provided for foreign insurance companies under section 10-1-204 (9), C.R.S.

(8) (a) The certificate of authority issued to a public entity under this section may be revoked or suspended by the commissioner of insurance for any of the following reasons:

(I) Insolvency or impairment;

(II) Refusal or failure to submit an annual report as required by subsection (6) of this section;

(III) Failure to comply with the provisions of its own ordinances, resolutions, contracts, or other conditions relating to the self-insurance pool;

(IV) Failure to submit to examination or any legal obligation relative thereto;

(V) Refusal to pay the cost of examination as required by subsection (7) of this section;

(VI) Use of methods which, although not otherwise specifically proscribed by law, nevertheless render the operation of the self-insurance pool hazardous, or its condition unsound, to the public;

(VII) Failure to otherwise comply with the law of this state, if such failure renders the operation of the self-insurance pool hazardous to the public.

(b) If the commissioner of insurance finds upon examination, hearing, or other evidence that any participating public entity has committed any of the acts specified in paragraph (a) of this subsection (8) or any act otherwise prohibited in this section, the commissioner may suspend or revoke such certificate of authority if the commissioner deems it in the best interest of the

public. Notice of any revocation shall be published in one or more daily newspapers in Denver which have a general state circulation. Before suspending or revoking any certificate of authority of a public entity, the commissioner shall grant the public entity fifteen days in which to show cause why such action should not be taken.

(9) (a) Any self-insurance pool organized pursuant to this section may invest in securities meeting the investment requirements established in part 6 of article 75 of title 24, C.R.S., and may also invest in membership claim deductibles and in any other security or other investment authorized for such pools by the commissioner of insurance.

(b) Any public entity which is a member of a self-insurance pool which is organized pursuant to this section or any instrumentality formed by two or more of such members may invest in subordinated debentures issued by such self-insurance pool.

(10) In addition to workers' compensation coverage pursuant to subsection (3) of this section, a self-insurance pool authorized by subsection (3) of this section may provide property coverage pursuant to section 29-13-102, C.R.S., and liability coverage pursuant to section 24-10-115.5, C.R.S.

Source: L. 90: Entire article R&RE, p. 526, § 1, effective July 1. **L. 92:** (4) amended, p. 1500, § 35, effective July 1; (7) amended, p. 1613, § 165, effective July 1. **L. 94:** (2) amended, p. 810, § 17, effective April 27; (7) amended, p. 1626, § 17, effective May 31. **L. 97:** (6) amended, p. 1475, § 11, effective June 3. **L. 2017:** (4) amended, (HB 17-1231), ch. 284, p. 1575, § 12, effective January 1, 2018.

Editor's note: This section is similar to former § 8-44-110 as it existed prior to 1990.

8-44-205. Employers - self-insurance pools authorized for workers' compensation - definition. (1) "Employers", as used in this section, means a bona fide trade or professional association or two or more employers which are engaged in the same or similar type of business or are members of the same bona fide trade or professional association.

(2) Employers may cooperate with one another to form a self-insurance pool to provide the insurance coverage required by this article for cooperating employers.

(3) Any self-insurance pool authorized by subsection (2) of this section shall not be construed to be an insurance company nor otherwise subject to the laws of this state regulating insurance or insurance companies; except that the pool shall comply with the applicable provisions of sections 10-1-203 and 10-1-204 (1) to (5), and is subject to proceedings authorized by part 5 of article 3 of title 10.

(4) Prior to the formation of a self-insurance pool, there shall be submitted to the commissioner of insurance a complete written proposal of the pool's operation, including, but not limited to, the administration, claims adjusting, membership, plan for reinsurance, capitalization of the pool, and risk management programs. The commissioner shall review the proposal within forty-five days after receipt to assure that proper insurance techniques and procedures are included in the proposal. After such review, the commissioner shall have the right to approve or disapprove the proposal. If the commissioner of insurance has not disapproved the proposal within ninety days of receipt of the proposal, such proposal shall be deemed approved. If the commissioner approves the proposal, the commissioner shall issue a certificate of authority. The costs of such review shall be paid by the employers desiring to form such a pool.

(5) Each self-insurance pool for employers created in this state shall file with the commissioner of insurance, on or before March 30 of each year, a written report in a form prescribed by the commissioner, signed and verified by its chief executive officer as to its condition.

(6) The commissioner of insurance, or the commissioner's designee, shall conduct an insurance examination at least once a year to determine that proper underwriting techniques and sound funding, loss reserves, and claims procedures are being followed. This examination shall be paid for by the self-insurance pool out of its funds at the same rate as provided for foreign insurance companies under section 10-1-204 (9), C.R.S.

(7) (a) The certificate of authority issued to an employer self-insurance pool under this section may be revoked or suspended by the commissioner of insurance for any of the following reasons:

(I) Insolvency or impairment;

(II) Refusal or failure to submit an annual report as required by subsection (5) of this section;

(III) Failure to comply with the provisions of its own rules, resolutions, contracts, or other conditions relating to the self-insurance pool;

(IV) Failure to submit to examination or any legal obligation relative thereto;

(V) Refusal to pay the cost of examination as required by subsection (6) of this section;

(VI) Use of methods which, although not otherwise specifically proscribed by law, nevertheless render the operation of the self-insurance pool hazardous, or its condition unsound, to the public;

(VII) Failure to otherwise comply with the law of this state, if such failure renders the operation of the self-insurance pool hazardous to the public.

(b) If the commissioner of insurance finds upon examination, hearing, or other evidence that any participating employer self-insurance pool has committed any of the acts specified in paragraph (a) of this subsection (7) or any act otherwise prohibited in this section, the commissioner may suspend or revoke such certificate of authority if the commissioner deems it in the best interest of the public. Notice of any revocation shall be published in one or more daily newspapers in Denver which have a general state circulation. Before suspending or revoking any certificate of authority of an employer self-insurance pool, the commissioner shall grant the employer self-insurance pool fifteen days in which to show cause why such action should not be taken.

(8) The commissioner of insurance may supervise or rehabilitate an employer self-insurance pool pursuant to the provisions of parts 4 and 5 of article 3 of title 10, C.R.S., for any of the following reasons:

(a) Insolvency or impairment;

(b) Failure to comply with the provisions of its own rules, resolutions, contracts, or other conditions relating to the self-insurance pool;

(c) Failure to submit to examination or any legal obligation relative thereto;

(d) Use of methods which, although not otherwise specifically proscribed by law, nevertheless render the operation of the self-insurance pool hazardous, or its condition unsound, to the public;

(e) Failure to otherwise comply with the law of this state, if such failure renders the operation of the self-insurance pool hazardous to the public.

(9) The commissioner of insurance may promulgate reasonable rules and regulations necessary to effectuate the purposes of this section.

(10) Any self-insurance pool or any trust which provides insurance coverage for purposes of articles 40 to 47 of this title which is in existence and is operating prior to July 10, 1987, is not subject to the requirements of this section and may continue to operate such pool or trust as authorized by law.

(11) Each self-insurance pool created under this section shall establish a trust fund, on an annual basis, to provide payment of the total workers' compensation loss cost incurred by all pool members within each given year. Aggregate excess insurance shall be provided by each self-insurance pool to the statutory limit of coverage, attaching at the maximum amount of each annual trust fund balance, or, in lieu thereof, the commissioner of insurance shall set other security standards which assure payment of workers' compensation in the event that a self-insurance pool disbands or defaults.

Source: L. 90: Entire article R&RE, p. 529, § 1, effective July 1. **L. 92:** (3) amended, p. 1500, § 36, effective July 1; (6) amended, p. 1613, § 166, effective July 1. **L. 94:** (6) amended, p. 1627, § 18, effective May 31. **L. 97:** (5) amended, p. 1475, § 12, effective June 3. **L. 2017:** (3) amended, (HB 17-1231), ch. 284, p. 1575, § 13, effective January 1, 2018.

Editor's note: This section is similar to former § 8-44-112 as it existed prior to 1990.

8-44-206. Guaranty fund - immediate payment fund - special funds board - creation. (1) The general assembly hereby finds and declares that benefits awarded under articles 40 to 47 of this title to claimants employed by self-insurers may be unreasonably delayed or not paid at all if receipt of the proceeds of the bond required of the self-insurer is delayed or if the self-insurer declares bankruptcy or has insufficient reserves to cover the claim. The general assembly further finds and declares that the creation of an immediate payment fund and a guaranty fund will assure prompt and complete payment of benefits awarded to such claimants.

(2) **Creation of special funds board - duties.** (a) For the purposes of carrying out this section, there is hereby created a special funds board which shall exercise its powers and perform its duties and functions as specified in this subsection (2) under the department of labor and employment as if the same were transferred to the department by a **type 2** transfer as such transfer is defined in the "Administrative Organization Act of 1968", article 1 of title 24, C.R.S. Said board shall be composed of five members: Four members who are managers or employees of self-insured employers in good standing, two of whom shall demonstrate knowledge of risk management and finance, and the executive director.

(b) With the exception of the executive director, the board members shall be appointed by the governor and approved by the senate. The terms of the members of the board first appointed shall be four years, three years, two years, and one year, respectively. Thereafter, the term for each appointed board member shall be four years. Members of the board may be reappointed and the executive director shall serve continuously.

(c) The members of the board shall receive no compensation but shall be reimbursed for actual and necessary traveling and subsistence expenses incurred in the performance of their duties as members of the board.

(d) (I) The board shall determine the assessments to be made pursuant to subsections (3) and (4) of this section and shall determine the qualifications and requirements for any claims administrators hired to adjust the claims of a self-insurer who fails to meet his obligations with respect to benefits awarded pursuant to articles 40 to 47 of this title.

(II) The board shall also participate, in an advisory capacity only, in matters concerning the granting or termination of self-insurance permits and the setting of security requirements.

(3) **Immediate payment fund - assessments - creation of fund.** (a) The board shall impose an assessment upon each employer self-insured under section 8-44-201. Assessments under this subsection (3) shall be based upon a ratio equal to the self-insured employer's paid workers' compensation medical and indemnity losses for the most recent self-insurance permit year divided by the aggregate sum of paid medical and indemnity losses by all self-insured employers for that year. Such losses shall be determined on July 1, 1990, for the most recently completed permit year, and on the first day of July for each year thereafter until the minimum fund balance has been reached. Contributions to the fund shall not be assets of the self-insured employer.

(b) (I) All moneys received by the executive director pursuant to this subsection (3) shall be deposited in the state treasury in the immediate payment fund, which fund is hereby created, and all moneys credited to such fund shall be used solely for the administration and payment of benefits to employees pursuant to this section. The general assembly shall make annual appropriations out of such fund for the administration of the fund. The moneys in such fund for the payment of benefits are hereby continuously appropriated to the department for payment of such benefits. Any moneys not utilized in the fund shall not revert to the general fund.

(II) The minimum fund balance shall be three hundred thousand dollars, to be assessed during the first three years at the rate of one hundred thousand dollars annually. Interest shall accrue to the fund to a maximum fund balance of one million dollars. Thereafter, the fund balance shall be maintained at one million dollars by refunding the excess funds to each self-insured employer, on a pro rata basis, based on that employer's contribution.

(4) **Guaranty fund - assessments - creation of fund.** (a) When the board determines that existing security held by an employer self-insured under section 8-44-201 is insufficient to meet its existing liability for workers' compensation benefits, the board shall impose an assessment on each self-insured employer. The assessment shall be based on a ratio which equals each self-insured employer's paid workers' compensation medical and indemnity losses for the most recent self-insurance permit year divided by the aggregate sum of paid medical and indemnity losses by all self-insured employers for that year. If necessary, the executive director may direct the board to make an annual assessment thereafter until such time as the present value of the guaranty fund, created in paragraph (b) of this subsection (4), equals the total liability for workers' compensation benefits which are in excess of the security held by the defaulting self-insured employers.

(b) (I) All moneys received by the executive director pursuant to this subsection (4) shall be deposited in the state treasury in the guaranty fund, which fund is hereby created. Such moneys credited to the fund shall be used solely for the administration and payment of benefits to employees pursuant to this section. The general assembly shall make annual appropriations out of such fund for the administration of the fund. The moneys in such fund for the payment of benefits are hereby continuously appropriated to the department for payment of such benefits. Any moneys not utilized in the fund shall not revert to the general fund.

(II) All interest shall accrue to the fund. No amounts shall be refunded until all liability in excess of security held by self-insured employers has been discharged and until the dates imposing limitations on actions, as specified in sections 8-43-103 and 8-43-303 have passed. When those conditions have been met, the remaining moneys in the fund shall be refunded to each self-insured employer, on a pro rata basis, based on that employer's contribution.

(c) Public entities self-insuring under section 8-44-201 shall be exempt from and shall not participate in this subsection (4).

(5) The department shall select any claims administrators required under this section based on the qualifications and requirements established by the board. For the purpose of contracting for such services, the department shall not be subject to articles 101 to 114 of title 24, C.R.S.

Source: L. 90: Entire section added, p. 581, § 1, effective July 1. **L. 92:** (3)(b)(I) and (4)(b)(I) amended, p. 1808, § 1, effective March 19.

ARTICLE 45

Pinnacol Assurance

Editor's note: This article was numbered as article 6 of chapter 81, C.R.S. 1963. The substantive provisions of this article were repealed and reenacted in 1990, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this article prior to 1990, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume. Former C.R.S. section numbers are shown in editors' notes following those sections that were relocated. For a detailed comparison of this article, see the comparative tables located in the back of the index.

8-45-101. Pinnacol Assurance - creation - powers and duties. (1) There is hereby created Pinnacol Assurance, which shall be a political subdivision of the state and shall operate as a domestic mutual insurance company except as otherwise provided by law. Pinnacol Assurance shall not be an agency of state government, nor shall it be subject to administrative direction by any state agency except as provided in this article, and except for the purposes of the "Colorado Governmental Immunity Act", article 10 of title 24, C.R.S. Pinnacol Assurance shall not be dissolved except by the general assembly. Section 10-12-411, C.R.S., shall not apply to Pinnacol Assurance.

(2) (a) The powers of Pinnacol Assurance shall be vested in the board of directors of Pinnacol Assurance, which shall have nine members. The members of the board shall be appointed by the governor with the consent of the senate. Of the nine members, four shall be employers whose liability under articles 40 to 47 of this title is insured by Pinnacol Assurance with one of such employers to be a farmer or rancher. Three of the nine members shall be employees of employers whose liability under articles 40 to 47 of this title is insured by Pinnacol Assurance. One of the nine members shall be experienced in the management and operation of insurance companies as defined in section 10-1-102 (6), C.R.S. Such member shall not concurrently serve as an owner, a shareholder, an officer, an employee, an agent of, or in any

other capacity with any business which competes with Pinnacol Assurance. One of the nine members shall be experienced in finance or investments, but shall not be an employer whose liability under articles 40 to 47 of this title is insured by Pinnacol Assurance. The term of office for each such member shall be five years. The appointees may serve on a temporary basis if the senate is not in session when they are appointed until the senate is in session and is able to confirm such appointments. Vacancies on the board shall be filled by appointment of the governor for the remainder of any unexpired terms. The board shall elect a chairman annually from its membership.

(b) The members of the board who were serving as of January 1, 2002, shall continue to serve until the completion of each member's term. New members of the board shall be appointed pursuant to paragraph (a) of this subsection (2).

(c) The board shall have the powers, rights, and duties as set forth in this article and otherwise provided by law.

(3) Members of the board shall be compensated one hundred forty dollars per diem plus their actual and necessary expenses. Per diem compensation, not to exceed thirty days in any calendar year, shall be paid only when the board is transacting official business.

(4) On and after July 1, 2002, the powers, duties, and functions formerly exercised by the Colorado compensation insurance authority may be exercised by Pinnacol Assurance.

(5) The board shall:

(a) (I) Appoint the chief executive officer of Pinnacol Assurance who shall serve under contract and appoint, hire, or delegate the authority to hire such other staff as may be necessary to carry out the duties of Pinnacol Assurance.

(II) If an executive officer of Pinnacol Assurance is appointed pursuant to subparagraph (I) of this paragraph (a) and such executive officer appoints, hires, or delegates duties to any other staff necessary to carry out the duties of Pinnacol Assurance, and the executive officer or other staff receives total compensation, including bonuses or deferred compensation, in an amount equal to or greater than one hundred fifty thousand dollars annually, such compensation information shall be a public record.

(b) Develop and approve an annual budget;

(c) Establish general policies and procedures for the operation and administration of Pinnacol Assurance;

(d) (Deleted by amendment, L. 2002, p. 1865, § 1, effective July 1, 2002.)

(e) Promulgate policies and procedures that establish the basis by which employer premiums payable to Pinnacol Assurance are determined. The board may establish different rates for employers who meet the requirements established by the board for any classification after complying with the requirements of part 4 of article 4 of title 10, C.R.S., so long as those rates are not excessive, inadequate, or unfairly discriminatory.

(f) Offer to provide workers' compensation insurance and employer's liability insurance covering any liability of Colorado employers on account of personal injuries sustained by, or the death of, any employee. Nothing in this article shall be interpreted to permit Pinnacol Assurance to provide any other type of insurance or to provide insurance to employers that are not Colorado employers. Pinnacol Assurance shall not refuse to insure any Colorado employer or cancel any insurance policy due to the risk of loss or amount of premium, except as otherwise provided in this title.

(g) Review and streamline administrative procedures;

(h) Oversee the operations and make necessary personnel changes;

(i) Review the investigative procedures and implement changes to expedite investigations;

(j) Review and recommend legislation pertaining to workers' compensation in articles 40 to 47 of this title and to clarify legal concepts related thereto;

(k) Review the method of calculation of the experience modification factor with the object of providing maximum incentives for job safety;

(l) Establish general policies and procedures by rule and regulation concerning medical care cost containment practices under articles 40 to 47 of this title; and

(m) Post the date, time, and location of each board meeting on the Pinnacol Assurance website at least seven calendar days prior to the scheduled meeting.

(6) Article 4 of title 24, C.R.S., shall not apply to the promulgation of any policies or procedures authorized by subsection (5) of this section.

(7) Pinnacol Assurance may sell services, including but not limited to medical bill processing, that are developed pursuant to its powers under this article.

(8) Employees of Pinnacol Assurance shall be exempt from the state personnel system but shall, by acceptance of employment, be subject to the provisions of article 51 of title 24, C.R.S. Pinnacol Assurance shall provide for the deduction of employer and employee contributions from salary and for payment to the association of such deductions and for any other payments that would be due from a state employer.

(9) Notwithstanding any provision of law to the contrary, the claim files of injured employees, the policy files of employers, and all business records relating to the determination of rates that are not required to be disclosed by any other insurance company shall not be subject to the provisions of part 2 of article 72 of title 24, C.R.S.

(10) With respect to meetings of Pinnacol Assurance, matters relating to the claim files of injured employees and policy files of employers shall not be subject to the provisions of part 4 of article 6 of title 24, C.R.S.

(11) Pinnacol Assurance may enter into cooperative arrangements with any public or private entity for the purpose of carrying out its powers, duties, and functions. Nothing in this section shall require or be interpreted to require an employer to provide health insurance coverage for its employees.

(12) Notwithstanding the provisions of subsection (1) of this section, upon the attainment of a reasonable surplus as set forth in section 8-45-111, the "Colorado Governmental Immunity Act", article 10 of title 24, C.R.S., shall not apply to Pinnacol Assurance.

(13) Any member of the board who owns at least ten percent of an entity that enters into a contract with Pinnacol Assurance shall disclose the board member's ownership interest in the entity. This disclosure shall be a public record.

Source: L. 90: Entire article R&RE, p. 531, § 1, effective July 1. **L. 91:** (8.5), (11), and (12) added, p. 1362, § 1, effective July 1. **L. 95:** (13) added, p. 987, § 1, effective May 25; (7)(b) amended, p. 636, § 16, effective July 1. **L. 96:** (1) amended, p. 1512, § 37, effective June 1. **L. 97:** (5)(e) and (11) amended and (5)(e.5) added, p. 935, § 1, effective May 21. **L. 2000:** (1) amended, p. 284, § 1, effective July 1. **L. 2002:** Entire section amended, p. 1865, § 1, effective July 1. **L. 2003:** (2)(a) amended, p. 614, § 5, effective July 1. **L. 2009:** (2)(c) amended, (SB 09-

281), ch. 335, p. 1775, § 1, effective June 1. **L. 2010:** (5)(m) added, (HB 10-1009), ch. 273, p. 1255, § 1, effective July 1.

Editor's note: This section is similar to former § 8-54-102.5 as it existed prior to 1990.

Cross references: For the provisions that designate Pinnacol Assurance as a "special purpose authority" for the purposes of section 20 of article X of the Colorado constitution, see § 24-77-102 (15).

8-45-102. Pinnacol Assurance fund created - control of fund. (1) There is hereby created in the state treasury a fund, to be known as the Pinnacol Assurance fund, for the benefit of injured and the dependents of killed employees, which shall be administered in accordance with the provisions of this article by the board. Such administration shall be without liability on the part of the state, beyond the amount of said fund, constituted as provided in this article. The state shall have no liability for the solvency or financial condition of the fund.

(2) The chief executive officer is vested with full power and jurisdiction over the administration of Pinnacol Assurance and may appoint such subordinate officers as may be necessary for the efficient operation of Pinnacol Assurance and may do and perform all things, whether specifically designated in this article or in addition thereto, that are necessary or convenient in the exercise of any power or jurisdiction over Pinnacol Assurance in the administration thereof under the provisions of this article as fully and completely as the head of a private insurance company might or could do, subject, however, to all the provisions of this article and other applicable law.

(3) Control of all moneys in the Pinnacol Assurance fund shall be transferred to the board, which shall administer the fund and use such moneys for the purposes of this article.

(4) The Pinnacol Assurance fund shall be a continuing fund and shall consist of all premiums received and paid into said fund for compensation insurance, all property and securities acquired by and through the use of moneys belonging to said fund, and all interest earned upon moneys belonging to said fund and deposited or invested. Said fund shall be applicable to the payment of the salaries of the employees of the fund and to its other operating expenses and to the payment of losses sustained or liabilities incurred under the contracts or policies of insurance issued by Pinnacol Assurance in accordance with the provisions of articles 40 to 47 of this title. All moneys in the fund previously known as the Colorado compensation insurance authority fund shall be transferred into the Pinnacol Assurance fund on July 1, 2002.

(5) The moneys in the Pinnacol Assurance fund shall be continuously available for the purposes of this article and shall not be transferred to or revert to the general fund of the state at the end of any fiscal year. All revenues, moneys, and assets of Pinnacol Assurance belong solely to Pinnacol Assurance. The state of Colorado has no claim to nor any interest in such revenues, moneys, and assets and shall not borrow, appropriate, or direct payments from such revenues, moneys, and assets for any purpose.

Source: L. 90: Entire article R&RE, p. 533, § 1, effective July 1. **L. 2002:** Entire section amended, p. 1869, § 2, effective July 1.

Editor's note: This section is similar to former § 8-54-102 as it existed prior to 1990.

8-45-103. Board to fix rates - chief executive officer to administer rates - sue and be sued - personal liability limited. (1) The board shall have full power and it is its duty to fix and determine the rates to be charged by Pinnacol Assurance for compensation insurance.

(2) The chief executive officer shall manage and conduct all business and affairs in relation to the rates to be charged by Pinnacol Assurance for compensation insurance which shall be conducted in the name of Pinnacol Assurance, and in that name, without any other name, title, or authority, the chief executive officer may:

(a) (I) Sue and be sued in all the courts of this state, or of any other state, or of the United States, and in actions arising out of any act, deed, matter, or thing made, omitted, entered into, done, or suffered in connection with Pinnacol Assurance and the administration, management, or conduct of the business or affairs relating thereto; and the chief executive officer shall be authorized to employ counsel to represent Pinnacol Assurance in any action.

(II) Nothing in this paragraph (a) shall be construed to waive any provisions of the "Colorado Governmental Immunity Act", article 10 of title 24, C.R.S., nor shall it be construed to waive immunity of the state of Colorado from suit in federal court, guaranteed by the eleventh amendment to the constitution of the United States.

(b) The chief executive officer shall not, nor shall any officer or employee of Pinnacol Assurance, or entities or parties with whom it contracts for services, be personally liable in a private capacity for or on account of any act done or omitted or contract or other obligation entered into or undertaken in an official capacity in good faith and without intent to defraud in connection with the administration, management, or conduct of Pinnacol Assurance, its business, or other affairs relating thereto.

(c) (Deleted by amendment, L. 2002, p. 1870, § 3, effective July 1, 2002.)

Source: L. 90: Entire article R&RE, p. 534, § 1, effective July 1. **L. 2002:** Entire section amended, p. 1870, § 3, effective July 1.

Editor's note: This section is similar to former § 8-54-105 as it existed prior to 1990.

8-45-104. Blanks furnished by state. (Repealed)

Source: L. 90: Entire article R&RE, p. 535, § 1, effective July 1. **L. 2002:** Entire section repealed, p. 1871, § 4, effective July 1.

Editor's note: Prior to its repeal in 2002, this section was similar to former § 8-54-126 as it existed prior to 1990.

8-45-105. Places of employment classified - amount of premiums. (1) The board may classify the places of employment of employers insured by Pinnacol Assurance into classes in accordance with the nature of the business in which they are engaged and the probable hazard or risk of injury to their employees. It shall determine the amount of the premiums that such employers shall pay to Pinnacol Assurance, and may prescribe in what manner such premiums shall be paid, and may change the amount thereof both in respect to any or all of such employers as circumstances may require, and the condition of their respective plants, establishments, or

places of work in respect to the safety of their employees may justify. All such premiums shall be levied on a basis that shall be fair, equitable, and just as among such employers.

(2) (Deleted by amendment, L. 2002, p. 1871, § 5, effective July 1, 2002.)

Source: L. 90: Entire article R&RE, p. 535, § 1, effective July 1. **L. 2002:** Entire section amended, p. 1871, § 5, effective July 1.

Editor's note: This section is similar to former § 8-54-107 as it existed prior to 1990.

8-45-106. Insurance at cost - board may impose surcharges. (1) It is the duty of the board, in the exercise of the powers and discretion conferred upon it by articles 40 to 47 of this title, ultimately to fix and maintain, for each class of occupation, the lowest possible rates of premium consistent with the maintenance of a solvent Pinnacol Assurance fund, and the creation and maintenance of a reasonable surplus after the payment of legitimate claims for injury and death, that may be authorized to be paid from the Pinnacol Assurance fund for the benefit of injured and dependents of killed employees.

(2) The board may impose a premium surcharge, not to exceed an additional fifty percent, for up to twelve continuous months, as a condition precedent to insure or reinsure an employer whose policy was canceled or terminated by any insurer for reasons of fraud or intentional misrepresentation of a material fact; except that, if an employer disputes the imposition of such surcharge, the employer may make a complaint to the commissioner of insurance. If the commissioner of insurance determines that the board, in imposing a premium surcharge, has engaged in any conduct in violation of part 11 of article 3 of title 10, C.R.S., the commissioner may take any action the commissioner deems appropriate and authorized by law.

Source: L. 90: Entire article R&RE, p. 536, § 1, effective July 1. **L. 97:** Entire section amended, p. 936, § 2, effective May 21. **L. 2002:** (1) amended, p. 1872, § 6, effective July 1.

Editor's note: This section is similar to former § 8-54-109 as it existed prior to 1990.

8-45-107. Basis of rates - reserve - surplus. (1) The rates shall be the percentage of the payroll of any employer that, on the average, shall produce a sufficient sum to:

(a) Carry all claims to maturity such that the rates shall be based upon the reserve and not upon the assessment plan;

(b) Produce a reasonable surplus as provided in articles 40 to 47 of this title, cover the catastrophe hazard, and ensure the payment to employees and their dependents of the compensation provided in said articles.

(2) In determining the amount of reserve to be laid aside to meet deferred payments according to awards, such reserve may be ascertained by finding the present worth of such deferred medical and indemnity payments calculated at a rate of interest not higher than six percent per annum, and such calculations of disability indemnity benefits shall be made according to a table of mortality not lower than the American experience table of mortality and, in the discretion of the board, by such other and further methods as will result in the establishment of adequate reserves.

(3) The amounts raised for the Pinnacol Assurance fund shall ultimately become neither more nor less than necessary to make the fund self-supporting, which includes the attainment and maintenance of an adequate surplus as determined in accordance with section 8-45-111, and the premiums or rates levied for such purpose shall be subject to readjustment from time to time by the board as may become necessary.

Source: L. 90: Entire article R&RE, p. 536, § 1, effective July 1. **L. 91:** (3) amended, p. 1362, § 2, effective July 1. **L. 2002:** Entire section amended, p. 1872, § 7, effective July 1.

Editor's note: This section is similar to former § 8-54-110 as it existed prior to 1990.

8-45-108. Intentional misrepresentation by employer. (Repealed)

Source: L. 90: Entire article R&RE, p. 536, § 1, effective July 1. **L. 94:** Entire section repealed, p. 1719, § 15, effective July 1.

Editor's note: Prior to its repeal in 1994, this section was similar to former § 8-54-125 as it existed prior to 1990.

8-45-109. Rate schedules posted. (Repealed)

Source: L. 90: Entire article R&RE, p. 536, § 1, effective July 1. **L. 2002:** Entire section repealed, 1873, § 8, effective July 1.

Editor's note: Prior to its repeal in 2002, this section was similar to former § 8-54-127 as it existed prior to 1990.

8-45-110. Board to keep accounts - readjustment by board of rates. (Repealed)

Source: L. 90: Entire article R&RE, p. 537, § 1, effective July 1. **L. 2002:** Entire section repealed, p. 1873, § 9, effective July 1.

Editor's note: Prior to its repeal in 2002, this section was similar to former § 8-54-111 as it existed prior to 1990.

8-45-111. Portions of premiums paid carried to surplus. The board shall set aside such proportion as it may deem necessary of the earned premiums paid into the Pinnacol Assurance fund, as a contribution to the surplus of the fund.

Source: L. 90: Entire article R&RE, p. 537, § 1, effective July 1. **L. 97:** Entire section amended, p. 936, § 3, effective May 21. **L. 2002:** Entire section amended, p. 1873, § 10, effective July 1. **L. 2003:** Entire section amended, p. 2201, § 4, effective July 1. **L. 2010:** Entire section amended, (HB 10-1220), ch. 197, p. 854, § 15, effective July 1.

Editor's note: This section is similar to former § 8-54-112 as it existed prior to 1990.

8-45-112. Amendment of rates - distribution to policyholders. The board may amend at any time the rates for any class. No contract of insurance between Pinnacol Assurance and any employer shall be in effect until a policy or binder has been actually issued by the board and the premium therefor paid as and when required by this article. Not less often than once a year the chief executive officer shall tabulate the earned premiums paid by policyholders of Pinnacol Assurance. Should the experience of the Pinnacol Assurance fund show a credit balance and after payment of all amounts that have fallen due because of operating expenses, injury, or death, and after setting aside proper reserves, the board shall distribute such credit balance to the policyholders who have a balance to their credit in proportion to the premium paid and losses incurred by each such policyholder during the preceding insurance period. In the event any such policyholder fails to renew a policy with Pinnacol Assurance for the period following the period in which said dividends were earned, said policyholder shall be entitled to said credit dividend if such policy is terminated in good standing. In the event an employer actually discontinues business, said employer's policy shall be cancelled, and the dividend, if any, when ascertained, shall be returned to the employer.

Source: L. 90: Entire article R&RE, p. 537, § 1, effective July 1. **L. 2002:** Entire section amended, p. 1873, § 11, effective July 1.

Editor's note: This section is similar to former § 8-54-113 as it existed prior to 1990.

8-45-113. New policies issued - when. Pinnacol Assurance shall not be required to issue a new policy of insurance to an employer until all moneys due Pinnacol Assurance have been paid, all premiums have been paid on all cancelled policies, and the employer has complied with all provisions of such cancelled policies.

Source: L. 90: Entire article R&RE, p. 537, § 1, effective July 1. **L. 93:** Entire section amended, p. 61, § 1, effective March 22. **L. 95:** Entire section amended, p. 63, § 1, effective March 23. **L. 97:** (1)(c) added, p. 936, § 4, effective May 21. **L. 2002:** Entire section R&RE, p. 1874, § 12, effective July 1.

Editor's note: This section is similar to former § 8-54-114 as it existed prior to 1990.

8-45-114. Adjustment of premiums. (Repealed)

Source: L. 90: Entire article R&RE, p. 538, § 1, effective July 1. **L. 2002:** Entire section repealed, p. 1874, § 13, effective July 1.

Editor's note: Prior to its repeal in 2002, this section was similar to former § 8-54-115 as it existed prior to 1990.

8-45-115. Determination of premium - payment in advance - deductibles. (Repealed)

Source: L. 90: Entire article R&RE, p. 538, § 1, effective July 1. **L. 94:** (1) amended, p. 1286, § 3, effective May 22. **L. 2002:** Entire section repealed, p. 1874, § 14, effective July 1.

Editor's note: Prior to its repeal in 2002, this section was similar to former § 8-54-116 as it existed prior to 1990.

8-45-116. Reinsurance. (Repealed)

Source: L. 90: Entire article R&RE, p. 539, § 1, effective July 1. **L. 95:** Entire section amended, p. 987, § 2, effective May 25. **L. 2002:** Entire section repealed, p. 1875, § 15, effective July 1.

Editor's note: Prior to its repeal in 2002, this section was similar to former § 8-54-120 as it existed prior to 1990.

8-45-117. Regulation by commissioner of insurance. (1) Pinnacol Assurance is subject to regulation by the commissioner of insurance as provided in:

(a) Part 11 of article 3 of title 10, C.R.S., pertaining to unfair competition and deceptive practices;

(b) Part 4 of article 4 of title 10, C.R.S., pertaining to rate regulation; however, if the pure premium rates used by Pinnacol Assurance are the national council on compensation insurance rates previously approved by the commissioner of insurance, Pinnacol Assurance may use different pure premium rates for employers who meet the requirements established by the board of directors after complying with the requirements of part 4 of article 4 of title 10, C.R.S., concerning type II insurers;

(c) Sections 24-31-104.5, C.R.S.; 10-1-108 (7), 10-1-109, and 10-1-102, except subsections (3) and (6), C.R.S.; 10-1-205 (1) to (6) and (8), C.R.S.; 10-3-109, C.R.S., except for the publication requirements; 10-3-128, C.R.S.; 10-3-202, C.R.S.; 10-3-207, C.R.S.; 10-3-208, C.R.S.; 10-3-231, C.R.S.; 10-3-239, C.R.S.; and parts 7 and 8 of article 3 of title 10, C.R.S., except as these sections are inconsistent with this article.

(2) (Deleted by amendment, L. 97, p. 936, § 5, effective May 21, 1997.)

(3) Nothing in this section shall be construed to subject Pinnacol Assurance to any premium tax assessed pursuant to title 10, C.R.S.

(4) The cost of examinations performed in accordance with section 8-45-121 (4) shall be billed by the commissioner to Pinnacol Assurance at prevailing hourly rates based upon time records kept by the commissioner. Any such payment received by the commissioner is hereby appropriated to the division of insurance in addition to any other funds appropriated for its normal operation.

(5) At such time as a reasonable surplus of the Pinnacol Assurance fund is reached pursuant to section 8-45-111, Pinnacol Assurance shall be subject to regulation by the commissioner of insurance as provided in section 10-1-205 (7) and part 4 of article 3 of title 10, C.R.S., to the extent consistent with the provisions of this article.

(6) Notwithstanding the provisions of sections 8-45-102 (1) and 8-45-118, upon the attainment of a reasonable surplus as set forth in section 8-45-111 and verified by audit and examination performed in accordance with section 8-45-121, all of the moneys in the Pinnacol

Assurance fund shall be transferred out of the state treasury and into the custody of the board of Pinnacol Assurance. The board shall thereafter control the investment of the fund pursuant to the requirements set forth in part 2 of article 3 of title 10, C.R.S.

(7) Notwithstanding the provisions of sections 8-45-102 (1) and 8-45-118, upon the transfer of the moneys in the Pinnacol Assurance fund in accordance with subsection (6) of this section, the board of Pinnacol Assurance shall make all disbursements, and such disbursements shall not be made upon state warrants.

(8) Notwithstanding the provisions of sections 8-45-102 (1) and 8-45-119, upon the transfer of the moneys in the Pinnacol Assurance fund in accordance with subsection (6) of this section, the state treasurer shall not be required to give any bond as custodian of the Pinnacol Assurance fund.

(9) After the transfer of the moneys in the Pinnacol Assurance fund in accordance with subsection (6) of this section, if the commissioner of insurance places Pinnacol Assurance under direct supervision pursuant to the provisions of section 10-3-405, C.R.S., the moneys in the Pinnacol Assurance fund may be transferred back to the custody of the state treasury pursuant to sections 8-45-102 (1), 8-45-118, and 8-45-119, and the state treasurer shall control the investment of the fund pursuant to section 8-45-120. The transfer of funds shall be under such conditions and within such time period as the state treasurer and the commissioner of insurance deem appropriate.

(10) Pinnacol Assurance shall not acquire or control any other insurer.

Source: L. 90: Entire article R&RE, p. 539, § 1, effective July 1. **L. 97:** (1), (2), and (4) amended and (5) added, p. 936, § 5, effective May 21. **L. 2002:** (1)(c) amended, p. 1012, § 4, effective June 1; IP(1), (1)(b), (3), (4), and (5) amended and (6), (7), (8), (9), and (10) added, p. 1875, § 16, effective July 1. **L. 2003:** (1)(c) amended, p. 615, § 6, effective July 1. **L. 2004:** (1)(c) amended, p. 1058, § 1, effective July 1. **L. 2010:** (1)(c) amended, (HB 10-1385), ch. 204, p. 883, § 2, effective May 5; (5) amended, (HB 10-1220), ch. 197, p. 854, § 16, effective July 1. **L. 2012:** (1)(c) amended, (SB 12-110), ch. 158, p. 560, § 4, effective July 1. **L. 2014:** IP(1) and (1)(c) amended, (HB 14-1315), ch. 295, p. 1217, § 4, effective January 1, 2015.

Editor's note: This section is similar to former § 8-54-124.5 as it existed prior to 1990.

8-45-118. Treasurer custodian of fund - disbursements. (1) The state treasurer shall be the custodian of the Pinnacol Assurance fund, and all disbursements therefrom shall be paid either by the state treasurer upon warrants drawn in accordance with law upon vouchers issued by the board upon order of the chief executive officer, or by or under the direction of the chief executive officer in such other manner as the state treasurer may approve. In every case occurring in which a warrant has been drawn in accordance with law against the state treasurer upon vouchers issued by the board for payment of any sum of money from the Pinnacol Assurance fund, or when another form of payment has been made from such fund by or under the direction of the chief executive officer, and the time within which said warrant or other form of payment shall be presented for payment in order to be valid has not been stamped, printed, or written across the face thereof, or otherwise specified, and a period of six months has elapsed since the issuance of such warrant or other form of payment, during which no person entitled thereto, or the proceeds thereof, has presented the same to the state treasurer for payment, or

appeared to claim the funds so authorized to be paid from the hands of the state treasurer or the chief executive officer, such warrant or other form of payment may in the discretion of the chief executive officer be posted for cancellation, and thereafter cancelled and set aside.

(2) In every such case in which it is proposed to cancel any such warrant, the chief executive officer shall cause a notice to be drawn in duplicate, with a description of said warrant containing the amount, number, date of issuance, and name of payee, and shall cause one copy of said notice to be posted in a conspicuous place that is open to the public in the office of said board and one copy to be delivered to the state treasurer. If, at the end of one month after the posting of such notice and the delivery of a copy to the state treasurer, such warrant is not presented for payment and no person entitled to the proceeds thereof appears to claim the funds so authorized to be paid in said warrant, said warrant may be cancelled as provided in this section.

(3) (a) The state treasurer shall, upon the request of the chief executive officer, transfer any such funds held to the credit of or for the payment of such warrant back to the credit of the Pinnacol Assurance fund. Except as otherwise provided in paragraph (b) of this subsection (3), if at any time thereafter application shall be made for the reissuance of such warrant, the same may be reissued, if the claim that it represents appears to be valid and still outstanding. Such reissued warrant shall be made payable from the moneys on deposit in the Pinnacol Assurance fund and shall be made payable to the person entitled to the proceeds thereof.

(b) For warrants issued on or after August 6, 2003, the funds transferred pursuant to subsection (3)(a) of this section shall be subject to the "Revised Uniform Unclaimed Property Act", article 13 of title 38, and for purposes of this subsection (3)(b), Pinnacol Assurance shall be considered an insurance company as defined in section 38-13-102 (13).

(4) Except as provided in section 8-45-117, the powers and discretion granted in this section to the chief executive officer and the state treasurer shall obtain in all cases relating to the warrants or other forms of payment drawn on the Pinnacol Assurance fund, anything to the contrary in any statute notwithstanding.

Source: L. 90: Entire article R&RE, p. 539, § 1, effective July 1. **L. 95:** (1) and (4) amended, p. 987, § 3, effective May 25. **L. 2002:** Entire section amended, p. 1876, § 17, effective July 1. **L. 2003:** (3) amended, p. 721, § 1, effective August 6. **L. 2019:** (3)(b) amended, (SB 19-088), ch. 110, p. 462, § 3, effective July 1, 2020.

Editor's note: This section is similar to former § 8-54-121 as it existed prior to 1990.

8-45-119. State treasurer to give separate bond as custodian. (1) The state treasurer shall give a separate and additional bond in such amount as may be fixed by the board with sureties to be approved by the governor, conditioned for the faithful performance of the state treasurer's duties as custodian of the Pinnacol Assurance fund, and as custodian of all the bonds, warrants, investments, and moneys of, or belonging to, said Pinnacol Assurance fund, subject to all provisions of law governing bonds of the state treasurer. The premium on said bond shall be paid out of the earnings of the Pinnacol Assurance fund.

(2) The state treasurer shall give a separate and additional bond in such amount as may be fixed by the executive director of the department of labor and employment with sureties to be approved by the governor, conditioned for the faithful performance of the state treasurer's duties

as custodian of the funds under the jurisdiction of the director of the division of workers' compensation, and as custodian of all the bonds, warrants, investments, and moneys of, or belonging to, the funds under the jurisdiction of the director of the division of workers' compensation, subject to all provisions of law governing bonds of the state treasurer. The premium on said bond shall be paid out of the earnings of the funds under the jurisdiction of the director of the division of workers' compensation on a pro rata basis.

Source: L. 90: Entire article R&RE, p. 540, § 1, effective July 1. **L. 2002:** (1) amended, p. 1877, § 18, effective July 1.

Editor's note: This section is similar to former § 8-54-123 as it existed prior to 1990.

8-45-120. State treasurer to invest funds. (1) Except as provided in subsection (2) of this section, the state treasurer, after consulting with the board of directors or the board's designated committee as to the overall direction of the portfolio, shall invest any portion of the Pinnacol Assurance fund, including its surplus or reserves, which is not needed for immediate use. Such moneys may be invested in the types of investments authorized in sections 24-36-109, 24-36-112, and 24-36-113, C.R.S. Such moneys may also be invested in common and preferred stock in the same manner as a domestic insurance company pursuant to section 10-3-226, C.R.S. The state treasurer shall determine the appropriate percentage of the fund, not to exceed one hundred percent of the surplus, to be invested in common and preferred stock and the appropriate level of risk for such investments. The state treasurer may make such investments in the form of mutual funds and may contract with private professional fund managers and employ portfolio managers.

(2) Subject to approval by the board, the chief executive officer may authorize and direct the state treasurer to invest a portion of the funds in the Pinnacol Assurance fund for the purchase of real property, to house, contain, and maintain the offices and operational facilities of Pinnacol Assurance as may be deemed necessary to accommodate its immediate and reasonably anticipated future needs. The chief executive officer is authorized to purchase such real property, buildings, and improvements thereon. Title to such real property, buildings, and improvements thereon shall vest in Pinnacol Assurance, and such assets shall be a part of the Pinnacol Assurance fund. The chief executive officer may lease or rent space not needed for the immediate requirements of Pinnacol Assurance in such real property to other public agencies or private businesses. Moneys received from such rental or lease of space and moneys appropriated by the general assembly for rental or lease of space in such real property shall be deposited with the state treasurer for credit to the Pinnacol Assurance fund. The chief executive officer shall not sell or otherwise dispose of any property, buildings, or improvements thereon so acquired, without consent of the board, and the moneys received from such sale or disposition shall be credited to the account of the Pinnacol Assurance fund.

(3) Repealed.

Source: L. 90: Entire article R&RE, p. 540, § 1, effective July 1. **L. 92:** (3) amended, p. 1112, § 1, effective July 1. **L. 97:** (1) amended, p. 938, § 6, effective May 21; (3) repealed, p. 376, § 7, effective August 6. **L. 2002:** (1) and (2) amended, p. 1878, § 19, effective July 1.

Editor's note: This section is similar to former § 8-54-122 as it existed prior to 1990.

8-45-121. Visitation of fund by commissioner of insurance - annual audit - examination. (1) Pinnacol Assurance shall be open to visitation by the commissioner of insurance at all reasonable times, and the commissioner of insurance shall require from the chief executive officer reports as to the condition of Pinnacol Assurance, as required by law to be made by other insurance carriers doing business in this state insofar as applicable to Pinnacol Assurance.

(2) The state auditor shall conduct an annual financial audit of Pinnacol Assurance. In conducting such audits, the state auditor may employ a firm of auditors and actuaries, or both, with the necessary specialized knowledge and experience. The cost of the annual audit shall be paid from the operating funds of Pinnacol Assurance. The state auditor shall report his or her findings from such audits, along with any comments and recommendations, to the governor, the general assembly, the executive director of the department of labor and employment, and the commissioner of insurance. The state auditor has continuing authority to conduct performance audits of Pinnacol Assurance as the state auditor deems appropriate. The cost of performance audits shall be paid from the operating funds of Pinnacol Assurance.

(3) (Deleted by amendment, L. 2002, p. 1879, § 20, effective July 1, 2002.)

(4) At least once every three years, the commissioner of insurance shall conduct an examination of the fund, to be conducted in the same manner as an examination of a private insurance carrier. With respect to the examination, section 10-1-204 applies. The commissioner of insurance shall transmit a copy of the commissioner's examination to the state auditor.

Source: L. 90: Entire article R&RE, p. 541, § 1, effective July 1. **L. 97:** (2) amended, p. 1475, § 13, effective June 3. **L. 2002:** Entire section amended, p. 1879, § 20, effective July 1. **L. 2009:** (2) amended, (SB 09-281), ch. 335, p. 1775, § 2, effective June 1. **L. 2017:** (2) amended, (SB 17-294), ch. 264, p. 1384, § 7, effective May 25; (4) amended, (SB 17-044), ch. 4, p. 6, § 1, effective August 9.

Editor's note: This section is similar to former § 8-54-124 as it existed prior to 1990.

8-45-122. Annual report. (1) The chief executive officer of Pinnacol Assurance shall submit an annual report to the governor; the business affairs and labor committee of the house of representatives; the business, labor, and technology committee of the senate; and the health and human services committees of the house of representatives and the senate, or their successor committees, reporting on the business operations, resources, and liabilities of the Pinnacol Assurance fund.

(2) The report required in subsection (1) of this section shall include the following information for the previous calendar year:

(a) The number of policies held by Pinnacol Assurance;

(b) The total assets of Pinnacol Assurance;

(c) The amount of reserves;

(d) The amount of surplus;

(e) The number of claims filed;

(f) The number of claims admitted or contested within the twenty-day period pursuant to section 8-43-203, specifying the number of contested claims that are medical only and those that are indemnity claims;

(g) The number of medical procedures denied;

(h) The amount of total compensation each executive officer or staff member receives, including bonuses or deferred compensation;

(i) The amount spent on commissions;

(j) The amount paid to trade associations for marketing fees;

(k) All information relating to bonus programs; and

(l) Any other information the chief executive officer deems relevant to the report.

Source: L. 90: Entire article R&RE, p. 542, § 1, effective July 1. **L. 97:** Entire section repealed, p. 1475, § 14, effective June 3. **L. 2010:** Entire section RC&RE, (SB 10-013), ch. 303, p. 1434, § 2, effective July 1.

Editor's note: This section is similar to former § 8-54-104.5 as it existed prior to 1990.

8-45-123. Change of names - direction to revisor. The revisor of statutes is authorized to change all references to the Colorado compensation insurance authority in the "Workers' Compensation Act of Colorado" and everywhere else a reference is contained in the Colorado Revised Statutes to Pinnacol Assurance and to change all references to the Colorado compensation insurance authority fund in the "Workers' Compensation Act of Colorado" and everywhere else a reference is contained in the Colorado Revised Statutes to the Pinnacol Assurance fund.

Source: L. 90: Entire article R&RE, p. 542, § 1, effective July 1. **L. 2002:** Entire section amended, p. 1879, § 21, effective July 1.

8-45-124. Review of cost-effectiveness of use of national council on compensation insurance by the authority. (Repealed)

Source: L. 91: Entire section added, p. 1363, § 3, effective July 1.

Editor's note: Subsection (2) provided for the repeal of this section, effective July 1, 1992. (See L. 91, p. 1363.)

8-45-125. Legislative interim committee on operation of Pinnacol Assurance - creation - members - study - report - repeal. (Repealed)

Source: L. 2009: Entire section added, (SB 09-281), ch. 335, p. 1776, § 3, effective June 1.

Editor's note: Subsection (8) provided for the repeal of this section, effective July 1, 2011. (See L. 2009, p. 1776.)

ARTICLE 46

Specific Insurance Funds

Editor's note: This article was numbered as article 7 of chapter 81, C.R.S. 1963. The substantive provisions of this article were repealed and reenacted in 1990, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this article prior to 1990, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume. Former C.R.S. section numbers are shown in editors' notes following those sections that were relocated. For a detailed comparison of this article, see the comparative tables located in the back of the index.

PART 1

SUBSEQUENT INJURY FUND

8-46-101. Subsequent injury fund. (1) (a) In a case where an employee has previously sustained permanent partial industrial disability and in a subsequent injury sustains additional permanent partial industrial disability and it is shown that the combined industrial disabilities render the employee permanently and totally incapable of steady gainful employment and incapable of rehabilitation to steady gainful employment, then the employer in whose employ the employee sustained such subsequent injury shall be liable only for that portion of the employee's industrial disability attributable to said subsequent injury, and the balance of compensation due such employee on account of permanent total disability shall be paid from the subsequent injury fund as is provided in this section.

(b) (I) In addition to such compensation and after the completion of the payments therefor, the employee shall continue to receive compensation at said employee's established compensation rate for permanent total disability until death out of a special fund to be known as the subsequent injury fund, hereby created for such purpose. The subsequent injury fund shall be funded pursuant to the provisions of section 8-46-102.

(II) The unrestricted year-end balance of the subsequent injury fund, created pursuant to subparagraph (I) of this paragraph (b), for the 1991-92 fiscal year shall constitute a reserve, as defined in section 24-77-102 (12), C.R.S., and, for purposes of section 24-77-103, C.R.S.:

(A) Any moneys credited to the subsequent injury fund in any subsequent fiscal year shall be included in state fiscal year spending, as defined in section 24-77-102 (17), C.R.S.; and

(B) Any transfers or expenditures from the subsequent injury fund in any subsequent fiscal year shall not be included in state fiscal year spending, as defined in section 24-77-102 (17), C.R.S., for such fiscal year.

(1.5) Notwithstanding any provision of this section to the contrary, on May 1, 2003, the state treasurer shall deduct twenty million dollars from the subsequent injury fund and transfer such sum to the general fund.

(1.7) Notwithstanding any provision of this section to the contrary, on March 30, 2009, the state treasurer shall deduct twenty-six million five hundred thousand dollars from the subsequent injury fund and transfer such sum to the general fund.

(2) If an employee entitled to additional benefits, as provided in this section, obtains employment while receiving compensation from the subsequent injury fund, such employee shall be compensated out of said fund at the rate of one-half of said employee's average weekly wage loss, subject to the maximum and minimum provisions of the workers' compensation act, during such period of employment.

(3) In case payment is or has been made under the provisions of this section and dependency later is shown or if payment is made by mistake or inadvertence or under such circumstances that justice requires a refund thereof, the division is authorized to refund such payment to the employer or, if insured, the employer's insurance carrier.

(4) (a) The sums provided for the subsequent injury fund created by this section shall be used to pay the costs related to the administration of the fund and to make such compensation payments as may be required by the provisions of articles 40 to 47 of this title.

(b) Moneys in the subsequent injury fund are continuously appropriated to the division for the payment of benefits as provided in this section and legal fees.

(5) The director shall administer and conduct all matters involving the subsequent injury fund in the name of the division, and, in that name and without any other name, title, or authority, the director may:

(a) (I) Sue and be sued in all the courts of this state, of any other state, or of the United States and in actions arising out of any act, deed, matter, or thing made, omitted, entered into, done, or suffered in connection with the subsequent injury fund and the administration or conduct of matters relating thereto, including the authority to employ counsel to represent the fund in any action.

(II) Nothing in this paragraph (a) shall be construed to waive any provisions of the "Colorado Governmental Immunity Act", article 10 of title 24, C.R.S., nor shall it be construed to waive immunity of the state of Colorado from suit in federal court, guaranteed by the eleventh amendment to the constitution of the United States.

(b) Make and enter into contracts or obligations relating to the subsequent injury fund as authorized or permitted under the provisions of articles 40 to 47 of this title, but neither the director nor any officer or employee of the division shall be personally liable in any private capacity for or on account of any act done or omitted or contract or other obligation entered into or undertaken in an official capacity in good faith and without intent to defraud in connection with the administration or conduct of the subsequent injury fund, its business, or other affairs relating thereto.

Source: L. 90: Entire article R&RE, p. 542, § 1, effective July 1. **L. 93:** (1)(b) amended, p. 1505, § 2, effective June 6. **L. 2003:** (1.5) added, p. 455, § 3, effective March 5. **L. 2007:** (4)(b) amended, p. 608, § 1, effective April 20. **L. 2009:** (1.7) added, (SB 09-208), ch. 149, p. 618, § 2, effective April 20.

Editor's note: This section is similar to former § 8-51-106 as it existed prior to 1990.

8-46-102. Funding for subsequent injury fund and major medical insurance fund. (1) (a) For every compensable injury resulting in death wherein there are no persons either wholly or partially dependent upon the deceased, the employer or the employer's insurance carrier, if any, shall pay to the division the sum of twenty thousand dollars, not to exceed one

hundred percent of the death benefit, to be transmitted to the state treasurer, as custodian, and credited by the state treasurer to the Colorado uninsured employer fund created in section 8-67-105. In the event that there are only partially dependent persons dependent upon the deceased, the employer or the employer's insurance carrier, if any, shall first pay such benefits to such partial dependents and shall transmit the balance of the sum of twenty thousand dollars to the state treasurer, as custodian, who shall credit the same to the Colorado uninsured employer fund.

(b) In the event that the deceased is a minor with no persons either wholly or partially dependent upon the deceased, the employer or the employer's insurance carrier, if any, shall pay to the parents of the deceased the sum of fifteen thousand dollars, not to exceed one hundred percent of the death benefit. In the event that there are no surviving parents, the employer or the employer's insurance carrier, if any, shall pay such benefits to the division, to be transmitted to the state treasurer, as custodian, and credited by the state treasurer to the subsequent injury fund. In the event that there are persons only partially dependent upon the deceased, the employer or the employer's insurance carrier, if any, shall first pay such benefits to such partially dependent persons and shall pay the balance to the surviving parents of the deceased, or in the event that there are no surviving parents, the remaining balance shall be paid to the division, to be transmitted to the state treasurer, as custodian, who shall credit the same to the subsequent injury fund.

(c) For injuries sustained on or after July 1, 2018, and on each July 1 thereafter, the director shall adjust the amount paid to the Colorado uninsured employer fund in this subsection (1) by the percentage of the adjustment made by the director to the state weekly wage pursuant to section 8-47-106.

(2) (a) (I) Notwithstanding sections 10-3-209 (1)(c) and 10-6-128 (3), C.R.S., for the purpose of funding the financial liabilities of the subsequent injury fund pursuant to this section and of the major medical insurance fund pursuant to section 8-46-202, every person, partnership, association, and corporation, whether organized under the laws of this state or of any other state or country, every mutual company or association, every captive insurance company, and every other insurance carrier, including Pinnacol Assurance, insuring employers in this state against liability for personal injury to their employees or death caused thereby under the provisions of articles 40 to 47 of this title shall, as provided in this subsection (2), be levied a tax upon the premiums received in this state, whether or not in cash, or on account of business done in this state for such insurance in this state at a rate determined by the director to generate sufficient revenue for claim payments and direct and indirect costs of administration that are anticipated to be submitted in the following state fiscal year for which such funds are liable. In determining the rate, the director shall, in addition to revenue for claim payments and direct and indirect costs of administration that are anticipated to be due in the following state fiscal year, maintain a cash balance in both the major medical insurance fund and the subsequent injury fund of an amount of otherwise unrestricted revenues equal to approximately one year's worth of claim payments and direct and indirect administrative costs. Such insurance carriers shall be credited with all cancelled or returned premiums actually refunded during the year of such insurance.

(II) Repealed.

(b) Every such insurance carrier shall, on July 1, 1988, and semiannually thereafter, make a return, verified by affidavits of its president and its secretary or by affidavits of its other chief officers or agents, to the division, stating the amount of all such premiums received and credits granted during the period covered by such return. Every insurance carrier required to

make such return shall file the same with the division within thirty days after the close of the period covered thereby and shall, at the same time, pay to the division a tax ascertained as provided in paragraph (a) of this subsection (2), less return premiums on cancelled policies.

(c) Every employer acting as a self-insurer under the provisions of articles 40 to 47 of this title shall, under oath, report to the division the employer's payroll in such form as may be prescribed by the director and at the times specified for premium reports by insurance companies in paragraph (b) of this subsection (2). The division shall assess against such payroll a tax for the purposes of paragraph (b) of this subsection (2) on the basic premiums chargeable against the same or most similar industry or business taken from the manual insurance rates, including any discount or experience modification allowed, chargeable by Pinnacol Assurance, and, upon receipt of notice from the division of the tax so assessed, every such self-insurer shall, within thirty days after the receipt of such notice, pay to the division the tax so assessed.

(d) If any such insurance carrier or self-insurer fails or refuses to make the return or report required by paragraph (b) or (c) of this subsection (2), the director shall assess the tax against such insurance carrier or self-insurer at the rate provided for in this subsection (2) on such amount of premium as the director may deem just, and the proceedings thereof shall be the same as if the return had been made.

(e) If any such insurance carrier or self-insurer withdraws from business in this state before the tax provided for in this subsection (2) falls due as provided in this section, or fails or neglects to pay such tax, the director shall proceed at once to collect the same; and the director is authorized to employ such legal processes as may be necessary for that purpose. Suit shall be brought by the director in any of the courts of this state having jurisdiction.

(f) The director, in the enforcement of this subsection (2), shall have all of the powers granted in articles 40 to 47 of this title, and any insurance carrier or self-insurer who violates any of the provisions of this subsection (2) or fails to pay the tax thereby imposed is guilty of a violation of said articles and shall be subject to the penalties therein prescribed.

(g) All moneys collected pursuant to this subsection (2) shall be transmitted to the state treasurer, as custodian, who shall credit the same to the subsequent injury fund and to the major medical insurance fund as determined by the director in accordance with subsection (3) of this section. Any interest earned on the investment or deposit of moneys in said funds shall remain in the funds and shall not revert to the general fund of the state at the end of any fiscal year.

(3) (a) As determined by the director, a portion of the revenue received each year pursuant to subsection (2) of this section shall be deposited into the subsequent injury fund, established in section 8-46-101 (1)(b), and a portion shall be deposited into the major medical insurance fund, established in section 8-46-202 (1). In addition, the director may move revenue between the funds when the director determines that doing so is necessary. The director shall continue to establish a surcharge rate pursuant to subsection (2) of this section until the balance in both such funds is sufficient to meet the future claim payments plus the amount necessary to pay the direct and indirect costs of administration of the funds, at which time the surcharge rate established in paragraph (a) of subsection (2) of this section shall be reduced to zero.

(b) For the purpose of determining the proper allocation of the surcharge and making the estimates contemplated in paragraph (a) of this subsection (3), the director shall contract for the services of qualified private actuaries.

Source: L. 90: Entire article R&RE, p. 544, § 1, effective July 1. **L. 92:** (1), (2)(a), and (2)(g) amended, p. 1829, § 3, effective May 19. **L. 93:** (2)(a)(I) and (2)(g) amended and (3) added, p. 2141, § 2, effective July 1. **L. 97:** (3)(b) amended, p. 1476, § 15, effective June 3. **L. 99:** (2)(g) amended, p. 618, § 5, effective August 4. **L. 2000:** (1) amended, p. 821, § 2, effective May 24. **L. 2002:** (2)(a) and (2)(c) amended, p. 1888, § 44, effective July 1. **L. 2006:** (2)(a)(II) repealed, p. 140, § 1, effective August 7. **L. 2009:** (2)(a)(I) and (3)(a) amended, (SB 09-037), ch. 324, p. 1729, § 1, effective August 5. **L. 2017:** (1)(a) amended and (1)(c) added, (HB 17-1119), ch. 317, p. 1708, § 9, effective July 1.

Editor's note: (1) This section is similar to former § 8-51-106 as it existed prior to 1990.

(2) The provisions pertaining to Pinnacol Assurance are contained in article 45 of this title.

8-46-103. State treasurer to invest funds. (1) The state treasurer shall invest any portion of the subsequent injury fund, including its surplus and reserves, which the division determines is not needed for immediate use. All interest earned upon such invested portion shall be credited to the fund and used for the same purposes and in the same manner as other moneys in the fund. Such moneys may be invested in the types of investments authorized in sections 24-36-109, 24-36-112, and 24-36-113, C.R.S.

(2) Repealed.

Source: L. 90: Entire article R&RE, p. 545, § 1, effective July 1. **L. 97:** (2) repealed, p. 377, § 8, effective August 6.

Editor's note: This section is similar to former § 8-51-111 as it existed prior to 1990.

8-46-104. Closure of fund. No cases shall be accepted into the subsequent injury fund for injuries occurring on or after July 1, 1993, or for occupational diseases occurring on or after April 1, 1994. When all payments have been made for all cases accepted into the fund, any remaining balance shall revert to the general fund.

Source: L. 92: Entire section added, p. 1830, § 5, effective May 19. **L. 93:** Entire section amended, p. 2142, § 3, effective July 1.

8-46-105. Calculation of premium - permanent total disability - employer may request examination. (1) Effective July 1, 1993, in any case in which an employee previously has sustained permanent partial disability and, in a subsequent injury, sustains additional permanent partial disability and it is shown that the combined industrial disabilities render the employee permanently and totally disabled, then the premiums of the employer in whose employ the employee sustained such subsequent injury shall be determined only on the basis of the impairment rating for such subsequent injury and not on the basis of the employee's permanent total disability. If such employer disputes the impairment rating for the subsequent injury, the employer shall request an independent medical examination pursuant to the procedures set forth in section 8-42-107.2. The finding of the independent medical examiner regarding the

impairment rating may be overcome only by clear and convincing evidence. The total cost of the employee's permanent total disability shall not be considered in determining the employer's premiums, but shall be considered by the commissioner of insurance in setting rates.

(2) In any case in which an employee becomes disabled by an occupational disease and the employer is liable for benefits pursuant to section 8-41-304 (2), then the premiums of the employer in whose employ the employee became disabled shall be determined only on the basis of the impairment rating for the portion of the occupational disease attributable to such employer and not on the basis of the combination of such portion and any prior impairment resulting from such occupational disease. For the purposes of premium calculations, if such employer disputes the impairment rating for the occupational disease, the employer shall request an independent medical examination pursuant to the procedures set forth in section 8-42-107.2. The finding of the independent medical examiner regarding the impairment rating may be overcome only by clear and convincing evidence. The total cost of the employee's occupational disease shall not be considered in determining the employer's premiums, but shall be considered by the commissioner of insurance in setting rates.

Source: L. 92: Entire section added, p. 1831, § 5, effective May 19. **L. 93:** Entire section amended, p. 2142, § 4, effective July 1. **L. 98:** Entire section amended, p. 1431, § 4, effective August 5.

8-46-106. Abatement of taxes - independent review of fund. The funding provisions of section 8-46-102, including the provisions relating to the assessment and levying of taxes, shall cease to be effective when an independent actuary, retained by the division for such purpose, determines that the fund has sufficient resources to pay benefits for injuries occurring prior to July 1, 1993, and occupational diseases occurring prior to April 1, 1994.

Source: L. 92: Entire section added, p. 1831, § 5, effective May 19. **L. 2000:** Entire section amended, p. 75, § 1, effective August 2.

8-46-107. Report to general assembly and governor. (Repealed)

Source: L. 92: Entire section added, p. 1831, § 5, effective May 19. **L. 97:** Entire section repealed, p. 1476, § 16, effective June 3.

8-46-108. Legislative council study of subsequent injury fund. (Repealed)

Source: L. 92: Entire section added, p. 1831, § 5, effective May 19. **L. 2006:** Entire section repealed, p. 140, § 2, effective August 7.

8-46-109. Legislative declaration - claims management. (1) The general assembly finds and declares that the purpose of this section is to provide for prompt, efficient, and fair settlement of all pending claims and the closure of both the subsequent injury fund and the major medical insurance fund as soon as is practicable.

(2) As necessary to augment the division's regular staff, the director shall contract for the services of qualified specialists in the area of settlements, who shall, on the director's behalf,

negotiate for and enter into settlements of claims of the subsequent injury fund and the major medical insurance fund for present value whenever possible.

(3) Repealed.

Source: L. 93: Entire section added, p. 2143, § 5, effective July 1. **L. 97:** (3) amended, p. 1476, § 17, effective June 3. **L. 2006:** (3) repealed, p. 141, § 3, effective August 7.

PART 2

COLORADO MAJOR MEDICAL
INSURANCE FUND ACT

8-46-201. Short title. This part 2 shall be known and may be cited as the "Colorado Major Medical Insurance Fund Act".

Source: L. 90: Entire article R&RE, p. 545, § 1, effective July 1.

Editor's note: This section is similar to former § 8-66-101 as it existed prior to 1990.

8-46-202. Major medical insurance fund - tax imposed - returns. (1) (a) There is hereby established a major medical insurance fund to defray medical, surgical, dental, hospital, nursing, and drug expenses and expenses for medical, hospital, and surgical supplies, crutches, apparatus, and vocational rehabilitation, which shall include tuition, fees, transportation, and weekly maintenance equivalent to that which the employee would receive under section 8-42-105 for the period of time that the employee is attending a vocational rehabilitation course, which expenses are in excess of those provided under the "Workers' Compensation Act of Colorado" for employees who have established their entitlement to disability benefits under said act, whether necessary to promote recovery, alleviate pain, or reduce disability.

(b) The unrestricted year-end balance of the major medical insurance fund, created pursuant to paragraph (a) of this subsection (1), for the 1991-92 fiscal year shall constitute a reserve, as defined in section 24-77-102 (12), C.R.S., and, for purposes of section 24-77-103, C.R.S.:

(I) Any moneys credited to the major medical insurance fund in any subsequent fiscal year shall be included in state fiscal year spending, as defined in section 24-77-102 (17), C.R.S., for such fiscal year; and

(II) Any transfers or expenditures from the major medical insurance fund in any subsequent fiscal year shall not be included in state fiscal year spending, as defined in section 24-77-102 (17), C.R.S., for such fiscal year.

(c) Moneys in the major medical insurance fund are continuously appropriated to the division for the payment of benefits as provided in this section and legal fees.

(1.5) (a) Notwithstanding any provision of this section to the contrary, on May 1, 2003, the state treasurer shall deduct one hundred fifty million dollars from the major medical insurance fund and transfer such sum to the general fund.

(b) On July 1, 2003, the state controller shall transfer ten million dollars from the general fund to the major medical insurance fund.

(1.6) Notwithstanding any provision of this section to the contrary, on March 30, 2009, the state treasurer shall deduct sixty-nine million five hundred thousand dollars from the major medical insurance fund and transfer such sum to the general fund.

(1.7) Notwithstanding any provision of this section to the contrary, on March 31, 2010, the state treasurer shall deduct twenty-six million five hundred thousand dollars from the major medical insurance fund and transfer such sum to the general fund.

(1.8) Notwithstanding any provision of this section to the contrary, on June 30, 2011, the state treasurer shall deduct ten million dollars from the major medical insurance fund and transfer such sum to the general fund.

(2) The director shall administer the major medical insurance fund and is hereby given jurisdiction to enforce the provisions of this article. The director shall administer and conduct all matters involving the major medical insurance fund in the name of the division, and, in that name and without any other name, title, or authority, the director may:

(a) (I) Sue and be sued in all the courts of this state, of any other state, or of the United States and in actions arising out of any act, deed, matter, or thing made, omitted, entered into, done, or suffered in connection with the major medical insurance fund and the administration or conduct of matters relating thereto, including the authority to employ counsel to represent the fund in any action.

(II) Nothing in this paragraph (a) shall be construed to waive any provisions of the "Colorado Governmental Immunity Act", article 10 of title 24, C.R.S., nor shall it be construed to waive immunity of the state of Colorado from suit in federal court, guaranteed by the eleventh amendment to the constitution of the United States.

(b) Make and enter into contracts or obligations relating to the major medical insurance fund as authorized or permitted under the provisions of articles 40 to 47 of this title, but neither the director nor any officer or employee of the division shall be personally liable in any private capacity for or on account of any act done or omitted or contract or other obligation entered into or undertaken in an official capacity in good faith and without intent to defraud in connection with the administration or conduct of the major medical insurance fund, its business, or other affairs relating thereto;

(c) Contract with physicians, surgeons, and hospitals for medical and surgical treatment, services and supplies, crutches and apparatus, and the care and nursing of injured persons entitled to benefits from said fund and, in addition, may contract for medical, surgical, hospital, and nursing services and supplies in excess of the amount and period otherwise limited in this article if said director determines that the contracting of such extra medical, surgical, hospital, and nursing services and supplies will reduce the period of disability for which said fund would be liable for the payment and compensation.

(3) to (5) Repealed.

Source: L. 90: Entire article R&RE, p. 545, § 1, effective July 1; (1) amended, p. 1844, § 32, effective July 1. **L. 93:** (1) amended, p. 1505, § 3, effective June 6; (3) to (5) repealed, p. 2143, § 6, effective July 1. **L. 2003:** (1.5) added, p. 455, § 4, effective March 5. **L. 2007:** (1)(c) added, p. 608, § 2, effective April 20. **L. 2009:** (1.6) added, (SB 09-208), ch. 149, p. 618, § 3, effective April 20; (1.7) added, (SB 09-279), ch. 367, p. 1925, § 1, effective June 1. **L. 2011:** (1.8) added, (SB 11-164), ch. 33, p. 92, § 1, effective March 18.

Editor's note: This section is similar to former § 8-66-102 as it existed prior to 1990.

8-46-203. Failure to make returns. (Repealed)

Source: L. 90: Entire article R&RE, p. 547, § 1, effective July 1. **L. 93:** Entire section repealed, p. 2144, § 7, effective July 1.

Editor's note: Prior to its repeal in 1993, this section was similar to former § 8-66-103 as it existed prior to 1990.

8-46-204. Use of funds limited. (Repealed)

Source: L. 90: Entire article R&RE, p. 547, § 1, effective July 1. **L. 93:** Entire section repealed, p. 2144, § 8, effective July 1.

Editor's note: Prior to its repeal in 1993, this section was similar to former § 8-66-107 as it existed prior to 1990.

8-46-205. Collection of taxes due. If any such insurance carrier or self-insurer withdraws from business in this state before the tax falls due as provided in this part 2, or fails or neglects to pay such tax, the director shall at once proceed to collect the same; and the director is authorized to employ such legal processes as may be necessary for that purpose. Suit shall be brought by the director in any of the courts of this state having jurisdiction.

Source: L. 90: Entire article R&RE, p. 547, § 1, effective July 1.

Editor's note: This section is similar to former § 8-66-104 as it existed prior to 1990.

8-46-206. Enforcement powers - violations. The director, in the enforcement of this article, shall have all of the powers granted in the "Workers' Compensation Act of Colorado", and any insurance carrier or self-insurer violating any of the provisions of this article, or failing to pay the tax imposed in this article, is guilty of violation of said act and subject to the penalties therein prescribed.

Source: L. 90: Entire article R&RE, p. 548, § 1, effective July 1.

Editor's note: This section is similar to former § 8-66-105 as it existed prior to 1990.

8-46-207. Receipt and disbursement of moneys. (Repealed)

Source: L. 90: Entire article R&RE, p. 548, § 1, effective July 1. **L. 93:** Entire section repealed, p. 2145, § 9, effective July 1.

Editor's note: Prior to its repeal in 1993, this section was similar to former § 8-66-106 as it existed prior to 1990.

8-46-208. Applications - awards. (1) Payments from the major medical insurance fund shall be awarded by the director only after an application therefor has been filed by a claimant employee, the claimant's employer, or such employer's insurance carrier, or one on their behalf, for admission to the fund, in any case where the limits of liability provided under section 8-42-101 have been exhausted.

(2) Following the filing of an application, the director shall approve or disapprove the expenditure of further sums of money from the major medical insurance fund and in so doing may rely upon medical reports contained in the case file if the director deems them adequate, or the director may rely upon recommendations of the medical director, appointed pursuant to section 8-1-103, or the director may appoint a medical panel of not more than three medical experts to see and examine the applicant, each of whom shall render a report to the director, advising whether or not such expenditure of further sums of money will promote recovery, alleviate pain, or reduce disability, suggesting the form and manner of such treatment or services and suggesting the reasonable cost thereof. The director, in every case in which an award is made from this fund, shall review said case at such time as the total medical expenditures, including those expended under section 8-42-101, shall reach fifteen thousand dollars and at each ten thousand dollars increment thereafter to determine and enter an order regarding continuation or cessation of further payments from said fund.

(3) The director shall award, and the state treasurer shall pay from the major medical insurance fund, the reasonable fees and expenses of the appointed members of the medical panel when such procedure is used by the director.

Source: L. 90: Entire article R&RE, p. 548, § 1, effective July 1.

Editor's note: This section is similar to former § 8-66-108 as it existed prior to 1990.

8-46-209. Credit for reduced disability - when. In any determination of permanent disability, the employer or the employer's insurance carrier shall receive any credit or benefit for the reduction of disability of any claimant employee under the "Workers' Compensation Act of Colorado" directly attributable to a compensable accident or disease when such reduction of disability is accomplished by expenditures from the major medical insurance fund.

Source: L. 90: Entire article R&RE, p. 548, § 1, effective July 1.

Editor's note: This section is similar to former § 8-66-109 as it existed prior to 1990.

8-46-210. State treasurer to invest funds. (1) The state treasurer shall invest any portion of the major medical insurance fund, including its surplus and reserves, which the director of the division of workers' compensation determines is not needed for immediate use. All interest earned upon such invested portion shall be credited to the fund and used for the same purposes and in the same manner as other moneys in the fund. Such moneys may be invested in the types of investments authorized in sections 24-36-109, 24-36-112, and 24-36-113, C.R.S.

(2) Repealed.

Source: L. 90: Entire article R&RE, p. 548, § 1, effective July 1. **L. 92:** (1) amended, p. 1830, § 4, effective May 19. **L. 97:** (2) repealed, p. 377, § 9, effective August 6. **L. 99:** (1) amended, p. 618, § 6, effective August 4.

Editor's note: This section is similar to former § 8-66-110 as it existed prior to 1990.

8-46-211. Abatement of tax - when. (Repealed)

Source: L. 90: Entire article R&RE, p. 549, § 1, effective July 1; entire section repealed, p. 584, § 6, effective July 1.

Editor's note: Prior to its repeal in 1990, this section was similar to former § 8-66-111.

8-46-212. Closure of fund. Effective July 1, 1981, no further cases shall be accepted into the major medical insurance fund for injuries or occupational diseases occurring after that date, nor shall any cases be transferred from the medical disaster insurance fund to the major medical insurance fund.

Source: L. 90: Entire article R&RE, p. 549, § 1, effective July 1. **L. 93:** Entire section amended, p. 2145, § 10, effective July 1.

Editor's note: This section is similar to former § 8-66-112 as it existed prior to 1990.

PART 3

COLORADO MEDICAL DISASTER
INSURANCE FUND

8-46-301. Short title. This part 3 shall be known and may be cited as the "Colorado Medical Disaster Insurance Fund Act".

Source: L. 90: Entire article R&RE, p. 549, § 1, effective July 1.

Editor's note: This section is similar to former § 8-65-101 as it existed prior to 1990.

8-46-302. Medical disaster insurance fund - tax imposed - returns. (1) There is hereby established a medical disaster insurance fund to defray medical, surgical, hospital, nursing, and drug expenses in excess of those provided under the "Workers' Compensation Act of Colorado" for employees who have established their entitlement to disability benefits under said act, whether necessary to promote recovery, alleviate pain, or reduce disability.

(2) The director shall administer the medical disaster insurance fund and is hereby given jurisdiction to enforce the provisions of this part 3. The director shall approve or disapprove admissions to the Colorado medical disaster insurance fund.

Source: L. 90: Entire article R&RE, p. 549, § 1, effective July 1.

Editor's note: This section is similar to former § 8-65-102 as it existed prior to 1990.

8-46-303. Use of funds limited. (1) All funds received by the division under the provisions of this article shall be used solely to pay the costs related to the administration of the medical disaster insurance fund and to defray the cost of medical, surgical, and hospital expenses necessary to effect the recovery, alleviate pain, or reduce the disability of employees who have established their entitlement to disability benefits under the "Workers' Compensation Act of Colorado" in accordance with and subject to the provisions of such act.

(2) Moneys in the medical disaster insurance fund are continuously appropriated to the division for the payment of benefits as provided in this section and legal fees.

Source: L. 90: Entire article R&RE, p. 549, § 1, effective July 1. **L. 2007:** (2) amended, p. 608, § 3, effective April 20.

Editor's note: This section is similar to former § 8-65-105 as it existed prior to 1990.

8-46-304. Enforcement powers - violations. (1) The director, in the enforcement of this article, shall have all of the powers granted in the "Workers' Compensation Act of Colorado", articles 40 to 47 of this title, and any insurance carrier or self-insurer violating any of the provisions of this article is guilty of a violation of said act and shall be subject to the penalties therein prescribed.

(2) The director shall administer and conduct all matters involving the medical disaster insurance fund in the name of the division, and, in that name and without any other name, title, or authority, the director may:

(a) (I) Sue and be sued in all courts of this state, of any other state, or of the United States and in actions arising out of any act, deed, matter, or thing made, omitted, entered into, done, or suffered in connection with the medical disaster insurance fund and the administration or conduct of matters relating thereto, including the authority to employ counsel to represent the fund in any action.

(II) Nothing in this paragraph (a) shall be construed to waive any provisions of the "Colorado Governmental Immunity Act", article 10 of title 24, C.R.S., nor shall it be construed to waive immunity of the state of Colorado from suit in federal court, guaranteed by the eleventh amendment to the constitution of the United States.

(b) Make and enter into contracts or obligations relating to the medical disaster insurance fund as authorized or permitted under the provisions of articles 40 to 47 of this title, but neither the director nor any officer or employee of the division shall be personally liable in any private capacity for or on account of any act done or omitted or contract or other obligation entered into or undertaken in an official capacity in good faith and without intent to defraud in connection with the administration or conduct of the medical disaster insurance fund, its business, or other affairs relating thereto;

(c) Contract with physicians, surgeons, and hospitals for medical and surgical treatment, services and supplies, crutches and apparatus, and the care and nursing of injured persons entitled to benefits from said fund and, in addition, may contract for medical, surgical, hospital, and nursing services and supplies in excess of the amount and period otherwise limited in this article if said director determines that the contracting of such extra medical, surgical, hospital,

and nursing services and supplies will reduce the period of disability for which said fund would be liable for the payment and compensation.

Source: L. 90: Entire article R&RE, p. 550, § 1, effective July 1.

Editor's note: This section is similar to former § 8-65-103 as it existed prior to 1990.

8-46-305. Receipt and disbursement of moneys. All moneys collected by the division pursuant to the provisions of this part 3 shall be transmitted to the state treasurer who shall deposit the same to the credit of the medical disaster insurance fund, and all disbursements therefrom shall be paid by the state treasurer in accordance with and subject to final awards of the director, as provided in this article.

Source: L. 90: Entire article R&RE, p. 550, § 1, effective July 1.

Editor's note: This section is similar to former § 8-65-104 as it existed prior to 1990.

8-46-306. Applications - medical panel - awards - limitations. (1) Payments from the medical disaster insurance fund shall be awarded by the director only after an application therefor has been filed by a claimant employee, the claimant's employer, or such employer's insurance carrier, or one on their behalf, and approved by the director for admission to the fund, in any case where the limits of liability provided under section 8-42-101 have been exhausted.

(2) The director shall, in every case where an application for payments from the medical disaster insurance fund is filed, immediately, after receipt of such application, appoint a medical panel of three medical experts to see and examine the applicant, each of whom shall render a report to the director, advising whether or not the expenditure of further sums of money will promote recovery, alleviate pain, or reduce disability, suggesting the form and manner of further treatment or services and suggesting the reasonable cost thereof.

(3) The director, upon receipt of reports from each of the medical experts appointed in accordance with subsection (2) of this section, shall either deny the application or award payments from the medical disaster insurance fund, based upon such reports and as nearly as possible in accordance with the majority opinion and suggestions of the medical panel.

(4) In making payment awards from the medical disaster insurance fund, the director shall be limited in any one case to the sum of fifty-five thousand dollars, less any amounts of money expended by the employer or the employer's insurance carrier for medical, surgical, or hospital services and the costs of any prosthetic devices, or the reasonable value of any such services or devices furnished by the employer or the employer's insurance carrier.

(5) The director shall award, and the state treasurer shall pay from the medical disaster insurance fund, the reasonable fees and expenses of the appointed members of the medical panel.

Source: L. 90: Entire article R&RE, p. 550, § 1, effective July 1.

Editor's note: This section is similar to former § 8-65-106 as it existed prior to 1990.

8-46-307. Credit for reduced disability - when. (1) In any determination of permanent disability, the employer or the employer's insurance carrier shall receive no credit or benefit for the reduction of disability of any claimant employee under the "Workers' Compensation Act of Colorado" directly attributable to a compensable accident or disease when such reduction of disability is accomplished by expenditures from the medical disaster insurance fund, unless it shall have been determined by a preponderance of the evidence:

(a) That the claimant employee had refused hospital, surgical, and medical services under the "Workers' Compensation Act of Colorado" necessary to reduce the employee's disability voluntarily offered by the employer; or

(b) That the claimant employee had reached maximum improvement as determined by the director prior to the filing of the application for payments from the medical disaster insurance fund.

Source: L. 90: Entire article R&RE, p. 551, § 1, effective July 1.

Editor's note: This section is similar to former § 8-65-107 as it existed prior to 1990.

8-46-308. State treasurer to invest funds. (1) The state treasurer shall invest any portion of the medical disaster insurance fund, including its surplus and reserves, which the director determines is not needed for immediate use. All interest earned upon such invested portion shall be credited to the fund and used for the same purposes and in the same manner as other moneys in the fund. Such moneys may be invested in the types of investments authorized in sections 24-36-109, 24-36-112, and 24-36-113, C.R.S.

(2) Repealed.

Source: L. 90: Entire article R&RE, p. 551, § 1, effective July 1. **L. 97:** (2) repealed, p. 377, § 10, effective August 6.

Editor's note: This section is similar to former § 8-65-108 as it existed prior to 1990.

8-46-309. Authority to utilize other revenue. Revenues obtained from the tax imposed pursuant to section 8-46-102 (2)(a) may be used, in the discretion of the director, for the purpose of paying the costs incurred pursuant to this article.

Source: L. 90: Entire section added, p. 583, § 5, effective July 1. **L. 93:** Entire section amended, p. 2145, § 11, effective July 1.

ARTICLE 47

Administration

Editor's note: This article was numbered as article 8 of chapter 81, C.R.S. 1963. The substantive provisions of this article were repealed and reenacted in 1990, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this article prior to 1990, consult the Colorado statutory research explanatory note and the table

itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume. Former C.R.S. section numbers are shown in editors' notes following those sections that were relocated. For a detailed comparison of this article, see the comparative tables located in the back of the index.

PART 1

DIRECTOR'S POWERS AND DUTIES

8-47-101. Division of workers' compensation - creation - powers, duties, and functions - transfer of functions - change of statutory references. (1) There is hereby created the division of workers' compensation in the department of labor and employment. Pursuant to section 13 of article XII of the state constitution, the executive director of the department of labor and employment shall appoint the director of the division of workers' compensation, and the director shall appoint such employees as are necessary to carry out the duties and exercise the powers conferred by law upon the division of workers' compensation and the director.

(2) The director and the division of workers' compensation shall enforce and administer the provisions of the "Workers' Compensation Act of Colorado", articles 40 to 47 of this title, as provided in said articles and the provisions of article 14.5 of this title.

(3) (a) The division of workers' compensation shall, on and after July 1, 1991, execute, administer, perform, and enforce the rights, powers, duties, functions, and obligations vested in the division of labor prior to July 1, 1991, concerning the duties and functions transferred to the division of workers' compensation. On July 1, 1991, all employees of the division of labor whose principal duties are concerned with the duties and functions transferred to the division of workers' compensation and whose employment in the division of workers' compensation is deemed necessary by the executive director of the department of labor and employment to carry out the purposes of this article 47 shall be transferred to the division of workers' compensation and shall become employees thereof. The employees shall retain all rights to the state personnel system and retirement benefits under the laws of this state, and their services shall be deemed to have been continuous. All transfers and any abolishment of positions in the state personnel system shall be made and processed in accordance with state personnel system laws and rules.

(b) Repealed.

(c) Whenever the division of labor is referred to or designated by any contract or other document in connection with the duties and functions transferred to the division of workers' compensation, such reference or designation is deemed to apply to the division of workers' compensation. All contracts entered into by the division of labor prior to July 1, 1991, in connection with the duties and functions transferred to the division of workers' compensation, are hereby validated, with the division of workers' compensation succeeding to all the rights and obligations of such contracts. Any appropriations of funds from prior fiscal years open to satisfy obligations incurred under such contracts are hereby transferred and appropriated to the division of workers' compensation for the payment of such obligations.

(d) (I) Repealed.

(II) At the discretion of the state auditor, the state auditor may conduct or cause to be conducted a performance review of the administrative law judges in the office of administrative courts who hear cases under articles 40 to 47 of this title. The review must include, but is not

limited to, the following topics: The time elapsed from the date of hearing until decisions are rendered by the administrative law judges; the time elapsed from the point at which the file is complete and the case is ready for order until the decision is rendered by the administrative law judges; the number of decisions that are reversed upon appeal to the industrial claim appeals panel and to the court of appeals respectively; the workload or number of cases assigned to each administrative law judge; and the public perception of the quality of the performance of the office of administrative courts with respect to matters arising under the "Workers' Compensation Act of Colorado".

(4) Repealed.

(5) On and after July 1, 1991, when any provision of articles 40 to 47 of this title 8 refers to the division of labor, said law shall be construed as referring to the division of workers' compensation.

(6) The revisor of statutes is authorized to change all references to the director of the division of labor standards and statistics and the division of labor standards and statistics in articles 14.5 and 40 to 47 of this title to refer to the director of the division of workers' compensation and the division of workers' compensation.

Source: L. 90: Entire article R&RE, p. 552, § 1, effective July 1. **L. 91:** Entire section amended, p. 1333, § 46, effective July 1. **L. 93:** (3)(d)(I) amended, p. 728, § 1, effective May 6. **L. 95:** (3)(d)(I) repealed, p. 458, § 1, effective May 16; (3)(d)(I) amended, p. 636, § 17, effective July 1. **L. 96:** (4) repealed, p. 1228, § 45, effective August 7. **L. 2005:** (3)(d)(II) amended, p. 856, § 17, effective June 1. **L. 2006:** (3)(b) repealed, p. 141, § 4, effective August 7. **L. 2013:** (3)(d)(II) amended, (SB 13-129), ch. 284, p. 1492, § 1, effective May 24. **L. 2016:** (3)(a), (3)(c), (5), and (6) amended, (HB 16-1323), ch. 131, p. 379, § 15, effective August 10. **L. 2017:** (3)(a), (3)(c), and (5) amended, (SB 17-294), ch. 264, p. 1385, § 8, effective May 25.

Editor's note: This section is similar to former § 8-40-102 as it existed prior to 1990.

Cross references: For the legislative declaration contained in the 1996 act repealing subsection (4), see section 1 of chapter 237, Session Laws of Colorado 1996.

8-47-102. Director to enforce orders. If any person fails or refuses to comply with an order of the director, or to obey any subpoena issued by the director or agents of the division, or to furnish the statistics, data, and information required to be furnished to the division by the provisions of articles 40 to 47 of this title, or refuses to permit an inspection as provided in said articles, or being in attendance refuses to be sworn or examined, or to answer a question, or to produce a book or paper when ordered to do so by the director or any of the deputies, agents, or referees of the division, the director may apply to the district court, upon proof by affidavit of the facts, for an order, returnable in not less than three days nor more than five days, directing such person to show cause before the district court which made the order why such person should not be committed to jail. Upon the return of such order, the district court shall examine under oath such person and give the person an opportunity to be heard. If the court determines that the person has refused without legal excuse in any one of the foregoing matters, it may commit the offender to jail forthwith by warrant, there to remain until the person submits to do the act which said person was required to do or until said person is discharged according to law.

Source: L. 90: Entire article R&RE, p. 552, § 1, effective July 1.

Editor's note: This section is similar to former § 8-46-103 as it existed prior to 1990.

8-47-103. Orders of director or appeals office - validity. All orders of the director or industrial claim appeals office shall be valid and in force and prima facie reasonable and lawful until found otherwise in an action brought for that purpose, pursuant to the provisions of articles 40 to 47 of this title, or until altered or revoked by the director or industrial claim appeals office, as the case may be.

Source: L. 90: Entire article R&RE, p. 552, § 1, effective July 1.

Editor's note: This section is similar to former § 8-46-105 as it existed prior to 1990.

8-47-104. Orders and awards - technical objections. Substantial compliance with the requirements of articles 40 to 47 of this title shall be sufficient to give effect to the orders or awards of the director or industrial claim appeals office, and they shall not be declared inoperative, illegal, or void for any omission of a technical nature in respect thereto.

Source: L. 90: Entire article R&RE, p. 552, § 1, effective July 1.

Editor's note: This section is similar to former § 8-46-106 as it existed prior to 1990.

8-47-105. Deposit on unpaid compensation or benefits - trust fund - surplus. (1) The director has the discretion, at any time, any provisions in articles 40 to 47 of this title to the contrary notwithstanding, to compute and require to be paid to the division, to be held by it in trust, an amount equal to the present value of all unpaid compensation or other benefits in any case computed at the rate of four percent per annum. Such action may be taken after a finding by the director as to the insolvency, the threatened insolvency, or any other condition or danger which may cause the loss of, or which has delayed or may impede, hinder, or delay prompt payment of, compensation or benefits by any insurance carrier or employer. The action and finding of the director shall not be subject to review, and the director shall not be required to give any notice of hearing or hold any hearing prior to taking such action or making such finding.

(2) All moneys so paid in shall constitute a separate trust fund in the office of the state treasurer, and, after any such payment is so ordered, the employer or insurance carrier shall thereupon be discharged from any further liability under such award for which payment is made to the extent of the payment made, and the payment of the award shall then be assumed to the extent of payment made by the special trust fund so created. If, for any reason, a beneficiary's right to the compensation awarded and ordered paid into said special trust fund ceases, lapses, or in any manner terminates by virtue of the terms and provisions of articles 40 to 47 of this title so that a surplus not surviving or accruing to any other beneficiary remains in said trust fund of the amount ordered paid into it on behalf of the beneficiary, the insurance carrier or employer who has made said payment shall be entitled to a refund of the present value of said surplus, if any, computed at the rate of four percent per annum. The state treasurer shall invest any portion of the

special trust fund, including its surplus and reserves, which the director determines is not needed for immediate use.

Source: L. 90: Entire article R&RE, p. 552, § 1, effective July 1.

Editor's note: This section is similar to former § 8-52-112 as it existed prior to 1990.

8-47-106. State average weekly wage - method of computation. The state average weekly wage shall be established by the director annually on or before July 1 of each year. The state average weekly wage shall be determined from the average weekly earnings referenced in section 8-73-102 (1), computed by the division in June on the basis of the most recent available figures, and applicable to the ensuing twelve months beginning July 1. Such state average weekly wage shall automatically form the basis for establishing maximum benefits under the "Workers' Compensation Act of Colorado" as of 12:01 a.m., July 1, 1974, and at each succeeding time and date annually thereafter.

Source: L. 90: Entire article R&RE, p. 553, § 1, effective July 1.

Editor's note: This section is similar to former § 8-46-113 as it existed prior to 1990.

8-47-107. Adoption of rules. The director has the power to adopt reasonable and proper rules relative to the administration of articles 40 to 47 of this title and proper rules to govern proceedings and hearings of the division, and the director has the discretion to amend the rules from time to time. No such rule shall limit the jurisdiction of an administrative law judge in the office of administrative courts to hear and decide all matters arising under articles 40 to 47 of this title; except that in any matter where the director has issued an order to enforce a provision of the "Workers' Compensation Act of Colorado", an administrative law judge in the office of administrative courts shall not hear and decide the same matter while it is pending before the director. The rules shall be promulgated in accordance with section 24-4-103, C.R.S.

Source: L. 90: Entire article R&RE, p. 553, § 1, effective July 1. **L. 94:** Entire section amended, p. 1880, § 17, effective June 1. **L. 2005:** Entire section amended, p. 857, § 18, effective June 1. **L. 2009:** Entire section amended, (SB 09-070), ch. 49, p. 177, § 5, effective August 5.

Editor's note: This section is similar to former § 8-46-108 as it existed prior to 1990.

8-47-108. Workers' compensation study - report to general assembly. (Repealed)

Source: L. 90: Entire article R&RE, p. 553, § 1, effective July 1. **L. 91:** Entire section repealed, p. 1336, § 47, effective July 1.

Editor's note: Prior to its repeal in 1991, this section was similar to former § 8-46-114 as it existed prior to 1990.

8-47-109. Report to general assembly. (Repealed)

Source: L. 90: Entire article R&RE, p. 553, § 1, effective July 1. **L. 91:** Entire section repealed, p. 1336, § 48, effective July 1.

Editor's note: Prior to its repeal in 1991, this section was similar to former § 8-52-114 as it existed prior to 1990.

8-47-110. Public officers to enforce orders - furnish information. It is the duty of all officers and employees of the state, counties, and municipalities, upon the request of the director, to enforce in their respective departments all lawful orders of the director insofar as the same may be applicable and consistent with the general duties of such officers and employees. It is also their duty to make to the director such reports as the director may require concerning matters within their knowledge pertaining to the purposes of articles 40 to 47 of this title and to furnish the director such facts, data, statistics, and information as, from time to time, may come to them pertaining to the purposes of said articles and the duties of the division thereunder, and particularly all information coming to their knowledge respecting the condition of all places of employment subject to the provisions of said articles with regard to the health, protection, and safety of employees and the hazard of risk of such places of employment.

Source: L. 90: Entire article R&RE, p. 554, § 1, effective July 1.

Editor's note: This section is similar to former § 8-46-111 as it existed prior to 1990.

8-47-111. Division efforts to ensure employer compliance with workers' compensation coverage requirements - legislative declaration. (1) The general assembly finds, determines, and declares that it is in the best interests of the public to assure that all employers who fall under the provisions of articles 40 to 47 of this title have in effect current policies of insurance or self-insurance for workers' compensation liability.

(2) In order to implement the declaration in subsection (1) of this section, the division shall develop a procedure for verifying whether or not all employers doing business in the state of Colorado comply with the requirements of article 44 of this title. This procedure must include cross-referencing employer records of the division of unemployment insurance and the division of workers' compensation. Upon identifying employers that are not in compliance with article 44 of this title, the division, with the assistance and cooperation of the attorney general, shall use all available means under articles 40 to 47 of this title to ensure compliance. Every insurance carrier authorized to transact business in this state, including Pinnacol Assurance, which insures employers against liability for compensation under the provisions of articles 40 to 47 of this title, shall furnish the division, upon request, all information required by it to accomplish the purposes of this section.

Source: L. 94: Entire section added, p. 1147, § 1, effective May 19. **L. 97:** (2) amended, p. 1476, § 18, effective June 3. **L. 2002:** (2) amended, p. 1889, § 45, effective July 1. **L. 2012:** (2) amended, (HB 12-1120), ch. 27, p. 104, § 12, effective June 1.

Editor's note: The effective date for amendments to this section by House Bill 12-1120 (chapter 27, Session Laws of Colorado 2012) was changed from August 8, 2012, to June 1, 2012, by House Bill 12S-1002 (First Extraordinary Session, chapter 2, p. 2432, Session Laws of Colorado 2012).

Cross references: For Pinnacol Assurance, see article 45 of this title.

8-47-112. Division website - procedures to file complaints. The director shall clearly post on the division's website the procedure for an injured worker to follow to file a complaint with the division regarding any issue over which the director or his or her designee has authority to pursue, settle, or enforce pursuant to articles 40 to 47 of this title.

Source: L. 2010: Entire section added, (SB 10-013), ch. 303, p. 1435, § 3, effective July 1.

PART 2

GENERAL POWERS

8-47-201. Information to division - blanks - verification. Every employer receiving from the division any blanks with directions to fill out the same or requests for information required for the purposes of articles 40 to 47 of this title shall properly fill out the blanks and furnish the information so requested fully and correctly. The director may require that any information requested by the division be verified under oath and may fix the time within which said information shall be returned.

Source: L. 90: Entire article R&RE, p. 554, § 1, effective July 1.

Editor's note: This section is similar to former § 8-45-104 as it existed prior to 1990.

8-47-202. Information furnished to division - confidential use. Every employer shall furnish the division, upon request, all information required by it to accomplish the purposes of articles 40 to 47 of this title. The information shall be for the confidential use of the division, unless otherwise ordered by the director, and shall not be open to the public nor used in any court or any action or proceeding pending therein, unless the director is a party to such action or proceeding.

Source: L. 90: Entire article R&RE, p. 554, § 1, effective July 1.

Editor's note: This section is similar to former § 8-45-103 as it existed prior to 1990.

8-47-203. Access to files, records, and orders. (1) Notwithstanding the provisions of section 8-47-202, the filing of a claim for compensation is deemed to be a limited waiver of the doctor-patient privilege to persons who are necessary to resolve the claim. Access to claim files maintained by the division will be permitted only as follows:

(a) Workers' compensation claim files shall be available for inspection upon request by the parties to the claim, including the claimant, the employer, and the insurer or their attorneys or other designated representatives. The parties to a claim may review other claim files relating to the said claimant.

(b) Persons who are not parties to a claim, or their attorneys or designated representatives, and who wish to inspect or obtain information from claim files may submit a request to inspect a particular file, stating the purpose for such inspection. The director may disallow such requests if the purpose of the inspection is to further commercial interests or to disseminate information to nonparties. Any such request shall be considered and determined by the division within seventy-two hours.

(c) (I) The director may permit access to other governmental entities only as required for the performance of their official duties and only if those official duties relate to enforcement of provisions of articles 40 to 47 of this title; except that the department of revenue may access results of any inquiry made by the division to determine whether an employer has any liability pursuant to articles 22 to 29 of title 39, C.R.S. As used in this subparagraph (I), "enforcement" includes duties of governmental entities involved in the administration of the provisions of articles 40 to 47 of this title or if such duties relate to the enforcement of child support under section 26-13-122, C.R.S. This provision is not intended to restrict the rights of persons otherwise provided for in articles 40 to 47 of this title to inspect and copy files.

(II) The general assembly intends that any contract, agreement, or any other means to transfer information between the department of labor and employment and any other governmental entity related to access to claim files in effect prior to May 27, 1997, shall be conformed to the provisions of this paragraph (c), as amended, or terminated as authorized by law.

(III) Notwithstanding articles 40 to 47 of this title 8, the director may provide information to the Colorado uninsured employer board created in section 8-67-106, as necessary, to exercise its powers and duties.

(d) Persons entitled to review claim files may obtain copies upon payment of the fee set by the division. Such persons shall not disseminate information contained in those files except as required to resolve the claim, or as permitted by the director, or as permitted by law.

(e) Claimants may waive the protection of this statute by executing a waiver for the release of information. The waiver must be dated and will be effective for ninety days thereafter.

(2) All orders entered by the director or an administrative law judge pursuant to articles 40 to 47 of this title shall be made available by the division for inspection or copying for a fee reflecting actual costs; except that the name and other identifying information concerning the claimant and employer shall be excised.

Source: L. 90: Entire article R&RE, p. 554, § 1, effective July 1. **L. 94:** (2) added, pp. 1822, 1880, §§ 1, 18, effective June 1. **L. 97:** (1)(c) amended, p. 1091, § 1, effective May 27. **L. 2004:** (1)(c)(I) amended, p. 615, § 2, effective August 4. **L. 2017:** (1)(c)(III) added, (HB 17-1119), ch. 317, p. 1708, § 10, effective July 1.

Editor's note: This section is similar to former § 8-45-105 as it existed prior to 1990.

8-47-203.3. Release of location information concerning individuals with outstanding felony arrest warrants. (1) Notwithstanding any provision of state law to the contrary and to the extent allowable under federal law, at the request of the Colorado bureau of investigation, the division shall provide the bureau with information concerning the location of any person whose name appears in the division's records who is the subject of an outstanding felony arrest warrant. Upon receipt of such information, it shall be the responsibility of the bureau to provide appropriate law enforcement agencies with location information obtained from the division. Location information provided pursuant to this section shall be used solely for law enforcement purposes. The division and the bureau shall determine and employ the most cost-effective method for obtaining and providing location information pursuant to this section. Neither the division nor its employees or agents shall be liable in civil action for providing information in accordance with the provisions of this subsection (1).

(2) As used in subsection (1) of this section, "law enforcement agency" means any agency of the state or its political subdivisions that is responsible for enforcing the laws of this state. "Law enforcement agency" includes but is not limited to any police department, sheriff's department, district attorney's office, the office of the state attorney general, and the Colorado bureau of investigation.

Source: L. 95: Entire section added, p. 1122, § 1, effective July 1.

8-47-204. Employees of division - qualifications. The executive director has the power to employ, pursuant to section 13 of article XII of the state constitution, such deputies, experts, statisticians, accountants, inspectors, clerks, and other employees as may be necessary to carry out the provisions of articles 40 to 47 of this title or to perform the duties and exercise the powers conferred by law upon the division.

Source: L. 90: Entire article R&RE, p. 555, § 1, effective July 1. **L. 94:** Entire section amended, p. 103, § 1, effective March 18.

Editor's note: This section is similar to former § 8-46-109 as it existed prior to 1990.

8-47-205. Salaries of employees of division. All deputies, statisticians, accountants, clerks, experts, and other employees of the division shall receive such compensation as may be fixed by law. The salaries so fixed shall be paid monthly from the fund appropriated for the use of the division after approval by the director.

Source: L. 90: Entire article R&RE, p. 555, § 1, effective July 1.

Editor's note: This section is similar to former § 8-46-110 as it existed prior to 1990.

8-47-206. Employees of division - bonds. Such employees of the division as shall be directed by the director shall furnish surety company bonds in such sum as may be fixed by the director, the premiums therefor to be paid as other expenses of the division are paid.

Source: L. 90: Entire article R&RE, p. 555, § 1, effective July 1.

Editor's note: This section is similar to former § 8-46-112 as it existed prior to 1990.

8-47-207. Collection of statistics. The director or any agents of the division may enter into any place of employment for the purpose of collecting facts and statistics, examining the provisions made for the health, protection, and safety of the employees, and bringing to the attention of every employer any rule, order, or requirement of the division, or any law, or any failure on the part of any employer to comply therewith.

Source: L. 90: Entire article R&RE, p. 555, § 1, effective July 1.

Editor's note: This section is similar to former § 8-46-101 as it existed prior to 1990.

8-47-208. Records of employers open to inspection of division. All books, records, and payrolls of employers or of any contractor, subcontractor, lessee, sublessee, or person showing or reflecting in any way upon the amount of wage expenditure of such employers, contractor, subcontractor, lessee, sublessee, or person and all other facts, data, and statistics appertaining to the purposes of this article shall always be open for inspection by the director or any agents of the division for the purpose of ascertaining the correctness of the reported wage expenditure, number of persons employed, and such other information as may be necessary for the uses and purposes of the division in the administration of the "Workers' Compensation Act of Colorado".

Source: L. 90: Entire article R&RE, p. 555, § 1, effective July 1.

Editor's note: (1) This section is similar to former § 8-46-102 as it existed prior to 1990.

(2) The provisions of the "Workers' Compensation Act of Colorado" are contained in articles 40 to 47 of this title.

8-47-209. Expenses of division. All expenses incurred by the division pursuant to the provisions of the "Workers' Compensation Act of Colorado" shall be paid from funds appropriated for the use of the division upon claims therefor which shall be itemized and sworn to by the person who incurred the same. The claims shall be allowed by the director subject to the approval of the controller. The traveling expenses of the director or of any employees of the division, incurred while on business of the division outside of the state of Colorado, shall be paid in the manner aforesaid, but only when such expenses are authorized in advance by the controller to be incurred by the division.

Source: L. 90: Entire article R&RE, p. 556, § 1, effective July 1.

Editor's note: This section is similar to former § 8-46-104 as it existed prior to 1990.

Workmen's Compensation

Editor's note: Articles 48 to 54 were numbered as articles 9 to 15 of chapter 81, C.R.S. 1963. For amendments to these articles prior to their repeal in 1990, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume. Some provisions of these articles were relocated to articles 40 to 47 of this title. For a detailed comparison, see the comparative table located in the back of the index.

ARTICLE 48

Contractors and Lessees

8-48-101 to 8-48-103. (Repealed)

Source: L. 90: Entire article repealed, p. 576, § 77, effective July 1.

ARTICLE 49

Medical, Surgical, and Hospital

8-49-101 and 8-49-102. (Repealed)

Source: L. 90: Entire article repealed, p. 576, § 77, effective July 1.

ARTICLE 50

Dependency

8-50-101 to 8-50-117. (Repealed)

Source: L. 90: Entire article repealed, p. 576, § 77, effective July 1.

ARTICLE 51

Benefits

8-51-101 to 8-51-113. (Repealed)

Source: L. 90: Entire article repealed, p. 576, § 77, effective July 1.

ARTICLE 52

General Provisions

8-52-101 to 8-52-115. (Repealed)

Source: L. 90: Entire article repealed, p. 576, § 77, effective July 1.

ARTICLE 53

Hearing and Review Procedure

8-53-101 to 8-53-130. (Repealed)

Source: L. 90: Entire article repealed, p. 576, § 77, effective July 1.

ARTICLE 54

State Compensation Insurance Authority

8-54-101 to 8-54-127. (Repealed)

Source: L. 90: Entire article repealed, p. 576, § 77, effective July 1.

ARTICLE 55

Workers' Compensation Classification
Appeals Board

8-55-101. Workers' compensation classification appeals board - creation. (1) There is hereby created, in the division of insurance in the department of regulatory agencies, the workers' compensation classification appeals board. The board shall hear grievances brought by employers against insurers and Pinnacol Assurance concerning the calculation of experience modification factors and classification assignment decisions. The board shall consist of five voting members, each of whom shall be knowledgeable about workers' compensation classification and experience modification factors, and one nonvoting member, as follows:

(a) Two members shall be either salaried employees of an insurance company that issues workers' compensation insurance policies in this state or representatives of Pinnacol Assurance. Such two members shall not both represent Pinnacol Assurance or the same insurance company. In addition, one person shall be selected to serve as an alternate member to represent the interests of the insurance industry or Pinnacol Assurance. The alternate shall represent such interests in the event the primary member recuses himself or herself.

(b) One member, who shall be a nonvoting member, shall be an employee of a workers' compensation rating organization functioning under the provisions of section 10-4-408, C.R.S. The workers' compensation rating organization shall serve as a technical resource for the board.

(c) Three members shall represent private employers. Each private employer member shall be knowledgeable with respect to workers' compensation insurance, rules, and classifications, and shall be familiar with the business environment and community in this state. No private employer member shall be an employee of an insurance company, insurance broker,

insurance agent, law firm, actuary, Pinnacol Assurance, or any association of such entities or persons. All private employer board memberships shall be held in the name of an individual. At least one private employer member shall represent the construction industry.

(2) The private employer members and the members representing insurers and Pinnacol Assurance shall be appointed by the commissioner of insurance. The workers' compensation rating organization representative shall be appointed by the chief executive officer of such organization or by another officer designated to make such appointment. The commissioner may solicit a list of nominees from any interested party before making such appointments. The commissioner shall immediately notify the workers' compensation rating organization concerning the identity of any appointees.

(3) Each member shall serve one three-year term, and, in addition:

(a) (Deleted by amendment, L. 2002, p. 1889, § 46, effective July 1, 2002.)

(b) A private employer member or member representing the insurance industry or Pinnacol Assurance may serve a second consecutive three-year term; and

(c) The member representing the workers' compensation rating organization may be reappointed without limitation.

(4) Any vacancy on the board shall be filled for the unexpired term in the same manner as the original appointment. The member appointed to fill such vacancy shall be from the same category described in subsection (1) of this section as the member vacating the position.

(5) Members of the board shall serve without compensation, but their reasonable expenses incurred when performing their duties as board members shall be reimbursed from the workers' compensation cash fund created in section 8-44-112 (7). Such expenses shall be limited to travel, food, and lodging expenses.

(6) Members of the board, in their capacity as members, shall be immune from liability in all claims for injury that lie in tort or could lie in tort, regardless of whether that may be the type of action or the form of relief chosen by the claimant.

Source: L. 96: Entire article added, p. 1139, § 1, effective October 1. **L. 2002:** IP(1), (1)(a), (1)(c), (2), and (3) amended, p. 1889, § 46, effective July 1.

8-55-102. Right to appeal - notice of appeal procedures. An employer may appeal to the workers' compensation classification appeals board any issue concerning the calculation of experience modification factors and classification assignment decisions under the workers' compensation laws of this state by filing written notice with said board within thirty days after the employer has exhausted all appeal review procedures provided by the insurance company. Every insurance carrier authorized to transact business in this state, including Pinnacol Assurance, shall provide employers with a written copy or summary of their appeal procedures, together with a written notice of the availability of an appeal under this article, at the beginning of each policy year and when notice is provided to the employer of a change in experience modification factors or job classification.

Source: L. 96: Entire article added, p. 1141, § 1, effective October 1. **L. 2002:** Entire section amended, p. 1890, § 47, effective July 1.

8-55-103. Hearings - conflicts of interest. (1) The board shall commence each term on January 1 of each year and shall terminate each term on December 31.

(2) At the beginning of each term the board shall either in person or by teleconference:

(a) Elect a chair who shall be responsible for conducting each hearing;

(b) Appoint the member representing the workers' compensation rating organization as secretary; and

(c) Establish such organizational and procedural rules as are deemed necessary.

(3) The board shall meet as needed and in accordance with the following:

(a) The board shall schedule a hearing within thirty days after receipt of an appeal.

(b) The board shall provide written notice of a hearing to the appellant, the insurer, and the workers' compensation rating organization within thirty days after receipt of an appeal, but not less than ten days before the hearing.

(c) A hearing shall be conducted only if a quorum of the board is present, either in person or by teleconference. A quorum shall consist of a simple majority of the voting members, including at least two private sector members.

(d) Any decision of the board shall be by majority vote of the voting members who are present at the hearing.

(e) A member's vote shall be cast only by such member.

(f) If a board member has a conflict of interest with respect to any matter scheduled for hearing before the board, such member shall recuse himself or herself from any discussion and decisions on said matter unless, after full disclosure of the facts giving rise to such conflict, all parties to the appeal agree to waive such conflict. For purposes of this paragraph (f), a member shall be deemed to have a conflict of interest if such member:

(I) Has a conflict that would call into question such member's ability to render an unbiased decision; and

(II) Is associated with either party to the appeal. A member is "associated" with a party to an appeal if:

(A) The member and the party to the appeal are involved in a common business enterprise or are members of a controlled group, as defined in section 1563(a) of the federal "Internal Revenue Code of 1986", as amended; or

(B) The member has a familial relationship with the party to the appeal.

(g) Notwithstanding the provisions of paragraph (f) of this subsection (3), the member representing the workers' compensation rating organization shall not be deemed to have a conflict of interest with respect to any appeal based solely on his or her affiliation with his or her organization.

(4) The secretary of the board shall carry out the administrative functions of the board and shall be responsible for providing notice of, preparing the agenda for, and arranging the facilities for each hearing and meeting. The secretary shall also prepare a memorandum after each hearing that includes the vote of the board. Such memoranda shall be signed by the chair of the board and, each month, the secretary shall deliver copies of that month's memoranda to the workers' compensation rating organization.

Source: L. 96: Entire article added, p. 1141, § 1, effective October 1.

8-55-104. Review of board decisions. (1) A decision of the board shall be final and not subject to appeal unless the employer, insurance company, or Pinnacol Assurance provides written notice to the office of the commissioner of insurance, who shall determine whether a job misclassification occurred, as required pursuant to section 8-44-108. An employer may hold disputed premium amounts in abeyance from the date an appeal is filed pursuant to section 8-55-102 until the later of:

(a) The date a final decision is made by the board concerning such appeal; or

(b) The date of any written decision of the commissioner of insurance issued pursuant to subsection (3) of this section.

(2) Each employer, insurance company, or Pinnacol Assurance, as the case may be, shall be advised of the right to appeal to the office of the commissioner of insurance.

(3) An employer, insurance company, or Pinnacol Assurance shall provide written notice of an appeal to the commissioner of insurance within thirty days after the date of the board's decision. The commissioner shall review any decision of the board properly appealed pursuant to this section and shall provide a written decision within thirty days after the request for such review.

(4) Any employer that holds disputed premium amounts in abeyance pursuant to subsection (1) of this section and loses its appeal shall pay the disputed premium amount plus interest at the rate of one percent of such disputed amount per month. Such interest shall accrue from the date of the premium rate increase to the date of payment.

Source: L. 96: Entire article added, p. 1143, § 1, effective October 1. **L. 2002:** IP(1), (2), and (3) amended, p. 1890, § 48, effective July 1.

8-55-105. Repeal of article. (1) This article is repealed, effective July 1, 2021.

(2) Prior to said repeal, the workers' compensation classification appeals board shall be reviewed as provided in section 24-34-104, C.R.S.

Source: L. 96: Entire article added, p. 1143, § 1, effective October 1. **L. 2001:** Entire section amended, p. 170, § 1, effective March 28. **L. 2010:** (1) amended, (HB 10-1247), ch. 77, p. 262, § 1, effective April 5.

Occupational Diseases

ARTICLE 60

Occupational Diseases

8-60-101 to 8-60-131. (Repealed)

Source: L. 75: Entire article repealed, p. 311, § 62, effective September 1.

Editor's note: This article was numbered as article 18 of chapter 81, C.R.S. 1963. For amendments to this article prior to its repeal in 1975, consult the Colorado statutory research explanatory note beginning on page vii in the front of this volume.

Cross references: For current provisions concerning occupational diseases, see articles 40 to 47 of this title.

Medical Insurance Provisions

Editor's note: Articles 65 and 66 were numbered as articles 19 and 20 of chapter 81, C.R.S. 1963. For amendments to these articles prior to their repeal in 1990, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume. Some provisions of these articles were relocated to articles 40 to 47 of this title. For a detailed comparison, see the comparative tables located in the back of the index.

ARTICLE 65

Colorado Medical Disaster Insurance Fund

8-65-101 to 8-65-108. (Repealed)

Source: L. 90: Entire article repealed, p. 576, § 77, effective July 1.

ARTICLE 66

Colorado Major Medical Insurance Fund Act

8-66-101 to 8-66-112. (Repealed)

Source: L. 90: Entire article repealed, p. 576, § 77, effective July 1.

ARTICLE 67

Colorado Uninsured Employer Act

Law reviews: For article, "HB 17-1119 Brings Reform to Workers' Compensation", see 46 Colo. Law. 58 (Nov. 2017).

8-67-101. Short title. The short title of this article 67 is the "Colorado Uninsured Employer Act".

Source: L. 2017: Entire article added, (HB 17-1119), ch. 317, p. 1697, § 1, effective July 1.

8-67-102. Legislative declaration. (1) The general assembly hereby finds and declares that the purpose of this article 67 is to provide a mechanism for the payment of covered claims to workers injured while employed by employers who have failed to obtain and maintain the

required workers' compensation insurance and to avoid excessive delay in payment and financial loss to injured workers.

(2) Therefore, it is the intent of the general assembly to require employers to maintain workers' compensation insurance and that the requirement be vigorously enforced in order to protect compliant employers from those who would gain a competitive advantage at the expense of the safety and well-being of employees.

Source: L. 2017: Entire article added, (HB 17-1119), ch. 317, p. 1697, § 1, effective July 1.

8-67-103. Definitions. As used in this article 67, unless the context otherwise requires:

(1) "Board" means the uninsured employer board created in section 8-67-106.

(2) "Covered claim" means a claim for benefits resulting from an injury occurring on or after January 1, 2020, that has been adjudicated to be compensable, for which the employer has been determined to be uninsured, and for which the employer has failed to pay the full amount of benefits as ordered.

(3) "Department" means the department of labor and employment.

(4) "Director" means the director of the division of workers' compensation.

(5) "Division" means the division of workers' compensation in the department of labor and employment.

(6) "Fund" means the Colorado uninsured employer fund.

Source: L. 2017: Entire article added, (HB 17-1119), ch. 317, p. 1697, § 1, effective July 1.

8-67-104. Exclusions. (1) The following persons may not recover compensation or other benefits from the fund:

(a) A partner in a partnership or an owner of a sole proprietorship;

(b) A director or officer of a corporation;

(c) A member or manager of a limited liability company;

(d) An individual who was responsible for obtaining and maintaining the employer's workers' compensation insurance coverage and who failed to do so;

(e) An individual who was eligible to be covered under a workers' compensation insurance policy and voluntarily rejected the coverage under section 8-41-202, 8-41-404 (4)(a)(V), or 8-41-404 (4)(a)(VI);

(f) An individual who is not an "employee" as defined in sections 8-40-202 and 8-40-301 or who is otherwise ineligible to receive benefits under articles 40 to 47 of this title 8.

Source: L. 2017: Entire article added, (HB 17-1119), ch. 317, p. 1698, § 1, effective July 1.

8-67-105. Colorado uninsured employer fund. (1) The Colorado uninsured employer fund is hereby created in the state treasury. A board of directors established under section 8-67-106 shall administer the fund under a plan of operation established under section 8-67-108.

(2) (a) The money collected for the fund pursuant to articles 40 to 47 of this title 8 shall be transmitted to the state treasurer, who shall credit the money to the fund. The money credited to the fund and all interest earned thereon are hereby continuously appropriated for the payment of the direct costs of administering the program, including benefits paid pursuant to this article 67 and payments to third parties retained pursuant to this article 67.

(b) The internal staffing costs, not including payments to third parties contracted by the board, associated with uninsured employer programs shall be paid out of the workers' compensation cash fund in accordance with appropriations made pursuant to section 8-44-112 (7).

(c) The fund consists of:

(I) Civil penalties, fines, and other revenue collected by the division and specifically allocated to the fund pursuant to articles 40 to 47 of this title 8;

(II) Any public or private gifts, grants, or donations to the fund received by the department;

(III) Any appropriations made to the fund; and

(IV) Earned interest, which the state treasurer shall deposit in the fund.

(d) The department may use revenues in the fund for benefits to be paid out of the fund pursuant to this article 67 as well as administrative costs of the board.

(e) The money in the fund:

(I) Shall remain in the fund and not be credited or transferred to the general fund at the end of any fiscal year;

(II) Is exempt from section 24-75-402; and

(III) Is not subject to annual appropriation by the general assembly.

(3) No later than June 1, 2022, the state auditor shall conduct or cause to be conducted a performance audit of the Colorado uninsured employer fund.

Source: L. 2017: Entire article added, (HB 17-1119), ch. 317, p. 1698, § 1, effective July 1.

8-67-106. Creation of board. (1) There is hereby created in the division the uninsured employer board, consisting of the director of the division or the director's representative and four members appointed by the governor and confirmed by the senate. Appointed members of the board must include at least one individual to represent each of the following:

(a) Employers;

(b) Labor organizations;

(c) Insurers; and

(d) Attorney representatives of injured workers.

(2) The board shall exercise its powers and perform its functions under the department and the director as if the board were transferred to the department by a **type 2** transfer, as such transfer is defined in the "Administrative Organization Act of 1968", article 1 of title 24.

(3) The appointed members of the board shall serve for terms of three years and may be reappointed; except that, of the members first appointed, one shall serve for an initial term of three years, two shall serve for initial terms of two years, and one shall serve for an initial term of one year. A member may serve no more than three consecutive terms.

(4) Members of the board are not entitled to compensation for their services but shall be reimbursed for actual and necessary traveling and expenses incurred in the performance of their official duties as members of the board.

Source: L. 2017: Entire article added, (HB 17-1119), ch. 317, p. 1699, § 1, effective July 1.

8-67-107. Powers of the board - rules. (1) The board has the following powers and duties:

(a) To establish standards and criteria for payment of benefits from the fund;

(b) To set minimum and maximum benefit rates; except that benefits paid by the fund shall not exceed the maximum allowed under articles 40 to 47 of this title 8 or set forth by order of the director. Minimum benefit rates shall be at the level required by articles 40 to 47 of this title 8 unless the fund lacks sufficient money as determined by the board. If benefits are paid below the amount mandated by articles 40 to 47 of this title 8, benefits shall be prioritized and paid as follows:

(I) Medical benefits;

(II) Funeral benefits;

(III) Temporary disability;

(IV) Death benefits;

(V) Permanent total disability;

(VI) Permanent partial disability;

(VII) Disfigurement.

(c) To adjust claims, which may be performed by contracting with any appropriate entities designated as third-party administrators. Designation of a third-party administrator is subject to the approval of the director.

(d) To pay the expenses of the board as authorized by this section;

(e) To disseminate information regarding the fund;

(f) To adopt rules as necessary to carry out the purposes of this article 67, including rules regarding admission to the fund and payment of benefits in order to ensure the financial stability of the fund;

(g) To investigate claims brought for benefits and to adjust, compromise, settle, and pay covered claims to the extent permitted by statute and rule; to deny payment of benefits from the fund of all other claims and to review settlements, releases, and final orders to which the uninsured employer and injured worker were parties; and to determine the extent to which such settlements, releases, and orders may effect eligibility for benefits.

(2) The board may:

(a) Employ or retain persons as necessary to handle claims and perform other duties of the board;

(b) Intervene as a party before any court or administrative tribunal in this state that has jurisdiction over an uninsured employer or other party potentially responsible for payment of benefits;

(c) Negotiate and become a party to contracts as necessary to carry out the purposes of this article 67;

(d) Perform other acts necessary or proper to effectuate the purposes of this article 67;

(e) Purchase or otherwise obtain insurance and reinsurance policies to limit the liability of the fund for payment of benefits under this article 67; and

(f) Deny entry to the fund or payment of benefits if the underlying claim appears to be premised on fraudulent activity.

Source: L. 2017: Entire article added, (HB 17-1119), ch. 317, p. 1700, § 1, effective July 1.

8-67-108. Plan of operation - rules. (1) The board shall, by rule, adopt a plan of operation and any amendments necessary or suitable to assure the fair, reasonable, and equitable administration of the fund.

(2) If the board fails to adopt a plan of operation on or before September 1, 2018, the director shall, after notice and hearing, adopt and promulgate reasonable rules as necessary or advisable to effectuate this article 67. The rules shall continue in force until modified or superseded by the board.

(3) The plan of operation shall:

(a) Establish the procedures by which all the powers and duties of the board under section 8-67-107 will be performed;

(b) Establish the amount and method of reimbursing members of the board under section 8-67-106 (4);

(c) Establish procedures by which claims may be filed with the board, including establishing acceptable forms of proof of covered claims;

(d) Establish procedures for pursuing actions against uninsured employers pursuant to section 8-67-110;

(e) Establish regular places and times for meetings of the board;

(f) Establish procedures for maintaining records of all financial transactions of the board;

(g) Contain additional provisions necessary or proper for the execution of the powers and duties of the board; and

(h) Establish procedures for contracting with third-party administrators to administer claims paid by the fund.

Source: L. 2017: Entire article added, (HB 17-1119), ch. 317, p. 1701, § 1, effective July 1.

8-67-109. Effect of benefits. (1) Notwithstanding this section or articles 40 to 47 of this title 8, a person seeking benefits under this article 67 from the fund is deemed to have assigned his or her rights under articles 40 to 47 of this title 8 to the board to the extent of the benefits paid by the fund. Every injured worker seeking the protection of this article 67 shall cooperate with the board to the same extent as he or she would have been required to cooperate with the employer.

(2) If an employer has no insurance and fails to pay the full amount of benefits as required by articles 40 to 47 of this title 8, the injured worker may apply to the board for payment of the compensation benefits, including medical benefits, to which the injured worker is entitled, to be paid from the fund. Benefits to which the injured worker is entitled from the fund do not include any penalties assessed against the employer.

(3) The board has the right to appear as a creditor in a bankruptcy proceeding involving an uninsured employer who has been found liable to an injured worker admitted to the fund.

(4) The receiver, liquidator, or statutory successor of an uninsured employer is bound by settlements of covered claims with the board. The court having jurisdiction shall grant such claims priority equal to that which the injured worker would have been entitled in the absence of this article 67 against the assets of the employer. The expenses of the board shall be accorded the same priority as the liquidator's expenses.

(5) Upon the acceptance of a claim into the fund, the board shall record, as provided by subsection (6) of this section, a certificate prepared and furnished by the division showing the date on which the claim was filed, the date of the injury, the name and last-known address of the employer against whom it was filed, the names and last-known addresses of the employer's principals, and the fact that the employer has not secured the payment of compensation as required. Upon recording, the certificate constitutes a valid lien against the assets of the employer and its principals in favor of the fund for the whole amount that may be due as compensation. Any lien secured pursuant to this article 67 has priority in the order filed. The board shall serve a copy of the certificate upon the employer and its principals.

(6) The certificate constituting a lien in favor of the fund must be filed in the following offices:

(a) The offices of the county clerks of the counties in which the principals of the defendant employer reside;

(b) The office of the county clerk of the county in which the defendant employer has its principal place of business; and

(c) The offices of the county clerks in the counties where the employer's property is located.

(7) If an uninsured employer becomes insolvent, the board may convert all future payments of workers' compensation weekly benefits, medical expenses, or other payments pursuant to articles 40 to 47 of this title 8 to a present lump sum. The board shall fix the lump sum of probable future medical expenses and weekly compensation benefits, or other benefits payable pursuant to articles 40 to 47 of this title 8, capitalized at their present value upon the basis of interest at the rate of four percent per annum. The board shall then file with the receiver or liquidator of an insolvent employer the statement of the lump sum, which shall preserve the rights of the board against the assets of the insolvent employer. The employer is discharged from all further liability for the commuted workers' compensation claim upon payment of the present lump sum to either the injured worker or, subject to approval by the board, to a licensed insurer for purchase of an annuity or other periodic payment plan for the benefit of the injured worker.

(8) Payment from the fund does not relieve the obligation of the employer to pay benefits as required by articles 40 to 47 of this title 8 to the injured worker; except that any benefits due to the injured worker will be reduced by the amount of the benefits paid by the fund to the injured worker. All benefits required pursuant to articles 40 to 47 of this title 8 remain the liability of the employer.

Source: L. 2017: Entire article added, (HB 17-1119), ch. 317, p. 1702, § 1, effective July 1.

8-67-110. Collection of benefit reimbursements. (1) The board shall institute practices and procedures as it deems necessary to collect any money due the fund in the form of reimbursement for benefits paid from the fund to an injured worker.

(2) The board, in its role as guardian of fund dollars, is exempt from section 24-30-202.4. If the board determines an account to be uncollectible, the account may be referred to the controller for collection. Reasonable fees for collection, as determined by the board and the controller, shall be added to the amount of debt. The debtor is liable for repayment of the total of the amount of outstanding debt plus the collection fee. All money collected by the controller shall be returned to the fund; except that all fees collected shall be retained by the controller. If less than the full amount is collected, the controller shall retain only a proportionate share of the collection fee.

(3) If, after due notice, an employer defaults in the repayment of any benefits paid by the fund to an injured worker on that employer's behalf, the board may seek collection from the employer by instituting a civil action, which shall include the right of attachment in the name of the fund. Court costs shall not be charged to the board, but any employer against whom judgment is taken shall be charged with all costs of the action. All costs collected by the fund shall be paid into the registry of the court.

(4) The board may employ counsel and other personnel necessary to collect reimbursements as described in this section.

Source: L. 2017: Entire article added, (HB 17-1119), ch. 317, p. 1703, § 1, effective July 1.

8-67-111. Payment of benefits. (1) Benefits paid under this article 67 are treated as benefits paid by an insurer or self-insured employer under articles 40 to 47 of this title 8.

(2) A person having a single claim against multiple employers is not entitled to receive benefits unless each of the liable employers is uninsured.

(3) When paying benefits, the board is entitled to claim any reduction of benefits, to claim overpayments, or to make any other adjustments allowed under articles 40 to 47 of this title 8.

(4) Benefits awarded under this article 67 must be reduced by any benefits paid by the uninsured employer.

Source: L. 2017: Entire article added, (HB 17-1119), ch. 317, p. 1704, § 1, effective July 1.

8-67-112. Medical benefits. (1) Medical benefits paid under this article 67 are treated as benefits paid by an insurer or self-insured employer under articles 40 to 47 of this title 8.

(2) Upon acceptance of a claim for benefits from the fund, the board may designate a new authorized treating physician. Application to the fund shall be deemed as acceptance by the injured worker of the new designated physician if the designation is made. The previously authorized treating physician providing primary care shall continue as the authorized treating physician providing primary care for the injured employee until the injured employee's initial visit with the newly authorized treating physician, at which time the treatment relationship with the previously authorized treating physician providing primary care is terminated.

(3) Notwithstanding articles 40 to 47 of this title 8, the board is permitted to negotiate rates of reimbursement for medical providers.

Source: L. 2017: Entire article added, (HB 17-1119), ch. 317, p. 1704, § 1, effective July 1.

8-67-113. Procedure. (1) A controversy concerning any issue arising under this section shall be resolved through hearings in accordance with sections 8-43-207 and 8-43-207.5. In any such hearing, a decision of the board to deny benefits may only be set aside upon a showing of abuse of discretion.

(2) The division shall notify the board of any claim determined or suspected to be uninsured, either at the time of filing or otherwise. Upon the notification, the board is permitted to join the claim as a party upon written notice to all other parties.

(3) A hearing must not proceed on the issue of lack of coverage without the board having been notified and provided an opportunity to join the claim as a party.

(4) The board, its agents, or employees have no liability for any action taken against them for the performance of their duties under this article 67.

Source: L. 2017: Entire article added, (HB 17-1119), ch. 317, p. 1705, § 1, effective July 1.

LABOR III - EMPLOYMENT SECURITY

ARTICLE 70

Definitions - General Provisions

Cross references: For applicability of legislation that amends, repeals, or adds to the provisions of this article on and after May 18, 1979, see § 8-70-143.

8-70-101. Short title. Articles 70 to 82 of this title shall be known and may be cited as the "Colorado Employment Security Act".

Source: L. 36, 3rd Ex. Sess.: p. 13, § 1. **CSA:** C. 167A, § 1. **L. 41:** p. 761, § 1. **CRS 53:** § 82-1-1. **C.R.S. 1963:** § 82-1-1.

8-70-102. Legislative declaration. As a guide to the interpretation and application of this article, the public policy of this state is declared to be as follows: Economic insecurity due to unemployment is a serious menace to the health, morals, and welfare of the people of this state. Involuntary unemployment is therefore a subject of general interest and concern which requires appropriate action by the general assembly to prevent its spread and to lighten its burden which now so often falls with crushing force upon the unemployed worker and his family. The achievement of social security requires protection against this greatest hazard of our economic life. This can be provided by encouraging employers to provide more stable employment and by the systematic accumulation of funds during periods of employment to provide benefits for

periods of unemployment, thus maintaining purchasing power and limiting the serious social consequences of poor relief assistance. The general assembly, therefore, declares that in its considered judgment the public good and the general welfare of the citizens of this state require the enactment of this measure, under the police powers of the state, for the compulsory setting aside of unemployment reserves to be used for the benefit of persons unemployed through no fault of their own.

Source: L. 36, 3rd Ex. Sess.: p. 13, § 2. **CSA:** C. 167A, § 2. **L. 41:** p. 761, § 2. **CRS 53:** § 82-1-2. **C.R.S. 1963:** § 82-1-2.

8-70-103. Definitions. **[*Editor's note: This version of this introductory portion is effective until January 1, 2021.*]** As used in articles 70 to 82 of this title, unless the context otherwise requires:

[*Editor's note: This version of this introductory portion is effective January 1, 2021.*] As used in articles 70 to 82 of this title 8, unless the context otherwise requires:

(1) "Agricultural labor" has the meaning set forth in section 8-70-109.

(1.5) "Alternative base period" means the last four completed calendar quarters immediately preceding the benefit year.

(2) "Base period" means the first four of the last five completed calendar quarters immediately preceding the first day of the individual's benefit year.

(3) "Benefits" means the money payments payable to an individual with respect to his unemployment. The different classifications of benefits are set forth in section 8-70-110.

(4) "Benefit year" has the meaning set forth in section 8-70-111.

(5) "Calendar day" means a full day beginning and ending at 12 midnight. As used in connection with appeal or protest periods, calendar days begin to be counted on the day after the date appearing on a notice issued by the division and continue consecutively for the number of days in the appeal or protest period. If the last day of any period set forth in articles 70 to 82 of this title is a Saturday, Sunday, or legal holiday, the period is extended to include the next day that is not a Saturday, Sunday, or legal holiday.

(6) "Calendar quarter" means the period of three consecutive calendar months ending on March 31, June 30, September 30, or December 31.

(6.3) "Chargeable payroll" means the sum of chargeable wages.

(6.5) **[*Editor's note: This version of subsection (6.5) is effective until January 1, 2021.*]** "Chargeable wages" means those wages paid to an individual employee during a calendar year on which the employer of that employee is required to pay premiums as provided by article 76 of this title, including all wages subject to a tax under federal law, which imposes a tax against which credit may be taken for premiums required to be paid into a state unemployment fund. For each calendar year, chargeable wages is the first ten thousand dollars paid to an individual; except that, effective January 1, 2012, chargeable wages for each calendar year is the first eleven thousand dollars paid to an individual and except that, after January 1, 2013, chargeable wages is the first eleven thousand dollars paid to an individual, adjusted by the change in the average weekly earnings prescribed in section 8-73-102, rounded to the nearest one hundred dollars. As used in articles 70 to 82 of this title, chargeable wages paid includes chargeable wages constructively paid as well as chargeable wages actually paid.

(6.5) [***Editor's note: This version of subsection (6.5) is effective January 1, 2021.***] (a) "Chargeable wages" means those wages paid to an individual employee during a calendar year on which the employer of that employee is required to pay premiums as provided by article 76 of this title 8, including all wages subject to a tax under federal law, which imposes a tax against which credit may be taken for premiums required to be paid into the unemployment compensation fund. For each calendar year, chargeable wages is as follows:

(I) For the calendar year beginning January 1, 2021, the first thirteen thousand six hundred dollars paid to an individual;

(II) For the calendar year beginning January 1, 2022, the first seventeen thousand dollars paid to an individual;

(III) For the calendar year beginning January 1, 2023, the first twenty thousand four hundred dollars paid to an individual;

(IV) For the calendar year beginning January 1, 2024, the first twenty-three thousand eight hundred dollars paid to an individual;

(V) For the calendar year beginning January 1, 2025, the first twenty-seven thousand two hundred dollars paid to an individual; and

(VI) For the calendar year beginning January 1, 2026, and each calendar year thereafter, the first thirty thousand six hundred dollars paid to an individual, adjusted by the change in the average weekly earnings prescribed in section 8-73-102, rounded to the nearest one hundred dollars.

(b) As used in articles 70 to 82 of this title 8, chargeable wages paid includes chargeable wages constructively paid as well as chargeable wages actually paid.

(7) "Claims" includes any of the divisions of the classifications set forth in section 8-70-112.

(8) "Division" means the division of unemployment insurance.

(8.5) "Electronic" has the meaning set forth in section 24-71.3-102 (5), C.R.S.; except that "electronic" shall not include use of the telephone to transmit audio or voice communication.

(9) "Employer" has the meaning set forth in section 8-70-113.

(10) "Employing unit" has the meaning set forth in section 8-70-114.

(11) "Employment" has the meaning set forth in sections 8-70-115 to 8-70-125, exclusive of the exceptions set forth in sections 8-70-126 to 8-70-140.7.

(12) "Employment office" means a free public employment office or branch thereof operated by this state or maintained as a part of a state-controlled system of public employment offices.

(12.5) "Fully employed" means any employee who is employed thirty-two hours or more for any week and is not included in the definition of "partially employed" as set forth in subsection (19) of this section.

(13) "Fund" means the unemployment compensation fund, established in section 8-77-101 (1), to which all premiums required and from which all benefits under articles 70 to 82 of this title and bonds issued under section 8-71-103 (2)(d) are paid and from which payments may be made to the Colorado housing and finance authority under section 29-4-710.7, C.R.S.

(14) "Hospital" means an institution which has been licensed, certified, or approved by the department of public health and environment as a hospital.

(14.5) [***Editor's note: Subsection (14.5) is effective January 1, 2021.***] "Immediate family" means an individual's spouse, partner in a civil union, parent, or minor child under

eighteen years of age; a sibling of the individual who is under eighteen years of age and for whom the individual stands in loco parentis; or a sibling of the individual who is incapable of self-care due to a mental or physical disability or a long-term illness.

(15) (a) "Institution of higher education" means an educational institution which:

(I) Admits as regular students only individuals having a certificate of graduation from a high school or the recognized equivalent of such a certificate; and

(II) Is legally authorized in this state to provide a program of education beyond high school; and

(III) Provides an educational program for which it awards a bachelor's or higher degree or a program which is acceptable for full credit toward such a degree, a program of postgraduate or postdoctoral studies, or a program of training to prepare students for gainful employment in a recognized occupation; and

(IV) Is a public or other nonprofit institution.

(b) Notwithstanding any of the provisions of paragraph (a) of this subsection (15), all colleges and universities in this state are institutions of higher education for purposes of this section.

(16) "Insured work" means employment for employers.

(17) (a) "Interested party" to any benefit decision means the individual who is claiming benefits, the division, and any employer who has complied with the reporting requirements of the division with respect to wages or other information regarding such individual.

(b) "Interested party" to a premium liability determination means the division and the employer whose business has been issued a liability determination by the division.

(18) "Inverse chronological order", when applied to the charging of employers' accounts, means that the most recent base period employer is the first employer charged and all other employers shall follow in reverse order of dates of employment.

(19) "Partially employed" refers to an individual whose wages payable to him by his regular employer for any week of less than full-time work are less than the weekly benefit amount he would be entitled to receive if totally unemployed and eligible or, in any established payroll period not longer than one month, are less than full-time work in which wages payable to him by his regular employer are less than an amount determined in accordance with the general rule proportionately equivalent for such pay period to the individual's weekly benefit amount. Any employee who is employed thirty-two hours or more for any week is deemed to be employed full time for such week and is not included in the definition of "partially employed" under this subsection (19).

(20) "Payments in lieu of premiums" means the money payments made into the fund by an employer pursuant to the provisions of sections 8-76-108 to 8-76-110.

(21) "Payroll period" means a period of not more than thirty-one consecutive days for which a payment of remuneration is ordinarily made to the employee by the employing unit employing him. If the services performed during one-half or more of any payroll period by an employee for the employing unit employing him constitute employment, all the services of the employee for such period shall be deemed to be employment; but, if the services performed during more than one-half of any such payroll period by an employee for the employing unit employing him do not constitute employment, none of the services of the employee for such period shall be deemed to be employment.

(22) "Period of unemployment" commences only after registration by the individual at an employment office, except as the division, by regulation, otherwise may prescribe.

(23) "Political subdivision" means a county, municipality, school district, local college district, special district formed pursuant to title 32, C.R.S., cooperative agency formed pursuant to part 2 of article 1 of title 29, C.R.S., or regional commission formed pursuant to section 30-28-105, C.R.S.

(23.5) "Premiums" means the money payments to the unemployment compensation fund required by articles 70 to 82 of this title.

(23.7) **[*Editor's note: Subsection (23.7) is effective January 1, 2021.*]** (a) "Severance allowance" means any payment that is:

(I) Designated by an employer as a severance allowance;

(II) Paid to an individual because the individual is separated from employment; and

(III) Paid to compensate the separated individual for a period of time following the separation during which period the individual does not work.

(b) Notwithstanding subsection (23.7)(a) of this section, a payment made by an employer to an individual is not a "severance allowance" if the purpose of the payment is to induce the individual to waive rights or claims against the employer.

(24) "State" includes the states of the United States of America, the District of Columbia, the commonwealth of Puerto Rico, and the Virgin Islands.

(25) to (27) (Deleted by amendment, L. 2009, (HB 09-1363), ch. 363, p. 1877, § 2, effective July 1, 2009.)

(28) "Totally unemployed" means an individual who performs no services in any week with respect to which no wages are payable to him. Should such week occur within an established payroll period in which the individual is not totally separated from his regular employer, he shall be deemed not totally unemployed but partially employed, as defined in subsection (19) of this section, and subject to the conditions pertaining to partial employment.

(29) "Wages" has the meaning set forth in section 8-70-141.

(30) "Week" means such period of seven consecutive days as the director of the division may prescribe by regulations.

(31) "Weekly benefit amount" means the amount of benefits an individual is entitled to receive for one week of total unemployment.

Source: L. 36, 3rd Ex. Sess.: p. 49, § 19. **L. 37:** p. 1270, § 12. **CSA:** C. 167A, § 19. **L. 39:** pp. 581, 586, §§ 13, 1. **L. 41:** pp. 802, 814, 818, §§ 19, 1, 1. **L. 43:** pp. 610, 612, §§ 11, 13. **L. 45:** p. 715, § 8. **L. 47:** pp. 888, 891, §§ 4, 1, 2. **L. 49:** p. 730, § 11. **L. 51:** pp. 822, 823, §§ 15-18. **L. 53:** p. 627, § 7. **CRS 53:** § 82-1-3. **L. 55:** pp. 528, 529, §§ 1, 1. **L. 57:** p. 516, § 1. **L. 58, 1st Ex. Sess.:** p. 24, § 1. **L. 59:** p. 559, § 1. **L. 60:** p. 155, § 1. **L. 63:** p. 664, §§ 1, 2. **C.R.S. 1963:** § 82-1-3. **L. 65:** pp. 830, 831, §§ 1, 2. **L. 71:** pp. 924-931, §§ 1-5. **L. 73:** p. 957, § 1. **L. 75:** (10)(f.1) added and IP(10)(g) and (11)(f) amended, p. 321, §§ 1, 2, effective June 20. **L. 76:** (10)(f.1) amended and (19.5) added, p. 360, § 1, effective April 20; (22)(b)(II) amended, p. 299, § 19, effective May 20; (3)(a), (7), (8)(a), IP(10)(g), (10)(g)(I), and (11)(f) amended and (10)(a)(II) and (10)(f.1) repealed, pp. 335, 352, §§ 2, 22, effective October 1. **L. 77:** (11)(d) amended, p. 472, § 1, effective July 1; (8)(b), (8)(c), (10)(g), and (11)(a)(I) R&RE, (8)(c.3), (8)(c.7), (10)(f.3), (10)(k), and (22)(c) added, and (10)(a), (10)(f), IP(10)(h)(I), (10)(h)(II), (11)(a)(I)(G), (20), and (22)(a) amended, pp. 457, 458, 460, 461, 462, §§ 1-12, effective July 7;

(11)(f) repealed, p. 471, § 27, effective January 1, 1978. **L. 79:** (4) and (10)(k) R&RE, (4.3) added, and (10)(g)(I), IP(10)(g)(III), and (10)(g)(III)(E) amended, pp. 344, 345, §§ 1-3, effective September 30. **L. 80:** (10)(g)(I) and (10)(k) amended, p. 462, § 1, effective July 1. **L. 81:** (4.5) added, p. 482, § 1, effective July 1; (8)(e), (10)(j), (11)(e), (13), and (22)(a) amended, (20.5) added, and (6) repealed, pp. 489, 507, §§ 1, 29, effective July 1; (11)(b) amended, p. 2023, § 4, effective July 14; (11)(o) added, p. 508, § 1, effective July 1, 1983. **L. 82:** (10)(g)(I) amended, p. 234, § 1, effective July 1. **L. 83:** (10)(f.3)(I)(A), (10)(f.3)(I)(B), (11)(h), and (11)(l) amended, p. 434, § 1, effective April 12; (8)(d), (9), IP(10)(a), and (10)(a)(III) amended, (10)(a)(IV) and (18.5) added, and (11)(m) and (11)(o)(I) repealed, pp. 428, 429, 433, §§ 1, 2, 14, effective June 3; (2)(e), (20.3), and (20.4) added and (22)(a) R&RE, pp. 2041, 2042, §§ 1-3, effective October 1. **L. 84:** IP(10)(a), (10)(a)(III), and (18) amended, (22)(a.5) added, (22)(b) R&RE, and (10)(a)(IV) repealed, pp. 313, 314, 320, §§ 1, 2, 3, 14, effective July 1. **L. 85:** (22)(a.5)(II) amended, p. 363, § 1, effective March 1; (3)(b), (10)(f.3)(I)(B), (22)(b)(IV)(C), (22)(b)(IV)(D), (22)(b)(V), and (22)(b)(VIII) amended, (22)(a.5)(I)(D), (22)(a.5)(I.5), (22)(b)(IV)(G), (22)(b)(XV), and (2)(b)(XVI) added, and (22)(b)(II), (22)(b)(VI), (22)(b)(XIII), and (22)(b)(XIV) repealed, pp. 359, 360, 361, §§ 1, 2, 3, 4, 7, effective April 4; (11)(p) added, p. 362, § 1, effective April 5; (1) and (3)(a) amended, p. 365, § 1, effective July 1; (8)(a) and (11)(c) amended, p. 372, § 1, effective July 1. **L. 86:** IP(11)(l) amended and (11)(q) added, p. 541, § 1, effective May 28; (19) and (23) amended and (5) repealed, pp. 487, 502, §§ 81, 125, effective July 1; (20.4) amended, p. 541, § 2, effective July 1. **L. 87:** (10)(f.3)(I) amended, p. 403, § 1, effective April 16; (19.5) amended, p. 405, § 1, effective June 1. **L. 89:** (10)(f.3)(II)(A) and (22)(b)(IV)(G) amended and (22)(b)(IV)(H) added, p. 424, § 1, effective July 1. **L. 90:** Entire section R&RE, p. 585, § 1, effective April 3; (11)(p) repealed, p. 609, § 8, effective April 16; (12.5) added and (17) amended, p. 606, § 1, effective April 16; (20.4) amended, p. 1763, § 2, effective June 8; (22)(b)(I)(A) amended, p. 557, § 9, effective July 1. **L. 94:** (14) amended, p. 2723, § 317, effective July 1. **L. 96:** (11) amended, p. 380, § 1, effective April 17. **L. 97:** (23) amended, p. 119, § 1, effective July 1. **L. 98:** (5) amended, p. 88, § 2, effective March 23. **L. 2002:** (8.5) added, p. 340, § 15, effective April 19. **L. 2003:** (8.5) amended, p. 1982, § 4, effective May 22. **L. 2009:** (1.5) added, (SB 09-247), ch. 405, p. 2228, § 1, effective July 1; (6.3), (6.5), and (23.5) added and (13), (17)(b), (20), and (25) to (27) amended, (HB 09-1363), ch. 363, p. 1877, § 2, effective July 1. **L. 2011:** (6.5) amended, (HB 11-1288), ch. 212, p. 914, § 1, effective July 1. **L. 2012:** (8) amended, (HB 12-1120), ch. 27, p. 77, § 2, effective June 1. **L. 2012, 1st Ex. Sess.:** (6.5) and (13) amended, (HB 12S-1002), ch. 2, p. 2424, § 2, effective June 1. **L. 2015:** (6.5) amended, (SB 15-264), ch. 259, p. 942, § 9, effective August 5. **L. 2020:** IP and (6.5) amended, (SB 20-207), ch. 296, p. 1469, § 1, effective January 1, 2021; IP amended and (14.5) and (23.7) added, (SB 20-170), ch. 297, p. 1478, § 3, effective January 1, 2021.

Editor's note: The effective date for amendments to this section by House Bill 12-1120 (chapter 27, Session Laws of Colorado 2012) was changed from August 8, 2012, to June 1, 2012, by House Bill 12S-1002 (First Extraordinary Session, chapter 2, p. 2432, Session Laws of Colorado 2012).

8-70-104. Additional definitions. (Repealed)

Source: L. 39: p. 583, § 14. **CSA:** C. 167A, § 21. **L. 41:** p. 809, § 20. **L. 43:** p. 611, § 12. **L. 45:** p. 715, § 9. **L. 47:** p. 889, § 5. **L. 49:** pp. 730, 731, §§ 12, 13. **L. 51:** p. 823, § 20. **L. 53:** p. 632, § 8. **CRS 53:** § 82-1-4. **C.R.S. 1963:** § 82-1-4. **L. 67:** p. 327, § 1. **L. 75:** Entire section repealed, p. 206, § 6, effective July 16.

8-70-105. Banks as instrumentalities of United States. (1) For all purposes of articles 70 to 82 of this title and in conformity with federal laws, national banks doing business in Colorado and state bank members of the federal reserve system shall be deemed and held to be instrumentalities of the United States, as referred to in articles 70 to 82 of this title.

(2) Banks doing a commercial banking business in Colorado and maintaining an account with the federal reserve bank or with a member of the federal reserve system, for the purposes of articles 70 to 82 of this title, shall not be deemed to be instrumentalities of the United States.

Source: L. 41: p. 287, §§ 1, 2. **CSA:** C. 167A, § 23. **CRS 53:** § 82-1-5. **C.R.S. 1963:** § 82-1-5.

8-70-106. No vested rights or immunities. The general assembly reserves the right to extend the time of operation, amend, or repeal all or any part of articles 70 to 74 and 76 to 81 of this title at any time; and there shall be no vested private right of any kind against such extension, amendment, or repeal. All the rights, privileges, or immunities conferred by said articles or by acts done pursuant thereto shall exist subject to the power of the general assembly to amend or repeal said articles at any time.

Source: L. 56: Ex. Sess., p. 26, § 1. **CRS 53:** § 82-1-6. **C.R.S. 1963:** § 82-1-6.

8-70-107. Disposition of funds in event of unconstitutionality. (1) Articles 70 to 74 and 76 to 81 of this title are enacted for the purpose of participating in the advantages available to the state of Colorado under the federal "Social Security Act", as amended. In the event that Title IX of the federal "Social Security Act" or any amendments to the federal act are amended or repealed by congress or are held unconstitutional by the supreme court of the United States, with the result that no portion of the premiums required under articles 70 to 74 and 76 to 81 of this title may be credited against the tax imposed by Title IX of the federal "Social Security Act", the division shall requisition from the unemployment trust fund all moneys in the trust fund standing to the credit of the state of Colorado, and such moneys, together with any other moneys in the unemployment compensation fund, shall be refunded to the contributors proportionate to their unexpended balances in the fund.

(2) In the event that the provisions of articles 70 to 74 and 76 to 81 of this title requiring the payment of premiums and benefits are held invalid under the constitution of this state by the supreme court of this state or the supreme court of the United States or are held invalid under the United States constitution by the supreme court of the United States or the supreme court of this state, the division shall requisition from the unemployment trust fund all moneys in the trust fund standing to the credit of the state of Colorado, and such moneys, together with any other moneys in the unemployment compensation fund, shall be held in custody by the state treasurer in the same manner as provided in section 8-77-105 until such time as the general assembly provides for the disposition of the moneys; except that the general assembly shall not dispose of

the moneys other than for unemployment compensation purposes or for reimbursements to the contributors under the provisions of articles 70 to 74 and 76 to 81 of this title, proportionate to their unexpended balances in the fund.

Source: L. 56: Ex. Sess., p. 26, § 2. **CRS 53:** § 82-1-7. **C.R.S. 1963:** § 82-1-7. **L. 81:** (3) amended, p. 490, § 2, effective July 1. **L. 2009:** Entire section amended, (HB 09-1363), ch. 363, p. 1878, § 3, effective July 1.

Cross references: For Title IX of the "Social Security Act", see 42 U.S.C. §§ 1101 to 1110.

8-70-108. Conformity with federal statutes. If any provisions contained in articles 70 to 82 of this title are determined to be in nonconformity with federal statutes, as determined by the United States secretary of labor or an assistant secretary of labor, the division, with the concurrence of the attorney general of the state of Colorado, is authorized to administer said articles so as to conform with the provisions of the federal statutes until such time as the general assembly meets in its next regular session and has an opportunity to amend said articles.

Source: L. 77: Entire section added, p. 463, § 13, effective July 7. **L. 81:** Entire section amended, p. 482, § 2, effective July 1. **L. 94:** Entire section amended, p. 1627, § 19, effective May 31.

8-70-109. Agricultural labor. (1) "Agricultural labor" means any remunerated service performed:

(a) On a farm in the employ of any person, in connection with cultivating the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and fur-bearing animals and wildlife;

(b) In the employ of the owner, tenant, or other operator of a farm, in connection with the operation, management, conservation, improvement, or maintenance of such farm and its tools and equipment, or in salvaging timber or clearing land of brush and other debris left by an act of nature, if the major part of the service is performed on a farm;

(c) In connection with the production or harvesting of any commodity defined as an agricultural commodity in section 15 (g) of the "Agricultural Marketing Act", as amended (46 Stat. 1550, sec. 3; 12 U.S.C. section 1141J), or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways, not owned or operated for profit, used exclusively for supplying and storing water for farming purposes;

(d) In the employ of the operator of a farm in handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, in its unmanufactured state, any agricultural or horticultural commodity, but only if such operator produced more than one-half of the commodity with respect to which the service is performed; except that the provisions of this paragraph (d) are not applicable with respect to service performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption;

(e) In the employ of a group of operators of farms (or a cooperative organization of which such operators are members) in the performance of service described in paragraph (d) of this subsection (1), but only if such operators produced more than one-half of the commodity with respect to which the service is performed; except that the provisions of this paragraph (e) are not applicable with respect to service performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption; or

(f) On a farm operated for profit if the service is not in the course of the employer's trade.

(2) As used in this section, the term "farm" includes stock, dairy, poultry, fruit, fur-bearing animal, and truck farms, plantations, ranches, nurseries, ranges, greenhouses, or other similar structures used primarily for the raising of agricultural or horticultural commodities and orchards.

Source: L. 79: Entire section added, p. 357, § 1, effective May 18. **L. 90:** Entire section R&RE, p. 588, § 2, effective April 3.

8-70-110. Benefits - classifications. (1) Benefits are divided into classifications, as follows:

(a) Regular benefits: Benefits payable to an individual under this article or under any other state law, including benefits payable to federal civilian employees and to ex-servicemen pursuant to chapter 85 of title 5 of the United States Code, other than extended benefits;

(b) Extended benefits: Benefits payable to an individual under part 1 of article 75 of this title, including benefits payable to federal civilian employees and to former members of the armed forces pursuant to chapter 85 of title 5 of the United States Code, for weeks of unemployment in his or her eligibility period;

(c) Additional benefits: Benefits payable to exhaustees, as defined in section 8-75-101 (2), by reason of conditions of high unemployment or by reason of special factors under the provisions of any state law;

(d) Benefits not effectively charged: Those regular benefits, including the state share of extended benefits, paid but not charged to any active employer account.

Source: L. 90: Entire section added, p. 589, § 3, effective April 3. **L. 2010:** (1)(b) amended, (SB 10-028), ch. 397, p. 1891, § 4, effective June 9.

Cross references: For chapter 85 of title 5 of the United States Code, see 5 U.S.C. § 8501 et seq.

8-70-111. Benefit year - definitions. (1) "Benefit year" means the period of fifty-two consecutive calendar weeks beginning with the first week of a claims series established by the filing of a valid initial claim; except that the benefit year shall be fifty-three weeks if filing a new valid claim would result in overlapping any quarter of the base year of a previously filed new claim.

(2) As used in this section:

(a) A "valid initial claim" means an application for the determination of benefit rights which includes the claimant's social security number and which establishes that the claimant has met the eligibility condition set forth in section 8-73-107 (1)(e).

(b) A calendar week shall be deemed to be entirely within that calendar quarter which contains the first day of such week.

Source: L. 90: Entire section added, p. 589, § 3, effective April 3.

8-70-112. Claims - classifications. (1) Claims are divided into classifications, as follows:

(a) Initial claim, which establishes a benefit year and is valid as defined in section 8-70-111 (2)(a); or

(b) Additional claim, which reopens a claim series within an existing benefit year after a second or subsequent period of unemployment; or

(c) Reopened claim, which reopens a claim within an existing benefit year when there has been no intervening employment since the last claim for a week of unemployment.

Source: L. 90: Entire section added, p. 590, § 3, effective April 3.

8-70-113. Employer - definition. (1) "Employer" means:

(a) (I) Any employing unit that, after December 31, 1985, and prior to January 1, 1999, had in employment at least one individual performing services at any time; except that this paragraph (a) shall not apply to employing units for which service in employment, as defined in sections 8-70-118 to 8-70-121, is performed.

(II) Any employing unit that, after December 31, 1998:

(A) Paid wages of one thousand five hundred dollars or more during any calendar quarter in the calendar year or the preceding calendar year; or

(B) Employed at least one individual in employment for some portion of the day on each of twenty days during the calendar year or during the preceding calendar year, each day being in a different calendar week.

(III) After December 31, 1998, this paragraph (a) shall not apply to employing units for which service in employment, as defined in sections 8-70-118 to 8-70-121, is performed.

(IV) For purposes of this paragraph (a), employment shall include service that would constitute employment but for the fact that such service is deemed to be performed entirely within another state pursuant to an arrangement entered into in accordance with section 8-72-110 (3) by the division and an agency charged with the administration of any other state or federal unemployment compensation law.

(V) For the purposes of this paragraph (a), if any calendar week includes both December 31 and January 1, the days of that week up to January 1 shall be deemed one calendar week and the days beginning January 1 another such week.

(b) Any employing unit for which service in employment as defined in section 8-70-118 is performed after December 31, 1971, except as provided in subsections (2) and (3) of this section. For purposes of this paragraph (b), employment shall include service which would constitute employment but for the fact that such service is deemed to be performed entirely within another state pursuant to an arrangement entered into in accordance with section 8-72-110

(3) by the division and an agency charged with the administration of any other state or federal unemployment compensation law.

(c) Any employing unit for which service in employment as defined in section 8-70-119 is performed, except as provided in subsections (2) and (3) of this section;

(d) Any employing unit for which agricultural labor as defined in section 8-70-109 is performed and is defined as employment in section 8-70-120;

(e) Any employing unit for which domestic service in employment as defined in section 8-70-121 is performed;

(f) Any employing unit (whether or not an employing unit at the time of acquisition) which acquired the organization, trade, or business, or substantially all of the assets of an employer subject to articles 70 to 82 of this title, or which acquired a part of the organization, trade, or business of an employer subject to articles 70 to 82 of this title, if such part would have been an employer under this section had it constituted the entire organization, trade, or business;

(g) Any employing unit that is not defined as an employer under this section but for which, within either the current or the preceding calendar year, service is or was performed with respect to which such employing unit is liable for any federal tax against which credit may be taken for premiums required to be paid into a state unemployment fund;

(h) Any employing unit that, as a condition for approval of articles 70 to 82 of this title for full credit against the tax imposed by the "Federal Unemployment Tax Act" for premiums paid, is required, pursuant to such act, to be an employer under articles 70 to 82 of this title;

(i) Any employing unit which, having become an employer under paragraphs (a) to (h) of this subsection (1), has not under section 8-76-106, ceased to be an employer subject to articles 70 to 82 of this title;

(j) For the effective period of its election pursuant to section 8-76-107, any employing unit which has become subject to articles 70 to 82 of this title; or

(k) Any Indian tribe for which service in employment as defined under section 8-70-125.5 is performed.

(2) In determining whether or not an employing unit for which service other than agricultural labor is also performed is an employer under paragraphs (b) and (e) of subsection (1) of this section, the wages earned or the employment of an employee performing service in agricultural labor after December 31, 1977, shall not be taken into account. If an employing unit is determined to be an employer of agricultural labor, such employing unit shall be determined to be an employer for the purposes of paragraph (a) of subsection (1) of this section.

(3) In determining whether or not an employing unit for which service other than domestic service is also performed is an employer under paragraph (b), (c), or (d) of subsection (1) of this section, the wages earned or the employment of an employee performing domestic service after December 31, 1977, shall not be taken into account.

Source: L. 90: Entire section added, p. 590, § 3, effective April 3. **L. 98:** (1)(a) amended, p. 82, § 1, effective August 5. **L. 2001:** (1)(k) added, p. 1547, § 1, effective December 21, 2000. **L. 2009:** (1)(g) and (1)(h) amended, (HB 09-1363), ch. 363, p. 1878, § 4, effective July 1.

Editor's note: The federal "Consolidated Appropriations Act, 2001", Pub.L. 106-554, which became law on December 21, 2000, required all states to amend their laws regarding how

Indian tribes are treated for unemployment insurance purposes. The 2001 act enacting subsection (1)(k) provided for an effective date of December 21, 2000. (See L. 2001, p. 1550.)

8-70-114. Employing unit - definitions - rules - employee leasing company certification fund. (1) "Employing unit" means any individual or type of organization, including any partnership, limited liability partnership, limited liability company, limited liability limited partnership, association, trust, estate, joint stock company, insurance company, or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or successor thereof, or legal representative of a deceased person, who employs one or more individuals performing services within this state. All individuals performing services within this state for any employing unit that maintains two or more separate establishments within this state shall be deemed to be employed by a single employing unit for all the purposes of articles 70 to 82 of this title. Each individual employed to perform or to assist in performing the work of any agent or employee of an employing unit shall be deemed to be employed by such employing unit for all the purposes of articles 70 to 82 of this title, whether such individual was hired or paid directly by such employing unit or by the agent or employee if the employing unit had actual or constructive knowledge of the work. Nothing in this section shall be construed to mean that a common paymaster may be considered a single employing unit for purposes of considering the services performed by another employing unit subject to a single or common payroll.

(2) (a) For purposes of this section:

(I) "Coemployer" means either an employee leasing company or a work-site employer.

(II) "Coemployment relationship" means a relationship that is intended to be an ongoing relationship rather than a temporary or project specific one, wherein the rights, duties, and obligations of an employer that arise out of an employment relationship have been allocated between coemployers pursuant to an employee leasing company contract and this section. In a coemployment relationship:

(A) The employee leasing company is entitled to enforce only such employer rights and is subject to only those obligations specifically allocated to the employee leasing company by the employee leasing company contract and this section;

(B) The work-site employer may enforce those rights and shall provide and perform those employer obligations allocated to the work-site employer by the employee leasing company contract and this section; and

(C) The work-site employer may enforce any right and shall perform any obligation of an employer not specifically allocated to the employee leasing company by the employee leasing company contract or this section.

(III) (A) "Covered employee" or "work-site employee" means an individual who is in an employment relationship with both an employee leasing company and a work-site employer and has received written notice of the coemployment with the employee leasing company.

(B) The provisions of sub-subparagraph (A) of this subparagraph (III) relate solely to the employee leasing contract and not to any contract for workers' compensation insurance or entitlement to workers' compensation benefits.

(IV) "Department" means the department of labor and employment.

(V) "Employee leasing company" means any person, business, or other entity that provides services to a work-site employer, as defined in subparagraph (VII) of this paragraph (a),

pursuant to an employee leasing company contract, as defined in subparagraph (VI) of this paragraph (a).

(VI) "Employee leasing company contract" means any written staff leasing contract, extended employee staffing or supply contract, or other contract under which an employee leasing company procures or receives from a work-site employer specified coemployer responsibilities for specified employees, designating itself as employer of such employees, and retaining the right of direction and control of such employees with regard to those employer responsibilities, including the rights and responsibilities set forth in paragraph (b) of this subsection (2). An employee leasing company may have other responsibilities pursuant to an employee leasing company contract, including provision of professional guidance with regard to employment matters.

(VII) "Work-site employer" means any person, business, or other entity that procures the services of an employee leasing company under an employee leasing company contract and otherwise retains direction and control of the employees specified in the contract regarding responsibilities not specified in the contract pertaining to the business of the work-site employer.

(b) Notwithstanding subsection (1) of this section, an employee leasing company shall be considered an employing unit or the coemployer of a work-site employer's employees if, pursuant to an employee leasing company contract with the work-site employer, it has the following rights and responsibilities:

(I) The employee leasing company, as the employing unit or the co-employer, assigns employees to the work-site employer's locations;

(II) The employee leasing company, as the employing unit or co-employer, retains the right to set the employees' rate of pay;

(III) The employee leasing company, as the employing unit or co-employer, retains the right to pay the employee from its own account or accounts;

(IV) The employee leasing company, as the employing unit or co-employer, retains the right to direct and control the employees and such rights and responsibilities may be shared as specified in the employee leasing company contract;

(V) The employee leasing company, as the employing unit or co-employer, has the right to discharge, reassign, or hire employees to perform services for the work-site employer and the employee leasing company;

(VI) The employee leasing company, as the employing unit or co-employer, has the responsibility for payment of wages to the workers pursuant to the employee leasing company contract. The employee leasing company, as the employing unit or co-employer, has responsibility for reporting, withholding, and paying any applicable taxes and premiums with respect to the employee's wages or payment of sponsored employee benefit plans pursuant to the employee leasing company contract.

(VII) (A) Each employee leasing company shall pay wages and collect, report, and pay all payroll-related taxes and premiums from its own accounts for all covered employees. Each employee leasing company shall be responsible for the payment of unemployment compensation insurance premiums and provide, maintain, and secure all records and documents required of work-site employers under the unemployment insurance laws of this state for covered employees.

(B) No later than the end of the calendar quarter immediately following August 5, 2009, each employee leasing company shall notify the division of unemployment insurance as to

whether the employee leasing company elects to report and pay unemployment insurance premiums as the employing unit under its own unemployment accounts and premium rates or whether it elects to report unemployment premiums attributable to covered employees under the respective unemployment accounts and premium rates for each work-site employer. Under either election, the employee leasing company shall have the responsibility for unemployment compensation insurance as required of an employer pursuant to the "Colorado Employment Security Act", articles 70 to 82 of this title. If the employee leasing company fails to make an election, the employee leasing company shall report unemployment premiums attributable to covered employees under the respective unemployment accounts and premium rates for each work-site employer.

(C) The election made in sub-subparagraph (B) of this subparagraph (VII) shall be binding on all employers and the employing unit's related enterprises, subsidiaries, or other entities that share common ownership management or control with the employee leasing company. Employee leasing companies electing to report and pay unemployment insurance as the employing unit under its own unemployment accounts and premium rates following August 5, 2009, are permitted to change the election one time after the initial election to report unemployment premiums attributable to covered employees under the respective unemployment accounts of each work-site employer by notifying the division no later than the end of the current calendar quarter. An employee leasing company's election to pay unemployment premiums under the respective unemployment accounts and premium rates of the work-site employer is final and may not be reversed.

(VIII) An employee leasing company, as the employing unit or coemployer, may aggregate all employees for the purpose of sponsoring and administering workers' compensation plans pursuant to article 44 of this title and fully insured health coverage plans, as defined in section 10-16-102 (34), C.R.S., employee pension benefit plans, and provision of benefits pursuant to such plans. As employing units or coemployers, employee leasing companies shall be entitled to sponsor fully insured employer plans and offer employee benefits to the full extent afforded employers by law. A health plan sponsored by an employee leasing company with an aggregate of more than fifty employees shall comply with all the provisions of Colorado law that apply to large employer health plans, including consumer and provider protections, mandated benefits, nondiscrimination and fair marketing rules, preexisting limitations, and other required health plan policy provisions, and the carrier underwriting the plan shall be responsible for assuring compliance with this requirement pursuant to section 10-16-214 (5), C.R.S. Notwithstanding any provision of this section to the contrary, any workers' compensation insurance carrier may issue an insurance policy that insures either the employee leasing company or the work-site employer as the employer pursuant to the "Workers' Compensation Act of Colorado", articles 40 to 47 of this title. Article 41 of this title shall apply to both the employee leasing company and the work-site employer, regardless of whether the policy is issued to the employee leasing company or the work-site employer. Notwithstanding any provision of this section to the contrary, any insurance carrier may issue an insurance policy that insures the employee leasing company as the employer pursuant to article 16 of title 10, C.R.S. An insurance carrier that issues an insurance policy to an employee leasing company shall be entitled to rely upon a copy of the certification filed by the employee leasing company with the department under paragraph (e) of this subsection (2), if such certification is currently valid, for the purpose of determining whether the leasing company is an "employer" under Colorado law.

(IX) The employee leasing company retains the right to provide for the welfare and benefit of the employees through such programs as professional guidance including, but not limited to, employment training, safety, and compliance matters;

(X) The employee leasing company, as the employing unit or co-employer, has the responsibility for addressing employee complaints, claims, or requests related to employment, except as otherwise provided pursuant to an existing collective bargaining agreement; except that some or all of the rights and responsibilities described in this subparagraph (X) may be shared with the work-site employer;

(XI) The employee leasing company, as the employing unit or co-employer, intends to retain the right to maintain the employment relationship between the employee leasing company and its employees on a long-term, and not temporary, basis;

(XII) The employees of the employee leasing company know of and consent to co-employment by the employee leasing company;

(XIII) The employee leasing company maintains employee records relating to employees of the employee leasing company; and

(XIV) Except as otherwise provided in the employee leasing company contract, the work-site employer has the responsibility for those policies and procedures related to the actual conduct of the work that leads to the work-site employer's conduct of its business and the production of its goods or services.

(c) (Deleted by amendment, L. 97, p. 207, § 2, effective April 8, 1997.)

(d) If an employee leasing company does not meet the requirements of this subsection (2), the work-site employer shall be considered the employing unit.

(e) Each employee leasing company shall maintain and have open for inspection by the department a listing of its work-site employers and their collective employees and shall maintain the records and reports as required by the "Colorado Employment Security Act", as described in articles 70 to 82 of this title. Each employee leasing company shall annually certify with an independent opinion of counsel to the department that it is in compliance with the rights and responsibilities set forth in paragraph (b) of this subsection (2) and that it is offering to all clients in its service agreements those items required in paragraph (b) of this subsection (2). The executive director of the department shall prescribe forms and promulgate rules to promote the efficient administration of this paragraph (e). The department may require employee leasing companies to submit documentation to show compliance with the provisions of paragraph (b) of this subsection (2) and may conduct any necessary review to verify that the employee leasing company is an employing unit or coemployer under this section. Each employee leasing company shall file an annual renewal of its certification on or before June 30 of each year.

(f) Each employee leasing company shall maintain and provide upon request to a carrier, as defined in section 10-16-102 (8), C.R.S., with which the employee leasing company requests a contract, the certification required in paragraph (e) of this subsection (2).

(g) (I) Each employee leasing company operating within this state as of August 5, 2008, shall complete its initial certification not later than sixty days after August 5, 2008. The initial certification shall be valid until the end of the state's first fiscal year that is more than one year after August 5, 2008.

(II) An employee leasing company not operating within this state as of August 5, 2008, shall complete its initial certification prior to commencement of operations within this state.

(III) Each employee leasing company shall annually certify and provide evidence to the department that it meets one of the following criteria to provide securitization of unemployment premiums:

(A) Repealed.

(A.5) On and after December 31, 2012, execute and file a surety bond or deposit with the division money or a letter of credit equivalent to fifty percent of the average annual amount of unemployment premium assessed within the previous calendar year for all covered employees regardless of the election made pursuant to subparagraph (VII) of paragraph (b) of this subsection (2). For a new employee leasing company, the initial bond amount is the unrated premium rate, as determined pursuant to section 8-76-102.5, multiplied by fifty percent of the estimated projected chargeable payroll for the current calendar year as estimated by the employee leasing company.

(B) Provide the most recent independently audited financial statement prepared by a certified public accountant pursuant to generally accepted accounting principles, which statement may not be older than thirteen months. The audit shall also include items that demonstrate an accounting working capital of not less than one hundred thousand dollars. For the purposes of this sub-subparagraph (B), "working capital" of an employee leasing company means the employee leasing company's current assets minus the employee leasing company's current liabilities as determined by generally accepted accounting principles.

(C) Provide sufficient evidence on an annual basis that it has been accredited by a bonded, independent, and qualified assurance organization approved by the director of the division that provides satisfactory assurance of compliance acceptable to the department.

(IV) The department may, at its discretion, require the employee leasing company to provide evidence of compliance with sub-subparagraph (B) or (C) of subparagraph (III) of this paragraph (g) immediately.

(V) An employee leasing company shall, within fifteen days following any deduction from a money deposit or sale of deposited securities, deposit sufficient additional moneys or securities to make whole the employee leasing company's deposit at the prior level. Any cash remaining from the department's sale of such securities shall be a part of the employee leasing company's escrow account. The department may, at any time, review the adequacy of the deposit made by any employee leasing company. If, as a result of such review, the department determines that an adjustment is necessary, it shall require the employee leasing company to make an additional deposit within thirty days after receipt of written notice of the department's determination or shall return to the employee leasing company such portion of the deposit as the department no longer considers necessary, whichever action is appropriate.

(VI) Upon filing an annual certification under this section, an employee leasing company shall pay a fee, as determined by rule of the department, not to exceed five hundred dollars. Fees collected pursuant to this section shall be transmitted to the state treasurer, who shall credit the same to the employee leasing company certification fund, referred to in this section as the "fund", which is hereby created in the state treasury. Moneys in the fund shall be subject to annual appropriation by the general assembly for implementation of this section. The moneys in the fund and interest earned on the moneys in the fund shall not revert to the general fund or be transferred to any other fund. No fee charged pursuant to this section shall exceed the amount reasonably necessary for the administration of this section.

(VII) The department shall maintain a list of employee leasing companies that submit certifications required under paragraph (e) of this subsection (2) that is readily available to the public by electronic or other means.

(VIII) All records, reports, and other information obtained from an employee leasing company under this section, except to the extent necessary for the proper administration of this section by the department, shall be held confidential and shall not be published or open to public inspection other than to public employees in the performance of their public duties, pursuant to provisions governing records and reports in this title.

(3) (a) The status of an employee leasing company as the employing unit or a co-employer of a work-site employer's employees shall be revoked by the division if such employee leasing company fails to file the required reports or pay the premiums due under the provisions of articles 70 to 82 of this title. The effective date of a revocation shall be the first day of the quarter for which the reports and premiums are due. In the event of a revocation, the work-site employer shall become liable for the reports and premiums due.

(b) The provisions of paragraph (a) of this subsection (3) shall apply if any portion of an employing unit's business activity can be characterized as an employee leasing company, as defined in subsection (2) of this section.

(c) The provisions of paragraph (a) of this subsection (3) shall not apply if an employee leasing company acts as an agent for a work-site employer pursuant to the provisions of subsection (1) of this section, files the required reports, and pays the premiums due under an account established for the work-site employer.

(d) The provisions of paragraph (a) of this subsection (3) shall not apply to any temporary help contracting firm, as defined in section 8-73-105.5. However, if any portion of such firm's business activity can be characterized as an employee leasing company, as defined in subsection (2) of this section, that portion of the firm's business shall be subject to the provisions of this subsection (3).

(4) An employee leasing company shall not report wages for any work-site employer that would not otherwise be subject to articles 70 to 82 of this title.

(5) An employee leasing company or business management company shall not report remuneration paid:

(a) For services performed by individuals who are clients and who are sole proprietors or partners in a partnership; or

(b) For any other services which would not otherwise constitute employment pursuant to articles 70 to 82 of this title.

(6) (a) Nothing in this section shall exempt a work-site employer or any employee from any other licensing requirements imposed by local, state, or federal law. An employee who is licensed, registered, or certified by a unit of local, state, or federal government shall, for the purposes of such license, registration, or certification, be considered an employee of the work-site employer. An employee leasing company shall not be deemed to engage in any occupation, trade, profession, or other activity that is subject to licensing, registration, or certification requirements, or is otherwise regulated by a governmental entity, solely by entering into and maintaining an employee leasing company contract with a work-site employer or work-site employees who are subject to such requirements or regulation.

(b) **Collective bargaining agreements.** Nothing contained in this subsection (6) or in any employee leasing company contract shall affect, modify, or amend any collective bargaining

agreement, or the rights or obligations of any work-site employer, employee leasing company, or work-site employee under the federal "National Labor Relations Act", 29 U.S.C. sec. 151 et seq., or the federal "Railway Labor Act", 45 U.S.C. sec. 151 et seq.

(c) **Tax or premium credits and other incentives.** For purposes of determination of employment-based tax or premium credits, such as economic development, enterprise zone, development zone, and other such economic incentives provided by the state or any other governmental entity, work-site employees shall be deemed employees solely of the work-site employer. A work-site employer shall be entitled to the benefit of any tax or premium credit, economic incentive, or other benefit arising as the result of the employment of work-site employees of the work-site employer. If the grant or amount of any credit, benefit, or other incentive is based on number of employees, then each work-site employer shall be treated as employing only those work-site employees coemployed by the work-site employer. Work-site employees working for other work-site employers of the employee leasing company shall not be counted. Upon request by a work-site employer or an agency or department of this state, each employee leasing company shall provide employment information reasonably required by any agency or department of this state responsible for administration of any tax or premium credit or economic incentive and necessary to support any request, claim, application, or other action by a work-site employer seeking the tax or premium credit or economic incentive.

(d) **Disadvantaged business.** With respect to a bid, contract, purchase order, or agreement entered into with the state or a political subdivision of the state, a work-site employer's status or certification as a small, minority-owned, disadvantaged, or women-owned business enterprise or as a historically underutilized business is not affected because the work-site employer has entered into an employee leasing company contract or uses the services of an employee leasing company.

(e) **Taxes, premiums, fees, other assessments.** (I) A tax, premium, fee, surcharge, penalty, or any other assessment on a work-site employer or employee leasing company on the basis of the number of employees shall be assessed:

(A) Against the work-site employer for the work-site employees under the employee leasing company contract with the employee leasing company; and

(B) Against the employee leasing company for the employees of the employee leasing company who are not work-site employees for any work-site employers in the state.

(II) For a tax or premium imposed or calculated upon the basis of total payroll, an employee leasing company may apply any small business allowance or exemption available to the work-site employer for the work-site employees for purposes of computing the tax or premium.

(III) The provisions of this paragraph (e) shall not apply to the reporting, withholding, and paying of taxes or premiums pursuant to subparagraphs (VI) and (VII) of paragraph (b) of subsection (2) of this section.

(7) **Employment arrangements.** Nothing in this section or in any employee leasing company contract shall:

(a) Diminish, abolish, or remove rights of covered employees of a work-site employer or obligations of such work-site employer to a covered employee existing prior to the effective date of the employee leasing company contract;

(b) Affect, modify, or amend any contractual relationship or restrictive covenant between a covered employee and any work-site employer in effect at the time an employee

leasing company contract becomes effective. Nor shall it prohibit or amend any contractual relationship or restrictive covenant that is entered into subsequently between a work-site employer and a covered employee. An employee leasing company shall have no responsibility or liability in connection with, or arising out of, any such existing or new contractual relationship or restrictive covenant unless the employee leasing company has specifically agreed otherwise in writing.

(c) Create any new or additional enforceable right of a covered employee against an employee leasing company that is not specifically provided by the employee leasing company contract or this section.

(8) **Prohibited acts and enforcement.** (a) A person shall not offer or provide employee leasing company services or use the names employee leasing company, professional employer organization, PEO, staff leasing, employee leasing, administrative employer, or other title representing employee leasing services without first obtaining certification from the department under this section.

(b) A person shall not knowingly provide false or fraudulent information to the department in conjunction with any certifications or in any report required under this section.

(c) The executive director of the department may take disciplinary action against an employee leasing company for a violation of paragraph (a) or (b) of this subsection (8), for the conviction in a court of law for a crime arising from the operation of an employee leasing company relating to fraud or deceit or the ability of the employee leasing company to operate as such, for knowingly making a material misrepresentation to the department or other governmental agency, or for a willful violation of this section or any order or rule issued by the department under this section.

(d) Upon finding, after notice and opportunity for hearing, that an employee leasing company has violated one or more provisions of this section, the director of the division may:

(I) Place the certified employee leasing company on probation for a period and subject to conditions that the director of the division specifies;

(II) Impose an administrative penalty in an amount not to exceed one thousand dollars for each material violation; and

(III) Refuse to accept the certification and rescind the employee leasing company's ability to make unemployment insurance contributions for work-site employees under its unemployment insurance account.

Source: L. 90: Entire section added, p. 591, § 3, effective April 3. **L. 93:** Entire section amended, p. 705, § 1, effective May 6. **L. 97:** (2) to (4) amended and (6) added, p. 207, § 2, effective April 8. **L. 98:** (1) amended, p. 68, § 1, effective March 23. **L. 99:** (2)(b)(VIII) and (2)(e) amended and (2)(f) added, p. 146, § 1, effective March 25. **L. 2007:** (6) amended, p. 553, § 1, effective August 3. **L. 2008:** (2)(a), (2)(b)(VII), (2)(b)(VIII), and (2)(e) amended and (2)(g), (7), and (8) added, pp. 916, 920, §§ 1, 2, effective August 5. **L. 2009:** (2)(b)(VI), (2)(b)(VII), IP(2)(g)(III), (2)(g)(III)(A), (3)(a), (3)(c), (6)(c), and (6)(e) amended, (HB 09-1363), ch. 363, p. 1879, § 5, effective July 1; IP(2)(b), (2)(b)(VII), and (2)(g)(III)(A) amended, (SB 09-258), ch. 250, p. 1123, § 1, effective August 5. **L. 2010:** (2)(b)(VII)(B) and (2)(b)(VII)(C) amended, (HB 10-1422), ch. 419, p. 2065, § 12, effective August 11. **L. 2011:** (2)(g)(III)(A) amended and (2)(g)(III)(A.5) added, (HB 11-1288), ch. 212, p. 926, § 9, effective July 1. **L. 2012, 1st Ex. Sess.:** (2)(g)(III)(A) amended, (HB 12S-1002), ch. 2, p. 2425, § 3, effective June 1. **L. 2013:**

(2)(b)(VIII) amended, (HB 13-1266), ch. 217, p. 985, § 41, effective May 13. **L. 2015:** (2)(g)(VI) amended, (HB 15-1261), ch. 322, p. 1313, § 3, effective June 5; (2)(g)(IV) and (2)(g)(V) amended, (SB 15-264), ch. 259, p. 942, § 10, effective August 5.

Editor's note: (1) Amendments to subsections (2)(b)(VII) and (2)(g)(III)(A) by Senate Bill 09-258 and House Bill 09-1363 were harmonized.

(2) Subsection (2)(g)(III)(A) provided for the repeal of subsection (2)(g)(III)(A), effective December 31, 2012. (See L. 2012, p. 2425.)

Cross references: For the legislative declaration contained in the 1997 act amending subsections (2) to (4) and enacting subsection (6), see section 1 of chapter 77, Session Laws of Colorado 1997.

8-70-115. Employment - federal unemployment tax act. (1) (a) "Employment", subject to other provisions of this subsection (1), includes any service performed prior to January 1, 1972, which was employment as defined in this subsection (1) prior to such date and service performed after December 31, 1971, by an employee as defined in section 3306 (i) of the "Federal Unemployment Tax Act" and any service performed after December 31, 1977, by an employee, as defined in subsection (o) of section 3306 of the "Federal Unemployment Tax Act", including service in interstate commerce.

(b) Notwithstanding any other provision of this subsection (1) and notwithstanding the provisions of section 8-80-101, service performed by an individual for another shall be deemed to be employment, irrespective of whether the common-law relationship of master and servant exists, unless and until it is shown to the satisfaction of the division that such individual is free from control and direction in the performance of the service, both under his contract for the performance of service and in fact; and such individual is customarily engaged in an independent trade, occupation, profession, or business related to the service performed. For purposes of this section, the degree of control exercised by the person for whom the service is performed over the performance of the service or over the individual performing the service, if exercised pursuant to the requirements of any state or federal statute or regulation, shall not be considered.

(c) To evidence that such individual is engaged in an independent trade, occupation, profession, or business and is free from control and direction in the performance of the service, the individual and the person for whom services are performed may either show by a preponderance of the evidence that the conditions set forth in paragraph (b) of this subsection (1) have been satisfied, or they may demonstrate in a written document, signed by both parties, that the person for whom services are performed does not:

(I) Require the individual to work exclusively for the person for whom services are performed; except that the individual may choose to work exclusively for the said person for a finite period of time specified in the document;

(II) Establish a quality standard for the individual; except that such person can provide plans and specifications regarding the work but cannot oversee the actual work or instruct the individual as to how the work will be performed;

(III) Pay a salary or hourly rate but rather a fixed or contract rate;

(IV) Terminate the work during the contract period unless the individual violates the terms of the contract or fails to produce a result that meets the specifications of the contract;

(V) Provide more than minimal training for the individual;

(VI) Provide tools or benefits to the individual; except that materials and equipment may be supplied;

(VII) Dictate the time of performance; except that a completion schedule and a range of mutually agreeable work hours may be established;

(VIII) Pay the individual personally but rather makes checks payable to the trade or business name of the individual; and

(IX) Combine his business operations in any way with the individual's business, but instead maintains such operations as separate and distinct.

(d) A document may satisfy the requirements of paragraph (c) of this subsection (1) if such document demonstrates, by a preponderance of the evidence, the existence of such factors listed in subparagraphs (I) to (IX) of paragraph (c) of this subsection (1) as are appropriate to the parties' situation.

(2) Where the parties use a written document pursuant to paragraph (c) of subsection (1) of this section, such document may be the contract for performance of service or a separate document. Such document shall create a rebuttable presumption of an independent contractor relationship between the parties, where such document contains a disclosure, in type which is larger than the other provisions in the document or in bold-faced or underlined type, that the independent contractor is not entitled to unemployment insurance benefits unless unemployment compensation coverage is provided by the independent contractor or some other entity, and that the independent contractor is obligated to pay federal and state income tax on any moneys paid pursuant to the contract relationship.

(3) Where the parties use a written document pursuant to paragraph (c) of subsection (1) of this section, and one of the parties is a professional whose license to practice a particular occupation under the laws of the state of Colorado requires such professional to exercise a supervisory function with regard to an entire project, such supervisory role shall not affect such professional's status as part of the independent contractor relationship.

(4) To improve the process of determining the classification of an individual for purposes of this section, including any audits performed pursuant to section 8-72-107, the department shall:

(a) Develop guidance for employers on the factors specified in paragraph (c) of subsection (1) of this section;

(b) Clarify the process by which an employer or individual may submit further information in response to a determination by the department and prior to an appeal;

(c) Establish an individual to serve as a resource for employers by providing guidance on:

(I) The proper classification of workers;

(II) Audit findings; and

(III) Options for curing or appealing an audit;

(d) Establish internal methods to improve the consistency among auditors; and

(e) Establish an independent review of a portion of audit and appeal results at least twice a year to monitor trends and make improvements to the audit process.

Source: L. 90: Entire section added, p. 592, § 3, effective April 3; entire section R&RE, p. 1766, § 10, effective June 8. **L. 91:** Entire section amended, p. 1366, § 1, effective May 18;

entire section amended, p. 1343, § 1, effective June 5. **L. 2016:** (4) added, (SB 16-179), ch. 275, p. 1138, § 2, effective August 10.

Editor's note: Amendments to this section by House Bill 91-1279 and Senate Bill 91-238 were harmonized.

Cross references: For the legislative declaration in SB 16-179, see section 1 of chapter 275, Session Laws of Colorado 2016.

8-70-116. Employment - location of services. (1) "Employment" means an individual's service, wherever performed within the United States, the Virgin Islands, or Canada, if:

(a) The service is not covered under the unemployment compensation law of any other state, the Virgin Islands, or Canada; and

(b) The place from which the service is directed or controlled is in Colorado.

Source: L. 90: Entire section added, p. 592, § 3, effective April 3.

8-70-117. Employment - base of operations. "Employment" means that the entire service of an individual is performed within this state or both within and without this state if the service is localized in this state; or that the service is not localized in any state but some of the service is performed in this state and that the base of operations or, if there is no base of operations, the place from which the service is directed or controlled is in this state; or that the base of operations or place from which the service is directed or controlled is not in any state in which some part of the service is performed but that the individual's residence is in this state. For purposes of this section, service shall be deemed to be localized within a state if the service is performed entirely within the state or if the service is performed both within and without the state but the service performed without the state is incidental to the individual's service within the state or, for example, is temporary or transitory in nature or consists of isolated transactions.

Source: L. 90: Entire section added, p. 592, § 3, effective April 3.

8-70-118. Employment - nonprofit organizations. "Employment" means services performed after December 31, 1971, by an individual in the employ of a religious, charitable, educational, or other organization which is excluded from the term "employment", as defined in the "Federal Unemployment Tax Act" solely by reason of section 3306 (c)(8) of that act, and which has had four or more individuals in employment for some portion of a day in each of twenty different weeks, whether or not such weeks were consecutive, within either the current or the preceding calendar year, regardless of whether they were employed at the same moment of time.

Source: L. 90: Entire section added, p. 592, § 3, effective April 3.

Editor's note: See § 8-70-140 for services that are not included in the use of the term "employment" as used in this section.

8-70-119. Employment - hospitals - institutions of higher education. "Employment" means services performed after December 31, 1971, by an individual in the employ of this state or any of its instrumentalities (or in the employ of this state and one or more other states or their instrumentalities) for a hospital or institution of higher education located in this state, if the service is excluded from the term "employment" as defined in the "Federal Unemployment Tax Act" solely by reason of section 3306 (c)(7) of that act, and means services performed after December 31, 1977, in the employ of this state or any of its instrumentalities or any political subdivision thereof or any of its instrumentalities or any instrumentality of more than one of the foregoing or any instrumentality of any of the foregoing, and one or more other states or political subdivisions, if such service is excluded from the term "employment" as defined in the "Federal Unemployment Tax Act" by reason of section 3306 (c)(7) and is not excluded from employment under section 8-70-140.

Source: L. 90: Entire section added, p. 593, § 3, effective April 3.

Editor's note: See § 8-70-140 for additional services that are not included in the use of the term "employment" as used in this section.

8-70-120. Employment - agricultural labor. (1) "Employment" means services performed after December 31, 1977, by an individual in agricultural labor as defined in section 8-70-109 when:

(a) Such service is performed for a person who, during any calendar quarter in either the current or the preceding calendar year, paid remuneration in cash of twenty thousand dollars or more to individuals employed in agricultural labor, including agricultural labor performed by an alien referred to in paragraph (b) of this subsection (1), or for some portion of a day in each of twenty different calendar weeks, whether or not such weeks were consecutive, in either the current or the preceding calendar year, employed in agricultural labor, including agricultural labor performed by an alien referred to in paragraph (b) of this subsection (1), ten or more individuals, regardless of whether they were employed at the same moment of time; and

(b) Such service is not agricultural labor if performed by an individual who is an alien admitted to the United States to perform service in agricultural labor pursuant to sections 214 (c) and 101 (a)(15)(H) of the federal "Immigration and Nationality Act".

(2) For the purposes of sections 8-70-115 to 8-70-125, any individual who is a member of a crew furnished by a crew leader to perform service in agricultural labor for any other person shall be treated as an employee of such crew leader:

(a) If such crew leader holds a valid certificate of registration under the federal "Migrant and Seasonal Agricultural Worker Protection Act" or substantially all the members of such crew operate or maintain tractors, mechanized harvesting or cropdusting equipment, or any other mechanized equipment, which is provided by such crew leader; and

(b) If such individual is not an employee of such other person within the meaning of section 8-70-115.

(3) For the purposes of this section, in the case of any individual who is furnished by a crew leader to perform service in agricultural labor for any other person and who is not treated as an employee of such crew leader under subsection (2) of this section:

(a) Such other person and not the crew leader shall be treated as the employer of such individual; and

(b) Such other person shall be treated as having paid cash remuneration to such individual in an amount equal to the amount of cash remuneration paid to such individual by the crew leader (either on his own behalf or on behalf of such other person) for the service in agricultural labor performed for such other person.

(4) For the purposes of this section, a crew leader is an individual who:

(a) Furnishes individuals to perform service in agricultural labor for any other person;

(b) Pays (either on his own behalf or on behalf of such other person) the individuals so furnished by him for the service in agricultural labor performed by them; and

(c) Has not entered into a written agreement with such other person under which such individual is designated as an employee of such other person.

Source: L. 90: Entire section added, p. 593, § 3, effective April 3. **L. 94:** (1)(b) amended, p. 637, § 1, effective July 1. **L. 98:** (1)(b) amended, p. 68, § 2, effective March 23.

8-70-121. Employment - domestic services. "Employment" means domestic services performed after December 31, 1977, in a private home, local college club, or local chapter of a college fraternity or sorority for a person who paid cash remuneration of one thousand dollars or more after December 31, 1977, in the current calendar year or the preceding calendar year to individuals employed in such domestic service in any calendar quarter.

Source: L. 90: Entire section added, p. 594, § 3, effective April 3.

8-70-122. Employment - American employer. (1) "Employment" means services of an individual who is a citizen of the United States performed outside the United States (except in Canada) after December 31, 1971, in the employ of an American employer (other than service which is deemed employment under the provisions of section 8-70-117 or the parallel provisions of another state's law) if:

(a) The employer's principal place of business in the United States is located in this state; or

(b) The employer has no place of business in the United States but the employer is an individual who is a resident of this state; or the employer is a corporation which is organized under the laws of this state; or the employer is a partnership or a trust and the number of the partners or trustees who are residents of this state is greater than the number who are residents of any one other state; or

(c) None of the criteria of paragraphs (a) and (b) of this subsection (1) is met but the employer has elected coverage in this state or, the employer having failed to elect coverage in any state, the individual has filed a claim for benefits based on the service, under the law of this state.

(2) For purposes of this section:

(a) An "American employer" means an individual person who is a resident of the United States; or a partnership if two-thirds or more of the partners are residents of the United States; or a trust if all of the trustees are residents of the United States; or a corporation organized under the laws of the United States or of any state.

(b) "United States" includes the District of Columbia, the commonwealth of Puerto Rico, and the Virgin Islands.

Source: L. 90: Entire section added, p. 594, § 3, effective April 3. **L. 92:** IP(1) amended, p. 1793, § 1, effective April 10.

8-70-123. Employment - vessels - aircraft. Notwithstanding section 8-70-117, "employment" means services performed after December 31, 1971, by an officer or member of the crew of an American vessel or an American aircraft on or in connection with such vessel or aircraft, if the office from which the operations of such vessel or aircraft operating within or within and without the United States are ordinarily and regularly supervised, managed, directed, and controlled is within this state.

Source: L. 90: Entire section added, p. 595, § 3, effective April 3.

8-70-124. Employment - credit - state unemployment fund. Notwithstanding any other provisions of sections 8-70-115 to 8-70-125, "employment" means services with respect to which a tax is required to be paid under any federal law imposing a tax against which credit may be taken for premiums required to be paid into a state unemployment fund or which, as a condition for full credit against the tax imposed by the "Federal Unemployment Tax Act", is required to be covered under articles 70 to 82 of this title.

Source: L. 90: Entire section added, p. 595, § 3, effective April 3. **L. 2009:** Entire section amended, (HB 09-1363), ch. 363, p. 1881, § 6, effective July 1.

8-70-125. Employment - educational institutions. With respect to weeks of unemployment which begin after December 31, 1977, "employment" means services performed in the employ of an educational institution, including an institution of higher education as defined in section 8-70-103 (15), and the payment or denial of benefits based on such employment shall be subject to the conditions set forth in section 8-73-107 (3).

Source: L. 90: Entire section added, p. 595, § 3, effective April 3.

8-70-125.5. Employment - Indian tribes. (1) "Employment" means service performed in the employ of an Indian tribe, as defined in section 3306 (u) of the "Federal Unemployment Tax Act", 26 U.S.C. sec. 3301 et seq. (FUTA), if such service is excluded from "employment", as defined in FUTA solely by reason of section 3306 (c)(7) of FUTA, and is not otherwise excluded from "employment" under the provisions of articles 70 to 82 of this title.

(2) Benefits based on service in employment defined in this section shall be payable in the same amount, on the same terms, and subject to the same conditions as benefits payable on the basis of other service subject to the provisions of articles 70 to 82 of this title.

Source: L. 2001: Entire section added, p. 1547, § 2, effective December 21, 2000.

Editor's note: The federal "Consolidated Appropriations Act, 2001", Pub.L. 106-554, which became law on December 21, 2000, required all states to amend their laws regarding how Indian tribes are treated for unemployment insurance purposes. The 2001 act enacting this section provided for an effective date of December 21, 2000. (See L. 2001, p. 1550.)

8-70-125.7. Employment - property tax work-off program participants. "Employment" includes services performed by participants in a property tax work-off program established pursuant to article 3.7 of title 39, C.R.S.

Source: L. 2010: Entire section added, (HB 10-1076), ch. 162, p. 567, § 4, effective August 11.

8-70-126. Employment does not include - agricultural labor. "Employment" does not include services performed by an individual in agricultural labor, as defined in section 8-70-109, except as provided in section 8-70-120.

Source: L. 90: Entire section added, p. 595, § 3, effective April 3.

8-70-127. Employment does not include - domestic service. Except as provided in section 8-70-121, "employment" does not include domestic service in a private home, local college club, or local chapter of a college fraternity or sorority.

Source: L. 90: Entire section added, p. 595, § 3, effective April 3.

8-70-128. Employment does not include - employer's trade or business. (1) "Employment" does not include casual labor not in the course of the employer's trade or business performed in any calendar quarter by an employee, unless the cash remuneration paid for the service is fifty dollars or more and unless the service is performed by an individual who is regularly employed by the employer to perform such service. For purposes of this section, an individual is deemed to be regularly employed during a calendar quarter only if:

(a) On at least twenty-four days during such calendar quarter, the individual performs services for the employer which are not in the course of the employer's trade or business; or

(b) On at least twenty-four days during the previous calendar quarter, the individual performed services for the employer which were not in the course of the employer's trade or business.

Source: L. 90: Entire section added, p. 595, § 3, effective April 3.

8-70-129. Employment does not include - spouse - minor. "Employment" does not include services performed by an individual in the employ of his spouse and service performed by a child under the age of twenty-one in the employ of his father or mother.

Source: L. 90: Entire section added, p. 596, § 3, effective April 3.

8-70-130. Employment does not include - instrumentalities of United States. "Employment" does not include services performed in the employ of the United States government, a national bank or state bank that is a member of the federal reserve system, or a federal savings and loan association or a state building and loan association that is a member of the federal home loan bank system, which institutions were, prior to January 1, 1972, exempt from articles 70 to 82 of this title, or any other instrumentality of the United States exempt under the constitution of the United States from the premiums imposed by articles 70 to 82 of this title; except that, to the extent that the congress of the United States permits states to require any instrumentalities of the United States to make payments into an unemployment fund under a state unemployment compensation law, all of the provisions of articles 70 to 82 of this title shall be applicable to such instrumentalities and to services performed for such instrumentalities in the same manner, to the same extent, and on the same terms as to all other employers, employing units, individuals, and services. If this state is not certified for any year by the United States secretary of labor under section 3304 of the federal "Internal Revenue Code of 1986", as amended, the payments required of such instrumentalities with respect to such year shall be refunded by the division from the fund in the same manner and within the same period as is provided in section 8-79-108 with respect to premiums erroneously collected.

Source: L. 90: Entire section added, p. 596, § 3, effective April 3. **L. 2000:** Entire section amended, p. 1837, § 2, effective August 2. **L. 2009:** Entire section amended, (HB 09-1363), ch. 363, p. 1881, § 7, effective July 1.

8-70-131. Employment does not include - school - college - university. (1) "Employment" does not include services performed in the employ of a school, college, or university, if such service is performed:

(a) By a student who is enrolled and is regularly attending classes at such school, college, or university; or

(b) By the spouse of such a student, if such spouse is advised, at the time such spouse commences to perform such service, that the employment of such spouse to perform such service is provided under a program to provide financial assistance to such student by such school, college, or university, and such employment will not be covered by any program of unemployment insurance.

Source: L. 90: Entire section added, p. 596, § 3, effective April 3.

8-70-132. Employment does not include - educational institution. "Employment" does not include services performed by an individual who is enrolled at a nonprofit or public educational institution, which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on, as a student in a full-time program taken for credit at such institution, which combines academic instruction with work experience, if such service is an integral part of such program and such institution has so certified to the employer; except that this section shall not apply to service performed in a program established for or on behalf of an employer or group of employers.

Source: L. 90: Entire section added, p. 596, § 3, effective April 3.

8-70-133. Employment does not include - hospital. "Employment" does not include services performed in the employ of a hospital, as defined in section 8-70-103 (14), if such service is performed by a patient of the hospital.

Source: L. 90: Entire section added, p. 597, § 3, effective April 3.

8-70-134. Employment does not include - unemployment compensation system. "Employment" does not include services with respect to which unemployment compensation is payable under an unemployment compensation system established by an act of congress. The division is authorized to enter into agreements with the proper agencies under such act of congress, which agreements shall become effective ten days after publication thereof in the manner provided in section 8-72-102 for general rules, to provide reciprocal treatment to individuals who have, after acquiring potential rights to benefits under articles 70 to 82 of this title, acquired rights to unemployment compensation under such act of congress or who have, after acquiring potential rights to unemployment compensation under such act of congress, acquired rights to benefits under articles 70 to 82 of this title.

Source: L. 90: Entire section added, p. 597, § 3, effective April 3.

8-70-135. Employment does not include - paper routes. "Employment" does not include services performed by an individual under the age of eighteen years in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution, or services performed by an individual in the delivery or distribution of newspapers whose remuneration primarily consists of the difference between the amount he pays or is obligated to pay for the said newspapers and the amount he receives or is entitled to receive on distribution or resale thereof.

Source: L. 90: Entire section added, p. 597, § 3, effective April 3.

8-70-136. Employment does not include - brokers. (1) "Employment" does not include services performed by an individual as a licensed real estate broker or as a direct seller engaged in the trade or business of selling, or soliciting the sale of, a consumer product in a home or in an establishment other than a permanent retail establishment or as an individual engaged in the trade or business of the delivering or distribution of newspapers or shopping news, including any services directly related to such trade or business if:

(a) All the remuneration, whether or not paid in cash, for the performance of such services is directly related to sales or other output, including the performance of services, instead of the number of hours worked; and

(b) The services are performed pursuant to a written contract between such person and the person for whom the services are performed and if such contract provides that the person shall not be treated as an employee with respect to such services for federal tax purposes.

Source: L. 90: Entire section added, p. 597, § 3, effective April 3. **L. 98:** IP(1) amended, p. 69, § 3, effective March 23. **L. 2008:** IP(1) amended, p. 511, § 30, effective April 17.

8-70-137. Employment does not include - organization exempt from income tax. "Employment" does not include services performed in any calendar quarter in the employ of any organization exempt from income tax under section 501 (a) of the "Internal Revenue Code", other than an organization described in section 401 (a), or under section 521 of said code, if the remuneration for such service is less than fifty dollars.

Source: L. 90: Entire section added, p. 597, § 3, effective April 3.

8-70-138. Employment does not include - in-home services. (Repealed)

Source: L. 90: Entire section added, p. 598, § 3, effective April 3; entire section repealed, p. 1845, § 33, effective May 31.

8-70-139. Employment does not include - insurance agents. "Employment" does not include services performed by an individual for a person as an insurance agent or an insurance solicitor, if all such services performed by such individual for such person are performed for remuneration solely by way of commission.

Source: L. 90: Entire section added, p. 598, § 3, effective April 3.

8-70-140. Employment does not include - nonprofit organizations - governmental entities - Indian tribes. (1) For the purposes of sections 8-70-118, 8-70-119, and 8-70-125.5, "employment" does not include services performed:

(a) In the employ of a church or a convention or association of churches or in the employ of an organization that is operated primarily for religious purposes and that is operated, supervised, controlled, or principally supported by a church or convention or association of churches or in the employ of an elementary or secondary school that is operated primarily for religious purposes; or

(b) By a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required by such order; or

(c) In the employ of a governmental entity referred to in section 8-70-119 or an Indian tribe referred to in section 8-70-125.5 if such service is performed by an individual in the exercise of such individual's duties:

(I) As an elected official;

(II) As a member of a legislative body or a member of the judiciary of a state or political subdivision thereof, or of an Indian tribe;

(III) As a member of the state National Guard or Air National Guard;

(IV) As an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood, or similar emergency;

(V) In a position that, pursuant to the laws of this state or Indian tribal law, is designated as a major, nontenured policymaking or advisory position, or a policymaking or advisory

position the performance of the duties of which ordinarily does not require more than eight hours per week;

(VI) As an election official or election worker if the amount of remuneration received by the individual during the calendar year for services as an election official or election worker is less than one thousand dollars; or

(d) By an individual receiving rehabilitation or remunerative work in a facility conducted for the purpose of carrying out a program of rehabilitation for individuals whose earning capacity is impaired by age, physical disability, or intellectual and developmental disability, or injury or of providing remunerative work for individuals who, because of their impaired abilities, cannot be readily absorbed in the competitive labor market; or

(e) By an individual receiving work relief or work training as part of an unemployment work relief or work training program assisted or financed in whole or in part by public funds or by an Indian tribe; or

(f) Prior to January 1, 1978, for a hospital in a state prison or other state correctional institution by an inmate of the prison or correctional institution and, after December 31, 1977, by an inmate of a custodial or penal institution.

Source: L. 90: Entire section added, p. 598, § 3, effective April 3. **L. 98:** (1)(a) and IP(1)(c) amended and (1)(c)(VI) added, p. 69, § 4, effective March 23; IP(1)(c) and (1)(c)(V) amended and (1)(c)(VI) added, p. 583, § 18, effective April 30. **L. 2001:** IP(1), IP(1)(c), (1)(c)(II), (1)(c)(V), and (1)(e) amended, p. 1547, § 3, effective December 21, 2000. **L. 2017:** (1)(d) amended, (HB 17-1046), ch. 50, p. 155, § 1, effective March 16.

Editor's note: The federal "Consolidated Appropriations Act, 2001", Pub.L. 106-554, which became law on December 21, 2000, required all states to amend their laws regarding how Indian tribes are treated for unemployment insurance purposes. The 2001 act amending the introductory portions to subsections (1) and (1)(c) and subsections (1)(c)(II), (1)(c)(V), and (1)(e) provided for an effective date of December 21, 2000. (See L. 2001, p. 1550.)

8-70-140.1. Employment does not include - foreign government service. "Employment" does not include service performed in the employ of a foreign government, including service as a consular or other officer or employee or a nondiplomatic representative.

Source: L. 94: Entire section added, p. 637, § 2, effective July 1.

8-70-140.2. Employment does not include - nonresident alien service. "Employment" does not include services performed by a nonresident alien individual for the period such individual is temporarily present in the United States as a nonimmigrant under subparagraph (F), (J), (M), or (Q) of section 101 of the federal "Immigration and Nationality Act", 8 U.S.C. sec. 1101 (a)(15), as amended, to carry out any purpose specified in subparagraph (F), (J), (M), or (Q) of section 101 of such federal act.

Source: L. 94: Entire section added, p. 637, § 2, effective July 1. **L. 96:** Entire section amended, p. 380, § 2, effective April 17.

8-70-140.5. Employment does not include - drivers of taxis or limousines. (1) "Employment" does not include services performed by an individual who is working as a driver under a lease or contract with a taxi or limousine motor common carrier that holds a certificate pursuant to article 10.1 of title 40, C.R.S. Any such lease or contract may contain the following provisions:

(a) That the driver may either lease or contract for a motor vehicle owned by such carrier or may own the motor vehicle driven and lease it to the carrier, which may then re-lease such motor vehicle to the driver;

(b) That the driver shall be instructed in the method of the carrier's operation, that the driver is familiar with federal, state, and municipal statutes, ordinances, and regulations, and that the carrier shall enforce compliance by the driver with such federal, state, and municipal statutes, ordinances, and regulations;

(c) That certain enumerated transportation services shall be accomplished personally by the driver;

(d) That certain characteristics on the body of the vehicle being used, including color and requirements for any written displays, are required for the sake of uniformity;

(e) That certain periodic driver safety training is required;

(f) That the common carrier has certain control over any assistant working with the driver for purposes of enforcement of and compliance with federal, state, and municipal statutes, ordinances, and regulations;

(g) That a specific number of hours is allotted in the form of shifts in which the driver shall complete a particular shipment of goods for the purpose of meeting the transportation equipment needs of drivers and the transportation needs of the public;

(h) That certain procedures for radio telecommunication between drivers and the carrier are mandated;

(i) That the driver shall work only for the carrier with whom such driver has contracted while such driver is operating the motor vehicle;

(j) That the driver is prohibited from advertising any services offered while driving for the carrier;

(k) That the carrier shall pay the driver's fees when the carrier accepts charge vouchers from the driver for services rendered to customers by such driver;

(l) That such lease or contract may be terminated by any party to such lease or contract; except that the driver may be required to complete an accepted trip; and

(m) That no length be specified for the term of such lease or contract.

(2) Leases or contracts containing the provisions specified in paragraphs (a), (b), (e), (f), (g), (h), and (i) of subsection (1) of this section shall be prima facie evidence that an independent contractor relationship exists between the parties to such lease or contract. This presumption may be overcome by clear and convincing evidence of an employment relationship between the parties to such lease or contract considering only factors not in the lease. Leases or contracts containing other optional provisions specified in subsection (1) of this section shall not change the characterization of the relationship between the driver and the carrier pursuant to such lease or contract.

Source: L. 92: Entire section added, p. 1798, § 3, effective June 6. **L. 2011:** IP(1) amended, (HB 11-1198), ch. 127, p. 416, § 5, effective August 10.

8-70-140.6. Employment does not include - nonprofit youth sports organization coach - definitions. (1) "Employment" does not include services performed by an individual as a coach for a nonprofit youth sports organization if:

(a) There is a written agreement between the nonprofit youth sports organization and the coach that includes the following:

(I) A statement that the coach is an independent contractor and not an employee of the nonprofit youth sports organization;

(II) A statement that the coach is not entitled to unemployment security benefits in connection with his or her contract with the nonprofit youth sports organization; and

(III) A disclosure in bold-faced, underlined, or large type, in a conspicuous location, and acknowledged by the parties that the parties have read and understand the disclosure indicating that the coach is an independent contractor rather than an employee of the nonprofit youth sports organization;

(b) The youth sports organization does not have the right to control the means and methods by which the coach provides coaching services. For the purpose of determining whether the youth sports organization is exercising control, the analysis to determine if the coach is an employee does not include any requirement of a youth sports governing body.

(c) The coach is not economically dependent on income from part-time youth sports coaching or is employed in a full-time covered employment position; and

(d) The services of the coach may not be terminated except for breach of the agreement, failure to meet the requirements of a youth coach governing body, or failure to meet generally accepted standards of conduct within the industry.

(2) If it is demonstrated to the division that the requirements of subsection (1) of this section are met, the coach shall be considered an independent contractor for the purposes of this section and not in covered employment or entitled to any benefits in accordance with the "Colorado Employment Security Act", articles 70 to 82 of this title 8.

(3) As used in this section, unless the context otherwise requires:

(a) "Coach" means an individual who:

(I) Performs services pursuant to a written and signed contract that complies with the requirements set forth in this section; and

(II) Performs coaching services fifteen hours or less in any consecutive seven-day period.

(b) "Nonprofit youth sports organization" means an organization that is exempt from federal taxation under section 501 (c)(3) of the federal "Internal Revenue Code of 1986", as amended, and is primarily engaged in conducting organized sports programs for persons under twenty-one years of age.

(4) This section does not alter or diminish otherwise applicable exemptions from covered employment for the following:

(a) Services performed in the employ of the state of Colorado, a political subdivision, or an Indian tribe, or an instrumentality of the state, a political subdivision, or an Indian tribe if the service is excluded from employment as defined in the "Federal Unemployment Tax Act", 26 U.S.C. sec. 3301 et seq.; or

(b) Services performed in the employ of a religious, charitable, educational, or other organization that is excluded from employment as defined in the "Federal Unemployment Tax Act".

Source: L. 2018: Entire section added, (HB 18-1303), ch. 383, p. 2304, § 1, effective August 8.

8-70-140.7. Employment does not include - land professionals. (1) "Employment" does not include services performed for a private for profit person or entity by a land professional, if:

(a) Substantially all remuneration paid in cash or otherwise for the performance of the services is directly related to the completion by the land professional of the specific tasks contracted for rather than to the number of hours worked by the individual; and

(b) The services performed by the land professional are performed under a contract between the land professional and the person or entity for whom the services are performed that provides that the land professional is to be treated as an independent contractor and not as an employee with respect to the services provided under the contract.

(2) For the purposes of this section, "land professional" means an individual who has been engaged primarily in:

(a) Negotiating for the acquisition or divestiture of mineral rights;

(b) Negotiating business agreements that provide for the exploration for or development of minerals;

(c) Determining ownership of minerals through the research of public and private records; and

(d) Reviewing the status of title, acting to cure title defects, and otherwise acting to reduce title risk associated with ownership of minerals, managing rights or obligations derived from ownership of interests in minerals, or unitizing or pooling of interest in minerals.

Source: L. 95: Entire section added, p. 177, § 1, effective April 7.

8-70-140.8. Employment does not include - owners. "Employment" does not include services performed by members of a limited liability company, sole proprietors, or partners in a partnership.

Source: L. 98: Entire section added, p. 69, § 5, effective March 23.

8-70-141. Wages - definition. (1) "Wages" means:

(a) All remuneration for personal services, including the cash value of all remuneration paid in any medium other than cash, other than remuneration paid in other than cash to an agricultural worker or a domestic worker. When an employing unit during a calendar year acquires the experience of an employer as provided in section 8-76-104 and if, immediately after such acquisition, the successor employer continues to employ an individual who immediately prior to the acquisition was an employee of the predecessor, any remuneration previously paid to the individual by the predecessor shall be considered as having been paid by the successor.

(b) (I) Repealed.

(II) Any amount treated as an employer contribution under 26 U.S.C. sec. 414 (h)(2); and

(III) Any employer contribution under a nonqualified deferred compensation plan. For the purposes of this subparagraph (III), "nonqualified deferred compensation plan" means any

plan or other arrangement for deferral of compensation other than a plan described in section 8-70-142 (1)(c). Any amount deferred under a nonqualified deferred compensation plan shall be taken into account for the purposes of this paragraph (b) as of the date that the services are performed or the date that there is no substantial risk of forfeiture of the rights to such amount, whichever date is later, and shall not thereafter be treated as "wages" for the purposes of this section.

(IV) Any payment included in the definition of wages in the "Federal Unemployment Tax Act".

(c) Tips which are received while performing services that constitute employment and which are made known to the employer through a written statement furnished to him by the employee; and

(d) (I) With respect to weeks of unemployment beginning on or after January 1, 1978, wages for insured work paid for previously uncovered services. For the purposes of this paragraph (d), "previously uncovered services" means services which were not employment as defined in sections 8-70-126 to 8-70-140.8 and were not services covered pursuant to section 8-76-107 at any time during the one-year period ending December 31, 1975, and:

(A) Which are agricultural labor as defined in section 8-70-103 or domestic service as defined in section 8-70-121; or

(B) Which are services performed by an employee of this state or a political subdivision thereof, as provided for in section 8-70-119, or by an employee of a nonprofit educational institution which is not an institution of higher education, as provided for in section 8-70-103 (15).

(II) "Previously uncovered services" shall not apply to services to the extent that assistance under Title II of the "Emergency Jobs and Unemployment Assistance Act of 1974" was paid on the basis of such services.

Source: L. 90: Entire section added, p. 599, § 3, effective April 3. **L. 96:** IP(1)(d)(I) amended, p. 381, § 3, effective April 17. **L. 2006:** (1)(b)(I) and IP(1)(d)(I) amended, p. 1517, § 87, effective June 1. **L. 2016:** (1)(b)(I) repealed, (SB 16-189), ch. 210, p. 755, § 10, effective June 6.

8-70-142. Wages - remuneration not included as wages. (1) "Wages" does not include:

(a) The amount of any payment (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment) made to, or on behalf of, an employee or any of his dependents by an employer under a plan or system established by an employer which makes provision for his employees generally, or for his employees generally and their dependents, or for any class or classes of his employees and their dependents, on account of:

(I) Sickness or accident disability, but, in the case of payments made to an employee or any of his dependents, this paragraph (a) shall exclude from the term "wages" only payments which are received under the workers' compensation law; or

(II) Medical or hospitalization expenses in connection with sickness or accident disability; or

(III) Death;

(b) Any payment on account of sickness or accident disability, or medical or hospitalization expenses in connection with sickness or accident disability, made by an employer to or on behalf of an employee after the expiration of six calendar months following the last calendar month in which the employee worked for such employer;

(c) Any payment made to or on behalf of an employee or his beneficiary:

(I) From or to a trust described in 26 U.S.C. section 401 (a) which is exempt from tax under 26 U.S.C. section 501 (a) at the time of such payment unless such payment is made to an employee of the trust as remuneration for services rendered as such employee and not as a beneficiary of the trust; or

(II) Under or to a bond purchase plan which, at the time of such payment, is a qualified bond purchase plan described in 26 U.S.C. section 405 (a); or

(III) Under a simplified employee pension if, at the time of payment, it is reasonable to believe that the employee will be entitled to a deduction for such payment under 26 U.S.C. section 219 (b)(2); or

(IV) Under or to an annuity contract described in 26 U.S.C. section 403 (b), other than a payment for the purchase of such contract which is made by reason of a salary reduction agreement (whether evidenced by a written instrument or otherwise); or

(V) Under or to an exempt governmental deferred compensation plan, as defined in 26 U.S.C. section 3121 (v)(3); or

(VI) To supplement pension benefits under a plan or trust described in any of the provisions of this subsection (1) which are designed to take into account all or some portion of the increase in the cost of living, as determined by the United States secretary of labor, since retirement but only if such supplemental payments are under a plan which is treated as a welfare plan under section 3 (2)(B)(ii) of the federal "Employee Retirement Income Security Act of 1974", as amended; or

(VII) Under or to an annuity plan which, at the time of such payment, is a plan described in 26 U.S.C. section 403 (a); or

(VIII) Under a cafeteria plan (within the meaning of 26 U.S.C. section 125);

(d) The payment by an employer, without deduction from the remuneration of the employee, of the tax imposed upon an employee under 26 U.S.C. section 3101 or any payment required from any employee under articles 70 to 82 of this title if the remuneration is paid to the employee for domestic service in a private home or for agricultural labor;

(e) Remuneration paid to or on behalf of an employee if and to the extent that, at the time of the payment of such remuneration, it is reasonable to believe that a corresponding deduction is allowable under 26 U.S.C. section 217;

(f) Any payment or series of payments, except for any payment or series of payments which would have been paid if the employee's employment relationship had not been terminated, by an employer to an employee or any of his dependents which is paid:

(I) Upon or after the termination of an employee's employment relationship because of death or retirement for disability; and

(II) Under a plan established by the employer which makes provision for his employees generally or any class or classes of employees and their dependents;

(g) Remuneration for agricultural labor paid in any medium other than cash;

(h) Any contribution, payment, or service provided by an employer which may be excluded from the gross income of an employee, his spouse, or his dependents under the

provisions of 26 U.S.C. section 120 (relating to amounts received under qualified group legal services plans);

(i) Any payment made or benefit furnished to or for the benefit of an employee if, at the time of such payment or such furnishing, it is reasonable to believe that the employee will be able to exclude such payment or benefit from income under 26 U.S.C. section 127 or 129;

(j) The value of any meals or lodging furnished by or on behalf of the employer if, at the time of such furnishing, it is reasonable to believe that the employee will be able to exclude such items from income under 26 U.S.C. section 119;

(k) Remuneration for service not in the course of the employer's trade or business paid to an employee in any medium other than cash;

(l) Any payment made by an employer to the survivors or the estate of a former employee after the calendar year in which such employee died;

(m) (I) Remuneration for duty in a branch of the United States military reserve or in the National Guard if such duty is served during a period of time that does not exceed seventy-two hours in duration from start of service to end of service during any one-month period;

(II) Remuneration for required annual training as part of duty pursuant to subparagraph (I) of this paragraph (m), for a period of time of approximately two weeks;

(n) Any payment made to or on behalf of an employee or such employee's beneficiary under an arrangement to which section 26 U.S.C. sec. 408 (p) applies, other than any elective contributions under section 26 U.S.C. sec. 408 (p)(2)(A)(I);

(o) Any payment made to or for the benefit of an employee if, at the time of such payment, it is reasonable to believe that the employee will be able to exclude such payment from income pursuant to section 26 U.S.C. sec. 106 (b);

(p) The amount of any payment, including any amount paid by an employer into a fund to provide for any such payment, made to or on behalf of an employee under a plan or system established by an employer that makes provision for his or her employees generally, or for classes of his or her employees, for the purpose of supplementing unemployment benefits; except that this paragraph (p) shall not apply if the employee has the option to receive a lump-sum payment instead of periodically distributed, supplemental unemployment benefits.

Source: L. 90: Entire section added, p. 600, § 3, effective April 3. **L. 95:** (1)(m) added, p. 520, § 1, effective May 16. **L. 98:** (1)(n) and (1)(o) added, p. 70, § 6, effective March 23. **L. 2004:** (1)(p) added, p. 175, § 1, effective August 4.

8-70-143. Applicability of legislation. Legislation which amends, repeals, or adds to the provisions of articles 70 to 82 of this title shall become applicable to unemployment compensation claims on the first day (Sunday) of the first calendar week subsequent to the effective date of such legislation unless a different applicability date is specifically provided for by the general assembly.

Source: L. 90: Entire section added, p. 602, § 3, effective April 3.

ARTICLE 71

Division of Unemployment Insurance

Cross references: For applicability of legislation that amends, repeals, or adds to the provisions of this article on or after May 18, 1979, see § 8-70-143.

PART 1

DIVISION OF UNEMPLOYMENT INSURANCE

Cross references: For current provisions relating to the Division of Employment and Training, see part 1 of article 83.

8-71-101. Division of unemployment insurance created - director. There is hereby created a division of unemployment insurance within the department of labor and employment, the head of which is the director of the division.

Source: L. 36, 3rd Ex. Sess.: p. 34, § 10. **CSA:** C. 167A, § 10. **L. 39:** p. 573, § 7. **L. 41:** p. 784, § 10. **CRS 53:** § 82-2-1. **L. 55:** p. 529, § 2. **C.R.S. 1963:** § 82-2-1. **L. 68:** p. 117, § 106. **L. 76:** Entire section amended, p. 336, § 3, effective October 1. **L. 2012:** Entire section amended, (HB 12-1120), ch. 27, p. 78, § 3, effective June 1.

Editor's note: The effective date for amendments to this section by House Bill 12-1120 (chapter 27, Session Laws of Colorado 2012) was changed from August 8, 2012, to June 1, 2012, by House Bill 12S-1002 (First Extraordinary Session, chapter 2, p. 2432, Session Laws of Colorado 2012).

8-71-102. Powers, duties, and functions - acceptance of moneys. (1) The functions of the division comprise all administrative functions of the state in relation to the administration of articles 70 to 82 of this title. The director of the division shall exercise the powers, duties, and functions prescribed under articles 70 to 82 of this title under the direction and supervision of the executive director of the department of labor and employment, as prescribed by section 24-1-105 (4), C.R.S. Any vacancy in the office of director of the division shall be filled in the manner provided by law.

(2) The division may accept and expend moneys from gifts, grants, donations, and other nongovernmental contributions for the purposes for which the division is authorized.

Source: L. 36, 3rd Ex. Sess.: p. 34, § 10. **L. 37:** p. 1264, § 8. **CSA:** C. 167A, § 10. **L. 39:** p. 573, § 7. **L. 41:** p. 784, § 10. **CRS 53:** § 82-2-2. **C.R.S. 1963:** § 82-2-2. **L. 83:** Entire section amended, p. 403, § 2, effective May 25. **L. 2008:** Entire section amended, p. 1762, § 1, effective June 2. **L. 2012:** Entire section amended, (HB 12-1120), ch. 27, p. 78, § 4, effective June 1.

Editor's note: The effective date for amendments to this section by House Bill 12-1120 (chapter 27, Session Laws of Colorado 2012) was changed from August 8, 2012, to June 1, 2012, by House Bill 12S-1002 (First Extraordinary Session, chapter 2, p. 2432, Session Laws of Colorado 2012).

8-71-103. Organization of division - authority to issue bonds.

(1) (Deleted by amendment, L. 2012.)

(2) (a) The division constitutes an enterprise for purposes of section 20 of article X of the state constitution, as long as the division retains authority to issue revenue bonds and the division receives less than ten percent of its total annual revenues in grants, as defined in section 24-77-102 (7), C.R.S., from all Colorado state and local governments combined. For as long as it constitutes an enterprise pursuant to this section, the division is not subject to section 20 of article X of the state constitution.

(b) (I) Except as provided in subparagraph (II) of this paragraph (b), the enterprise established pursuant to this subsection (2) has all the powers and duties authorized by articles 70 to 82 of this title pertaining to unemployment insurance and unemployment compensation. The unemployment compensation fund, created in section 8-77-101, constitutes part of the enterprise established pursuant to this subsection (2).

(II) The employment support fund established in section 8-77-109 (1) shall not be included in or administered by the enterprise established pursuant to this subsection (2).

(c) Nothing in this subsection (2) limits or restricts the authority of the division to expend its revenues consistent with the provisions of articles 70 to 82 of this title.

(d) (I) Upon receiving the certifications specified in subparagraphs (III) and (IV) of this paragraph (d), the division may issue revenue bonds for the same purposes and on the same terms, and levy and apply the proceeds of bond assessments for the same purposes and in the same manner, as the Colorado housing and finance authority may issue bonds and levy and apply the proceeds of bond assessments under section 29-4-710.7, C.R.S., substituting references to the division for references to the authority under that section. Bond assessments levied by the division may be used to pay revenue bonds issued by the division under this paragraph (d) or revenue bonds issued by the Colorado housing and finance authority under section 29-4-710.7, C.R.S.

(II) Any bonds issued pursuant to this paragraph (d) must be executed and delivered by the director of the division and may be in the form, may be sold and may have the same terms as provided in section 43-4-807 (1)(b) and (1)(c), C.R.S., may contain the provisions permitted by section 43-4-807 (1)(d), C.R.S., shall be legal investments for the entities described in, subject to the terms set forth in, section 43-4-807 (3), C.R.S., and shall be exempt from taxation and assessments in the state as provided in section 43-4-807 (4), C.R.S. The division may invest or deposit any proceeds and interest from the sale of such bonds as provided in section 43-4-807 (2), C.R.S. The division shall have the power to enter into all other contracts or agreements, which contracts and agreements are not subject to the "Procurement Code", articles 101 to 112 of title 24, C.R.S., that are necessary or incidental to the exercise of its powers and duties under this paragraph (d), including the power to engage the services of consultants, financial advisors, underwriters, bond insurers, letter of credit banks, rating agencies, and agents and other persons whose services may be required or deemed advantageous by the division, and the power to enter into interest rate exchange agreements for bonds that have been issued in accordance with this paragraph (d). The amount of outstanding liability for bonds issued pursuant to this paragraph (d) or section 29-4-710.7, C.R.S., is not taken into account for purposes of rate setting under article 76 of this title.

(III) The division may not issue its bonds pursuant to this paragraph (d) until the monthly balance in the unemployment compensation fund is equal to or less than nine-tenths of

one percent of the total wages reported by ratable employers for the calendar year, or for the most recent available four consecutive quarters prior to the last computation date, and the governor, the state treasurer, and the executive director of the department of labor and employment have each certified in writing to the division:

(A) That other funding alternatives to the issuance of bonds by the division under this paragraph (d) have been considered and that the issuance of such bonds is the most cost-effective means for the division to maintain adequate balances in the unemployment compensation fund or to repay moneys advanced to the state pursuant to 42 U.S.C. sec. 1321;

(B) The amount of money required to maintain adequate balances in the unemployment compensation fund or to repay moneys advanced to the state pursuant to 42 U.S.C. sec. 1321, or both; and

(C) The amount of bonds to be issued.

(IV) In addition to the written certifications specified in subparagraph (III) of this paragraph (d), the executive director of the department of labor and employment shall certify in writing that the issuance of bonds as authorized by law would not result in decertification of Colorado's unemployment insurance program, impact any cap application, affect the receipt of emergency unemployment compensation funds, create an ineligibility for receipt of federal funds, or result in other penalties or sanctions under the federal "Social Security Act", as amended, or the "Federal Unemployment Tax Act", as amended, 26 U.S.C. sec. 3301 et seq.

Source: L. 36, 3rd Ex. Sess.: p. 34, § 10. **L. 37:** p. 1264, § 8. **CSA:** C. 167A, § 10. **L. 39:** p. 573, § 7. **L. 41:** p. 784, § 10. **L. 43:** p. 607, § 7. **CRS 53:** § 82-2-3. **C.R.S. 1963:** § 82-2-3. **L. 86:** Entire section amended, p. 487, § 82, effective July 1. **L. 2009:** Entire section amended, (HB 09-1363), ch. 363, p. 1876, § 1, effective July 1. **L. 2012:** Entire section amended, (HB 12-1120), ch. 27, p. 78, § 5, effective June 1. **L. 2012, 1st Ex. Sess.:** (2)(b)(I) and (2)(d) amended, (HB 12S-1002), ch. 2, p. 2426, § 4, effective June 1.

Editor's note: The effective date for amendments to this section by House Bill 12-1120 (chapter 27, Session Laws of Colorado 2012) was changed from August 8, 2012, to June 1, 2012, by House Bill 12S-1002 (First Extraordinary Session, chapter 2, p. 2432, Session Laws of Colorado 2012).

8-71-104. Head of division. (Repealed)

Source: L. 36, 3rd Ex. Sess.: p. 34, § 10. **L. 37:** p. 1264, § 8. **CSA:** C. 167A, § 10. **L. 39:** p. 573, § 7. **L. 41:** p. 784, § 10. **CRS 53:** § 82-2-4. **C.R.S. 1963:** § 82-2-4. **L. 76:** Entire section amended, p. 336, § 4, effective October 1. **L. 86:** Entire section amended, p. 488, § 83, effective July 1. **L. 2012:** Entire section repealed, (HB 12-1120), ch. 27, p. 104, § 8, effective June 1.

Editor's note: The effective date for the repeal of this section by House Bill 12-1120 (chapter 27, Session Laws of Colorado 2012) was changed from August 8, 2012, to June 1, 2012, by House Bill 12S-1002 (First Extraordinary Session, chapter 2, p. 2432, Session Laws of Colorado 2012).

8-71-105. Unemployment compensation commission. (Repealed)

Source: L. 36, 3rd Ex. Sess.: p. 34, § 10. **L. 37:** p. 1264, § 8. **CSA:** C. 167A, § 10. **L. 39:** p. 573, § 7. **L. 41:** p. 784, § 10. **CRS 53:** § 82-2-5. **C.R.S. 1963:** § 82-2-5. **L. 86:** Entire section repealed, p. 502, § 125, effective July 1.

8-71-106. State employment service. (Repealed)

Source: L. 36, 3rd Ex. Sess.: p. 41, § 12. **L. 37:** p. 1268, § 10. **CSA:** C. 167A, § 12. **L. 39:** p. 576, § 9. **L. 41:** p. 791, § 12. **L. 51:** p. 818, § 11. **CRS 53:** § 82-2-6. **C.R.S. 1963:** § 82-2-6. **L. 91:** Entire section amended, p. 1283, § 1, effective June 8. **L. 2012:** Entire section repealed, (HB 12-1120), ch. 27, p. 103, § 7, effective June 1.

Editor's note: The effective date for the repeal of this section by House Bill 12-1120 (chapter 27, Session Laws of Colorado 2012) was changed from August 8, 2012, to June 1, 2012, by House Bill 12S-1002 (First Extraordinary Session, chapter 2, p. 2432, Session Laws of Colorado 2012).

PART 2

WORK FORCE INVESTMENT ACT

8-71-201 to 8-71-224. (Repealed)

Source: L. 2012: Entire part repealed, (HB 12-1120), ch. 27, p. 103, § 7, effective June 1.

Editor's note: (1) The effective date for the repeal of this part 2 by House Bill 12-1120 (chapter 27, Session Laws of Colorado 2012) was changed from August 8, 2012, to June 1, 2012, by House Bill 12S-1002 (First Extraordinary Session, chapter 2, p. 2432, Session Laws of Colorado 2012).

(2) This part 2 was added in 2000. For amendments to this part 2 prior to its repeal in 2012, consult the 2011 Colorado Revised Statutes and the Colorado statutory research explanatory note beginning on page vii in the front of this volume. This part 2 was relocated to part 1 of article 83 of this title. Former C.R.S. section numbers are shown in editor's notes following those sections that were relocated.

Cross references: For current provisions relating to the Work Force Investment Act, see part 2 of article 83.

ARTICLE 72

Administration of Division

Cross references: For applicability of legislation that amends, repeals, or adds to the provisions of this article on or after May 18, 1979, see § 8-70-143.

8-72-101. Duties and powers of division. (1) It is the duty of the division to administer articles 70 to 82 of this title; and it has the power to employ such persons, make such expenditures, require such reports, make such investigations, set such reasonably necessary standards, create and require the use of such forms, adopt such administrative methods and procedures, and take such other action as it deems necessary or suitable to that end. The division shall determine its own organization and methods of procedure in accordance with the provisions of articles 70 to 82 of this title.

(2) Repealed.

(3) (a) Whenever any event occurs that may have a material effect on the adequacy of the fund, whether to increase costs or decrease revenues or otherwise, the division shall promptly analyze the potential effect and provide the analysis to the governor and the general assembly. For purposes of this subsection (3), "event" includes proposed federal or state legislation and administrative or judicial adjudications.

(b) Notwithstanding section 24-1-136 (11)(a)(I), the department of labor and employment shall update the general assembly annually on the status of the fund during the hearing conducted pursuant to section 2-7-203. By August 31, 2012, and by each August 31 thereafter, the division shall report to the joint budget committee, the economic and business development committee of the house of representatives, and the business, labor, and technology committee of the senate, or their successor committees, regarding the status of the fund. The report shall include at least the following from the prior calendar year:

(I) Total fund revenues and expenditures;

(II) The highest and lowest trust fund balance from the prior calendar year and a comparison of those balances to the following three solvency measures: The reserve ratio, the high-cost multiple, and the average high-cost multiple;

(III) An analysis of the responsiveness of the funding mechanism to changes in economic conditions, both positive and negative;

(IV) An analysis of any material concerns identified by the division in fund solvency, revenue, and expenditures;

(V) An analysis of the impact of total premiums assessed to employers by employer size and employer experience;

(VI) The total amount of overpayments paid to claimants and the total amount of overpayments recovered; and

(VII) An analysis of measures taken by the division to reduce the total number and amount of overpayments and fraudulent payments.

Source: L. 36, 3rd Ex. Sess.: p. 35, § 11. **CSA:** C. 167A, § 11. **L. 41:** p. 785, § 11. **L. 51:** p. 814, § 9. **CRS 53:** § 82-3-1. **C.R.S. 1963:** § 82-3-1. **L. 64:** p. 149, § 86. **L. 76:** (2) amended, p. 336, § 5, effective October 1. **L. 81:** (1) amended, p. 509, § 1, effective July 1; (2) amended, p. 491, § 3, effective July 1. **L. 83:** (2) amended, p. 825, § 4, effective July 1. **L. 84:** (1) amended, p. 316, § 4, effective July 1. **L. 89:** (3) added, p. 424, § 2, effective July 1. **L. 96:** (2) repealed, p. 1228, § 46, effective August 7. **L. 2011:** (3) amended, (HB 11-1288), ch. 212, p.

915, § 2, effective July 1. **L. 2017:** IP(3)(b) amended, (HB 17-1272), ch. 181, p. 663, § 1, effective August 9.

Cross references: For the legislative declaration contained in the 1996 act repealing subsection (2), see section 1 of chapter 237, Session Laws of Colorado 1996.

8-72-102. Rules. (1) The director of the division has the power to adopt, amend, or rescind, in accordance with section 24-4-103, C.R.S., reasonable and necessary rules relating to the administration of the "Colorado Employment Security Act" and governing hearings and proceedings under such act.

(2) The director shall adopt rules establishing a procedure for an individual or employer filing a petition for review pursuant to section 8-74-106 (1)(a) or (1)(b) or an appeal pursuant to section 8-73-107 (1)(c)(I)(A), 8-74-103 (1), 8-74-104 (1), 8-76-113 (1) or (2), or 8-81-101 (4)(c), or an interested party presenting additional information pursuant to section 8-74-102 (1), to contest a determination by the director that the individual, employer, or interested party failed to comply with a deadline set forth in the applicable section by providing proof that the petition for review, appeal, or additional information was timely mailed.

Source: L. 36, 3rd Ex. Sess.: p. 35, § 11. **CSA:** C. 167A, § 11. **L. 41:** p. 785, § 11. **CRS 53:** § 82-3-2. **C.R.S. 1963:** § 82-3-2. **L. 81:** Entire section R&RE, p. 509, § 3, effective July 1. **L. 86:** Entire section amended, p. 488, § 84, effective July 1. **L. 2007:** Entire section amended, p. 802, § 1, effective August 3.

Cross references: For the "Colorado Employment Security Act", see articles 70 to 82 of this title.

8-72-103. Publications. The director of the division shall determine what information should be made public in order to carry out the provisions of articles 70 to 82 of this title. Materials of the division circulated in quantity outside the executive branch shall be issued in accordance with the provisions of section 24-1-136, C.R.S.

Source: L. 36, 3rd Ex. Sess.: p. 35, § 11. **CSA:** C. 167A, § 11. **L. 41:** p. 785, § 11. **CRS 53:** § 82-3-3. **C.R.S. 1963:** § 82-3-3. **L. 64:** p. 149, § 87. **L. 76:** Entire section amended, p. 337, § 6, effective October 1. **L. 83:** Entire section amended, p. 826, § 5, effective July 1.

8-72-104. Personnel. Subject to other provisions of articles 70 to 82 of this title and the state personnel system regulations, the division is authorized to appoint, fix the compensation, and prescribe the duties and powers of such officers, accountants, attorneys, experts, and other persons as may be necessary in the performance of its duties. The division may delegate to any such person so appointed such power as it deems reasonable and proper for the effective administration of articles 70 to 82 of this title. In its discretion, the division may bond any person handling moneys or signing checks under articles 70 to 82 of this title.

Source: L. 36, 3rd Ex. Sess.: p. 35, § 11. **CSA:** C. 167A, § 11. **L. 41:** p. 785, § 11. **CRS 53:** § 82-3-4. **C.R.S. 1963:** § 82-3-4.

8-72-105. Advisory council - sunset review. (Repealed)

Source: L. 36, 3rd Ex. Sess.: p. 35, § 11. **CSA:** C. 167A, § 11. **L. 41:** p. 785, § 11. **L. 43:** p. 607, § 8. **CRS 53:** § 82-3-5. **C.R.S. 1963:** § 82-3-5. **L. 77:** Entire section amended, p. 473, § 1, effective July 1. **L. 86:** Entire section amended, p. 409, § 7, effective March 26.

Editor's note: Subsection (2)(a) provided for the repeal of this section, effective July 1, 1990. (See L. 86, p. 409.)

8-72-106. Employment stabilization. The division, with the advice and aid of such advisory councils as it may appoint and through its appropriate sections, shall take all appropriate steps to reduce and prevent unemployment; to encourage and assist in the adoption of practical methods of vocational training, retraining, and vocational guidance; to investigate, recommend, advise, and assist in the establishment and operation, by municipalities, counties, school districts, and the state, of reserves for public works to be used in times of business depression and unemployment; to promote the reemployment of unemployed workers throughout the state in every way that may be feasible; and, to these ends, to carry on investigations and research studies, the results of which, if circulated in quantity outside the division, shall be issued in accordance with the provisions of section 24-1-136, C.R.S.

Source: L. 36, 3rd Ex. Sess.: p. 35, § 11. **CSA:** C. 167A, § 11. **L. 41:** p. 785, § 11. **CRS 53:** § 82-3-6. **C.R.S. 1963:** § 82-3-6. **L. 64:** p. 149, § 88. **L. 83:** Entire section amended, p. 826, § 6, effective July 1.

8-72-107. Records and reports - fee - violation - penalty. (1) Each employing unit shall keep true and accurate work records, containing such information as the division may prescribe. Such records shall be retained for a period of not less than five years and shall be open to inspection and be subject to being copied by the division or its authorized representatives at any reasonable time and as often as may be necessary. The division or any referee may require from any employing unit any sworn or unsworn reports, with respect to persons employed by it, which it or the referee deems necessary for the effective administration of articles 70 to 82 of this title. Information thus obtained, or obtained from any individual pursuant to the administration of articles 70 to 82 of this title, except to the extent necessary for the proper presentation of a claim, or withholding tax or unemployment insurance account numbers if such numbers are obtained from the department of revenue pursuant to section 39-21-113, C.R.S., shall be held confidential and shall not be published or be open to public inspection (other than to public employees in the performance of their public duties, to an agent of a state or local child support enforcement agency pursuant to section 8-72-109 (9), or to an agent of the division designated as such in writing for the purpose of accomplishing certain of the division's functions) in any manner revealing the individual's or employing unit's identity. Any interested party or such party's authorized representative, in preparation for and prior to any hearing on a claim governed by articles 70 to 82 of this title, shall be entitled to examine and, upon the payment of a reasonable fee to the division, obtain a copy of any materials contained in such records to the extent necessary for proper presentation of the party's position at the hearing. Notwithstanding said provisions of this subsection (1), any applicant for work shall be entitled to

examine and copy, or obtain a copy from the division upon payment of the costs of duplication, any letters of reference or other similar documents pertaining to the applicant that are in possession of the division. Any employee or member of the division or any referee who violates any provision of this article is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than twenty dollars nor more than two hundred dollars, or by imprisonment in the county jail for not more than ninety days, or by both such fine and imprisonment.

(2) The division may request the comptroller of the currency of the United States to cause an examination of the correctness of any return or report of any national banking association rendered pursuant to the provisions of articles 70 to 82 of this title. In connection with such request, the division may transmit any such report or return to the comptroller of the currency of the United States as provided in section 1606 (c) of the federal internal revenue code.

(3) Repealed.

Source: L. 36, 3rd Ex. Sess.: p. 35, § 11. **L. 37:** p. 1265, § 9. **CSA:** C. 167A, § 11. **L. 41:** p. 785, § 11. **CRS 53:** § 82-3-7. **C.R.S. 1963:** § 82-3-7. **L. 69:** p. 668, § 2. **L. 73:** pp. 958, 963, §§ 2, 1. **L. 76:** (1) and (3) amended, p. 337, § 7, effective October 1. **L. 77:** (3) amended, p. 475, § 1, effective July 1. **L. 81:** (1) amended, p. 483, § 3, effective July 1; (2) amended, p. 491, § 4, effective July 1. **L. 83:** (2) amended, p. 2042, § 4, effective October 1. **L. 84:** (3) amended, p. 316, § 5, effective July 1. **L. 86:** (3) amended, p. 702, § 8, effective July 1. **L. 91:** (3) repealed, p. 1360, § 2, effective September 1. **L. 97:** (1) amended, p. 559, § 1, effective July 1. **L. 2009:** (1) amended, (HB 09-1363), ch. 363, p. 1881, § 8, effective July 1.

8-72-108. Oaths - witnesses - subpoenas. (1) In the discharge of the duties imposed by articles 70 to 82 of this title, the division or its duly authorized representative shall have power to administer oaths and affirmations, take depositions, certify to official acts, and issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda, and other records deemed necessary as evidence in connection with a disputed claim or the administration of articles 70 to 82 of this title.

(2) In case of contempt or refusal to obey a subpoena issued to any person, any court of this state within the jurisdiction of which the inquiry is carried on or within the jurisdiction of which said person guilty of contempt or refusal to obey is found or resides or transacts business, upon application by the division or its duly authorized representative, shall have jurisdiction to issue to such person an order requiring him to appear before the division or its duly authorized representative to produce evidence if so ordered or give testimony touching the matter under investigation or in question. Any failure to obey such order of the court may be punished by said court as a contempt thereof. Any person who, without just cause, fails or refuses to attend and testify or to answer any lawful inquiry, or to produce books, papers, correspondence, memoranda, and other records, if it is in his power so to do in obedience to a subpoena of the division or its duly authorized representative, is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than two hundred dollars, or by imprisonment in the county jail for not more than sixty days, or by both such fine and imprisonment. Each day such violation continues shall be deemed a separate offense.

(3) No person may be excused from attending and testifying or from producing books, papers, correspondence, memoranda, and other records before the division or its duly authorized representative or in obedience to the subpoena of the division or its duly authorized representative in any cause or proceeding before the division or its duly authorized representative on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, documentary or otherwise; except that such individual so testifying is not exempt from prosecution and punishment for perjury in the first degree committed in so testifying.

Source: L. 36, 3rd Ex. Sess.: p. 35, § 11. **L. 37:** p. 1265, § 9. **CSA:** C. 167A, § 11. **L. 41:** p. 785, § 11. **CRS 53:** § 82-3-8. **C.R.S. 1963:** § 82-3-8. **L. 72:** p. 562, § 30. **L. 76:** (2) amended, p. 338, § 8, effective October 1.

8-72-109. State-federal cooperation. (1) (a) In the administration of articles 70 to 82 of this title, the division shall cooperate with the United States department of labor to the fullest extent consistent with the provisions of articles 70 to 82 of this title, and shall take such action through the adoption of appropriate rules, regulations, administrative methods, and standards as may be necessary to secure to the state and its citizens all the advantages available under the provisions of the federal "Social Security Act", as amended, section 3302 of the "Federal Unemployment Tax Act", the "Wagner-Peyser Act", as amended, and the "Federal-State Extended Unemployment Compensation Act of 1970".

(b) In the administration of the provisions of article 75 of this title, which are enacted to conform with the requirements of the "Federal-State Extended Unemployment Compensation Act of 1970", the division shall take such action as may be necessary:

(I) To ensure that the provisions are so interpreted and applied as to meet the requirements of such federal act as interpreted by the United States department of labor; and

(II) To secure to this state the full reimbursement of the federal share of extended benefits paid under articles 70 to 82 of this title that are reimbursable under the federal act.

(2) The division shall comply with the regulations of the secretary of labor or his successor relating to the receipt or expenditure by this state of money granted under any of said acts and shall make such reports, in such form and containing such information as the secretary of labor may from time to time require, and shall comply with such provisions as the secretary of labor, from time to time, may find necessary to assure the correctness and verification of such reports. The division shall afford reasonable cooperation with every agency of the United States charged with the administration of any employment security law.

(3) The division is authorized to make such investigations, obtain and transmit such information, make available such services and facilities, and exercise such of the other powers provided in articles 70 to 82 of this title with respect to the administration of articles 70 to 82 of this title as it deems necessary or appropriate to facilitate the administration of any state or federal unemployment insurance or public employment service law and in like manner to accept and utilize information, services, and facilities made available to the state by the agency charged

with the administration of any such other unemployment insurance or public employment service law.

(4) Upon request therefor the division shall furnish to any agency of the United States charged with the administration of public works or assistance through public employment the name, address, ordinary occupation, and employment status of each recipient of benefits and such recipient's right to further benefits under articles 70 to 82 of this title.

(5) The division may make the state's records relating to the administration of articles 70 to 82 of this title available to the railroad retirement board and may furnish the railroad retirement board, at the expense of such board, such copies thereof as the railroad retirement board deems necessary for its purposes.

(6) (a) The division may afford reasonable cooperation with every agency of the United States charged with the administration of any law providing for payment of benefits arising out of unemployment. In so doing, the division may use its personnel and equipment and accept and use federal funds and make payments therefrom, but in so doing it is not required to neglect or to carry on with less efficiency its own program, and the state of Colorado and its employees shall be free from liability except in case of gross negligence or attempt to defraud the United States.

(b) The director of the division is authorized to enter into agreements with every agency of the United States charged with administration of income or wage verification for the purpose of exchanging information among agencies as a method of controlling the overpayment of unemployment benefits.

(7) The director of the division is authorized to enter into agreements with other departments and divisions of the state for the purpose of obtaining such information as he deems necessary for the proper administration of articles 70 to 82 of this title and providing for payment of the costs thereof.

(8) The director of the division is authorized to enter into agreements with other departments and divisions of the state for the purpose of establishing an income and eligibility system for the exchange of information among agencies administrating federally assisted human service programs. Such system shall conform to all requirements and restrictions of section 1137 of the federal "Social Security Act", as amended.

(9) (a) Information obtained by a state or local child support enforcement agency pursuant to subsection (8) of this section may be used only for the purposes authorized by said subsection (8) and may not be disclosed by such agency to any person or entity for the purposes of establishing, modifying, or collecting child support obligations or locating individuals owing such obligations unless safeguards for the confidentiality of such information, consistent with section 303 (e)(1)(B) of the federal "Social Security Act", as amended, are established by agreement. Neither the division nor its employees shall be liable in civil action for providing information in accordance with subsection (8) of this section.

(b) The limitations on disclosure of information obtained pursuant to subsection (8) of this section set forth in paragraph (a) of this subsection (9) shall apply to any agent of a state or local child support enforcement agency specified in section 8-72-107 (1).

(10) On a quarterly basis, the director of the division shall provide wage and claim information contained in division records to the secretary of the federal department of health and human services for purposes of the national directory of new hires pursuant to all requirements and restrictions set forth in section 453 of the federal "Social Security Act", as amended.

Source: L. 36, 3rd Ex. Sess.: p. 35, § 11. **CSA:** C. 167A, § 11. **L. 39:** p. 574, § 8. **L. 41:** p. 785, § 11. **L. 45:** p. 713, § 5. **L. 51:** p. 815, § 10. **CRS 53:** § 82-3-9. **C.R.S. 1963:** § 82-3-9. **L. 71:** p. 931, § 6. **L. 81:** (7) added, p. 483, § 4, effective July 1. **L. 85:** (8) added, p. 361, § 5, effective April 4. **L. 97:** (9) added, p. 560, § 2, effective July 1; (10) added, p. 1263, § 3, effective July 1. **L. 2011:** (6) amended, (HB 11-1288), ch. 212, p. 915, § 3, effective July 1.

Cross references: (1) For the legislative declaration contained in the 1997 act enacting subsection (10), see section 1 of chapter 236, Session Laws of Colorado 1997.

(2) For the "Federal Unemployment Tax Act", see 26 U.S.C. § 3301 et seq.; for the "Wagner-Peyser Act", see 29 U.S.C. § 49 et seq.; for the "Federal-State Extended Unemployment Compensation Act of 1970", see Pub.L. 91-373, codified at 26 U.S.C. § 3304.

(3) For the "Social Security Act" generally, see 42 U.S.C. § 301 et seq.; for section 1137 of the act, see 42 U.S.C. § 1320b-7; for section 303 of the act, see 42 U.S.C. § 503; for section 453 of the act, see 42 U.S.C. § 653.

8-72-110. Reciprocal interstate agreements. (1) The division is authorized to enter into reciprocal arrangements with appropriate and duly authorized agencies of other states, or of the federal government, or both, whereby potential rights to benefits under articles 70 to 82 of this title may constitute the basis for payment of benefits by another state or by the federal government, and potential rights to benefits accumulated under the law of another state or of the federal government may constitute the basis for the payment of benefits by this state. Such benefits shall be paid under such provisions of articles 70 to 82 of this title, or under the provisions of the law of such state or of the federal government, or under such combination of the provisions of both laws as may be agreed upon as being fair and reasonable to all affected interests. No such arrangement shall be entered into unless it contains provisions for reimbursement to the fund for such benefits as are paid on the basis of wages and service, subject to the law of another state or of the federal government, and provisions for reimbursement from the fund for such benefits paid by another state or by the federal government on the basis of wages and service, subject to articles 70 to 82 of this title. Reimbursements paid from the fund pursuant to this section shall be deemed to be benefits for the purposes of articles 70 to 82 of this title.

(2) (a) Repealed.

(b) (I) The division may enter into reciprocal arrangements with appropriate and duly authorized agencies of other states or of the federal government, or both, whereby wages for insured work paid in another state or by the federal government are deemed to be wages for insured work under articles 70 to 82 of this title; and wages for insured work paid under articles 70 to 82 of this title are deemed to be wages on the basis of which unemployment insurance is payable under a corresponding law of another state or of the federal government. No such arrangement may be entered into unless it contains provision for reimbursement to the fund for the benefits paid under articles 70 to 82 of this title on the basis of the wages and provision for reimbursement from the fund for the benefits paid under such other law on the basis of wages for insured work as the division finds will be fair and reasonable to all affected interests. Reimbursements paid from the fund pursuant to this section are deemed to be benefits for the purposes of articles 70 to 82 of this title; except that no charge may be made to a premium-paying employer's account under sections 8-76-101 to 8-76-104. With the exception of benefit

overpayments, the noncharging shall not apply to reimbursing employer accounts that will be charged in accordance with section 8-76-102.5 in the same amount and to the same extent as if the reimbursement to another state had been benefits based solely on wages paid by an employer covered by articles 70 to 82 of this title.

(II) This paragraph (b) is effective December 31, 2012.

(3) The division is authorized to enter into arrangements with the appropriate agencies of other states or the federal government whereby individuals performing services in this and other states for employing units under circumstances not specifically provided for in sections 8-70-126 to 8-70-140.7 or under similar provisions in the unemployment compensation laws of such other states shall be deemed to be engaged in employment performed entirely within this state or within one of such other states and whereby potential rights and benefits accumulated under the unemployment compensation laws of several states or under such a law of the federal government, or both, may constitute the basis for the payment of benefits through a single appropriate agency under terms that the department finds will be fair and reasonable as to all affected interests and will not result in any substantial loss to the fund. An individual applying for unemployment insurance benefits through an interstate agreement authorized by this section who is not a Colorado resident and is unable to produce a Colorado driver's license or Colorado identification card shall produce one of the other documents required by section 24-76.5-103 (4)(a), C.R.S., or a valid driver's license or state identification card issued in another state, or, in the case of individuals residing in Canada, a valid Canadian identification card or valid Canadian driver's license, and execute an affidavit as described in section 24-76.5-103 (4)(b), C.R.S., stating that he or she is a United States citizen, a legal permanent resident, or otherwise lawfully present in the United States pursuant to federal law.

(4) The division is further authorized to enter into arrangements with the appropriate agencies of other states or of the federal government for the determination, adjustment, collection, and assessment of premiums by employers with respect to employment within and without this state.

(5) For the purposes of establishing and maintaining free public employment offices, the division is authorized to enter into agreements with the railroad retirement board or any other agency of the United States charged with the administration of an employment security law, with any political subdivision of this state, or with any private, nonprofit organization. As a part of any such agreement, the division may accept moneys, services, or quarters as a contribution to the employment security administration fund.

Source: L. 37: p. 1265, § 9. **CSA:** C. 167A, § 11. **L. 39:** p. 574, § 8. **L. 41:** p. 785, § 11. **L. 51:** p. 815, § 10. **CRS 53:** § 82-3-10. **L. 54:** p. 138, § 1. **C.R.S. 1963:** § 82-3-10. **L. 69:** pp. 669, 681, §§ 3, 1. **L. 73:** p. 958, § 3. **L. 79:** (5) amended, p. 345, § 4, effective September 30. **L. 81:** (2) amended, p. 483, § 5, effective July 1; (4) amended, p. 492, § 5, effective July 1. **L. 90:** (3) amended, p. 602, § 4, effective April 3; (2) amended, p. 607, § 3, effective April 16. **L. 96:** (3) amended, p. 381, § 4, effective April 17. **L. 2007:** (3) amended, p. 635, § 1, effective August 3. **L. 2009:** (2) and (4) amended, (HB 09-1363), ch. 363, p. 1882, § 9, effective July 1. **L. 2011:** (2) amended, (HB 11-1288), ch. 212, p. 926, § 10, effective July 1. **L. 2012, 1st Ex. Sess.:** (2)(a)(II) amended, (HB 12S-1002), ch. 2, p. 2427, § 5, effective June 1.

Editor's note: Subsection (2)(a)(II) provided for the repeal of subsection (2)(a), effective December 31, 2012. (See L. 2012, p. 2427.)

8-72-111. Release of location information concerning individuals with outstanding felony arrest warrants. (1) Notwithstanding any provision of state law to the contrary and to the extent allowable under federal law, at the request of the Colorado bureau of investigation, the division shall provide the bureau with information concerning the location of any person whose name appears in the division's records who is the subject of an outstanding felony arrest warrant. Upon receipt of such information, it shall be the responsibility of the bureau to provide appropriate law enforcement agencies with location information obtained from the division. Location information provided pursuant to this section shall be used solely for law enforcement purposes. The division and the bureau shall determine and employ the most cost-effective method for obtaining and providing location information pursuant to this section. Neither the division nor its employees or agents shall be liable in civil action for providing information in accordance with the provisions of this subsection (1).

(2) As used in subsection (1) of this section, "law enforcement agency" means any agency of the state or its political subdivisions that is responsible for enforcing the laws of this state. "Law enforcement agency" includes but is not limited to any police department, sheriff's department, district attorney's office, the office of the state attorney general, and the Colorado bureau of investigation.

Source: L. 95: Entire section added, p. 1123, § 2, effective July 1.

8-72-112. Division - reporting - veterans programs. The division, by September 30, 2002, and on or before September 30 each year thereafter, shall provide sufficient information to enable the Colorado board of veterans affairs to complete the report required by section 28-5-703 (3), C.R.S.

Source: L. 2002: Entire section added, p. 355, § 6, effective July 1.

Cross references: For the legislative declaration contained in the 2002 act enacting this section, see section 1 of chapter 121, Session Laws of Colorado 2002.

8-72-113. Annual report - federal stimulus moneys to expand unemployment benefits - repeal. (1) (a) By December 31, 2009, and by each December 31 thereafter until federal stimulus moneys have been exhausted, the division, in connection with its reporting requirements set forth in section 8-73-114 (6), shall report on the total accumulated federal stimulus moneys expended as of December 1 of the year in which the report is submitted in connection with the expansion of unemployment insurance benefits enacted by Senate Bill 09-247 in 2009. The report shall delineate the portions of the federal stimulus moneys expended in connection with each area of expansion of unemployment insurance benefits enacted pursuant to Senate Bill 09-247.

(b) As used in this section, "federal stimulus moneys" means unemployment compensation modernization incentive payments made to the state's unemployment trust fund in

accordance with the federal "American Recovery and Reinvestment Act of 2009", Pub.L. 111-5, for enacting unemployment compensation modernization as required by the federal act.

(2) (a) This section is repealed, effective when the state has exhausted all of the federal stimulus moneys provided to the state to fund the expansion of unemployment insurance benefits enacted by Senate Bill 09-247 in 2009.

(b) The director of the division shall notify the revisor of statutes, in writing, when the condition specified in paragraph (a) of this subsection (2) has been satisfied.

Source: L. 2009: Entire section added, (SB 09-247), ch. 405, p. 2234, § 7, effective July 1.

Editor's note: As of publication date, the revisor of statutes has not received the notice referred to in subsection (2)(b).

8-72-114. Employee misclassification - investigations - enforcement - advisory opinions - rules - employee misclassification advisory opinion fund - statewide study - report - definitions - legislative declaration. (1) The general assembly hereby finds and declares that:

(a) Misclassification of employees as independent contractors in violation of the "Colorado Employment Security Act" and, in particular, the provisions of article 70 of this title defining the employment relationship, may pose a significant problem in this state and leads to underpayment of employment taxes and premiums that employers are obligated to pay the state for covered employment;

(b) Businesses that misclassify employees gain an unfair competitive advantage over businesses that properly classify employees and pay appropriate taxes and premiums to the state;

(c) When employees are misclassified, the protections available to properly classified employees against economic insecurity are unavailable to those misclassified employees, and the stream of revenue that should be paid to the state to provide protections to misclassified employees is not available.

(2) As used in this section:

(a) "Act" means the "Colorado Employment Security Act".

(b) "Complainant" means the person who files a complaint with the division pursuant to this section.

(c) "Director" means the director of the division.

(d) Repealed.

(e) "Executive director" means the executive director of the department of labor and employment.

(f) "Misclassification of employees" means erroneously classifying a person as an independent contractor, free from control and direction of the employer in the performance of service for the employer, when the employer cannot show an exception, pursuant to section 8-70-103 (11), to the general rule that service being performed for the employer is presumed to be employment for purposes of the act.

(g) "Respondent" means the person against whom a complaint is filed pursuant to this section.

(3) (a) The division shall be responsible for accepting and investigating complaints regarding misclassification of employees and enforcing the requirements of the act regarding classification of employees and payment of premiums.

(b) Any person may file a written complaint with the division alleging that a person engaged in employment is being misclassified by an employer as an independent contractor. The complainant shall specify in the complaint the facts showing that the person classified as an independent contractor is engaged in employment, as defined in article 70 of this title.

(c) The director may investigate a complaint filed pursuant to this subsection (3) and shall focus on the investigation of the most egregious complaints or those complaints alleging intentional acts of misclassification of employees undertaken in order to gain a competitive advantage or to avoid the payment of premiums.

(d) No later than thirty days after receipt of a complaint, the director shall determine whether or not an investigation is warranted. If the director determines that an investigation is warranted, the director shall notify the complainant and respondent that an investigation will be conducted and shall conduct the investigation in accordance with the act and the rules adopted pursuant to the act. The complainant and respondent shall cooperate and provide information as necessary to facilitate the investigation.

(e) (I) Upon conclusion of an investigation, the director shall issue a written order either dismissing the complaint or finding that the employer has engaged in the misclassification of employees and has failed to pay appropriate premiums for covered employment as defined in article 70 of this title.

(II) If the director finds that an employer has engaged in the misclassification of employees, the director shall order the employer to pay back premiums owed and interest.

(III) Upon a finding that the employer, with willful disregard of the law, misclassified employees, the director may:

(A) Impose a fine of up to five thousand dollars per misclassified employee for the first misclassification with willful disregard, and for a second or subsequent misclassification with willful disregard, a fine of up to twenty-five thousand dollars per misclassified employee; and

(B) Upon a second or subsequent misclassification with willful disregard, issue an order prohibiting the employer from contracting with, or receiving any funds for the performance of contracts from, the state for up to two years after the date of the director's order. Upon the issuance of such order, the director shall notify state departments and agencies as necessary to ensure enforcement of the order.

(IV) **[*Editor's note: Subsection (3)(e)(IV) is effective January 1, 2021.*]** Fines received by the division pursuant to subsection (3)(e)(III) of this section or by the department of law pursuant to subsection (9) of this section shall be transferred to the department of labor and employment and credited to the unemployment revenue fund created in section 8-77-106.

(f) The director shall provide a copy of the written order to the respondent. Those portions of the written order that are not confidential under the act shall be a public record.

(g) An employer shall have the right to appeal the director's order in accordance with section 8-76-113.

(4) (a) An employer may request a written advisory opinion from the director concerning whether the employer should classify the individual as an employee for purposes of complying with the act. The employer shall provide the director with information necessary for the director to issue an advisory opinion.

(b) Upon receipt of a request and pertinent information from an employer, the director shall issue an advisory opinion to the employer, indicating whether the employer should classify the individual as an employee in order to comply with the act. An opinion issued pursuant to this subsection (4) is only advisory, based on the information provided by the employer and the director's understanding of the circumstances at the time issued, and is not binding on the division, the employer, or any other state or local governmental entity.

(c) The director shall promulgate rules in accordance with article 4 of title 24, C.R.S., establishing the process for issuing an advisory opinion and the fees to be charged the requesting employer to cover the director's and division's costs in providing the advisory opinion. Any fees charged pursuant to this subsection (4) for the costs associated with issuing an advisory opinion shall be deposited in the employee misclassification advisory opinion fund, which fund is hereby created. Moneys in the employee misclassification advisory opinion fund shall be subject to annual appropriation by the general assembly for the purposes of this subsection (4). Interest derived from the deposit and investment of moneys in the fund shall be credited to the fund. At the end of any fiscal year, all unexpended and unencumbered moneys in the fund shall remain in the fund and shall not be credited or transferred to the general fund or any other fund.

(5) The director, by all means reasonable and within budgetary constraints, shall publicize the complaint process established in this section and its availability to those who have discovered misclassification of employees. The director shall develop and make available free of charge to employers a notice explaining the rights of employees to be properly classified and the availability of a complaint process pursuant to this section. Employers shall post the notice conspicuously in the workplace or otherwise where it can be seen as employees come or go to their places of work.

(6) to (8) Repealed.

(9) **[*Editor's note: Subsection (9) is effective January 1, 2021.*]** Subject to the approval of the executive director, the director may enter into an interagency agreement with the department of law for assistance in enforcing this section. The director is authorized to transfer to the department of law from the unemployment revenue fund created in section 8-77-106 such money as is necessary to pay for reasonable costs associated with enforcement actions by the department of law.

Source: L. 2009: Entire section added, (HB 09-1310), ch. 406, p. 2238, § 1, effective June 2. **L. 2010:** (1)(a), (1)(b), (3)(a), (3)(c), (3)(e)(I), (3)(e)(II), and (7)(c) amended, (HB 10-1422), ch. 419, p. 2065, § 13, effective August 11. **L. 2012:** (2)(c) amended and (2)(d) repealed, (HB 12-1120), ch. 27, p. 105, § 13, effective June 1. **L. 2020:** (3)(e)(IV) and (9) added, (SB 20-170), ch. 297, p. 1479, § 4, effective January 1, 2021.

Editor's note: (1) Subsection (8) provided for the repeal of subsections (6) to (8), effective July 1, 2012. (See L. 2009, p. 2238.)

(2) The effective date for amendments to subsection (2)(c) and the repeal of subsection (2)(d) by House Bill 12-1120 (chapter 27, Session Laws of Colorado 2012) was changed from August 8, 2012, to June 1, 2012, by House Bill 12S-1002 (First Extraordinary Session, chapter 2, p. 2432, Session Laws of Colorado 2012).

ARTICLE 73

Cross references: For applicability of legislation that amends, repeals, or adds to the provisions of this article on or after May 18, 1979, see § 8-70-143.

8-73-101. Payment of benefits. (1) All benefits provided in this article shall be payable from the fund. All benefits shall be paid through employment offices or such other agencies as the director of the division, by general rule, may designate. Notwithstanding any other provision of the law to the contrary, any amount of unemployment compensation payable to any individual for any week, if not an even dollar amount, shall be rounded to the next lower full dollar amount.

(2) An individual's eligibility and benefit amounts shall be determined weekly. Unemployment insurance benefit checks shall be issued once every two weeks; except that the division, when it determines it to be necessary for proper administration of articles 70 to 82 of this title, including the effecting of administrative economies, may issue benefit checks on a weekly basis. Under no circumstance shall benefit checks be issued less frequently than once every two weeks.

Source: L. 36, 3rd Ex. Sess.: p. 14, § 3. **L. 37:** p. 1250, § 1. **CSA:** C. 167A, § 3. **L. 39:** p. 568, § 1. **L. 41:** p. 762, § 3. **CRS 53:** § 82-4-1. **C.R.S. 1963:** § 82-4-1. **L. 83:** Entire section amended, p. 435, § 2, effective October 1. **L. 84:** Entire section amended, p. 321, § 1, effective March 26. **L. 86:** (1) amended, p. 488, § 85, effective July 1. **L. 93:** (2) amended, p. 1771, § 23, effective June 6. **L. 2006:** (2) amended, p. 141, § 5, effective August 7.

8-73-102. Weekly benefit amount for total unemployment - definitions - repeal. (1) (a) Except as otherwise provided in section 8-73-104 or subsection (2) of this section, each eligible individual who is totally unemployed in any week shall be paid, with respect to such week, benefits at the rate of sixty percent of one-twenty-sixth of the wages paid for insured work during the two consecutive quarters of the individual's base period in which such total wages were highest, computed to the next lower multiple of one dollar but not more than one-half of the average weekly earnings in all covered industries in Colorado according to the records of the division, as computed by the division in June for the ensuing twelve months beginning July 1, on the basis of the most recent available figures, and not less than twenty-five dollars.

(b) (I) If an individual does not have sufficient qualifying weeks or wages in the base period to qualify for unemployment insurance benefits, the individual shall have the option of designating that the base period shall be the alternative base period.

(II) If information regarding weeks and wages for the calendar quarter immediately preceding the first day of the benefit year is not available from the regular quarterly reports of wage information, and the division is not able to obtain the information using other means pursuant to state or federal law, the division may base the determination of eligibility for unemployment insurance benefits on the affidavit of the unemployed individual with respect to weeks and wages for that calendar quarter. The individual shall furnish payroll documentation, if available, in support of the affidavit. The division shall verify the employee's wage information. A determination of unemployment insurance benefits based on an alternative base period shall

be adjusted when the quarterly report of wage information from the employer is received, if that information causes a change in the determination.

(2) An individual who is entitled to the maximum weekly benefit amount as computed in subsection (1) of this section shall receive a weekly benefit amount of fifty percent of one fifty-second of his total wages paid for insured work during his base period, computed to the next lower multiple of one dollar, but not to exceed fifty-five percent of the average weekly earnings in all covered industries in Colorado; except that the maximum weekly benefit amount in effect on July 1, 1985, as computed pursuant to this subsection (2), shall remain in effect until such maximum weekly benefit amount is equal to or less than fifty-five percent of the average weekly earnings in all covered industries in Colorado. In no case shall an individual receive a weekly benefit amount computed in accordance with this subsection (2) unless it is greater than the weekly benefit amount yielded by computation in accordance with subsection (1) of this section.

(3) Benefit amounts determined under the provisions of this section shall apply only to those individuals whose benefit years begin subsequent to the effective date of each newly computed maximum benefit amount. No redetermination of benefit amounts already established shall be required by the computation of new maximum benefit amounts.

(4) (a) There shall be deducted from the weekly benefit amount that part of wages payable to an individual with respect to a week that is in excess of twenty-five percent of the weekly benefit amount, and the weekly benefit amount resulting shall be computed to the next lower multiple of one dollar.

(b) (I) Notwithstanding subsection (4)(a) of this section, on and after July 14, 2020, and for two calendar years thereafter, there shall be deducted from the weekly benefit amount that part of wages payable to an individual with respect to a week that is in excess of fifty percent of the weekly benefit amount, and the weekly benefit amount resulting shall be computed to the next lowest multiple of one dollar.

(II) This subsection (4)(b) is repealed, effective September 1, 2022.

(5) (a) There shall be deducted from the weekly benefit amount child support intercept payments calculated under paragraphs (b) to (h) of this subsection (5).

(b) An individual filing a new claim for unemployment compensation shall, at the time of filing such claim, disclose whether or not the individual owes child support obligations. If any such individual discloses that he owes child support obligations and is determined to be eligible for unemployment compensation, the division shall notify the state or local child support enforcement agency enforcing such obligation that the individual has been determined to be eligible for unemployment compensation.

(c) The division shall deduct and withhold from any unemployment compensation payable to an individual that owes child support obligations:

(I) The amount specified by the individual to the division to be deducted and withheld under this subsection (5), if neither subparagraph (II) of this paragraph (c) nor subparagraph (III) of this paragraph (c) is applicable; or

(II) The amount, if any, determined pursuant to an agreement submitted to the division under section 454(20)(B)(i) of the "Social Security Act", as amended, by the state or local child support enforcement agency, unless subparagraph (III) of this paragraph (c) is applicable; or

(III) Any amount otherwise required to be so deducted and withheld from such unemployment compensation pursuant to legal process, as that term is defined in section 462(e) of the "Social Security Act", as amended, transmitted to the division.

(d) Any amount deducted and withheld under paragraph (c) of this subsection (5) shall be paid by the division to the appropriate state or local child support enforcement agency.

(e) Any amount deducted and withheld under paragraph (c) of this subsection (5) shall be treated as if it were paid to the individual as unemployment compensation and as if it were paid by such individual to the state or local child support enforcement agency in satisfaction of the individual's child support obligations.

(f) For the purposes of this subsection (5), "unemployment compensation" means any compensation payable under articles 70 to 82 of this title, including amounts payable by the division pursuant to an agreement under any federal law providing for compensation, assistance, or allowances with respect to unemployment.

(g) This subsection (5) applies only if appropriate arrangements have been made for reimbursement by the state or local child support enforcement agency for the administrative costs incurred by the division under this section which are attributable to child support obligations being enforced by the state or local child support enforcement agency.

(h) As used in this subsection (5), "child support obligations" includes only those obligations which are being enforced pursuant to a plan described in section 454 of the "Social Security Act", as amended, which has been approved by the secretary of health and human services under part D of Title IV of the "Social Security Act".

(i) As used in this subsection (5), "state or local child support enforcement agency" means any agency of a state or a political subdivision operating pursuant to a plan described in paragraph (h) of this subsection (5).

(6) (a) There shall be deducted from the weekly benefit amount any uncollected overissuance of food stamp coupons calculated under paragraphs (b) to (f) of this subsection (6).

(b) The division shall deduct and withhold from any unemployment compensation payable to an individual that owes an uncollected overissuance of food stamp coupons:

(I) The amount specified by the individual to the division to be deducted and withheld under this subsection (6);

(II) The amount, if any, determined pursuant to an agreement submitted to the division under section 13(c)(3)(A) of the federal "Food Stamp Act", as amended, by the state food stamp agency; or

(III) Any amount otherwise required to be deducted and withheld from such unemployment compensation pursuant to section 13(c)(3)(B) of the federal "Food Stamp Act", as amended.

(c) Any amount deducted and withheld under paragraph (b) of this subsection (6) shall be paid by the division to the appropriate state food stamp agency.

(d) Any amount deducted and withheld under paragraph (b) of this subsection (6) shall for all purposes be treated as if it were paid to the individual as unemployment compensation and then paid by such individual to the state food stamp agency to which the uncollected overissuance of food stamp coupons is owed as repayment for the overissuance.

(e) This subsection (6) applies only if appropriate arrangements have been made for reimbursement by the state food stamp agency for the administrative costs incurred by the division under this section that are attributable to repayment of uncollected overissuances of food stamp coupons owed to the state food stamp agency.

(f) For the purposes of this subsection (6):

(I) "State food stamp agency" means any agency described in section 3(n)(1) of the federal "Food Stamp Act", as amended, that administers the food stamp program established under such federal act within this state.

(II) "Uncollected overissuance" has the meaning provided for the term in section 13(c)(1) of the federal "Food Stamp Act", as amended.

(III) "Unemployment compensation" has the meaning provided for the term in paragraph (f) of subsection (5) of this section.

(7) (a) An individual filing a new claim for unemployment compensation shall, at the time of filing such claim, be advised that:

(I) Unemployment compensation is subject to federal and state income tax;

(II) Requirements exist pertaining to estimated tax payments;

(III) The individual may elect to have federal income tax deducted and withheld from the individual's payment of unemployment compensation at the rate specified in the federal internal revenue code;

(IV) The individual may elect to have Colorado state income tax deducted and withheld from the individual's payment of unemployment compensation at the rate of four percent; and

(V) The individual shall be permitted to change a previously elected withholding status no more than one time during each "benefit year" as that term is defined by section 8-70-111 (1).

(b) Amounts deducted and withheld from unemployment compensation for income tax purposes shall remain in the unemployment compensation fund, created pursuant to section 8-77-101, until transferred to the federal or state taxing authority as a payment of income tax.

(c) The director of the division shall follow all procedures specified by the United States department of labor and the federal internal revenue service pertaining to the deducting and withholding of income tax.

(d) Amounts shall be deducted and withheld under the provisions of this subsection (7) for income tax purposes only after amounts are deducted and withheld for any overpayments, child support obligations, food stamp overissuances, or any other amounts required to be deducted and withheld under articles 70 to 82 of this title.

(8) As used in this section:

(a) "Election judge" has the same meaning as in section 1-6-101 (1).

(b) "Wages" does not include payment made to an election judge for services; except that "wages" includes payment made to an election judge if the payment exceeds the maximum amount permissible pursuant to federal law.

Source: L. 36, 3rd Ex. Sess.: p. 14, § 3. **L. 37:** p. 1250, § 1. **CSA:** C. 167A, § 3. **L. 39:** p. 568, § 1. **L. 41:** p. 762, § 3. **L. 47:** p. 885, § 1. **L. 49:** p. 720, § 1. **L. 53:** p. 628, §§ 1, 2. **CRS 53:** § 82-4-2. **L. 57:** p. 516, §§ 2, 3. **L. 59:** pp. 560, 564, §§ 1, 6. **L. 63:** pp. 666, 683, §§ 1, 11. **C.R.S. 1963:** § 82-4-2. **L. 69:** pp. 669, 682, §§ 4, 1. **L. 73:** p. 958, § 4. **L. 79:** (1) amended, p. 345, § 5, effective July 1; (2) amended, p. 345, § 5, effective September 30. **L. 82:** (5) added, p. 235, § 1, effective July 1. **L. 83:** (4) amended, p. 435, 2042, § 3, effective October 1; (1) and (2) amended, p. 2042, § 5, effective January 1, 1984. **L. 85:** (5)(c)(III) amended, p. 587, § 1, effective July 1. **L. 86:** (2) amended, p. 542, § 3, effective July 1. **L. 87:** (4) amended, p. 409, § 3, effective May 16. **L. 94:** (6) added, p. 2060, § 1, effective July 1. **L. 96:** (7) added, p. 381, § 5, effective January 1, 1997. **L. 98:** (4) amended, p. 88, § 1, effective March 23. **L. 2009:** (1)

amended, (SB 09-247), ch. 405, p. 2228, § 2, effective July 1. **L. 2020:** (4) amended and (8) added, (SB 20-207), ch. 296, p. 1470, § 2, effective July 14.

Editor's note: Section 462 of the "Social Security Act", referenced in subsection (5)(c)(III), was repealed in 1996. For the current definition of "legal process" in such act, see 42 U.S.C. § 659 (i)(5).

Cross references: (1) For section 454 of the "Social Security Act", see 42 U.S.C. § 654; for part D of Title IV of the act, see 42 U.S.C. § 651 et seq.

(2) For section 13 of the "Food Stamp Act", see 7 U.S.C. § 2022; for section 3 of the act, see 7 U.S.C. § 2012.

8-73-103. Benefits for partial unemployment - repeal. (1) (a) Each eligible individual who is partially unemployed shall be paid a partial benefit. Partial benefits shall be in an amount equal to the eligible individual's weekly benefit amount for total unemployment, minus that part of wages payable to the individual with respect to the week that is in excess of twenty-five percent of the individual's weekly benefit amount as computed in accordance with section 8-73-102, and the benefit payment resulting shall be computed to the next lower multiple of one dollar.

(b) (I) Notwithstanding subsection (1)(a) of this section, on and after July 14, 2020, and for two calendar years thereafter, partial benefits shall be in an amount equal to the eligible individual's weekly benefit amount for total unemployment, minus that part of wages payable to the individual with respect to the week that is in excess of fifty percent of the individual's weekly benefit amount as computed in accordance with section 8-73-102, and the benefit payment resulting shall be computed to the next lower multiple of one dollar.

(II) This subsection (1)(b) is repealed, effective September 1, 2022.

(2) The director of the division is authorized to prescribe regulations governing benefits for partial unemployment for other pay periods which will result in benefit amounts for such periods proportionate to the amounts prescribed in this article for weekly pay periods.

Source: L. 36, 3rd Ex. Sess.: p. 14, § 3. **L. 37:** p. 1250, § 1. **CSA:** C. 167A, § 3. **L. 39:** p. 568, § 1. **L. 41:** p. 762, § 3. **CRS 53:** § 82-4-3. **C.R.S. 1963:** § 82-4-3. **L. 73:** p. 959, § 5. **L. 81:** (1) amended, p. 484, § 6, effective July 1. **L. 83:** (1) amended, p. 435, § 4, effective October 1. **L. 86:** (2) amended, p. 488, § 86, effective July 1. **L. 2020:** (1) amended, (SB 20-207), ch. 296, p. 1470, § 3, effective July 14.

8-73-104. Duration of benefits. (1) The division shall compute wage credits for each individual by crediting him with the wages for insured work paid during each quarter of such individual's base period or twenty-six times the current maximum benefit amount, whichever is the lesser. Any otherwise eligible individual shall be entitled during any benefit year to a total amount of benefits equal to twenty-six times his weekly benefit amount or one-third of his wage credits for insured work paid during his base period, whichever is the lesser; except that benefits based on seasonal wages may be paid only for unemployment during the normal seasonal period of the seasonal industry in which such wage credits were earned and only to seasonal workers who are available for work in such seasonal industry, and the total thereof shall not exceed one-

third of such individual's wages paid for insured seasonal work during the corresponding normal seasonal period of his base period. For the purposes of this section, wages shall be counted as "wages for insured work" for benefit purposes with respect to any benefit year only if such benefit year begins subsequent to the date on which the employing unit by whom the wages were paid has satisfied the conditions of section 8-70-113, 8-76-104, or 8-76-107, with respect to becoming an employer.

(2) (a) Repealed.

(b) (I) Notwithstanding any other provision of this section or of section 8-76-102.5 (11)(a), benefits based upon regular part-time employment may not be charged to the experience rating account of the regular part-time employer until the claimant has become separated from the regular part-time employment, and then only for those weeks of unemployment that occur after the separation.

(II) This paragraph (b) is effective December 31, 2012.

Source: L. 36, 3rd Ex. Sess.: p. 14, § 3. **L. 37:** p. 1250, § 1. **CSA:** C. 167A, § 3. **L. 39:** p. 568, § 1. **L. 41:** p. 762, § 3. **L. 43:** p. 600, § 1. **L. 47:** p. 885, § 1. **L. 49:** p. 720, § 1. **L. 53:** p. 629, § 3. **CRS 53:** § 82-4-4. **L. 57:** p. 517, § 4. **L. 59:** pp. 561, 564, §§ 2, 6. **L. 63:** p. 667, § 2. **C.R.S. 1963:** § 82-4-4. **L. 65:** pp. 831, 847, §§ 3, 11. **L. 72:** pp. 448, 609, §§ 1, 122. **L. 76:** (1) amended, p. 338, § 9, effective October 1. **L. 77:** (1) amended, p. 482, § 1, effective October 1. **L. 85:** (1) amended, p. 366, § 2, effective July 1. **L. 90:** (1) amended, p. 602, § 5, effective April 3. **L. 2011:** (2) amended, (HB 11-1288), ch. 212, p. 928, § 11, effective July 1. **L. 2012, 1st Ex. Sess.:** (2)(a)(II) amended, (HB 12S-1002), ch. 2, p. 2427, § 6, effective June 1.

Editor's note: Subsection (2)(a)(II) provided for the repeal of subsection (2)(a), effective December 31, 2012. (See L. 2012, p. 2427.)

8-73-105. Part-time workers. (1) As used in this section, "part-time worker" means an individual whose normal work is in an occupation in which his services are not required for the customary scheduled full-time hours prevailing in the establishment in which he is employed or who, owing to personal circumstances, does not customarily work the customary scheduled full-time hours prevailing in the establishment in which he is employed.

(2) The director of the division shall prescribe fair and reasonable general rules applicable to part-time workers for determining their full-time weekly wage and the total wages for employment by employers required to qualify such workers for benefits. The rules, with respect to such part-time workers, shall supersede any inconsistent provisions of articles 70 to 82 of this title but, so far as practicable, shall secure results reasonably similar to those provided in the analogous provisions of articles 70 to 82 of this title.

Source: L. 36, 3rd Ex. Sess.: p. 14, § 3. **L. 37:** p. 1250, § 1. **CSA:** C. 167A, § 3. **L. 39:** p. 568, § 1. **L. 41:** p. 762, § 3. **CRS 53:** § 82-4-5. **C.R.S. 1963:** § 82-4-5. **L. 86:** (2) amended, p. 488, § 87, effective July 1.

8-73-105.3. Temporary employees. (1) As used in this section, "temporary employee" means an individual who is employed by an employer on an irregular schedule and who has agreed to work for the employer on an as-needed or on-call basis.

(2) At the time of hire as a temporary employee, an employer must give the employee notice that the employee is required to contact or notify the employer upon completion of an assignment and to be available to work, as agreed upon at the time of hire, during a specified period of time, on specified dates, or upon call by the employer on an as-needed basis.

(3) If a temporary employee receives the notice pursuant to subsection (2) of this section and does not contact or notify the employer upon completion of an assignment in compliance with the notice and is not available to work at the agreed-upon times, the employee is deemed to have voluntarily terminated employment for the purpose of determining benefits pursuant to section 8-73-108 (5)(e).

(4) If a temporary employee who agrees to work on an as-needed basis receives the notice pursuant to subsection (2) of this section and refuses all work within three separate pay periods when contacted by the employer, the temporary employee is deemed to have voluntarily terminated employment for reasons that may or may not allow an award of benefits pursuant to section 8-73-108.

(5) Repealed.

Source: L. 95: Entire section added, p. 776, § 1, effective July 1. **L. 2001:** (5) repealed, p. 43, § 1, effective March 11.

8-73-105.5. Employment by temporary help contracting firm. (1) (a) For the purposes of this section, "temporary help contracting firm" means any person who is in the business of employing individuals and, for compensation from a third party, providing those individuals to perform work for the third party, under the supervision of the third party.

(b) Repealed.

(2) Employment with a temporary help contracting firm is characterized by a series of limited-term assignments of an employee to a third party, based on an agreement between the temporary help contracting firm and the third party. A separate employment agreement exists between the temporary help contracting firm and each individual it hires as an employee. Completion of an assignment for a third party by an employee employed by a temporary help contracting firm does not, in itself, terminate the employment agreement between the temporary help contracting firm and the employee.

(3) (Deleted by amendment, L. 94, p. 637, § 3, effective July 1, 1994.)

(4) At the time of hire a temporary help contracting firm shall provide written notice to each employee which clearly states that the employee is required to contact the firm upon completion of an assignment.

(5) If an employee of a temporary help contracting firm receives the written notice pursuant to subsection (4) of this section and does not contact the firm upon completion of an assignment in compliance with such written notice, such employee shall be held to have voluntarily terminated employment for purposes of determining benefits pursuant to section 8-73-108 (5)(e)(XXII).

(6) If an employee of a temporary help contracting firm contacts the firm upon completion of an assignment in compliance with subsection (4) of this section and does not continue employment in a new assignment, such employee shall be considered separated under the provisions of section 8-73-108 (4)(a).

Source: L. 90: Entire section added, p. 606, § 2, effective April 16. **L. 94:** Entire section amended, p. 637, § 3, effective July 1. **L. 95:** (1) amended, p. 776, § 2, effective July 1. **L. 2001:** (1)(b) repealed, p. 43, § 2, effective March 11.

8-73-106. Seasonal industry - definitions. (1) (a) As used in articles 70 to 82 of this title, "seasonal industry" means an industry or functionally distinct occupation within an industry which, because of climatic conditions or the seasonal nature of the employment, customarily employs workers only during a regularly recurring period or periods of less than twenty-six weeks in a calendar year. "Nonseasonal period or periods" means the time within a calendar year other than the seasonal period or periods. "Seasonal worker" means an individual who has been paid seasonal wages by a seasonal employer for seasonal work only during the designated seasonal period.

(b) During the nonseasonal period or periods, the seasonal employer may employ not more than twenty-five percent of the total number of workers in each functionally distinct occupation that were employed in the previous seasonal period or periods without losing the seasonal designation for that functionally distinct occupation, so long as the seasonal employer does not employ any workers in the designated seasonal occupations during a consecutive forty-five-day period at any time following the seasonal period or periods. A worker who performs services for the same seasonal employer outside the employer's designated seasonal period or periods shall not be considered a seasonal worker for any period, and all wages paid by the seasonal employer to such worker shall be considered nonseasonal wages. If a seasonal worker performs services for the same seasonal employer outside the employer's designated seasonal period or periods thereby resulting in the loss of the worker's seasonal status and if such worker is not thereafter employed by such employer between any two following designated seasonal periods, the worker may thereafter be reemployed by such seasonal employer and regain his status as a seasonal worker.

(2) The director of the division shall prescribe rules and regulations applicable to seasonal industries for determining their normal seasonal period or periods and seasonal workers, as such terms are defined in subsection (1) of this section.

(3) Upon written application filed with the division by an employer, the director of the division shall determine and may thereafter redetermine, from time to time in accordance with the rules and regulations of the division, the normal seasonal period during which workers are ordinarily employed for the purpose of carrying on seasonal operations in the seasonal industry in which such employer is engaged. Such determination shall be made by said director within ninety days after the filing of such application by an employer with the division. Until such determination by the director of the division, no occupation or industry shall be deemed seasonal. Any employing unit affected by such seasonal determination may appeal the determination in accordance with section 8-76-113. For the purpose of determining whether an individual is a seasonal worker and the duration of such individual's benefits, the determination by said director of the normal seasonal period of a seasonal industry shall be applicable to the filing of the quarterly report of wages in the calendar quarter commencing after the date of such determination.

(4) Repealed.

Source: L. 36, 3rd Ex. Sess.: p. 14, § 3. **L. 37:** p. 1250, § 1. **CSA:** C. 167A, § 3. **L. 39:** p. 568, § 1. **L. 41:** p. 762, § 3. **CRS 53:** § 82-4-6. **L. 59:** p. 566, § 1. **L. 63:** p. 668, § 3. **C.R.S. 1963:** § 82-4-6. **L. 67:** p. 282, § 1. **L. 69:** p. 660, § 247. **L. 72:** pp. 448, 609, §§ 2, 123. **L. 73:** p. 959, § 6. **L. 76:** (3) amended, p. 339, § 10, effective October 1. **L. 79:** (1) and (3) amended, p. 346, § 6, effective September 30. **L. 85:** (1) amended, p. 370, § 1, effective March 30. **L. 86:** (2) and (3) amended, p. 488, § 88, effective July 1. **L. 90:** (4) added, p. 610, § 1, effective April 3; (3) amended, p. 607, § 4, effective April 16. **L. 94:** (4) repealed, p. 639, § 4, effective July 1.

8-73-107. Eligibility conditions - penalty. (1) Any unemployed individual shall be eligible to receive benefits with respect to any week only if the division finds that:

(a) (I) He or she has registered for work at and thereafter has continued to report at an employment office in accordance with such regulations as the director of the division may prescribe; except that the director of the division, by regulation, may waive or alter either or both of the requirements of this subparagraph (I) as to individuals attached to regular jobs and as to such other types of cases or situations with respect to which the director of the division finds that compliance with such requirements would be oppressive, or would be inconsistent with the purposes of articles 70 to 82 of this title, but that no such regulation shall conflict with section 8-73-101.

(II) Without in any way limiting the authority of the director of the division to waive or alter the requirements of subparagraph (I) of this paragraph (a), during the period of the national economic recession that began in 2008, in order to assist unemployed individuals in being available for appropriate jobs and to assist employers in having available trained employees, the director of the division shall waive or alter such requirements so that individuals attached to regular jobs do not have to comply with the requirements of subparagraph (I) of this paragraph (a) for a period of twenty-six weeks.

(b) He has made a claim for benefits in accordance with the provisions of section 8-74-101;

(c) (I) The individual is able to work and is available for all work deemed suitable pursuant to the provisions of section 8-73-108, and, with respect thereto:

(A) Decisions of the division regarding the ability of the claimant to work, the availability of the claimant for work, and the claimant's active search for work may be appealed by the claimant or by any employer whose account may be charged with any benefits paid pursuant to such decision, if the appeal is received within twenty calendar days, as defined in section 8-70-103 (5), after the date on the notice of any such decision;

(B) A potentially chargeable employer may protest on the basis of inability to work, nonavailability for work, or failure to search for work within fifteen calendar days after the date on which he discovers such a condition to exist, within thirty days after the date on which payment was made for the week during which the claimant is alleged to have been unable to work or unavailable for work, or within sixty calendar days after the mailing date of the report of quarterly benefit charges, whichever comes first;

(C) No individual shall be considered available for work during any week in which he has no reasonable expectation of securing employment in his usual occupation or in an occupation for which he is reasonably qualified as a result of his movement to an area;

(D) No individual shall be denied benefits because of nonavailability or failure to make an active search for work solely due to his compliance with a summons to report for jury duty.

Remuneration received in connection with such duty shall not be considered wages, as defined in section 8-70-141 (1)(a), and the individual's weekly benefit amount shall not be reduced as prescribed in section 8-73-102 (4).

(E) If an individual left employment because of health-related reasons, the division may require a written medical statement issued by a licensed practicing physician or licensed practicing physician assistant authorized under section 12-240-107 (6) addressing any matters related to health.

(II) Nothing in this paragraph (c) shall prevent the division from reviewing and redetermining any decision at any time if the redetermination is based upon facts not known to the division at the time of its original decision.

(d) The individual has been either totally or partially unemployed for a waiting period of one week. No benefits are payable for the waiting period. No week shall be counted as a week of unemployment for the purposes of this paragraph (d):

(I) Unless it occurs within the benefit year which includes the week with respect to which he claims payment of benefits;

(II) If benefits have been paid with respect thereto;

(III) Unless the individual was eligible for benefits with respect thereto under provisions of sections 8-73-107 to 8-73-112;

(IV) Unless total wages earned for the week are less than the weekly benefit amount;

(e) The individual has during his or her base period been paid wages for insured work equal to not less than forty times such individual's weekly benefit amount or two thousand five hundred dollars, whichever is greater. For the purposes of this paragraph (e), wages shall be counted as "wages for insured work" for benefit purposes with respect to any benefit year only if such benefit year comes subsequent to the date on which the employing unit by whom such wages were paid has satisfied the conditions of sections 8-70-113, 8-76-104, and 8-76-107 with respect to becoming an employer.

(f) His total wages earned for the week are less than his weekly benefit amount;

(g) (I) He or she is actively seeking work. In determining whether the claimant is actively seeking work, the division, taking notice of the customary methods of obtaining work in the claimant's usual occupation, or any occupation for which he or she is reasonably qualified, and the current condition of the labor market, shall consider, but shall not be limited to a consideration of, whether, during said week, the claimant followed a course of action that was reasonably designed to result in his or her prompt reemployment in suitable work.

(II) This paragraph (g) shall not apply to a person determined eligible to receive benefits pursuant to section 8-73-108 (4)(r)(I) for the first fifteen business days after a claim for benefits is filed if compliance with this paragraph (g) would:

(A) Make it more difficult for the person to escape domestic abuse; or

(B) Unfairly penalize a person who is or has been a victim of domestic abuse or is at further risk of domestic abuse.

(h) The individual has furnished the division with separation and other reports containing the information deemed necessary by the division to determine the individual's eligibility for benefits, but this provision shall not apply if the individual proves to the satisfaction of the division that he or she had good cause for failing to furnish such reports. The eligibility of any individual shall not be affected by the refusal or failure of an employer to furnish reports concerning separation and employment as required by articles 70 to 82 of this

title and the rules pursuant thereto, and the division shall determine the eligibility of such individual upon the basis of such information it may obtain; and any employer who fails or refuses to furnish reports concerning separation and employment shall cease to be an interested party to the separation issue directly related to determinations made in accordance with section 8-73-108 (4) and (5)(e). For each instance of failure to furnish the division with such reports, the employer, unless good cause to the contrary is shown to the satisfaction of the division, may be assessed a penalty of twenty-five dollars, which shall be collected in the same manner as premiums due under articles 70 to 82 of this title.

(i) It is not, in whole or in part, within a period during which the worker is not working due to a disciplinary suspension as provided in the contract of employment;

(j) Such individual is not absent from work due to an authorized and approved voluntary leave of absence.

(2) An individual who has received compensation during the individual's benefit year is required to have worked for an employer as defined in section 8-70-113 since the beginning of such year and to have earned at least two thousand dollars as remuneration for such employment in order to qualify for compensation in the next benefit year.

(3) For the purpose of this subsection (3), "educational institution" includes the Colorado school for the deaf and the blind; except that such term does not include a headstart program that is not a part of a school administered by a board of education because such headstart employees are not subject to the same employment conditions as other employees of the school. Compensation is payable on the basis of services to which sections 8-70-119, 8-70-125, and 8-70-125.5 apply in the same amount, on the same terms, and subject to the same conditions as compensation payable on the basis of other services subject to articles 70 to 82 of this title; except that:

(a) With respect to services in an instructional, research, or principal administrative capacity for an educational institution, compensation shall not be payable based on such services for any week commencing during the period between two successive academic years or terms (or when an agreement provides instead for a similar period between two regular but not successive terms, during such period) to any individual if such individual performs such services in the first of such academic years or terms and if there is a contract or reasonable assurance that such individual will perform services in any such capacity for any educational institution in the second of such academic years or terms;

(b) With respect to services in any other capacity, for an educational institution compensation payable on the basis of such services shall be denied to any individual for any week which commences during a period between two successive academic years or terms or periods described in paragraph (c) of this subsection (3) if such individual performs such services in the first of such academic years, terms, or periods and there is a reasonable assurance that such individual will perform such services in the second of such academic years, terms, or periods; except that, if compensation is denied to any individual for any week under this paragraph (b) and such individual was not offered, an opportunity to perform such services for the educational institution for the second of such academic years, terms, or periods, such individual shall be entitled to a retroactive payment of the compensation for each week for which the individual filed a timely claim for compensation and for which compensation was denied solely by reason of this paragraph (b);

(c) With respect to any services described in paragraph (a) or (b) of this subsection (3), compensation payable on the basis of such services shall be denied to any individual for any week which commences during an established and customary vacation period or holiday recess if such individual performs such services in the period immediately before such vacation period or holiday recess and if there is a reasonable assurance that such individual will perform such services in the period immediately following such vacation period or holiday recess;

(d) With respect to any services described in paragraph (a) or (b) of this subsection (3), compensation payable on the basis of services in any such capacity shall be denied as specified in paragraph (a), (b), or (c) of this subsection (3) to any individual who performed such services in an educational institution while in the employ of an educational service agency. For the purpose of this paragraph (d), the term "educational service agency" means a governmental agency or governmental entity, such as that created by the "Boards of Cooperative Services Act of 1965", article 5 of title 22, C.R.S., which is established and operated exclusively for the purpose of providing such services to one or more educational institutions.

(e) With respect to any services described in paragraph (a) of this subsection (3), compensation payable on the basis of such services shall be denied to any individual for any week during a period of paid or unpaid sabbatical or other voluntary leave provided for in the individual's contract if such individual performs such services in the academic year or term immediately preceding the beginning of sabbatical or other voluntary leave and if there is a contract or reasonable assurance that such individual will perform such services in the academic year or term following the end of the sabbatical or other voluntary leave;

(f) With respect to services to which section 8-70-140 applies, if such services are provided to or on behalf of an educational institution, benefits shall not be payable under the same circumstances and subject to the same terms and conditions as described in paragraphs (a) to (d) of this subsection (3).

(4) (a) Notwithstanding any other provision in this section, no otherwise eligible individual shall be denied benefits for any week because he is in training with the approval of the division, nor shall such individual be denied benefits by reason of the application of provisions in paragraph (c) of subsection (1) of this section relating to availability for work, the provisions of paragraph (g) of subsection (1) of this section relating to active search for work, or the provisions of section 8-73-108 relating to failure to apply for, or a refusal to accept, suitable work with respect to any week in which he is in training with the approval of the division.

(b) (Deleted by amendment, L. 98, p. 89, § 3, effective March 23, 1998.)

(5) Repealed.

(6) Benefits shall not be paid to any individual on the basis of any services, substantially all of which consist of participating in sports or athletic events or training or preparing to so participate, for any week which commences during the period between two successive sport seasons (or similar periods) if such individual performed such services in the first of such seasons (or similar periods) and there is a reasonable assurance that such individual will perform such services in the latter of such seasons (or similar periods).

(7) (a) Benefits shall not be payable on the basis of services performed by an alien unless such alien is an individual who was lawfully admitted for permanent residence at the time such services were performed, or was lawfully present for purposes of performing such services, or was permanently residing in the United States under color of law at the time such services were performed. For purposes of the "Colorado Employment Security Act":

(I) An alien shall be considered to be "lawfully admitted for permanent residence" only if the alien has been granted status under section 101 of the "Immigration and Nationality Act", 8 U.S.C. sec. 1101 (a)(20);

(II) An alien shall be considered to be "lawfully present for purposes of performing services" only if the alien is an alien who possesses work authorization or has been lawfully admitted to temporary residence under section 245 (a) or section 210 of the "Immigration and Nationality Act", 8 U.S.C. sec. 1255(a) and 8 U.S.C. sec. 1160, respectively;

(III) An alien shall be considered to be "permanently residing in the United States under color of law" only if the alien is:

(A) An alien admitted as a refugee under section 207 of the "Immigration and Nationality Act", 8 U.S.C. sec. 1157, in effect after March 31, 1980;

(B) An alien granted asylum by the attorney general of the United States under section 208 of the "Immigration and Nationality Act", 8 U.S.C. sec. 1158;

(C) An alien granted a parole into the United States for an indefinite period under section 212 (d)(5)(B) of the "Immigration and Nationality Act", 8 U.S.C. sec. 1182 (d)(5)(B);

(D) An alien granted the status as a conditional entrant refugee under section 203 (a)(7) of the "Immigration and Nationality Act", 8 U.S.C. sec. 1153 (a)(7), in effect prior to March 31, 1980; or

(E) An alien who has been formally granted deferred action status by the immigration and naturalization service, or any successor agency.

(b) Any data or information required of individuals applying for benefits to determine whether benefits are not payable to them because of their alien status shall be uniformly required from all applicants for benefits.

(c) In the case of an individual whose application for benefits would otherwise be approved, no determination that benefits to such individual are not payable because of his alien status shall be made except upon a preponderance of the evidence.

Source: L. 36, 3rd Ex. Sess.: p. 18, § 4. **L. 37:** p. 1254, § 2. **CSA:** C. 167A, § 4. **L. 39:** p. 570, § 2. **L. 41:** p. 765, § 4. **L. 43:** p. 601, § 2. **L. 45:** p. 712, § 1. **L. 47:** p. 886, § 2. **L. 49:** p. 722, § 2. **L. 51:** p. 807, § 2. **L. 53:** p. 623, §§ 2-4. **CRS 53:** § 82-4-8. **L. 55:** p. 533, § 1. **C.R.S. 1963:** § 82-4-7. **L. 65:** p. 832, § 4. **L. 71:** p. 932, § 7. **L. 73:** p. 959, § 7. **L. 75:** (3) amended, p. 322, § 3, effective June 20. **L. 76:** (3) amended, p. 360, § 2, effective April 20; (3) amended, p. 339, § 11, effective October 1. **L. 77:** (5), (6), and (7) added, p. 463, § 14, effective July 1; (3) repealed, p. 471, § 27, effective January 1, 1978. **L. 79:** (1)(c) and (7)(a) R&RE, (1)(d)(I) amended, (3) RC&RE, and (5) repealed, pp. 346, 347, 356, §§ 7, 8, 9, 25, effective September 30. **L. 81:** (1)(h) amended, p. 492, § 6, effective July 1; (3) amended, p. 511, § 1, effective July 1. **L. 82:** (1)(e) and (2) amended, p. 236, § 3, effective July 1. **L. 83:** (3)(b) amended, p. 436, § 5, effective April 12. **L. 84:** (2) R&RE, p. 317, § 6, effective July 1; (3)(e) amended, p. 323, § 1, effective July 1. **L. 85:** (3)(e) amended, p. 1358, § 4, effective June 28; (1)(h) and (7)(a) amended, p. 366, § 3, effective July 1. **L. 86:** (1)(a) amended, p. 489, § 89, effective July 1; (3)(f) added and IP(7)(a) amended, p. 542, §§ 4, 5, effective July 1. **L. 87:** (4) amended, p. 406, § 1, effective May 16. **L. 89:** (1)(h) and (2) amended, p. 425, § 3, effective July 1. **L. 90:** (1)(c)(I)(A), (1)(c)(I)(D), (1)(e), (2), IP(3) and (3)(f) amended, p. 603, § 6, effective April 3; (7)(a) amended, p. 609, § 7, effective April 16. **L. 92:** (1)(c)(I)(B) and (1)(h) amended, p. 1793, § 2, effective April 10. **L. 98:** IP(1)(d), (2), and (4)(b) amended, p. 89, § 3, effective March 23.

L. 99: (1)(e) amended, p. 634, § 1, effective August 4; (1)(c)(I)(E) and (1)(j) added, p. 396, §§ 1, 2, effective August 15. **L. 2001:** IP(3) amended, p. 1548, § 4, effective December 21, 2000. **L. 2005:** (1)(g) amended, p. 319, § 1, effective August 8. **L. 2007:** IP(1)(c)(I) and (1)(c)(I)(A) amended, p. 802, § 2, effective August 3. **L. 2009:** (1)(a) amended, (SB 09-178), ch. 268, p. 1220, § 1, effective May 18; (1)(h) amended, (HB 09-1363), ch. 363, p. 1883, § 10, effective July 1. **L. 2011:** (7)(a)(III)(E) amended, (HB 11-1303), ch. 264, p. 1149, § 5, effective August 10. **L. 2016:** (1)(c)(I)(E) amended, (SB 16-158), ch. 204, p. 720, § 4, effective August 10. **L. 2019:** (1)(c)(I)(E) amended, (HB 19-1172), ch. 136, p. 1648, § 25, effective October 1.

Editor's note: The federal "Consolidated Appropriations Act, 2001", Pub.L. 106-554, which became law on December 21, 2000, required all states to amend their laws regarding how Indian tribes are treated for unemployment insurance purposes. The 2001 act amending the introductory portion to subsection (3) provided for an effective date of December 21, 2000. (See L. 2001, p. 1550.)

Cross references: For the legislative declaration in SB 16-158, see section 1 of chapter 204, Session Laws of Colorado 2016.

8-73-108. Benefit awards - definitions. (1) (a) In the granting of benefit awards, it is the intent of the general assembly that the division at all times be guided by the principle that unemployment insurance is for the benefit of persons unemployed through no fault of their own; and that each eligible individual who is unemployed through no fault of his own shall be entitled to receive a full award of benefits; and that every person has the right to leave any job for any reason, but that the circumstances of his separation shall be considered in determining the amount of benefits he may receive, and that certain acts of individuals are the direct and proximate cause of their unemployment, and such acts may result in such individuals receiving a disqualification.

(b) A full award of benefits shall be the total amount of benefits computed under sections 8-73-102 and 8-73-104. Benefits payable under the provisions of this section shall be awarded, subject to other applicable provisions of articles 70 to 82 of this title.

(2) Repealed.

(3) (a) (I) The most recent separation and all separations from base period employers, excluding those defined in subparagraph (II) of paragraph (e) of this subsection (3), shall be considered. In the event a claimant has more than one separation from the same adjudicable employer, the most recent separation shall be controlling as to the determination of eligibility for benefits attributable to that employer.

(II) Benefits remaining from a previous full award shall be reduced if a disqualification is granted on the most recent separation from that employer.

(III) Benefits previously reduced due to a disqualification shall become available if a full award is granted on the most recent separation. If a disqualification was previously imposed, then the employee must work ten consecutive workdays for the same employer before a full award may be granted on the most recent separation.

(b) An additional claim filed during an existing benefit year because of a recurrence of unemployment shall require the claimant to report all job separations subsequent to the effective date of the initial claim which may be considered by the division. Those job separations that are

considered shall result in a full award or a disqualification. If a disqualification is imposed on the most recent separation, a ten-week deferral of benefits shall be imposed.

(c) The gross misconduct of an individual causing his discharge from employment shall result in a disqualification of twenty-six weeks. "Gross misconduct" means conduct evincing such willful or wanton disregard of an employer's interests or negligence or harm of such a degree or recurrence as to manifest culpability or wrongful intent, or assault or threatened assault upon supervisors, coworkers, or others at the work site.

(d) Benefits shall not be denied to any individual by reason of cancellation of wage credits or total reduction of his benefit rights for any cause other than discharge for gross misconduct connected with his work, fraud in connection with a claim for benefits, or receipt of disqualifying income.

(e) (I) Benefit payments will be charged against the experience rating accounts of the base period employers in inverse chronological order.

(II) When the total amount of base period wages, as defined in section 8-70-141 (1)(a), paid by a base period employer is less than one thousand dollars:

(A) Such wages shall be included in the computation of wage credits under the provisions of section 8-73-104; and

(B) Benefits paid with respect to such wages shall not be charged against the experience rating account of an employer but will be charged against the fund; and

(C) Separations from such employers, other than the last employer, shall not be adjudicated.

(III) Repealed.

(f) Benefit payments shall not be charged against the experience rating account of an employer and shall be charged against the fund when:

(I) The benefits are paid for unemployment directly caused by a major natural disaster;

(II) The president has declared the event a disaster pursuant to section 102 (2) of the federal "Robert T. Stafford Disaster Relief and Emergency Assistance Act", as amended, 42 U.S.C. sec. 5122(2); and

(III) The benefits are paid to an individual who would have otherwise been eligible for disaster unemployment assistance with respect to that unemployment but for the individual's receipt of unemployment compensation benefits.

(4) **Full award.** An individual separated from a job must be given a full award of benefits if the division determines that any of the following reasons and pertinent related conditions exist. The determination of whether or not the separation from employment must result in a full award of benefits is the responsibility of the division. The following reasons must be considered, along with any other factors that may be pertinent to such determination:

(a) Laid off for lack of work;

(b) (I) The health of the worker is such that the worker is separated from his or her employment and must refrain from working for a period of time that exceeds the greater of the employer's medical leave of absence policy or the provisions of the federal "Family and Medical Leave Act of 1993", if applicable, or the worker's health is such that the worker must seek a new occupation, or the health of the worker or the worker's spouse, partner in a civil union, or dependent child is such that the worker must leave the vicinity of the worker's employment; except that, if the health of the worker or the worker's spouse, partner in a civil union, or dependent child has caused the separation from work, the worker, in order to be entitled to a full

award, must have complied with the following requirements: Informed the worker's employer in writing, if the employer has posted or given actual advance notice of this writing requirement, of the condition of the worker's health or the health of the worker's spouse, partner in a civil union, or dependent child prior to separation from employment and allowed the employer the opportunity to make reasonable accommodations for the worker's condition; substantiated the cause by a competent written medical statement issued by a licensed practicing physician or physician assistant authorized under section 12-240-107 (6) prior to the date of separation from employment when so requested by the employer prior to the date of separation from employment or within a reasonable period thereafter; submitted himself or herself or the worker's spouse, partner in a civil union, or dependent child to an examination by a licensed practicing physician or licensed practicing physician assistant authorized under section 12-240-107 (6) selected and paid by the interested employer when so requested by the employer prior to the date of separation from employment or within a reasonable period thereafter; or provided the division, when so requested, with a written medical statement issued by a licensed practicing physician or licensed practicing physician assistant authorized under section 12-240-107 (6). For purposes of providing the medical statement or submitting to an examination for an employer, "a reasonable period thereafter" includes the time before adjudication by either a deputy or referee of the division. An award of benefits pursuant to this subsection (4)(b)(I) includes benefits to a worker who, either voluntarily or involuntarily, is separated from employment because of pregnancy and who otherwise satisfies the requirements of this subsection (4)(b)(I).

(II) In the event of an injury or sudden illness of the worker that would preclude verbal or written notification of the employer prior to such occurrence, the failure of the worker to notify the employer prior to such occurrence will not in itself constitute a reason for the denial of benefits if the worker has notified the employer at the earliest practicable time after such occurrence. Such notice shall be given no later than two working days following such occurrence unless the worker's physician or physician assistant authorized under section 12-240-107 (6) provides a written statement to the employer within one week after the employer's request that the worker's condition made giving such notice impracticable and substantiating the illness or injury.

(III) Any physician or physician assistant authorized under section 12-240-107 (6) who makes or is present at any examination required under these provisions shall testify as to the results of the physician's or physician assistant's examination; except that no such physician or physician assistant shall be required to disclose any confidential communication imparted to him or her for the purpose of treatment that is not necessary to a proper understanding of the case.

(IV) The off-the-job or on-the-job use of not medically prescribed intoxicating beverages or controlled substances, as defined in section 18-18-102 (5), may be reason for a determination for a full award pursuant to this subsection (4)(b), but only if:

(A) The worker has declared to the division that he or she has an alcohol or substance use disorder;

(B) The worker has substantiated the alcohol or substance use disorder by a competent written medical statement issued by a physician licensed to practice medicine pursuant to article 240 of title 12, or by a licensed physician assistant authorized under section 12-240-107 (6), or has substantiated the successful completion of, or ongoing participation in, a treatment program as described in subsection (4)(b)(IV)(C) of this section within four weeks after the claimant's

admission. The substantiation must be in writing to the division and signed by an authorized representative of the approved treatment program.

(C) A worker who is not affiliated with an approved treatment program must present to the division within four weeks after the date of the medical statement referred to in sub-subparagraph (B) of this subparagraph (IV), substantiation of registration in a program of corrective action that will commence within four weeks after the date of the medical statement and that is provided by an approved private treatment facility or an approved public treatment facility as defined in section 27-81-102 (2) or (3), C.R.S., or by an alcoholics anonymous program. The substantiation shall be in writing to the division and signed by an authorized representative of the approved treatment program.

(D) (Deleted by amendment, L. 2006, p. 653, § 1, effective April 24, 2006.)

(IV.5) Any benefits awarded to the claimant under the provisions of subparagraph (IV) of this paragraph (b) and normally chargeable to the employer will be charged to the fund.

(V) A potentially chargeable employer may notify the division concerning the failure of the worker to participate in or complete an approved program of corrective action to deal with the alcohol or substance use disorder within fifteen calendar days after the date on which he or she discovers the existence of such a disorder. The worker must be given an opportunity to respond to the employer's allegations. The division, upon review of additional information, may modify a prior decision pursuant to subsection (5)(e)(XXIV) of this section.

(c) Unsatisfactory or hazardous working conditions when so determined by the division. In determining whether or not working conditions are unsatisfactory for an individual, the degree of risk involved to his health, safety, and morals, his physical fitness and prior training, his experience and prior earnings, the distance of the work from his residence, and the working conditions of workers engaged in the same or similar work for the same and other employers in the locality shall be considered. For the purpose of this paragraph (c), "hazardous working conditions" means such conditions, as are determined by the division to exist, that could result in a danger to the physical or mental well-being of the worker. In any such determination the division shall consider, but shall not be limited to a consideration of, the following: The safety measures used or the lack thereof and the condition of equipment or lack of proper equipment. No work shall be considered hazardous if the working conditions surrounding a worker's employment are the same or substantially the same as the working conditions generally prevailing among workers performing the same or similar work for other employers engaged in the same or similar type of activity.

(d) A substantial change in the worker's working conditions, said change in working conditions being substantially less favorable to the worker; but requiring a worker to work a different shift shall not be considered a substantial change in working conditions unless such requirement would be a violation of seniority rights which entitle the worker to shift preferential, but in any such case the burden of proving such seniority rights shall rest upon the worker. No change in working conditions shall be considered substantial if it is determined by the division that the conditions prevailing after the change are those generally prevailing for other workers performing the same or similar work.

(e) Unreasonable reduction in the worker's rate of pay as determined by the division. In determining whether or not there has been an unreasonable reduction in the worker's rate of pay, the division shall consider, but shall not be limited to a consideration of, whether or not the reduction in pay was applied by the employer to all workers in the same or similar class or

merely to this individual, the general economic conditions prevailing in the state, the financial condition of the employer involved, and whether or not the reduction in wage was agreed to by other workers employed in the same or similar work. The worker's loss of a shift differential or overtime pay shall not be considered an unreasonable reduction in the worker's rate of pay under this paragraph (e), unless such shift differential or overtime pay was guaranteed by the employer.

(f) (I) Due to the particular nature of the building and construction industry, construction workers who quit a construction job to accept a different construction job in any of the following circumstances:

(A) Quitting within thirty days immediately prior to the established termination date of the job quit; and at the time of quitting, the construction worker had been offered and had accepted another construction job and the specific starting date of the new job was within thirty days from the date of quitting the prior job; and the new job offered employment for a longer period of time than remained available on the job quit unless the new job was terminated by a contract cancellation; or

(B) Unsatisfactory working conditions with respect to the distance of his work from his residence when so determined by the division; or

(C) Quitting a construction job that is outside the state of Colorado in order to accept a construction job within the state of Colorado, if such construction worker has maintained a residence in this state; or

(D) Leaving a job to comply with a condition of an apprenticeship assignment of an employer, which condition was imposed to meet the conditions of a joint apprenticeship or other apprenticeship program which is in accordance with requirements for programs registered with the federal government; or

(E) Quitting a job outside the worker's regular apprenticeable trade to return to work in his or her regular apprenticeable trade. For purposes of this paragraph (f), a "regular apprenticeable trade" is a skilled trade or occupation in the construction industry in which, by longstanding and recognized practice of a significant segment of the industry, a worker generally must complete a period of apprenticeship or training pursuant to a joint apprenticeship or other apprenticeship program which is in accordance with requirements for programs registered with the federal government. A worker may have more than one regular apprenticeable trade.

(II) If the provisions of either sub-subparagraph (A), (B), (C), (D), or (E) of subparagraph (I) of this paragraph (f) are met, any benefits normally chargeable to the employer for whom the employee worked immediately prior to accepting the new job will be charged to the fund. Benefits shall not be awarded pursuant to this paragraph (f) unless the worker has subsequently separated from the new job under conditions which would result in a full award under this subsection (4).

(g) After being given the choice by his employer between being terminated, furloughed, or laid off and replacing another worker, the worker has elected to accept a termination, furlough, or layoff;

(h) Quitting employment because of a violation of the written employment contract by the employer; except that before such quitting the worker must have exhausted all remedies provided in such written contract for the settlement of disputes before quitting his job;

(i) Being discharged from employment without the employer informing either the worker or the division, after a request from the division as to the reason for the discharge;

(j) Being physically or mentally unable to perform the work or unqualified to perform the work as a result of insufficient educational attainment or inadequate occupational or professional skills. In cases where an individual quits because of physical or mental inability to perform the work because of domestic abuse, any award of benefits will be made in accordance with paragraph (r) of this subsection (4).

(k) Refusing with good cause to work overtime without reasonable advance notice. Good cause as used in this paragraph (k) shall be restricted to reasonable, compelling personal reasons as determined by the division affecting either the worker or the worker's immediate family.

(l) Being instructed or requested to perform a service or commit an act which is in violation of an ordinance or statute;

(m) Involuntary retirement in accordance with company policy or at the volition of the employer;

(n) Quitting employment under conditions which would not have resulted in a denial of benefits under the provisions of paragraph (b) of subsection (5) of this section;

(o) Quitting employment because of personal harassment by the employer not related to the performance of the job;

(p) (I) Business closure because the employer is, or was, a member of the military reserves or National Guard and was called to active military duty.

(II) Any benefits awarded to the claimant under the provisions of subparagraph (I) of this paragraph (p) and normally chargeable to the employer will be charged to the fund.

(q) Repealed.

(r) (I) **[*Editor's note: This version of subsection (4)(r)(I) is effective until January 1, 2021.*]** Separating from a job because of domestic violence may be reason for a determination for a full award if:

(A) The worker reasonably believes that his or her continued employment would jeopardize the safety of the worker or any member of the worker's immediate family and provides the division with substantiating documentation as described in sub-subparagraph (B) or (C) of this subparagraph (I); or

(B) The worker provides the division with an active or recently issued protective order or other order documenting the domestic violence or a police record documenting recent domestic violence; or

(C) The worker provides the division with a statement substantiating recent domestic violence from a qualified professional from whom the worker has sought assistance for the domestic violence, such as a counselor, shelter worker, member of the clergy, attorney, or health worker.

(r) (I) **[*Editor's note: This version of subsection (4)(r)(I) is effective January 1, 2021.*]** Separating from a job because of domestic violence may be reason for a determination for a full award if the worker reasonably believes that the worker's continued employment would jeopardize the safety of the worker or any member of the worker's immediate family.

(II) If the worker does not meet the provisions of subparagraph (I) of this paragraph (r), the worker shall be held to have voluntarily terminated employment for the purposes of determining benefits pursuant to subparagraph (XXII) of paragraph (e) of subsection (5) of this section.

(III) Any benefits awarded to the claimant under the provisions of this paragraph (r) normally chargeable to the employer shall be charged to the fund.

(IV) The director of the division shall adopt rules as necessary to implement and administer this paragraph (r).

(V) **[*Editor's note: This version of subsection (4)(r)(V) is effective until January 1, 2021.*]** As used in this paragraph (r), "immediate family" means the worker's spouse, partner in a civil union, parent, or minor child under eighteen years of age.

(V) **[*Editor's note: This version of subsection (4)(r)(V) is effective January 1, 2021.*]** Repealed.

(s) and (t) Repealed.

(u) (I) Separating from a job due to a change in location of the employment of the worker's spouse or partner in a civil union that necessitates a new place of residence for the worker, either within or outside Colorado, from which it is impractical to commute to the worker's place of employment, and upon arrival at the new place of residence, the individual is in all respects available for suitable work. The director of the division shall adopt rules as necessary to implement and administer this paragraph (u).

(II) Any benefits awarded to the claimant under this paragraph (u) normally chargeable to the employer shall be charged to the fund.

(v) (I) Separating from a job because a member of the worker's immediate family is suffering from an illness that requires the worker to care for the immediate family member for a period that exceeds the greater of the employer's medical leave of absence policy or the provisions of the federal "Family and Medical Leave Act of 1993" if the worker meets the following requirements:

(A) The worker informed his or her employer, if the employer has posted or given actual advance notice of the requirement to so inform the employer, of the condition of the worker's immediate family member; and

(B) The worker provides the division, when requested, a competent statement verifying the condition of the worker's immediate family member.

(II) Separating from a job because a member of the worker's immediate family is suffering from a disability that requires the worker to care for the immediate family member for a period that exceeds the greater of the employer's medical leave of absence policy or the provisions of the federal "Family and Medical Leave Act of 1993" if the worker meets the following requirements:

(A) The worker informed his or her employer, if the employer has posted or given actual advance notice of the requirement to so inform the employer, of the condition of the worker's immediate family member; and

(B) The worker provides the division, when requested, a competent statement verifying the condition of the worker's immediate family member.

(III) The director of the division shall adopt rules as necessary to implement and administer this paragraph (v).

(IV) Any benefits awarded to the claimant under this paragraph (v) normally chargeable to the employer shall be charged to the fund, and any such benefits shall not affect an employer's premium.

(V) **[*Editor's note: This version of the introductory portion to subsection (4)(v)(V) is effective until January 1, 2021.*]** As used in this paragraph (v):

(V) **[*Editor's note: This version of the introductory portion to subsection (4)(v)(V) is effective January 1, 2021.*]** As used in this subsection (4)(v):

(A) "Disability" means all types of verified disability, including, without limitation, mental and physical disabilities; permanent and temporary disabilities; and partial and total disabilities.

(B) "Illness" means verified poor health or sickness.

(C) **[*Editor's note: This version of subsection (4)(v)(V)(C) is effective until January 1, 2021.*]** "Immediate family member" means the worker's spouse, partner in a civil union, parent, or minor child under eighteen years of age.

(C) **[*Editor's note: This version of subsection (4)(v)(V)(C) is effective January 1, 2021.*]** Repealed.

(w) Separating from employment because the employer requires the employee to work in an environment that is not in compliance with:

(I) Federal centers for disease control and prevention guidelines applicable to the employer's business and workplace at the time of the determination;

(II) State and federal laws, rules, and regulations concerning disease mitigation and workplace safety;

(III) An executive order issued by the governor requiring the employer to close the business or modify the operation of the business; and

(IV) Any public health order issued by the department of public health and environment or a local government to close the business or modify the operation of the business;

(x) Separating from employment because the employee is the primary caretaker of:

(I) A child enrolled in a school that is closed due to a public health emergency; or

(II) A family member or household member who is quarantined due to an illness during a public health emergency;

(y) Separating from employment because the employee is immunocompromised and more susceptible to illness or disease during a public health emergency as evidenced by the employee's health care provider.

(5) **Disqualification.** (a) An individual who refuses to accept suitable work or refuses a referral to suitable work shall be disqualified from receiving benefits for a period of twenty weeks beginning with the week in which the refusal occurred, and his total benefits shall be reduced by an amount equal to the number of weeks of disqualification multiplied by his weekly benefit amount. The determination of whether or not an individual has refused to accept suitable work or refused to accept a referral to suitable work shall be the responsibility of the division.

(b) The division shall consider the refusal of suitable work or refusal of referral to suitable work at any time after the last separation from employment that occurred prior to the time of filing the initial claim in determining the direct and proximate cause of the separation. In determining whether or not any work is suitable for an individual, the division shall consider the degree of risk involved to the individual's health, safety, and morals, the individual's physical fitness and prior training, the individual's experience and prior earnings, the individual's length of unemployment and prospects for securing work in the individual's customary occupation, and the distance of the available local work from the individual's residence. Notwithstanding any other provisions of articles 70 to 82 of this title 8, the division shall not deem work to be suitable and shall not deny benefits under articles 70 to 82 of this title 8 to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

(I) If the position offered is vacant due directly to a strike, lockout, or other labor dispute;

(II) If the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality;

(III) If as a condition of being employed the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization;

(IV) The employer requires the individual to work in an environment that is not in compliance with:

(A) Federal centers for disease control and prevention guidelines applicable to the employer's business and workplace at the time of the determination;

(B) State or federal laws, rules, and regulations concerning disease mitigation and workplace safety;

(C) An executive order issued by the governor requiring the employer to close the business or modify the operation of the business; and

(D) Any public health order issued by the department of public health and environment or a local government to close the business or modify the operation of the business;

(V) The individual is the primary caretaker of:

(A) A child enrolled in a school that is closed due to a public health emergency; or

(B) A family member or household member who is quarantined due to an illness during a public health emergency; or

(VI) The employee is immunocompromised and more susceptible to illness or disease during a public health emergency as evidenced by the employee's health care provider.

(c) An award shall not be denied to an individual more than once for failure to apply for or to accept the same or a similar position with the same employer.

(d) Repealed.

(e) Subject to the maximum reduction consistent with federal law, and insofar as consistent with interstate agreements, if a separation from employment occurs for any of the following reasons, the employer from whom such separation occurred must not be charged for benefits which are attributable to such employment and, because any payment of benefits which are attributable to such employment out of the fund as defined in section 8-70-103 (13) is deemed to have an adverse effect on the employer's account in such fund, a payment of such benefits must not be made from such fund:

(I) Quitting employment because of dissatisfaction with prevailing rates of pay in that industry, standard hours of work, standard working conditions, or working conditions which generally prevail for other workers performing the same or similar work, regularly assigned duties, or opportunities for advancement;

(II) Quitting employment because of dissatisfaction with a supervisor with no evidence to indicate that the supervision is other than that reasonably to be expected in the proper performance of work;

(III) Quitting to marry, irrespective of whether or not such marriage occurs subsequent to the separation from employment;

(IV) Quitting to move to another area as a matter of personal preference, unless such move was pursuant to other provisions of subsection (4) of this section;

(V) Quitting to seek other work; or quitting to accept other employment if such employment does not meet the requirements of paragraph (f) of subsection (4) of this section;

(VI) Insubordination such as: Deliberate disobedience of a reasonable instruction of an employer or an employer's duly authorized representative, refusal or failure to obtain, maintain,

or renew licenses, certifications, credentials, conditions, or other professional designations which are necessary to permit the claimant to perform a job, failure to keep in good standing with the union because of nonpayment of dues, or repeated acts of agitation against employer working conditions, pay scale, policies, or procedures; except that orderly action on the part of an employee or through union negotiation shall not be so considered if such action does not interfere with work performance;

(VII) Violation of a statute or of a company rule which resulted or could have resulted in serious damage to the employer's property or interests or could have endangered the life of the worker or other persons, such as: Mistreatment of patients in a hospital or nursing home; serving liquor to minors; selling prescription items without prescriptions from licensed doctors; immoral conduct which has an effect on worker's job status; divulging of confidential information which resulted or could have resulted in damage to the employer's interests; failure to observe conspicuously posted safety rules; intentional falsification of expense accounts, inventories, or other records or reports whether or not substantial harm or injury was incurred; or removal or attempted removal of employer's property from the premises of the employer without proper authority;

(VIII) Off-the-job use of not medically prescribed intoxicating beverages or controlled substances, as defined in section 18-18-102 (5), C.R.S., to a degree resulting in interference with job performance;

(IX) On-the-job use of or distribution of not medically prescribed intoxicating beverages or controlled substances, as defined in section 18-18-102 (5), C.R.S.;

(IX.5) The presence in an individual's system, during working hours, of not medically prescribed controlled substances, as defined in section 18-18-102 (5), C.R.S., or of a blood alcohol level at or above 0.04 percent, or at or above an applicable lower level as set forth by federal statute or regulation, as evidenced by a drug or alcohol test administered pursuant to a statutory or regulatory requirement or a previously established, written drug or alcohol policy of the employer and conducted by a medical facility or laboratory licensed or certified to conduct such tests;

(X) Incarceration after conviction of a violation of any law, or loss of license, certification, credential, condition, or other professional designation that is essential to job performance;

(XI) Theft;

(XII) Assaulting or threatening to assault under circumstances such as to cause a reasonably emotionally stable person to become concerned as to his physical safety;

(XIII) Willful neglect or damage to an employer's property or interests;

(XIV) Rudeness, insolence, or offensive behavior of the worker not reasonably to be countenanced by a customer, supervisor, or fellow worker;

(XV) Careless or shoddy work. In determining whether or not work has been performed in a careless or shoddy manner, the division shall consider the length of time the worker has been performing the work satisfactorily and industry standards for such work. No work shall be considered careless or shoddy that comes within the area of reasonable mistakes and errors normally made by workers engaging in the same or similar work.

(XVI) Failure to properly safeguard, maintain, or account for the employer's property when this obligation is an essential part of the job;

(XVII) Taking unauthorized vacations or failing to return to work as scheduled after an authorized vacation or other leave of absence unless such failure to return to work was caused by circumstances which would result in a full award under the provisions of this section;

(XVIII) Refusal without good cause to work a different shift when no violation of seniority rights, as provided in paragraph (d) of subsection (4) of this section, is involved;

(XIX) Refusal without good cause to accept transfer to another department which does not involve a substantial change in working conditions or a substantial loss in wages;

(XX) For other reasons including, but not limited to, excessive tardiness or absenteeism, sleeping or loafing on the job, or failure to meet established job performance or other defined standards, unless such failure is attributable to factors listed in paragraph (b) of subsection (4) of this section;

(XXI) Lack of transportation. Transportation shall be the responsibility of the worker; if, however, in the opinion of the division, it would have been unreasonable to require the worker to continue in employment with his same employer at a new jobsite substantially less accessible or substantially more distant from the worker's residence than the site at which he had worked, benefits shall not be denied because of his refusal to continue in employment at the new site.

(XXII) Quitting under conditions involving personal reasons, unless the personal reasons were compelling pursuant to other provisions of subsection (4) of this section;

(XXIII) Voluntary retirement;

(XXIV) Failure to participate in or failure to complete an approved program of corrective action to deal with an alcohol or substance use disorder pursuant to subsection (4)(b)(IV) of this section. The determination of whether or not an individual has failed to participate in or complete an approved program of corrective action to deal with an alcohol or substance use disorder is the responsibility of the division. In making such a decision, the division may consider extenuating circumstances for the individual's failure to participate in or complete the approved program of corrective action which would justify a decision not to disqualify the individual from receiving benefits, but only if the individual presents a program of corrective action in accordance with subsection (4)(b)(IV)(C) of this section. The only extenuating circumstances which may be considered by the division are whether the individual suffered an illness not related to the alcohol or substance use disorder or received incapacitating injuries in an accident or whether the death of an immediate family member of the individual occurred which contributed to the failure of the individual to participate in or complete the program of corrective action. The burden of proof that an extenuating circumstance existed lies with the claimant.

(f) Repealed.

(g) If a separation from employment subject to adjudication under this subsection (5) occurs for any of the reasons enumerated in paragraph (e) of this subsection (5) and such separation is the most recent separation from employment, any benefits to which the claimant is entitled shall be deferred for ten weeks. In the event that the last separation does not include wages in the base period and the job separation results in a disqualification, the receipt of any benefits from qualifying employment in the base period shall be deferred for a period of ten weeks from the effective date of the claim. A subsequent initial claim in which such wages are within the base period shall result in the maximum reduction of benefits attributable to such employment consistent with federal law and interstate agreements. Such deferral shall begin with the effective date of the valid initial or additional claim. As used in this paragraph (g), "most

recent separation from employment" means the claimant's last employment prior to filing a valid initial or additional claim.

(h) Repealed.

(6) to (9) Repealed.

Source: L. 36, 3rd Ex. Sess.: p. 19, § 5. **CSA:** C. 167A, § 5. **L. 41:** p. 766, § 5. **L. 49:** p. 722, § 3. **L. 53:** p. 624, § 5. **CRS 53:** § 82-4-9. **L. 57:** p. 517, § 5. **L. 59:** pp. 562, 564, §§ 3, 6. **L. 63:** p. 668, § 4. **C.R.S. 1963:** § 82-4-8. **L. 65:** p. 833, § 5. **L. 69:** p. § 5. **L. 71:** pp. 933-935, 946, 947, §§ 8-11, 19, 2. **L. 76:** (2)(b)(I) amended, p. 299, § 20, May 20; entire section R&RE, p. 339, § 12, effective October 1; (6)(a) amended, p. 358, § 2, effective October 1. **L. 77:** (4)(f)(I) amended, p. 292, § 3, effective May 26; (4)(b)(I) amended and (7)(b) repealed, pp. 480, 481, §§ 1, 2, effective July 1; (2)(b)(I), (2)(b)(II), (2)(b)(III), (2)(b)(IV), (2)(c)(I), and (4)(f)(I) amended, (4)(f)(V) and (4)(f)(VI) added, and (7) repealed, pp. 464, 465, 471, §§ 15, 16, 27, effective July 7; (1), (2)(b)(I), (2)(b)(II), (2)(b)(III), (2)(b)(IV), (2)(c)(I), (3), IP(4), and IP(5) amended and (2)(b)(V), (2)(d)(III), (2)(f), (6), and (7) repealed, pp. 483, 485, §§ 2, 5, effective October 1; (2)(f) repealed, p. 471, § 27, effective January 1, 1978. **L. 79:** (2)(b) amended, p. 1665, § 135, effective July 19; (1), (2), and (3) R&RE, (4)(f)(VI), IP(5), and (5)(d) amended, and (4)(o) and (8) added, pp. 348, 350, 351, §§ 10, 11, 12, effective September 30. **L. 81:** (3)(e)(II)(B) amended, p. 510, § 4, effective July 1; (5) R&RE and (9) added, p. 515, 516, §§ 1, 2, effective July 1. **L. 83:** (3)(e)(II)(B) amended, (3)(e)(II)(C) added, and (3)(e)(III) repealed, pp. 429, 433, §§ 3, 14, effective June 3; (4)(f)(VII) added, p. 2043, § 6, effective October 1. **L. 84:** (1)(a), (3)(b), and IP(4) amended, (5) R&RE, and (2), (8), and (9) repealed, pp. 325, 326, 330, §§ 1, 2, 6, effective July 1; (9)(a)(XXI) added, p. 323, § 2, effective July 1. **L. 85:** (3)(d) amended, p. 361, § 6, effective April 4; (3)(a), (3)(b), IP(3)(e)(II), (3)(e)(II)(C), (4)(n), and (5)(g) amended and (5)(f) and (5)(h) repealed, pp. 367, 369, §§ 4, 7, effective July 1. **L. 86:** (4)(h) amended, p. 543, § 6, effective July 1. **L. 88:** (4)(f)(IV) amended, p. 1429, § 4, effective June 11; (4)(b)(IV) and (4)(b)(V) added, p. 393, § 1, effective July 1; IP(4)(f) amended, p. 394, § 2, effective July 1; (5)(e)(XXIV) added, p. 394, § 3, effective July 1. **L. 89:** (3)(a) and (4)(b)(I) amended, p. 425, § 4, effective July 1; (4)(f) R&RE, p. 427, § 1, effective July 1; (5)(d) repealed, p. 426, § 5, effective July 1; (5)(e)(IV) and (5)(e)(V) amended, p. 428, § 2, effective July 1. **L. 90:** IP(3)(e)(II) amended, p. 603, § 7, effective April 3; (3)(a) R&RE, p. 608, § 5, effective April 16. **L. 91:** (4)(f) amended, p. 1287, § 1, effective May 16; (4)(p) added, p. 1289, § 2, effective May 16. **L. 92:** (4)(b)(I) amended, p. 1794, § 3, effective April 10; (4)(q) added, p. 1822, § 1, effective April 10. **L. 94:** (5)(e)(IX.5) added, p. 1998, § 1, effective July 1. **L. 95:** (4)(b)(I), (4)(b)(II), (4)(b)(IV), (4)(e), (4)(k), (5)(e)(VI), (5)(e)(VII), (5)(e)(IX), and (5)(e)(X) amended, p. 273, § 1, effective July 1. **L. 96:** IP(3)(e)(II) and (3)(e)(II)(B) amended and (3)(f) added, p. 382, § 6, effective April 17. **L. 97:** (4)(b)(IV.5) added, p. 479, § 1, effective April 24. **L. 98:** (4)(q) repealed, p. 91, § 4, effective March 23; IP(4) and (4)(b)(IV) amended, p. 375, § 1, effective April 21. **L. 99:** (4)(j) and (5)(e)(XXII) amended and (4)(r) added, p. 397, § 3, effective August 15. **L. 2003:** (4)(r)(I)(A) amended, p. 1009, § 10, effective July 1. **L. 2005:** (4)(s) added, p. 972, § 1, effective June 2; (4)(r)(I) amended, p. 320, § 2, effective August 8. **L. 2006:** (4)(b)(IV)(D), IP(4)(r)(I), and (4)(s)(I) amended, p. 653, § 1, effective April 24; (3)(f)(II) amended, p. 1489, § 7, effective June 1. **L. 2008:** (4)(s) amended, p. 1721, § 1, effective June 2. **L. 2009:** (4)(t) added, (HB 09-1054), ch. 65, p. 230, § 1, effective March 25; (4)(r)(I), (5)(e)(IV), and (5)(e)(XXII) amended and (4)(r)(IV), (4)(r)(V), (4)(u), and (4)(v) added, (SB 09-247), ch. 405,

pp. 2229, 2231, 2230, §§ 3, 5, 4, effective July 1. **L. 2010:** (4)(b)(IV)(C) amended, (SB 10-175), ch. 188, p. 777, § 5, effective April 29. **L. 2012:** IP(4)(b)(IV), (5)(e)(VIII), (5)(e)(IX), and (5)(e)(IX.5) amended, (HB 12-1311), ch. 281, p. 1609, § 8, effective July 1. **L. 2013:** (4)(b)(I), (4)(r), (4)(s)(I), (4)(t)(I), (4)(u)(I), and (4)(v) amended (SB 13-011), ch. 49, p. 157, § 6, effective May 1. **L. 2016:** (4)(b)(I), (4)(b)(II), (4)(b)(III), and (4)(b)(IV)(B) amended, (SB 16-158), ch. 204, p. 721, § 5, effective August 10. **L. 2018:** IP(4), IP(4)(b)(IV), (4)(b)(IV)(A), (4)(b)(IV)(B), (4)(b)(V), IP(5)(e), and (5)(e)(XXIV) amended, (SB 18-091), ch. 35, p. 379, § 2, effective August 8. **L. 2019:** (4)(b)(I), (4)(b)(II), (4)(b)(III), and (4)(b)(IV)(B) amended, (HB 19-1172), ch. 136, p. 1648, § 26, effective October 1. **L. 2020:** (4)(w), (4)(x), (4)(y), (5)(b)(IV), (5)(b)(V), and (5)(b)(VI) added and IP(5)(b) amended, (SB 20-207), ch. 296, p. 1471, § 4, effective July 14; (4)(r)(I) and IP(4)(v)(V) amended and (4)(r)(V) and (4)(v)(V)(C) repealed, (SB 20-170), ch. 297, p. 1477, § 1, effective January 1, 2021.

Editor's note: (1) Subsection (4)(s)(IV) provided for the repeal of subsection (4)(s), effective July 1, 2018. (See L. 2008, p. 1721.)

(2) Subsection (4)(t)(V) provided for the repeal of subsection (4)(t), effective July 1, 2019. (See L. 2009, p. 230.)

Cross references: For the legislative declaration in SB 16-158, see section 1 of chapter 204, Session Laws of Colorado 2016. For the legislative declaration in SB 18-091, see section 1 of chapter 35, Session Laws of Colorado 2018.

8-73-109. Strikes or other labor disputes - definitions. (1) (a) For purposes of this section:

(I) "Coordinated bargaining" means two or more employers bargaining with a union where there is communication and accommodation among the employers but where each is free to make independent decisions on some or all of the issues being negotiated with the union, either written notification of the intent to engage in coordinated bargaining has been provided to the union or the union has rejected an offer to engage in multiemployer bargaining, and one or more representatives of each employer participating in the coordinated bargaining is present at one or more bargaining sessions.

(II) "Defensive lockout" means a lockout:

(A) Reasonably imposed by an employer to protect materials, property, or operations; or

(B) Where a union or two or more employees that are represented by the union take economic action against an employer and that action causes the employer to lock out; or

(C) By any member of a multiemployer bargaining unit or an employer engaged in coordinated bargaining with one or more other employers if such lockout is initiated because of a strike or labor dispute involving any member of such multiemployer bargaining unit or coordinated bargaining group.

(III) "Lockout" means a refusal by an employer engaged in a dispute with a union to permit its employees to perform employment services.

(IV) "Multiemployer bargaining unit" means any group of two or more employers bargaining with a union as a single unit with the consent of each employer and the union.

(V) "Offensive lockout" means any lockout by an employer that does not satisfy the definition of a defensive lockout.

(VI) "Strike or labor dispute" means the withholding of employment services or other economic action by two or more employees that are represented by the union directed at an employer's business.

(b) An individual is ineligible for unemployment compensation benefits for any week with respect to which the division finds that his or her total or partial unemployment is due to a strike or labor dispute in the factory, establishment, or other premises in which he or she was employed and thereafter for such reasonable period of time, if any, as may be necessary for such factory, establishment, or other premises to resume normal operations.

(c) For the purposes of this section, a lockout by any member of a multiemployer bargaining unit or an employer engaged in coordinated bargaining with another employer shall constitute a labor dispute if such lockout was a defensive lockout. In accordance with paragraph (b) of this subsection (1), the employees laid off in such a defensive lockout are ineligible for unemployment compensation benefits.

(d) However, notwithstanding paragraph (b) of this subsection (1), if his or her unemployment is due to an offensive lockout initiated by the employer, the individual will be determined eligible for unemployment compensation benefits.

(2) This section shall not apply if he is not participating in or financing or directly interested in the strike as an individual or as a member of the grade or class of workers conducting the strike. Participating in a strike shall include refusal to cross the picket line.

(3) If in any case separate branches of work which are commonly conducted as separate businesses in separate premises are conducted in separate departments of the same premises, each such department, for the purposes of this section, shall be deemed to be a separate factory, establishment, or other premises.

Source: L. 36, 3rd Ex. Sess.: p. 19, § 5. **CSA:** C. 167A, § 5. **L. 41:** p. 766, § 5. **L. 49:** p. 722, § 3. **L. 53:** p. 624, § 5. **CRS 53:** § 82-4-11. **L. 63:** p. 678, § 5. **C.R.S. 1963:** § 82-4-9. **L. 75:** (2) R&RE, p. 323, § 1, effective June 29. **L. 99:** (1) amended, p. 682, § 1, effective May 19.

8-73-110. Other remuneration - severance pay - definitions. (1) (a) **[*Editor's note: This version of subsection (1)(a) is effective until January 1, 2021.*]** An individual who is separated from employment and, because of the separation, receives additional remuneration not otherwise referred to in this section and the remuneration is not wages shall have his or her benefits postponed for a number of calendar weeks after separation from employment that is equal to the total amount of the additional remuneration, divided by the individual's usual weekly wage. The postponement required by this subsection (1) shall begin with the calendar week in which the payment was received. If the number of weeks does not equal a whole number, the remainder shall be disregarded. Notwithstanding section 8-73-107 (1)(f), any wages earned by an individual in a calendar week during postponement shall be disregarded.

(a) **[*Editor's note: This version of subsection (1)(a) is effective January 1, 2021.*]** The benefits for an individual who is separated from employment and receives a severance allowance must be postponed for a number of calendar weeks after separation from employment that is equal to the total amount of the severance allowance, divided by the individual's usual weekly wage. The postponement required by this subsection (1) begins with the calendar week in which the severance allowance was received. If the number of weeks does not equal a whole number,

the remainder is disregarded. Notwithstanding section 8-73-107 (1)(f), any wages earned by an individual in a calendar week during postponement are disregarded.

(b) For purposes of this subsection (1), "individual's weekly wage" means an individual's usual or average wage earned in a representative number of calendar weeks.

(1.2) (Deleted by amendment, L. 2009, (HB 09-1076), ch. 408, p. 2248, § 1, effective June 2, 2009.)

(1.5) Repealed.

(1.6) (Deleted by amendment, L. 2009, (HB 09-1076), ch. 408, p. 2248, § 1, effective June 2, 2009.)

(2) An individual who has an award for any week and for which week he, at a subsequent date, received a pay award by reason of a decision of the national labor relations board or other source, as a result of the action taken by the national labor relations board or other source, shall immediately repay to the division such amounts as will reimburse the division for all benefit payments made for the period during which he drew benefits and for which the national labor relations board or other source has caused a payment to be made in the form of back pay award to the claimant; and the employer's account charged for such benefits shall be credited accordingly.

(3) (a) (I) Except as provided in subparagraph (II) of this paragraph (a), an individual's weekly benefit amount shall be reduced (but not below zero) by:

(A) (Deleted by amendment, L. 2009, (HB 09-1076), ch. 408, p. 2248, § 1, effective June 2, 2009.)

(B) The prorated weekly amount of a pension, retirement or retired pay, or annuity that has been contributed to by a base period employer; or

(C) The prorated weekly amount of any other similar periodic or lump-sum retirement payment from a plan, fund, or trust which has been contributed to by a base period employer.

(II) An individual's weekly benefit amount shall not be reduced when an individual receives a lump-sum retirement payment from a plan, fund, or trust that has been contributed to by a base period employer when all of the following conditions are met:

(A) The individual's separation from the employer awarding the payment is not due to a retirement pursuant to section 8-73-108 (4)(m) or (5)(e)(XXIII);

(B) The individual presents proof to the division within fourteen calendar days from date of claim or sixty calendar days of receipt of such lump-sum payment, whichever is later, that this total payment has been reinvested into an individual retirement account or KEOGH plan, as defined in 26 U.S.C. 408 or 26 U.S.C. 401, and such proof establishes that the investment is for a duration of at least one year; except that such lump-sum retirement payment shall not be considered to be received by the individual until the entire balance has been so received. Should a portion of the payment be ineligible for reinvestment and the claimant presents proof that the total eligible portion has been reinvested, only the remaining uninvested portion will be prorated in accordance with subparagraph (III) of this paragraph (a).

(III) When an individual receives a lump-sum retirement payment from a plan, fund, or trust that has been contributed to by a base period employer and the payment does not meet all of the criteria established in subparagraph (II) of this paragraph (a), then the division shall postpone the individual's benefits for a number of calendar weeks equal to the gross amount of the lump-sum payment divided by the individual's full-time weekly wage. However, when an individual receives a lump-sum retirement payment from a plan, fund, or trust as described in this

subparagraph (III), but only reinvests a portion of that payment as required in subparagraph (II) of this paragraph (a), or when an individual otherwise withdraws an amount from a plan, fund, or trust that is less than the total lump sum of the account, then the division shall consider only the portion that is received but not reinvested pursuant to subparagraph (II) of this paragraph (a) in determining the number of calendar weeks that the individual's benefits are postponed.

(IV) An individual's weekly benefit amount shall not be reduced by any amount of a primary insurance benefit under Title II of the federal "Social Security Act" that has been contributed to by a base period employer if the employee has made contributions to federal social security.

(b) (I) An individual who has applied for a retirement payment shall be entitled to receive, if otherwise eligible, the weekly benefit amount reduced by the prorated weekly amount of the estimated or reported amount of such retirement payment. When notice of the actual or confirmed amount of the retirement payment is received by the individual, he shall advise the division and the deduction will be adjusted accordingly.

(II) If the estimated amount of the retirement payment exceeds the amount of unemployment compensation to which the individual is entitled, he shall receive one payment equal to the minimum weekly benefit amount, as prescribed by section 8-73-102 (1), other provisions of articles 70 to 82 of this title notwithstanding.

(c) For purposes of this subsection (3), "lump-sum retirement payment" means the entire balance due the individual from the plan, fund, or trust that has been contributed to by a base period employer.

(4) An individual's weekly benefit amount shall not be reduced because of the receipt of military service-connected disability compensation payable under 38 U.S.C., chapter 11, by the federal veterans administration. An individual's weekly benefit amount shall be reduced because of the receipt of a military disability retirement pension based on previous work performed by the individual, the relationship to the level of prior remuneration, or the length of service.

(5) Individuals who receive compensation for temporary disability under the workers' compensation law of any state or under a similar law of the United States shall be entitled to receive benefits for a corresponding week, if otherwise eligible, reduced by the amount of the temporary disability compensation unless the temporary disability amount has already been reduced by the unemployment insurance benefit amount.

(6) Individuals who receive sick pay benefits or other similar periodic cash payments paid to the worker by a base period employer or from any trust or fund contributed to by a base period employer shall be entitled to receive benefits for a corresponding week, if otherwise eligible, reduced by the amount of such sick pay benefits or other similar periodic cash payments.

(7) Repealed.

(8) (Deleted by amendment, L. 2009, (HB 09-1076), ch. 408, p. 2248, § 1, effective June 2, 2009.)

Source: L. 36, 3rd Ex. Sess.: p. 19, § 5. **L. 37:** p. 1255, § 3. **CSA:** C. 167A, § 5. **L. 41:** p. 766, § 5. **L. 49:** p. 722, § 3. **L. 53:** p. 624, § 5. **CRS 53:** § 82-4-12. **L. 55:** p. 533, § 2. **L. 57:** p. 518, § 6. **L. 59:** p. 564, § 6. **L. 63:** p. 679, § 6. **C.R.S. 1963:** § 82-4-10. **L. 65:** p. 843, § 6. **L. 69:** p. 671, § 6. **L. 72:** p. 450, § 1. **L. 76:** (4) and (5) amended, p. 348, § 13, effective October 1. **L. 79:** (3)(a)(I) amended, p. 351, § 13, effective September 30. **L. 81:** (3), (4), and (5) R&RE and

(6) added, pp. 511, 512, §§ 2, 3, effective July 1. **L. 83:** (7) added, p. 430, § 4, effective June 3. **L. 84:** (1)(c) amended, p. 323, § 3, effective July 1. **L. 85:** (3)(a) amended, p. 368, § 5, effective July 1. **L. 86:** (1)(c) repealed, p. 547, § 12, effective May 28; IP(1), (3)(a), and (6) amended and (1.5) and (8) added, p. 543, § 7, effective July 1. **L. 86, 2nd Ex. Sess.:** IP(1) and (1.5) amended, (1)(c) RC&RE, and (1.2) and (1.6) added, p. 55, §§ 2, 1, effective August 15; (1.5) repealed, p. 55, § 2, effective September 1, 1986. **L. 87:** (3)(a) amended, p. 410, § 1, effective April 16. **L. 88:** (5) amended, p. 389, § 2, effective June 11. **L. 90:** (3)(a)(II)(B) amended and (3)(c) added, p. 613, § 1, effective March 16; (5) amended, p. 557, § 10, effective July 1. **L. 92:** (3)(a)(II)(B) and (3)(b)(I) amended, p. 1795, § 4, effective April 10. **L. 96:** (1) and (1.6) amended, p. 27, § 1, effective March 13. **L. 2000:** (3)(a)(I) amended, p. 1393, § 1, effective October 1. **L. 2009:** (1), (1.2), (1.6), (3)(a)(I)(A), and (8) amended and (3)(a)(IV) added, (HB 09-1076), ch. 408, p. 2248, § 1, effective June 2. **L. 2013:** (3)(a)(III) amended, (HB 13-1054), ch. 92, p. 295, § 1, effective April 4. **L. 2020:** (1)(a) amended, (SB 20-170), ch. 297, p. 1478, § 2, effective January 1, 2021.

Editor's note: Subsection (7)(b) provided for the repeal of subsection (7), effective July 1, 1984. (See L. 83, p. 430.)

Cross references: For Title II of the "Social Security Act", see 42 U.S.C. § 401 et seq.

8-73-111. Compensation from other state. An individual shall not receive an award for any week with respect to which or a part of which he has received or is seeking unemployment benefits under an unemployment compensation law of another state, the federal government, or a foreign country. If the appropriate agency of such other state, the federal government, or a foreign country finally determines that he is not entitled to such unemployment benefits, this lack of award shall not apply. For the purposes of this section, a law of the federal government providing payments of any type and for any amount for periods of unemployment due to lack of work shall be considered an unemployment compensation law of the federal government.

Source: L. 36, 3rd Ex. Sess.: p. 19, § 5. **CSA:** C. 167A, § 5. **L. 39:** p. 571, § 3. **L. 41:** p. 766, § 5. **L. 45:** p. 712, § 2. **L. 49:** p. 722, § 3. **L. 53:** p. 624, § 5. **CRS 53:** § 82-4-13. **L. 63:** p. 680, § 7. **C.R.S. 1963:** § 82-4-11.

8-73-112. Benefits payable after receiving workers' compensation benefits. Any provision of the law to the contrary notwithstanding, a person who is separated from employment due to an accident or injury resulting in a temporary total disability for which he has been compensated under section 8-42-105, if otherwise eligible, shall be entitled to receive, after the termination of the continuous period of disability, benefits under this article which were available and in effect at the time of separation from employment. Payment of benefits for a week under this section shall be made only if a claim therefor is filed within the four weeks immediately following the termination of the continuous period of total disability and the week for which benefits are claimed occurs within three years after the date of separation from employment. Only one benefit year may be established under the provisions of this section.

Source: L. 69: p. 684, § 1. **C.R.S. 1963:** § 82-4-12. **L. 91:** Entire section amended, p. 1908, § 9, effective June 1.

8-73-113. Benefits payable during approved training - definition. (1) Notwithstanding any other provisions of articles 70 to 82 of this title, the division shall not deny benefits for any week to an otherwise eligible individual because:

(a) The individual is in training approved under section 236 (a)(1) of the federal "Trade Act of 1974", Pub.L. 93-618, codified at 19 U.S.C. sec. 2296 (a)(1), as amended;

(b) The individual left work to enroll in the training, as long as the work left is not suitable employment;

(c) Of the application of provisions of articles 70 to 82 of this title relating to availability for work, active search for work, or refusal to accept work to any week in which the individual is enrolled in the training;

(d) The individual left work that he or she engaged in on a temporary basis during a break in the training or a delay in the commencement of the training; or

(e) The individual left on-the-job training not later than thirty days after commencing the training because the training did not meet the requirements of 19 U.S.C. sec. 2296 (c)(1)(B) of the federal "Trade Act of 1974", as amended.

(2) As used in this section, "suitable employment" means, with respect to an individual, work of a substantially equal or higher skill level than the individual's past adversely affected employment, as defined for purposes of the federal "Trade Act of 1974", as amended, and wages for such work at not less than eighty percent of the individual's average weekly wage, as determined for the purposes of the federal "Trade Act of 1974", as amended.

Source: L. 82: Entire section added, p. 236, § 2, effective July 1. **L. 2011:** (1) amended, (SB 11-010), ch. 76, p. 208, § 1, effective March 29.

8-73-114. Enhanced unemployment insurance compensation benefits - eligibility - approved training programs - amount of benefits - outreach - repeal. (Repealed)

Source: L. 2009: Entire section added, (SB 09-247), ch. 405, p. 2232, § 6, effective July 1. **L. 2012:** (1), (2), (3)(b), (4)(b), (5), (6), (8), and (9) amended, (HB 12-1272), ch. 265, p. 1380, § 1, effective July 1. **L. 2013:** (8)(a)(II) repealed, (HB 13-1300), ch. 316, p. 1663, § 10, effective August 7. **L. 2014:** (4)(b)(III) repealed, (HB 14-1363), ch. 302, p. 1262, § 4, effective May 31.

Editor's note: Subsection (9) provided for the repeal of this section, effective July 1, 2014. (See L. 2012, p. 1380.)

ARTICLE 74

Claims for Benefits

Editor's note: This article was numbered as article 5 of chapter 82, C.R.S. 1963. The substantive provisions of this article were repealed and reenacted in 1976, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this article prior to 1976, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973

beginning on page vii in the front of this volume. Former C.R.S. section numbers are shown in editors' notes following those sections that were relocated.

Cross references: For applicability of legislation that amends, repeals, or adds to the provisions of this article on or after May 18, 1979, see § 8-70-143.

8-74-101. Claims for benefits. (1) Claims for benefits shall be made, processed, and reviewed pursuant to articles 70 to 82 of this title and such regulations as the director of the division may prescribe.

(2) Every employer shall post and maintain notices to inform his employees that he is subject to the "Colorado Employment Security Act" and has been so registered by the division. Such notices shall be conspicuously posted at or near work locations after an employer's account number has been assigned by the division and shall be supplied by the division in reasonable numbers and without cost.

(3) Copies of articles 70 to 82 of this title and rules and regulations shall be supplied without cost by the division to any person who requests a copy.

Source: L. 76: Entire article R&RE, p. 354, § 1, effective October 1. **L. 81:** Entire section R&RE, p. 484, § 7, effective July 1. **L. 86:** (1) amended, p. 489, § 90, effective July 1.

Editor's note: This section is similar to former § 8-74-101 as it existed prior to 1976.

8-74-102. Deputy's decision - rules. (1) Upon receipt of a claim, the division shall notify any other interested parties of the claim by mail or electronic means in accordance with such rules as the director of the division may promulgate. The interested parties must be afforded seven calendar days after the date of the notice of the claim to present any information pertinent to the claim by mail, telephone, or electronic means in accordance with such rules as the director of the division may promulgate. The information must be received by the division within seven calendar days after said date. If the seventh calendar day falls on a weekend or a state holiday, the date must be moved to the first working day immediately following such weekend or holiday. The interested party may present information out of time only if good cause is shown. A deputy to be designated by the director of the division shall promptly examine all materials submitted. Whenever information submitted is not clearly adequate to substantiate a decision, the deputy shall promptly seek the necessary information. If it is necessary to obtain information by mail from any source, the information shall be received by the division no later than seven calendar days after the date of the request for information. On the basis of the deputy's review, the deputy shall determine the validity of the claim and, if valid, when payment shall commence, the amount payable, and the duration of payment. The deputy shall issue a decision in all cases, even if the claimant has insufficient qualifying wages, unless the interested employer did not receive notice of the claim, except when the separation from employment is due to a lack of work and no alleged disqualifying circumstances are indicated, or unless the claimant did not file a continued claim. The deputy's decision shall set forth findings of fact, conclusions of law, and an order. The division shall promptly provide all interested parties with copies of the deputy's decision.

(2) Notwithstanding articles 70 to 82 of this title, an initial determination of arithmetic computations, wage amounts, and dates of wage payments shall not be subject to immediate appeal. Interested parties who disagree with monetary determinations of the division may request reconsideration of determinations as the director of the division, by regulation, may prescribe. A reconsidered determination of the division is subject to the provisions of section 8-74-105.

Source: L. 76: Entire article R&RE, p. 354, § 1, effective October 1. **L. 79:** Entire section amended, p. 351, § 14, effective September 30. **L. 81:** (1) amended, p. 510, § 5, effective July 1. **L. 82:** (1) amended, p. 237, § 4, effective July 1. **L. 86:** (2) amended, p. 489, § 91, effective July 1. **L. 2002:** (1) amended, p. 336, § 1, effective April 19. **L. 2007:** (1) amended, p. 803, § 3, effective August 3. **L. 2008:** (1) amended, p. 998, § 1, effective August 5. **L. 2020:** (1) amended, (SB 20-207), ch. 296, p. 1473, § 5, effective July 14.

Editor's note: This section is similar to former § 8-74-102 as it existed prior to 1976.

8-74-103. Hearing officer review. (1) Any interested party who is dissatisfied with a deputy's decision may appeal that decision and obtain a hearing covering any issue relevant to the disputed claim. The issue of a claimant's availability will be relevant to the extent set forth in section 8-73-107 (1)(c)(I)(A). The initial appeal shall be to a hearing officer designated by the director of the division and must be received by the division within twenty calendar days after the date of notification of the decision of the deputy in accordance with such rules as the director of the division may promulgate. "Deputy", as used in this article, means a person who adjudicates claims for the division when Colorado is the paying state. Wages paid in Colorado and transferred to another state in which the claimant has filed shall not be subject to adjudication by a deputy of the division or to an appeal directed to this state.

(2) The hearing officer shall have the power and authority to call, preside at, and conduct hearings pursuant to the provisions of section 8-72-108 and such regulations as the director of the division may prescribe.

(3) The hearing officer, after affording all interested parties a reasonable opportunity for a fair hearing in conformity with the provisions of this article and the regulations of the division, shall make a decision on each relevant issue raised, including findings of fact, conclusions of law, and an order. The division shall promptly provide all interested parties with copies of the hearing officer's decision.

(4) The hearing officer may conduct all appeal hearings at designated locations which are most convenient to the claimant and employer. If the claimant and employer request that such hearing be bifurcated, the division may honor this request.

Source: L. 76: Entire article R&RE, p. 355, § 1, effective October 1. **L. 79:** (1) amended and (4) added, p. 352, § 15, effective September 30. **L. 81:** Entire section R&RE, p. 484, § 8, effective July 1. **L. 86:** (2) and (3) amended, p. 489, § 92, effective July 1. **L. 96:** (1) amended, p. 383, § 7, effective April 17. **L. 2002:** (1) amended, p. 337, § 2, effective April 19. **L. 2007:** (1) amended, p. 803, § 4, effective August 3.

Editor's note: This section is similar to former §§ 8-74-103 and 8-74-104 as they existed prior to 1976.

8-74-104. Industrial claim appeals office review. (1) Any interested party who is dissatisfied by a hearing officer's decision may appeal that decision and obtain administrative review by the industrial claim appeals office. Any such appeal must be received by the industrial claim appeals office within twenty calendar days after the date of notification of the decision of the hearing officer. The director of the division may prescribe rules for the conduct of such appeals, including apportionment of transcript costs (not to exceed the actual costs of such materials), filing methods, briefing schedules, and similar matters.

(2) Upon petition to review by an interested party, the industrial claim appeals panel may affirm, modify, reverse, or set aside any decision of a hearing officer on the basis of the evidence in the record previously submitted in the case.

(3) The industrial claim appeals office shall promptly provide all interested parties with copies of the industrial claim appeals panel's written decision and order in each case.

(4) The panel shall have the power to issue such procedural orders as may be necessary to carry out its appellate review under subsection (2) of this section, including, but not limited to, orders concerning the acceptance of appeals before the panel and orders granting or denying requests for extension of time.

Source: L. 76: Entire article R&RE, p. 355, § 1, effective October 1. **L. 79:** (1) amended, p. 352, § 16, effective September 30. **L. 81:** (1) amended, p. 485, § 9, effective July 1. **L. 86:** Entire section R&RE, p. 490, § 93, effective July 1. **L. 92:** Entire section amended, p. 1812, § 2, effective March 19. **L. 96:** (1) amended, p. 383, § 8, effective April 17. **L. 2002:** (1) amended, p. 337, § 3, effective April 19. **L. 2007:** (1) amended, p. 804, § 5, effective August 3.

Editor's note: This section is similar to former § 8-74-105 as it existed prior to 1976.

8-74-105. Reconsiderations. The deputy, hearing officer, or industrial claim appeals panel may, on his or its own motion, reconsider a decision within a twelve-month period subsequent to the date of decision when it appears that an apparent procedural or substantive error has occurred in connection therewith. Notification of a decision on reconsideration and the reasons therefor shall be promptly given to all interested parties. In the event that an appeal involving an original decision is pending as of the date on which a decision as a result of reconsideration is issued by the division, such appeal shall be considered void. Any interested party who is dissatisfied by a decision that is issued as a result of reconsideration may appeal that decision in the manner set forth in section 8-74-106.

Source: L. 76: Entire article R&RE, p. 355, § 1, effective October 1. **L. 86:** Entire section amended, p. 490, § 94, effective July 1; entire section amended, p. 543, § 8, effective July 1.

Editor's note: This section is similar to former § 8-74-110 as it existed prior to 1976.

8-74-106. Appeals - time limits - procedures. (1) The following procedures and limitations shall apply to all appeals taken pursuant to this article:

(a) Any party may petition for review of a deputy's decision by filing a petition therefor with the division within twenty calendar days after the date of notification of such decision.

Notification of the decision shall be by personal delivery of the decision to an interested party or by mailing a copy of the decision to the last-known address shown in the division records of an interested party and to the interested party's attorney or representative of record, if any, or by electronic means. The date of notification shall be the date of personal delivery, the date of transmission as recorded by the division, if notification is made by electronic means, or the date of mailing of a decision.

(b) Unless, within twenty calendar days after the date of notification of a deputy's decision, an interested party petitions for review of such decision, the decision shall be final. Petitions for review may be accepted out of time only for good cause shown and in accordance with rules adopted by the director of the division.

(c) The division shall give written notice to all interested parties when a petition for review is filed. Such notice shall be pursuant to regulations adopted by the director of the division.

(d) Pursuant to section 8-72-107, each interested party shall be given such reasonable access to division records concerning the claim as is necessary for proper presentation of his position concerning the claim.

(e) Any interested party to an appeal from a deputy's decision shall be entitled to a hearing before a hearing officer. All interested parties shall have the right to be present or to be represented by an attorney or other representative at the hearing, to present such testimony and evidence as may be pertinent to the claim, and to cross-examine witnesses. The division, pursuant to regulations adopted by the director of the division, shall notify all interested parties of the hearing. Such notification shall be made not less than ten calendar days prior to the hearing.

(f) (I) The manner in which disputed claims shall be presented, the reports required from interested parties, and the conduct of hearings shall be in accordance with the provisions of this article and the regulations prescribed by the director of the division, whether or not such regulations conform to common law or statutory or regulatory rules of evidence or other technical rules of procedure.

(II) Evidence and requirements of proof shall conform, to the extent practicable, with those in civil nonjury cases in the district courts of this state. However, when necessary to do so in order to ascertain facts affecting the substantial rights of the parties to the proceeding, the person conducting the hearing may receive and consider evidence not admissible under such rules, if such evidence possesses probative value commonly accepted by reasonable and prudent men in the conduct of their affairs. Objections to evidentiary offers may be made and shall be noted in the record. The person conducting a hearing shall give effect to the rules of privilege recognized by law. He may exclude incompetent and unduly repetitious evidence. Documentary evidence may be received in the form of a copy or excerpt if the original is not readily available; but, upon request, the party shall be given an opportunity to compare the copy with the original. The division may utilize its experience, technical competence, and specialized knowledge in the evaluation of the evidence presented. The provisions of the "State Administrative Procedure Act", article 4 of title 24, C.R.S., and particularly sections 24-4-105 and 24-4-106, C.R.S., shall not apply to hearings and court review under this article. However, the rule-making provisions of section 24-4-103, C.R.S., shall apply to this article.

(III) When the same or substantially similar evidence is relevant and material to the matters at issue in claims by more than one individual or in claims by a single individual with

respect to two or more weeks of unemployment, the same time and place for considering each such claim may be fixed, hearings thereon may be jointly conducted, a single record of the proceedings may be made, and evidence introduced with respect to one proceeding may be considered as introduced in the others, if, in the judgment of the tribunal having jurisdiction over the proceeding, such consolidation would not be prejudicial to any interested party.

(IV) No person shall participate on behalf of the division in any case in which he has a direct or indirect interest.

(V) A full and complete record shall be kept of all proceedings in connection with a disputed claim. All testimony at any hearing upon a disputed claim shall be recorded but need not be transcribed unless the disputed claim is presented for further review. If necessary, the industrial claim appeals panel may listen to the recorded testimony of a hearing on a disputed claim prior to rendering a decision. If review is sought pursuant to section 8-74-107, the division shall transcribe the testimony pursuant to such regulations as the director of the division may prescribe.

(g) Repealed.

Source: L. 76: Entire article R&RE, p. 356, § 1, effective October 1. **L. 79:** (1)(e) amended and (1)(g) repealed, pp. 352, 356, §§ 17, 25, effective September 30. **L. 81:** (1)(a) and (1)(b) amended, p. 485, § 10, effective July 1. **L. 86:** (1)(a), (1)(b), (1)(c), (1)(e), (1)(f)(I), (1)(f)(II), (1)(f)(IV), and (1)(f)(V) amended, p. 490, § 95, effective July 1. **L. 96:** (1)(a) and (1)(b) amended, p. 383, § 9, effective April 17. **L. 2002:** (1)(a) amended, p. 337, § 4, effective April 19. **L. 2007:** (1)(a) and (1)(b) amended, p. 804, § 6, effective August 3.

Editor's note: This section is similar to former §§ 8-74-102, 8-74-104, 8-74-106, and 8-74-107 as they existed prior to 1976.

8-74-107. Court review. (1) No action, proceeding, or suit to set aside an industrial claim appeals panel's decision or to enjoin the enforcement thereof shall be brought unless the petitioning party has first complied with the review provisions of sections 8-74-104 and 8-74-106.

(2) Actions, proceedings, or suits to set aside, vacate, or amend any final decision of the industrial claim appeals panel or to enjoin the enforcement thereof may be commenced in the court of appeals by any interested party, including the division. Such actions, proceedings, or suits shall be commenced by filing a notice of appeal in the court of appeals within twenty-one days of the mailing of the industrial claim appeals panel's decision, together with a certificate of service showing service of a copy of said notice of appeal on the division, the industrial claim appeals office, and all other parties who appeared in the administrative proceedings. The industrial claim appeals office, within twenty-one days after the service of the notice, shall make return to said court of all documents and papers on file in the matter, of all testimony taken therein, and of certified copies of all findings, orders, and awards, which return shall be deemed its answer to said petition. Such return of the industrial claim appeals office shall constitute the judgment roll in any such action, proceeding, or suit, and it shall not be necessary to settle a bill of exceptions in order to make such return part of the record of such court in such action, proceeding, or suit.

(3) The industrial claim appeals panel may certify to the court of appeals questions of law involved in any of its decisions.

(4) In judicial proceedings under this article, administrative findings as to the facts, if supported by substantial evidence and in the absence of fraud, shall be conclusive.

(5) Actions, proceedings, and suits to review any final decision of the industrial claim appeals panel or questions certified to the court of appeals by such panel shall be heard in an expedited manner and shall be given precedence over all other civil cases, except cases arising under the "Workers' Compensation Act of Colorado", articles 40 to 47 of this title.

(6) The industrial claim appeals panel's decision may be set aside only upon the following grounds:

(a) That the industrial claim appeals panel acted without or in excess of its powers;

(b) That the decision was procured by fraud;

(c) That the findings of fact do not support the decision;

(d) That the decision is erroneous as a matter of law.

Source: L. 76: Entire article R&RE, p. 357, § 1, effective October 1. **L. 84:** (2) amended, p. 318, § 8, effective July 1. **L. 86:** (1) to (5), IP(6), and (6)(a) amended, p. 492, § 96, effective July 1. **L. 90:** (5) amended, p. 557, § 11, effective July 1. **L. 92:** (2) amended, p. 1812, § 3, effective March 19. **L. 2013:** (2) amended, (HB 13-1126), ch. 58, p. 191, § 1, effective July 1.

Editor's note: This section is similar to former §§ 8-74-108 and 8-74-109 as they existed prior to 1976.

8-74-108. Conclusiveness of determinations and decisions. Any right, fact, or matter in issue directly passed upon or necessarily involved in a decision of a deputy, a hearing officer, the industrial claim appeals office, or the court of appeals which has become a final decision under this article, after appeal procedures, if initiated, have been completed or otherwise terminated, shall be conclusive for all the purposes of articles 70 to 82 of this title as between all interested parties. No finding of fact or law, judgment, conclusion, or final order made with respect to a determination made under articles 70 to 82 of this title may be conclusive or binding or used as evidence in any separate or subsequent action or proceeding in another forum, except proceedings under articles 70 to 82 of this title, regardless of whether the prior action was between the same or related parties or involved the same facts. No findings of fact or law, judgment, conclusion, or final order made by any other agency, administrative body, or forum that are not made pursuant to articles 70 to 82 of this title shall be binding on the division for the purposes of articles 70 to 82 of this title.

Source: L. 76: Entire article R&RE, p. 358, § 1, effective October 1. **L. 84:** Entire section amended, p. 318, § 9, effective July 1. **L. 86:** Entire section amended, p. 493, § 97, effective July 1. **L. 87:** Entire section amended, p. 404, § 2, effective April 16. **L. 92:** Entire section amended, p. 1795, § 5, effective April 10.

Editor's note: This section is similar to former § 8-74-111 as it existed prior to 1976.

8-74-109. Payment of benefits. (1) Notwithstanding any other provisions of this article, if a decision grants benefits to a claimant, such benefits shall be promptly paid in accordance with and upon issuance of the decision. If further benefits are granted by a subsequent decision, all accrued and unpaid benefits shall be promptly paid. If a subsequent decision denies or reduces benefits, subsequent benefits shall be denied or reduced pursuant to and upon issuance of the decision. If the final decision denies benefits, no employer's rating account shall be charged with benefits paid.

(2) If by reason of fraud, mistake, or clerical error a claimant receives moneys in excess of benefits to which he is entitled or if a claimant receives benefits to which he is subsequently determined to be not entitled as a result of a final decision in the appeals process, the division shall recoup such moneys in accordance with section 8-79-102 and such regulations as may be prescribed by the director of the division.

Source: L. 76: Entire article R&RE, p. 358, § 1, effective October 1. **L. 83:** (2) amended, p. 430, § 5, effective June 3. **L. 86:** (2) amended, p. 493, § 98, effective July 1.

8-74-110. Decisions of industrial claim appeals panel. (Repealed)

Source: L. 89: Entire section added, p. 371, § 2, effective July 1. **L. 92:** Entire section repealed, p. 1812, § 4, effective March 19.

ARTICLE 75

Extended Benefits Program

Editor's note: This article was numbered as article 13 of chapter 82, C.R.S. 1963. The substantive provisions of this article were repealed and reenacted in 1971, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this article prior to 1971, consult the Colorado statutory research explanatory note beginning on page vii in the front of this volume.

Cross references: For applicability of legislation that amends, repeals, or adds to the provisions of this article on or after May 18, 1979, see § 8-70-143.

PART 1

EXTENDED BENEFITS

8-75-101. Definitions. As used in this part 1, unless the context otherwise requires:

(1) "Eligibility period" of an individual means the period consisting of the weeks in his benefit year which begin in an extended benefit period and, if his benefit year ends within such extended benefit period, any weeks thereafter which begin in such period.

(2) (a) "Exhaustee" means an individual who, with respect to any week of unemployment in his or her eligibility period:

(I) Has received, prior to such week, all of the regular benefits that were payable to him under articles 70 to 82 of this title or any other state law (including dependents' allowances and regular benefits payable to federal civilian employees and ex-servicemen under 5 U.S.C., chapter 85) for his benefit year that includes such week;

(II) Has received, prior to such week, all of the regular benefits that were available to him under articles 70 to 82 of this title or any other state law (including dependents' allowances and regular benefits available to federal civilian employees and ex-servicemen under 5 U.S.C., chapter 85) in his benefit year that includes such week, after the cancellation of some or all of his wage credits or the total or partial reduction of his right to regular benefits. For the purposes of this subparagraph (II) and subparagraph (I) of this paragraph (a), an individual shall be deemed to have received in his applicable benefit year all of the regular benefits that were payable to him or available to him, as the case may be, even though:

(A) As a result of a pending appeal with respect to wages or employment, or both, that was not included in the original monetary determination with respect to such benefit year, he may subsequently be determined to be entitled to more regular benefits; or

(B) By reason of the seasonal provisions of another state law, he is not entitled to regular benefits with respect to such week of unemployment (although he may be entitled to regular benefits with respect to future weeks of unemployment in the next season or off-season, as the case may be, in such benefit year), and he is otherwise an exhaustee within the meaning of this subsection (2) with respect to his right to regular benefits under such other state law's seasonal provisions during the season or off-season in which that week of unemployment occurs; or

(C) Having established a benefit year, no regular benefits are payable to him during such year because his wage credits were cancelled or his right to regular benefits was totally reduced as a result of the application of a disqualification;

(III) His benefit year having ended prior to such week, has insufficient wages or employment, or both, on the basis of which he could establish in any state a new benefit year that would include such week or, having established a new benefit year that includes such week, he is precluded from receiving regular benefits by reason of the provisions of section 8-73-107 (2) which meet the requirements of section 3304 (a)(7) of the "Federal Unemployment Tax Act" or a similar provision in any other state law;

(IV) Has no right for such week to unemployment benefits or allowances, as the case may be, under the "Railroad Unemployment Insurance Act", the "Trade Expansion Act of 1962", and such other federal laws as are specified in regulations issued by the United States secretary of labor;

(V) Has not received and is not seeking for such week unemployment benefits under an unemployment compensation law of Canada, unless the appropriate agency finally determines that he is not entitled to unemployment benefits under such law for such week; or

(VI) Has received all of the unemployment compensation benefits pursuant to part 2 of this article and regular unemployment compensation benefits available in a benefit year.

(b) "Applicable benefit year", as used in this subsection (2), means, with respect to an individual, his current benefit year if at the time he files a claim for extended benefits he has an unexpired benefit year only in the state in which he files such claim or, in any other case, his most recent benefit year. For the purpose of this paragraph (b), his "most recent benefit year", if he has unexpired benefit years in more than one state when he files a claim for extended

benefits, is the benefit year with the latest ending date or, if such benefit years have the same ending date, the benefit year in which his latest continued claim for regular benefits was filed.

(3) (a) "Extended benefit period" means a period which:

(I) Begins with the third week after a week for which there is an "on" indicator; and

(II) Ends with either of the following weeks, whichever occurs later:

(A) The third week after the first week for which there is an "off" indicator; or

(B) The thirteenth consecutive week of such period.

(b) But no extended benefit period may begin by reason of an "on" indicator before the fourteenth week following the end of a prior extended benefit period which was in effect with respect to this state.

(4) "Extended benefits" means benefits as defined in section 8-70-110 (1)(b).

(4.5) "High unemployment period" means a period in which the seasonally adjusted total unemployment rate, as determined by the United States secretary of labor, for the most recent three months for which data for all states is published, equals or exceeds eight percent.

(5) and (6) Repealed.

(7) "Rate of insured unemployment", for the purposes of subsection (11) of this section, means the percentage derived by dividing: The average weekly number of individuals filing claims for regular compensation in this state for weeks of unemployment with respect to the most recent consecutive thirteen-week period as determined by the division on the basis of its reports to the United States secretary of labor, by the average monthly employment covered under articles 70 to 82 of this title for the first four of the six most recently completed calendar quarters ending before the end of such thirteen-week period.

(8) "Regular benefits" means benefits as defined in section 8-70-110 (1)(a).

(9) "State law" means the unemployment insurance law of any state, approved by the United States secretary of labor under section 3304 of the federal "Internal Revenue Code of 1986", as amended.

(9.5) "Total unemployment rate" or "TUR" means the percentage derived by dividing the number of all unemployed persons in the civilian labor force by the number of individuals comprising the total labor force, including both employed and unemployed individuals, and then multiplying that number by one hundred.

(10) There is an "off" indicator for a week if, for the period consisting of such week and the immediately preceding twelve weeks, either:

(a) Sub-subparagraph (A) or (C) of subparagraph (I) of paragraph (a) of subsection (11) of this section was not satisfied, and subparagraph (II) of paragraph (a) of subsection (11) of this section was not satisfied; or

(b) Sub-subparagraph (B) or (C) of subparagraph (I) of paragraph (a) of subsection (11) of this section was not satisfied, and subparagraph (II) of paragraph (a) of subsection (11) of this section was not satisfied.

(11) (a) There is an "on" indicator for a week if the rate of insured unemployment under articles 70 to 82 of this title for the period consisting of such week and the immediately preceding twelve weeks:

(I) (A) Equaled or exceeded one hundred twenty percent of the average of such rates for the corresponding thirteen-week period ending in each of the preceding two calendar years; or

(B) Equaled or exceeded one hundred twenty percent of the average of such rates for the corresponding thirteen-week period ending in each of the preceding three calendar years with

respect to weeks beginning on or after December 17, 2010, and ending December 31, 2011, or while Pub.L. 111-312 and any amendments thereto are in effect; and

(C) Equaled or exceeded five percent; or

(II) Equaled or exceeded six percent.

(b) Repealed.

Source: L. 71: R&RE, p. 943, § 18. **C.R.S. 1963:** § 82-13-1. **L. 73:** p. 961, § 12. **L. 76:** (2) R&RE, p. 349, § 15, effective October 1. **L. 77:** (2)(a)(V) amended and (5), (6), (10), and (11) R&RE, pp. 465, 466, §§ 17, 18, effective July 7. **L. 82:** (3)(a)(I), (3)(a)(II)(A), (3)(b), (7), (10), and (11)(a) amended and (5), (6), and (11)(b) repealed, pp. 237, 240, §§ 5, 11, effective July 1. **L. 83:** (10) amended, p. 2047, § 1, effective October 14. **L. 90:** (4) and (8) amended, p. 604, § 8, effective April 3. **L. 92:** (2)(a)(V) amended, p. 1796, § 6, effective April 10. **L. 2000:** (9) amended, p. 1838, § 3, effective August 2. **L. 2009:** (4.5) and (9.5) added, (SB 09-247), ch. 405, p. 2235, § 8, effective July 1. **L. 2010:** IP and IP(2)(a) amended and (2)(a)(VI) added, (SB 10-028), ch. 397, p. 1890, § 2, effective June 9. **L. 2011:** (10) and (11)(a) amended, (SB 11-010), ch. 76, p. 209, § 2, effective March 29.

8-75-102. Effect of state law provisions relating to regular benefits on claims for, and payment of, extended benefits. Except when the result would be inconsistent with the other provisions of this section as provided in the regulations of the division, the provisions of articles 70 to 82 of this title which apply to claims for, or the payment of, regular benefits shall apply to claims for, and the payment of, extended benefits.

Source: L. 71: R&RE, p. 945, § 18. **C.R.S. 1963:** § 82-13-2.

8-75-103. Eligibility requirements for extended benefits. (1) An individual shall be eligible to receive extended benefits with respect to any week of unemployment in his eligibility period only if the division finds that with respect to such week:

(a) He is an exhaustee;

(b) He has satisfied the requirements of articles 70 to 82 of this title for the receipt of regular benefits that are applicable to individuals claiming extended benefits, including not being subject to a disqualification for the receipt of benefits; and

(c) He files his interstate claim from a state in which there is an extended benefits state "on" indicator. If he files his interstate claim from a state in which there is an extended benefits state "off" indicator, he shall be paid for not more than the first two weeks in which extended benefits are payable in an interstate claim.

Source: L. 71: R&RE, p. 946, § 18. **C.R.S. 1963:** § 82-13-3. **L. 81:** (1)(a) and (1)(b) amended and (1)(c) added, p. 512, § 4, effective July 1.

8-75-103.5. Additional extended benefit requirements. (1) An individual shall be ineligible for payment of extended benefits for any week of unemployment in his eligibility period if the division finds that during such period:

(a) He failed to accept any offer of suitable work as defined under subsection (3) of this section or failed to apply for any suitable work to which he was referred by the division; or

(b) He failed to actively engage in seeking work which is prescribed as suitable work under subsection (5) of this section.

(2) Any individual who has been found ineligible for extended benefits by reason of the provisions of subsection (1) of this section shall also be denied benefits beginning with the first day of the week following the week in which such failure occurred and until he has been employed in each of four subsequent weeks, whether or not consecutive, and has earned remuneration equal to not less than four times the extended weekly benefit amount.

(3) For the purposes of this section, "suitable work" means, with respect to any individual, any work which is within such individual's capabilities. The gross average weekly remuneration payable for such work shall:

(a) Exceed the sum of the individual's extended weekly benefit amount as determined under sections 8-73-102 and 8-75-104 plus the amount, if any, of supplemental unemployment benefits, as defined in section 501 (c)(17)(D) of the federal "Internal Revenue Code of 1986", as amended, payable to such individual for such week;

(b) Not be less than the higher of the minimum wage provided by section 206 (a)(1) of the "Fair Labor Standards Act of 1938", as amended, without regard to any exemption, or the applicable state or local minimum wage.

(4) No individual shall be denied extended benefits for failure to accept an offer of or apply for any job which meets the definition of suitability, provided in subsection (3) of this section, if:

(a) The position was not offered to such individual in writing or was not listed with the state employment service;

(b) Such failure could not result in a denial of benefits under the definition of suitable work for regular benefit claimants in section 8-73-108 (5)(b) to the extent that the criteria of suitability in that section are not consistent with the provisions of subsection (3) of this section;

(c) The individual furnishes satisfactory evidence to the division that his prospects for obtaining work in his customary occupation within a reasonably short period are good. If such evidence is deemed satisfactory for this purpose, the determination of whether any work is suitable with respect to such individual shall be made in accordance with the definition of suitable work for regular benefit claimants in section 8-73-108 without regard to the definition specified by subsection (3) of this section.

(5) Notwithstanding the provisions of paragraph (b) of subsection (3) of this section to the contrary, no work shall be deemed suitable work for an individual which does not accord with the labor standards provisions required by section 3304 (a)(5) of the federal "Internal Revenue Code of 1986", as amended, and set forth under section 8-73-108 (5)(b).

(6) For the purposes of paragraph (b) of subsection (1) of this section, an individual shall be treated as actively engaged in seeking work during any week if:

(a) The individual has engaged in a systematic and sustained effort to obtain work during such week;

(b) The individual furnishes tangible evidence that he has engaged in such effort during such week.

(7) The state employment service shall refer any claimant entitled to extended benefits under the "Colorado Employment Security Act", articles 70 to 82 of this title, to any suitable work which meets the criteria prescribed in subsection (3) of this section.

(8) An individual shall not be eligible to receive extended benefits with respect to any week of unemployment in his eligibility period if such individual has been disqualified for regular benefits under the "Colorado Employment Security Act", articles 70 to 82 of this title, because he voluntarily left work, was discharged for misconduct, or failed to accept an offer of or apply for suitable work unless the disqualification imposed for such reasons has been terminated in accordance with specific conditions established under said act, requiring the individual to perform service for remuneration subsequent to the date of such disqualification.

(9) Repealed.

Source: L. 81: Entire section added, p. 512, § 5, effective July 1. **L. 83:** (4)(a) amended, p. 430, § 6, effective June 3. **L. 84:** (4)(b) and (5) amended, p. 330, § 5, effective July 1. **L. 94:** (9) added, p. 641, § 5, effective April 14. **L. 2000:** (3)(a) and (5) amended, p. 1838, § 4, effective August 2.

Editor's note: Subsection (9)(b) provided for the repeal of subsection (9), effective July 1, 2005. (See L. 94, p. 641.)

8-75-104. Weekly extended benefit amount. The weekly extended benefit amount payable to an individual for a week of total unemployment in his eligibility period shall be an amount equal to the weekly benefit amount payable to him during his applicable benefit year; except that, for any week during a period in which federal payments to states under section 204 of the "Federal-State Extended Unemployment Compensation Act of 1970" and amendments thereto are reduced under section 252 of the "Balanced Budget and Emergency Deficit Control Act of 1985" and amendments thereto, the weekly extended benefit amount payable to an individual for a week of total unemployment in his eligibility period shall be reduced by a percentage equivalent to the percentage of the reduction in the federal payment. Such reduced weekly extended benefit amount, if not an even dollar amount, shall be rounded to the next lower full dollar amount.

Source: L. 71: R&RE, p. 946, § 18. **C.R.S. 1963:** § 82-13-4. **L. 87:** Entire section amended, p. 412, § 1, effective April 16.

8-75-105. Total extended benefit amount. (1) The total extended benefit amount payable to any eligible individual with respect to his applicable benefit year shall be the least of the following amounts:

(a) Fifty percent of the total amount of regular benefits which were payable to him under articles 70 to 82 of this title in his applicable benefit year; or

(b) Thirteen times his weekly benefit amount which was payable to him under articles 70 to 82 of this title for a week of total unemployment in the applicable benefit year.

(2) Notwithstanding any other provisions of this part 1, if the benefit year of any individual ends within an extended benefit period, the remaining balance of extended benefits that such individual would, but for this subsection (2), be entitled to receive in that extended benefit period, with respect to weeks of unemployment beginning after the end of the benefit year, shall be reduced (but not below zero) by an amount equal to the product of the number of

weeks for which the individual received any amounts as trade readjustment allowances within that benefit year multiplied by the individual's weekly benefit amount for extended benefits.

(3) Notwithstanding any other provision of this part 1, during any fiscal year in which federal payments to states under section 204 of the "Federal-State Extended Unemployment Compensation Act of 1970" and amendments thereto are reduced under section 252 of the "Balanced Budget and Emergency Deficit Control Act of 1985" and amendments thereto, the total extended benefit amount payable to an individual with respect to his or her applicable benefit year shall be reduced by an amount equal to the aggregate of the reductions in the weekly amounts paid to the individual under section 8-75-104.

Source: L. 71: R&RE, p. 946, § 18. **C.R.S. 1963:** § 82-13-5. **L. 82:** (2) added, p. 238, § 6, effective July 1. **L. 87:** (3) added, p. 412, § 2, effective April 16. **L. 2010:** (2) and (3) amended, (SB 10-028), ch. 397, p. 1890, § 3, effective June 9.

8-75-106. Beginning and termination of extended benefit period. (1) Whenever an extended benefit period is to become effective in this state as a result of an "on" indicator, or an extended benefit period is to be terminated in this state as a result of an "off" indicator, the division shall make an appropriate public announcement.

(2) Computations required by the provisions of section 8-75-101 (10) shall be made by the division, in accordance with regulations prescribed by the United States secretary of labor.

Source: L. 71: R&RE, p. 946, § 18. **C.R.S. 1963:** § 82-13-6. **L. 82:** (1) amended, p. 238, § 7, effective July 1.

8-75-107. Amended determination of "on" or "off" indicator. (Repealed)

Source: L. 75: Entire section added, p. 325, § 1, effective January 1. **L. 79:** Entire section repealed, p. 1632, § 3, effective July 19.

8-75-108. Total unemployment rate extended benefits. (1) For weeks of unemployment beginning on or after November 1, 2020:

(a) There is an "on" indicator for a week of TUR extended benefits, in the amount determined pursuant to sections 8-75-104 and 8-75-105, if subsections (1)(a)(I) and (1)(a)(II) of this section apply:

(I) The seasonally adjusted TUR, as determined by the United States secretary of labor, for the most recent three months for which data for all states is published, equals or exceeds six and one-half percent;

(II) The average TUR in the state equals or exceeds one hundred ten percent of the TUR for either or both of the corresponding three-month periods in the two preceding calendar years.

(III) Repealed.

(b) There is an "off" indicator for weeks of TUR extended benefits if any of the following applies:

(I) The TUR falls below six and one-half percent;

(II) The requirement described in subsection (1)(a)(II) of this section is not satisfied; or

(III) Pursuant to section 4105 of the federal "Families First Coronavirus Response Act", Pub.L. 116-127, as amended, or pursuant to any other federal law, there is not an extension of one hundred percent federal sharing available to cover the cost of extended benefits.

(2) For weeks of unemployment beginning on or after November 1, 2020, the total amount of TUR extended benefits payable in a high unemployment period to an eligible individual with respect to his or her applicable benefit year shall be the least of the following amounts:

(a) Eighty percent of the total amount of regular benefits that were payable to the eligible individual under articles 70 to 82 of this title 8 in the applicable benefit year;

(b) Twenty times the weekly benefit amount that was payable to the eligible individual under articles 70 to 82 of this title 8 for a week of total unemployment in the applicable benefit year; or

(c) Forty-six times the individual's weekly benefit amount, including any applicable dependents' allowances, for a week of total unemployment in the applicable benefit year, reduced by the total amount of regular benefits that were paid or deemed paid to the individual with respect to the applicable benefit year.

Source: L. 2009: Entire section added, (SB 09-247), ch. 405, p. 2235, 9, effective July 1. **L. 2011:** (1) amended, (SB 11-010), ch. 76, p. 209, 3, effective March 29. **L. 2020, 1st Ex. Sess.:** IP(1), IP(1)(a), (1)(b), and (2) amended and (1)(a)(III) repealed, (SB 20B-002), ch. 8, p. 43, 4, effective December 7.

PART 2

WORK SHARE PROGRAM

8-75-201. Short title. This part 2 shall be known and may be cited as the "Colorado Work Share Program".

Source: L. 2010: Entire part added, (SB 10-028), ch. 397, p. 1886, § 1, effective June 9.

8-75-202. Definitions. As used in this part 2, unless the context otherwise requires:

(1) "Affected unit" means a specified plant, department, shift, or other definable unit to which a work share plan applies.

(2) "Director" means the director of the division or his or her designee.

(3) "Normal weekly work hours" means the number of hours in a week that an employee ordinarily works for a participating employer or forty hours, whichever is less.

(4) "Work share plan" means a plan for reducing unemployment under which employees who are members of an affected unit share the work remaining after a reduction in their normal weekly work hours.

Source: L. 2010: Entire part added, (SB 10-028), ch. 397, p. 1886, § 1, effective June 9. **L. 2012:** (2) amended, (HB 12-1120), ch. 27, p. 105, § 14, effective June 1.

Editor's note: The effective date for amendments to this section by House Bill 12-1120 (chapter 27, Session Laws of Colorado 2012) was changed from August 8, 2012, to June 1, 2012, by House Bill 12S-1002 (First Extraordinary Session, chapter 2, p. 2432, Session Laws of Colorado 2012).

8-75-203. Work share program - work share plan - eligibility of employer - approval - denial - rules.

(1) (a) Repealed.

(b) (I) The director shall establish a voluntary work share program for the purpose of allowing the payment of unemployment compensation benefits to employees whose wages and hours have been reduced. In order to participate in the work share program, an employer shall submit a work share plan in writing to the director for approval. If the employer is subject to a collective bargaining agreement, the collective bargaining unit must agree in writing to the work share plan prior to implementation. An employer that is a negative excess employer pursuant to section 8-76-102.5 (3) may be eligible to participate in the work share program in accordance with rules adopted by the director concerning eligibility requirements.

(II) This paragraph (b) is effective December 31, 2012.

(2) An employer must submit a work share plan to the division on forms and following procedures required by the director. The director may approve a work share plan if:

(a) The plan applies to and identifies a specific affected unit;

(b) The plan identifies the employees in the affected unit by name and social security number;

(c) The plan reduces the normal work for an employee in the affected unit by at least ten percent and not more than an amount consistent with rules promulgated by the director and authorized under 26 U.S.C. sec. 3306 (v);

(d) The plan applies to at least two of the employees in the affected unit;

(e) Repealed.

(f) The plan includes a description of how the plan complies with the "Federal Unemployment Tax Act", 26 U.S.C. sec. 3301 et seq.;

(g) The plan includes an explanation of how employees will be notified of the plan in advance, if notification is feasible, or an explanation of why it is not feasible to notify the employees in advance;

(h) The plan includes an estimate of the number of employees who would be laid off if the employer did not participate in the work share program; and

(i) The plan includes certification by the employer that the terms of the written plan and implementation of the plan are consistent with employer obligations pursuant to federal and state law.

(3) The director shall not approve a work share plan unless the employer:

(a) Agrees that for the duration of the employer's participation in the work share program, the employer shall not eliminate or diminish health insurance, retirement benefits received under a pension plan, paid vacation and holidays, sick leave, or any other similar employee benefit provided by the employer immediately prior to submitting the work share plan to the division, if the employer provides benefits to his or her employees;

(b) Certifies that the collective bargaining agent for the employees, if applicable, has agreed to the work share plan;

(c) Certifies that the implementation of a shared work plan and the resulting reduction in work hours is in lieu of layoffs that would affect at least two of the employees in the affected unit and that would result in an equivalent reduction in work hours;

(d) Certifies that the employer will not employ additional employees in the affected unit while participating in the work share program;

(e) Agrees that no employee participating in the work share program shall receive, in the aggregate, more than twenty-six weeks of benefits; and

(f) Agrees to submit reports concerning the operation of the work share plan to the division upon request of the director.

(4) The director shall approve or deny the work share plan in writing no later than thirty days after the date the division receives the plan. If the director denies the work share plan, he or she shall inform the employer in writing of the reasons for the denial.

Source: L. 2010: Entire part added, (SB 10-028), ch. 397, p. 1887, § 1, effective June 9. **L. 2011:** (1) amended, (HB 11-1288), ch. 212, p. 928, § 12, effective July 1. **L. 2012, 1st Ex. Sess.:** (1)(a)(II) amended, (HB 12S-1002), ch. 2, p. 2428, § 7, effective June 1. **L. 2013:** IP(2), (2)(d), (3)(c), and (3)(e) amended, (2)(e) repealed, and (2)(f), (2)(g), (2)(h), and (2)(i) added, (SB 13-157), ch. 147, p. 472, § 3, effective July 1. **L. 2020:** (1)(b)(I) and (2)(c) amended, (SB 20-207), ch. 296, p. 1473, § 6, effective July 14.

Editor's note: Subsection (1)(a)(II) provided for the repeal of subsection (1)(a), effective December 31, 2012. (See L. 2012, p. 2428.)

8-75-204. Employee eligibility for unemployment benefits under the work share plan - employee eligibility for job training. (1) Notwithstanding any other provision of this title 8, an employee may be eligible for unemployment compensation benefits for a particular week pursuant to this part 2 if:

(a) The employee is employed as a member of an affected unit that is subject to an approved work share plan that is in effect for that week;

(b) The employee's normal remuneration has been reduced by an amount consistent with a reduction in hours rules as established in an approved work share plan pursuant to section 8-75-203 (2)(c); and

(c) The employee is able and available to work additional or full-time hours with his or her employer.

(2) The eligibility requirements for the receipt of unemployment compensation benefits related to the availability for work, actively seeking work, and refusing to apply for or to accept work with an employer other than the employee's current employer, pursuant to sections 8-73-107 and 8-73-108 (5), shall not apply to an employee subject to this part 2.

(3) An eligible employee may participate in training, including employer-sponsored training and training funded through the federal "Workforce Innovation and Opportunity Act", 29 U.S.C. sec. 3101 et seq., to enhance job skills if the training program has been approved by the department of labor and employment.

Source: L. 2010: Entire part added, (SB 10-028), ch. 397, p. 1888, § 1, effective June 9. **L. 2013:** (3) added, (SB 13-157), ch. 147, p. 473, § 4, effective July 1. **L. 2016:** (3) amended,

(HB 16-1302), ch. 183, p. 626, § 2, effective May 19. **L. 2020:** IP(1) and (1)(b) amended, (SB 20-207), ch. 296, p. 1474, § 7, effective July 14.

8-75-205. Benefits formula - limitation of benefits. (1) **Formula.** The division shall pay an employee who is eligible for unemployment compensation benefits under a work share plan a weekly benefit that is the product of the employee's regular weekly benefit amount pursuant to article 73 of this title, multiplied by the nearest full percentage of the reduction of the employee's work hours, rounded down to the next full dollar.

(2) **Limitations.** (a) An individual is not entitled to receive unemployment compensation benefits pursuant to this part 2 and regular unemployment compensation benefits that exceed the maximum allowable total benefits payable to an individual in a benefit year pursuant to articles 70 to 82 of this title.

(b) The division shall not pay unemployment compensation benefits to an employee for a week in which the employee is compensated for work for his or her employer that exceeds the reduced hours established under the work share plan.

(c) An employee receiving weekly unemployment compensation benefits under a work share plan is not entitled to receive benefits for partial employment pursuant to section 8-73-103 for the same week.

(d) The waiting period of one week in section 8-73-107 (1)(d) that applies to the payment of benefits for total or partial unemployment shall apply to the payment of benefits pursuant to this part 2.

Source: L. 2010: Entire part added, (SB 10-028), ch. 397, p. 1888, § 1, effective June 9.

8-75-206. Work share plan - effective date - expiration - termination. (1) A work share plan and the payment of unemployment compensation benefits pursuant to the plan shall begin the first week following approval of the plan by the director or the first week specified by the employer, whichever is later.

(2) A work share plan shall expire twelve months after the effective date of the plan.

(3) The director may terminate a work share plan for good cause if the plan is not executed according to the terms and intent of the program. "Good cause" may include failure to comply with section 8-75-203, unreasonable revision of productivity standards for the affected unit, or other conduct by the employer that may compromise the purpose, intent, and effectiveness of a work share plan.

Source: L. 2010: Entire part added, (SB 10-028), ch. 397, p. 1889, § 1, effective June 9.

8-75-207. Work share plan modifications. (1) An employer may modify a work share plan to meet changed conditions if the modification conforms to the basic provisions of the plan as originally approved by the director.

(2) Before a proposed change to a work share plan may be implemented:

(a) The collective bargaining agent shall approve the modification to the plan if an employee is covered by a collective bargaining unit;

(b) The employer shall report the change in writing to the division; and

(c) The director shall approve the modified plan.

(3) The director shall approve or deny a modified work share plan using the same standards and requirements that are used for the original work share plan in accordance with section 8-75-203.

(4) Approval of a modified work share plan shall not affect the original expiration date of the work share plan.

Source: L. 2010: Entire part added, (SB 10-028), ch. 397, p. 1889, § 1, effective June 9.

8-75-208. Benefits payments charged to employer. If reimbursement to the state for unemployment compensation is not available pursuant to the federal "Layoff Prevention Act of 2012", Subtitle D of Title II of Pub.L. 112-96, unemployment compensation benefits paid to an employee pursuant to this part 2 shall be charged to the account of the employer participating in the work share plan in the same manner as regular benefits pursuant to section 8-73-108 (3)(e)(I).

Source: L. 2010: Entire part added, (SB 10-028), ch. 397, p. 1890, § 1, effective June 9. **L. 2013:** Entire section amended, (SB 13-157), ch. 147, p. 473, § 5, effective July 1.

8-75-209. Repeal of article. (Repealed)

Source: L. 2010: Entire part added, (SB 10-028), ch. 397, p. 1890, § 1, effective June 9. **L. 2013:** Entire section repealed, (SB 13-157), ch. 147, p. 472, § 1, effective July 1.

ARTICLE 76

Premiums - Coverage

Cross references: For applicability of legislation that amends, repeals, or adds to the provisions of this article on or after May 18, 1979, see § 8-70-143.

8-76-101. Payment. (1) Premiums shall accrue and become payable by each employer for each calendar year in which the employer is subject to articles 70 to 82 of this title with respect to wages for employment. The premiums shall become due and be paid by each employer to the division for the fund in accordance with rules prescribed by the director of the division and shall not be deducted, in whole or in part, from the wages of individuals in the employer's employ.

(2) In the payment of any premiums, a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to one cent.

(3) When the quarterly amount of premiums due is less than five dollars, payment of the premiums shall not be required.

Source: L. 36, 3rd Ex. Sess.: p. 26, § 7. **CSA:** C. 167A, § 7. **L. 41:** p. 773, § 7. **CRS 53:** § 82-6-1. **C.R.S. 1963:** § 82-6-1. **L. 81:** Entire section amended, p. 492, § 7, effective July 1. **L. 86:** (1) amended, p. 493, § 99, effective July 1. **L. 2001:** (3) added, p. 34, § 1, effective March 9. **L. 2009:** Entire section amended, (HB 09-1363), ch. 363, p. 1883, § 11, effective July 1.

8-76-102. Rate of premiums - surcharge - repeal. (Repealed)

Source: L. 36, 3rd Ex. Sess.: p. 26, § 7. **CSA:** C. 167A, § 7. **L. 41:** p. 773, § 7. **CRS 53:** § 82-6-2. **C.R.S. 1963:** § 82-6-2. **L. 77:** (3) added, p. 466, § 19, effective July 7. **L. 79:** (3)(b)(II)(A) amended and (3)(c) repealed, pp. 353, 356, §§ 18, 25, effective September 30. **L. 81:** (1), (2), (3)(a), and (3)(b) amended, p. 492, § 8, effective July 1; (3)(a) amended, p. 486, § 11, effective July 1. **L. 83:** (4) added, p. 2043, § 7, effective October 1. **L. 84:** (4) amended, p. 329, § 3, effective July 1. **L. 85:** (1), (2), and (4) amended, p. 363, § 2, effective March 1; (4) amended, p. 373, § 2, effective July 1. **L. 86:** (4) amended, p. 544, § 9, effective July 1. **L. 90:** (5) added, p. 1765, § 5, effective June 8; (4) amended, p. 1764, § 3, effective July 1. **L. 91:** (5) amended, p. 1347, § 1, effective July 1. **L. 92:** (4)(b) amended, p. 1822, § 2, effective April 10. **L. 96:** (4)(b) amended and (4)(c) added, p. 384, § 10, effective April 17; (4)(a) and (4)(b) amended, p. 995, § 1, effective May 23. **L. 99:** (4) amended, p. 973, § 1, effective May 28. **L. 2000:** (4)(d) amended, p. 1838, § 5, effective August 2. **L. 2003:** (4)(d) amended, p. 1540, § 1, effective May 1. **L. 2005:** (5)(a) amended, p. 548, § 1, effective May 25. **L. 2009:** Entire section and (4)(d) amended, (HB 09-1363), ch. 363, pp. 1883, 1887, §§ 12, 13, effective July 1; (4)(a), (4)(b), and (4)(d) amended, (SB 09-076), ch. 409, p. 2251, § 1, effective July 1. **L. 2011:** (6) added, (HB 11-1288), ch. 212, p. 916, § 4, effective July 1. **L. 2012, 1st Ex. Sess.:** (6) amended, (HB 12S-1002), ch. 2, p. 2428, § 8, effective June 1.

Editor's note: Subsection (6) provided for the repeal of this section, effective December 31, 2012. (See L. 2012, p. 2428.)

8-76-102.5. Rates effective upon fund solvency - repeal of prior rates - solvency surcharge - definitions - repeal.

(1) Repealed.

(2) Effective January 1, 2013, each employer shall pay premiums in the manner prescribed by this section.

(3) (a) (I) Each employer's rate for the twelve months commencing January 1 of any calendar year is determined on the basis of the employer's record prior to the computation date for the year. The computation date for any calendar year is July 1 of the year preceding the calendar year for which the rate is computed.

(II) The total of all of an employer's premiums paid on his or her own behalf on or before thirty-one days immediately after the computation date and the total benefits that were chargeable to the employer's account and were paid before the computation date, with respect to weeks, or any established payroll period of unemployment, beginning before the computation date, is used to compute his or her premium rate for the ensuing calendar year; except that the maximum rate for negative excess employers that is credited to the unemployment compensation fund must be at least 0.0613 assessed as part of each employer's premium under this paragraph (a), and for these employers the maximum combined premium rate must be at least 0.0628 but not greater than 0.1039. "Percent of excess" means the percentage resulting from dividing the excess of premiums paid over benefits charged by the average chargeable payroll, computed to the nearest one percent. The word "to" in the column headings, which make reference to fund balances (resources available for benefits), means "not including". "Reserve ratio" means the

fund balance on any June 30 as a proportion of total wages reported by experience-rated employers.

Standard Premium Rate Schedule

Reserve Ratio	**Reserve Ratio**	**Reserve Ratio**	**Reserve Ratio**	**Reserve Ratio**	**Reserve Ratio**	**Reserve Ratio**
0.014 or Greater	0.011 to 0.014	0.008 to 0.011	0.006 to 0.008	0.004 to 0.006	0.000 to 0.004	0.000 to Deficit
Eligible Employers	**Percent of Excess**					
+20 or more	0.0051	0.0056	0.0058	0.0062	0.0066	0.0071 0.0075
+18 to +19	0.0057	0.0062	0.0064	0.0069	0.0073	0.0078 0.0082
+16 to +17	0.0058	0.0063	0.0065	0.0070	0.0074	0.0079 0.0084
+14 to +15	0.0061	0.0067	0.0069	0.0075	0.0080	0.0086 0.0091
+12 to +13	0.0066	0.0072	0.0075	0.0082	0.0088	0.0095 0.0101
+10 to +11	0.0075	0.0083	0.0087	0.0094	0.0102	0.0110 0.0118
+8 to +9	0.0095	0.0105	0.0110	0.0120	0.0130	0.0140 0.0150
+6 to +7	0.0116	0.0129	0.0135	0.0148	0.0160	0.0173 0.0186
+4 to +5	0.0138	0.0154	0.0161	0.0177	0.0192	0.0207 0.0223
+2 to +3	0.0193	0.0214	0.0225	0.0247	0.0269	0.0291 0.0313
+0 to +1	0.0271	0.0302	0.0317	0.0348	0.0379	0.0410 0.0441
Unrated	0.0170	0.0170	0.0170	0.0170	0.0170	0.0170 0.0 170
-0 to -1	0.0346	0.0386	0.0406	0.0447	0.0487	0.0527 0.0568
-2 to -3	0.0368	0.0412	0.0433	0.0476	0.0519	0.0562 0.0606
-4 to -5	0.0391	0.0437	0.0460	0.0506	0.0552	0.0598 0.0644
-6 to -7	0.0414	0.0462	0.0487	0.0535	0.0584	0.0633 0.0682
-8 to -9	0.0436	0.0488	0.0514	0.0565	0.0617	0.0668 0.0720
-10 to -11	0.0459	0.0513	0.0540	0.0595	0.0649	0.0703 0.0758
-12 to -13	0.0481	0.0539	0.0567	0.0624	0.0681	0.0738 0.0796
-14 to -15	0.0504	0.0564	0.0594	0.0654	0.0714	0.0774 0.0834
-16 to -17	0.0527	0.0589	0.0621	0.0683	0.0746	0.0809 0.0872
-18 to -19	0.0549	0.0615	0.0648	0.0713	0.0779	0.0844 0.0910
-20 to -21	0.0572	0.0640	0.0674	0.0743	0.0811	0.0879 0.0948
-22 to -23	0.0594	0.0666	0.0701	0.0772	0.0843	0.0914 0.0986
-24 to -25	0.0617	0.0690	0.0727	0.0801	0.0875	0.0949 0.1023
More than -25	0.0628	0.0703	0.0740	0.0815	0.0890	0.0964 0.1039</TBL N=8>

(a.5) Notwithstanding subsection (3)(a) of this section, if the reserve ratio is one and four-tenths percent or greater on June 30 of any year, the department shall reduce employer premiums up to fifteen percent for the following calendar year.

(b) Only those wages paid for covered employment that occurred before the computation date and were reported to the division on or before thirty-one days immediately following the computation date will be used to determine the experience rate effective for the next calendar year.

(c) Whenever an employer subject to articles 70 to 82 of this title acquires, before the computation date and pursuant to section 8-76-104, all or a segregable portion of the organization, trade, and business or substantially all of the assets of an employer who was subject to articles 70 to 82 of this title at the time of the acquisition, and the successor submitted in writing that the successor met the conditions set forth in section 8-76-104, a total or partial transfer of the experience rating record of the predecessor employer shall be made as provided in section 8-76-104. No merger of the accounts for experience rating purposes will be made for the rate effective the next calendar year unless the information is submitted to the division on or before sixty days following the computation date.

(d) Notwithstanding any provision to the contrary, an employer, at any time before March 15 of any year, may pay voluntary premiums in addition to the premiums and surcharges provided under articles 70 to 82 of this title. Voluntary premiums shall allow for a reduction of the employer's experience rate and shall be credited to the employer's account and be used in determining the employer's rate for the current calendar year and subsequent calendar years; except that, if an employer is delinquent in the payment of any premiums or surcharges due, the voluntary premium payments shall be reduced by the total amount of delinquent premiums and surcharges before such computation is made. No voluntary premiums paid pursuant to this paragraph (d) shall be refunded or applied to future premium liability.

(e) As used in sections 8-76-101 to 8-76-104, for the purpose of computing the premium rate of any employer, the term "annual payroll" means the total amount of wages for employment paid by an employer during the twelve-month period ending on June 30. The term "average chargeable payroll" means the average of the chargeable payrolls for the last three fiscal years ending on June 30. For any employer who has not reported payrolls to the division for thirty-six consecutive months ending on June 30, the division shall compute the average chargeable payroll by dividing the total chargeable payrolls of the employer during the three fiscal years ending on June 30 by the total months during which such wages were paid and multiplying the amount so determined by twelve.

(f) An employer shall have sixty calendar days after the mailing date or the transmission date as recorded by the division of a quarterly statement of benefits charged to the employer's account in which to file a written application for a review and determination of benefit charges. The application must specify in detail the grounds upon which the employer relies and may be filed in person, by mail, or by electronic means in accordance with such rules as the director of the division may promulgate. The division shall investigate the matters specified and shall give the employer notice of its redetermination by mail or by electronic means. If the employer fails to act within the prescribed time, benefits charged to the account shall be deemed correct and final. Appeal from the redetermination decision may be made pursuant to section 8-76-113 (2).

(g) By December 1 of each year, or as soon as practicable, the division shall notify each employer of the employer's premium rate as determined for the next calendar year pursuant to sections 8-76-101 to 8-76-104. The notification shall include the amount determined as the employer's average annual payroll, the total of all the employer's premiums paid on his or her own behalf and credited to his or her account for all past years, and the total benefits charged to the employer's account for all such years.

(h) No later than January 1, 2013, the division shall develop an online computer application that allows employers to review and manage account information. The online computer application shall include at least the following:

(I) A method for employers to file premium reports and make premium payments;

(II) A method for employers to review account balances, charging history, premium rates, and account status;

(III) A method for employers to change the physical address of an account, reinstate an account, and close an account; and

(IV) A method for employers to receive and return division forms and correspondence.

(i) Whenever there has been a period of five consecutive calendar years during which there were no chargeable wages paid for services considered employment under articles 70 to 82 of this title, any balance shown in the employer's account will not be transferred nor be used for premium rating purposes if the employer again becomes liable under articles 70 to 82 of this title.

(4) (a) The division shall determine employer premium rates for employers newly subject to articles 70 to 82 of this title each year as of the computation date in accordance with subsection (3) of this section. New employers pay the same premiums as unrated employers as prescribed in subsection (3) of this section or at the computed rate, whichever is higher, unless there have been twelve consecutive calendar months immediately preceding the computation date during which an employer's account has been chargeable with benefit payments.

(b) An employer that elects reimbursement under sections 8-76-108 to 8-76-110 is exempt from this section.

(c) An "employer newly subject", as used in this article, means an employer who has never, at any time, been an employer under any provision of articles 70 to 82 of this title, an employer who has lost his or her prior experience under subsection (3) of this section, or an employer who, under section 8-76-110 (2)(e), terminates his or her election to make payments in lieu of premiums or whose election to make payments in lieu of premiums has been terminated by the division under the authority of section 8-76-110 (4)(e) or (4)(f).

(5) (a) Those employers newly subject to articles 70 to 82 of this title and assigned the three-digit North American industry classification code 236, 237, or 238 for the construction industry must pay the same premiums as unrated employers as prescribed in subsection (3) of this section, at the actual experience rate, at a rate equal to the average actual experience rate, or at a rate equal to the average industry premium rate as determined by the division, whichever is greater, unless there have been thirty-six consecutive calendar months immediately preceding the computation date.

(b) For purposes of this subsection (5), assignment by the division of employment and training of industrial classifications to employers pursuant to this subsection (5) must be in accordance with procedures and guidelines of the bureau of labor statistics of the United States department of labor and be the appropriate three-digit subsector level found in the North American industry classification system manual issued by the office of management and budget.

(c) For purposes of this subsection (5), "average industry premium rate" means the average premium rate of all employers assigned the same three-digit North American industry classification code pursuant to this subsection (5). The rate is computed annually by the division using the latest data as of the computation date.

(6) (a) A political subdivision or its instrumentality that has elected to become a premium-paying employer will have its account charged with the full amount of all regular and extended benefits that are attributable to service in its employ.

(b) (I) The premium rate for political subdivisions or their instrumentalities will be examined annually in conjunction with the employer's benefit experience and may be adjusted on a year-by-year basis as prescribed by subparagraph (I) of paragraph (a) of subsection (3) of this section.

(II) The division must notify all political subdivisions or their instrumentalities, as defined in paragraph (a) of this subsection (6), of the premium rate no later than January 1 of the year for which the rate applies.

(7) (a) A solvency surcharge will be assessed when the fund balance of the unemployment compensation fund on any June 30 is equal to or less than 0.005 multiplied by the total wages reported by experience-rated employers for the previous calendar year, or for the most recent available four consecutive quarters before the last computation date. The solvency surcharge will be assessed on all experience-rated employers beginning with the next calendar year, and the solvency surcharge is added to the employer's premium rate. The solvency surcharge rate added to the employer's premium rate will also be identified separately on the employer's premium rate notice as the solvency surcharge. The solvency surcharge remains in effect until the June 30 fund balance in the unemployment compensation fund is equal to or greater than 0.007 multiplied by the total wages reported by experience-rated employers for the calendar year, or for the most recent available four consecutive quarters:

Eligible Employers Percent of Excess	**Solvency Surcharge**
+20 or more	0.00100
+18 to +19	0.00150
+16 to +17	0.00150
+14 to +15	0.00150
+12 to +13	0.00150
+10 to +11	0.00175
+8 to +9	0.00275
+6 to +7	0.00375
+4 to +5	0.00475
+2 to +3	0.00725
+0 to +1	0.01100
Unrated	0.01350
-0 to -1	0.01425
-2 to -3	0.01525
-4 to -5	0.01625
-6 to -7	0.01725
-8 to -9	0.01825
-10 to -11	0.01925
-12 to -13	0.02025
-14 to -15	0.02125
-16 to -17	0.02225
-18 to -19	0.02325
-20 to -21	0.02425
-22 to -23	0.02525

-24 to -25 0.02625
More than -25 0.02700 </TBL N=2>

(b) The solvency surcharge shall not be assessed against:

(I) The covered employers of state and local governments;

(II) Nonprofit organizations that are reimbursing employers; or

(III) Political subdivisions electing the special rate.

(c) (I) Notwithstanding subsection (7)(a) of this section, for the calendar years 2021 and 2022, the division shall not assess a solvency surcharge on any employer.

(II) This subsection (7)(c) is repealed, effective January 1, 2023.

(8) (a) Subject to the conditions stated in paragraph (b) of this subsection (8), an employer is eligible for a premium credit, as determined by the division, of a proportionate amount of the excess of the amount specified in subparagraph (IV) of paragraph (b) of this subsection (8). Each employer that qualifies for the premium credit receives a share of the total available premium credit equal to his or her proportionate share of the total chargeable wages paid by qualifying employers.

(b) An employer does not receive premium credit under this subsection (8) unless all of the following conditions are met:

(I) As of the most recent computation date, the employer has filed all required reports and paid all premiums and surcharges due under articles 70 to 82 of this title;

(II) The employer is not a negative excess employer under the table in subsection (3) of this section;

(III) The employer has not elected to make reimbursement payments in lieu of premiums; and

(IV) As of the computation date immediately preceding the calendar year for which the premium credit is to be taken, the unexpended and unencumbered surplus balance in the unemployment compensation fund created in section 8-77-101 (1) exceeded one and six-tenths percent of total wages reported by experience-rated employers. Amounts in excess of one and six-tenths percent of total covered wages are considered available for disbursement as part of the premium credit.

(9) Any premium credit remaining to an employer after the first year in which the premium credit is applied is available to the employer in subsequent calendar years.

(10) As used in subsections (8) and (9) of this section, "premium credit" means the dollar amount discount available to eligible employers under the conditions set forth in paragraph (b) of subsection (8) of this section to be applied against premiums due in any given calendar year. For purposes of computing an employer's future rate, any premium credit claimed by an employer under subsection (8) of this section is disregarded, and the premium that would otherwise be due is deemed paid.

(11) (a) The division shall maintain a separate account for each employer and shall credit the employer's account with all premiums and surcharges paid on the employer's behalf. Nothing in articles 70 to 82 of this title shall be construed to grant any employer or individuals in the employer's service prior claims or rights to the amounts paid by the employer into the fund, either on the employer's behalf or on behalf of such individuals. Benefits paid to an eligible individual shall be charged, in the amount provided in this section, against the accounts of his or her employers in the base period in the inverse chronological order in which the employment of the individual occurred. Benefits paid to a seasonal worker during the normal seasonal periods

shall be charged against the account of his or her most recent seasonal employers in the corresponding normal seasonal period of his or her base period in the inverse chronological order in which the seasonal employment of the individual occurred and prior to the charging of benefits based on nonseasonal employment.

(b) The maximum amount charged against the experience rating account of any employer pursuant to paragraph (a) of this subsection (11) may not exceed one-third of the wages paid to an individual by the employer for insured work during the individual's base period, but not more per completed calendar quarter or portion thereof than one-third of the maximum wage credits as computed in section 8-73-104. Nothing in sections 8-76-101 to 8-76-104 shall be construed to limit benefits payable pursuant to sections 8-73-101 to 8-73-106. Notwithstanding section 8-73-108 or any administrative practice that results in fund charging, a reimbursing employer shall bear the cost of all benefits paid to its former employees, with the exception of benefit overpayments. The director of the division, by general rules, shall prescribe the manner in which benefits shall be charged against the accounts of several employers for whom an individual performed employment at the same time.

(c) If, by reason of fraud, mistake, or clerical error, an individual receives benefits in excess of those to which he or she is entitled and the employer's account is charged, the employer's account shall be credited an amount equal to the benefits erroneously charged to the account.

Source: L. 2011: Entire section added, (HB 11-1288), ch. 212, p. 916, § 5, effective July 1. **L. 2012:** (3)(a) and (4)(a) amended, (HB 12-1127), ch. 29, p. 116, § 1, effective March 19. **L. 2015:** (1) repealed and (2) amended, (SB 15-264), ch. 259, p. 943, § 11, effective August 5. **L. 2020:** (3)(a.5) and (7)(c) added, (SB 20-207), ch. 296, p. 1475, § 9, effective July 14.

Editor's note: On July 18, 2012, the revisor of statutes received the written report described in subsection (1) related to the repeal of sections 8-76-102 and 8-76-103. For more information about the repeal, see House Bill 11-1288. (See L. 2011, p. 916.)

8-76-103. Future rates based on benefit experience - definitions - repeal. (Repealed)

Source: L. 36, 3rd Ex. Sess.: p. 26, § 7. **L. 37:** p. 1258, § 5. **CSA:** C. 167A, § 7. **L. 39:** p. 572, § 5. **L. 41:** p. 773, § 7. **L. 43:** p. 602, § 4. **L. 45:** p. 713, § 3. **L. 49:** p. 724, §§ 5, 6. **L. 51:** p. 808, § 5. **L. 53:** p. 629, §§ 4-6. **CRS 53:** § 82-6-3. **L. 57:** p. 518, § 7. **L. 58: 1st Ex. Sess.**, p. 26, §§ 2, 3. **L. 59:** pp. 564, 567, §§ 5, 6, 2, 3. **L. 63:** p. 681, § 9. **C.R.S. 1963:** § 82-6-3. **L. 65:** p. 846, § 8. **L. 69:** pp. 671, 685-687, §§ 8, 1-3. **L. 71:** p. 935, § 12. **L. 73:** pp. 960, 961, §§ 8-10, 13. **L. 76:** (1)(b) R&RE and (3)(a) amended, p. 351, §§ 16, 17, effective October 1. **L. 77:** (3)(b)(II) R&RE, p. 475, § 2, effective July 1; (1)(b) amended, p. 485, § 4, effective October 1. **L. 79:** (3)(b)(II)(A) amended and (4) R&RE, p. 353, §§ 19, 20, effective September 30. **L. 81:** (1)(a), (3)(a), (3)(b)(II), (3)(d), (3)(e), (5), and (6), amended, p. 493, § 9, effective July 1; (1)(b) amended, p. 486, § 12, effective July 1. **L. 83:** (3)(e) R&RE, p. 430, § 7, effective June 3; (3)(a), (3)(b)(I), (3)(b)(II), and (3)(d) amended, p. 2043, § 8, effective October 1. **L. 84:** (3)(a)(I) and (3)(b)(I) amended, p. 318, § 10, effective July 1. **L. 85:** (3)(b)(IV) and (3)(d) amended and (2) repealed, pp. 373, 376, §§ 3, 8, effective July 1. **L. 86:** (1)(b) amended, p. 493, § 100, effective July 1; (3)(b)(II)(B) and (3)(b)(II)(C) amended, p. 544, § 10, effective July 1. **L. 90:** (3)(a)(III)

R&RE, p. 1765, § 4, effective June 8. **L. 91:** (3)(a)(V) added, p. 1289, § 1, effective May 16; (3)(a)(III), (3)(b)(II)(B), and (3)(b)(II)(C) amended and (3)(b)(V) added, p. 1348, § 2, effective July 1; (3)(b)(I) amended, p. 1360, § 3, effective September 1. **L. 92:** (3)(a)(III)(A) and (3)(b)(V) amended, p. 1796, § 7, effective April 10. **L. 94:** (3)(a)(V) repealed, p. 641, § 6, effective July 1. **L. 97:** (3)(a)(I) amended and (3)(a)(VI) added, p. 1141, § 1, effective May 28. **L. 2000:** (7) added, p. 142, § 1, effective March 16. **L. 2001:** (3)(a)(III) amended, p. 221, § 1, effective August 8. **L. 2002:** (4) amended, p. 337, § 5, effective April 19; (7)(a) amended, p. 941, § 1, effective August 7. **L. 2006:** (3)(b)(II)(B) amended, p. 1517, § 88, effective June 1. **L. 2009:** (1)(a), (3)(a)(I), (3)(a)(III)(E), (3)(a)(III)(G), (3)(a)(IV), (3)(b)(II), (3)(b)(V), (3)(d), (3)(e), and (5) to (7) amended, (HB 09-1363), ch. 363, p. 1887, § 14, effective July 1; (3)(a)(III)(H) repealed, (SB 09-292), ch. 369, p. 1939, § 7, effective August 5. **L. 2011:** (1)(d) and (8) added, (HB 11-1288), ch. 212, p. 925, §§ 6, 7, effective July 1; (3)(e) amended, (HB 11-1303), ch. 264, p. 1149, § 6, effective August 10. **L. 2012:** (3)(a)(III)(F) and (3)(b)(V) amended, (HB 12-1120), ch. 27, p. 105, § 15, effective June 1. **L. 2012, 1st Ex. Sess.:** (8) amended, (HB 12S-1002), ch. 2, p. 2428, § 9, effective June 1.

Editor's note: (1) Subsection (8) provided for the repeal of this section, effective December 31, 2012. (See L. 2012, p. 2428.)

(2) The effective date for amendments to this section by House Bill 12-1120 (chapter 27, Session Laws of Colorado 2012) was changed from August 8, 2012, to June 1, 2012, by House Bill 12S-1002 (First Extraordinary Session, chapter 2, p. 2432, Session Laws of Colorado 2012).

8-76-103.5. Transitional provisions - combined premium rate for 2012 - repeal. (Repealed)

Source: L. 2011: Entire section added, (HB 11-1288), ch. 212, p. 926, § 8, effective July 1.

Editor's note: Subsection (2) provided for the repeal of this section, effective January 1, 2014. (See L. 2011, p. 926.)

8-76-104. Transfer of experience - assignment of rates - definitions. (1) (a) An employing unit, as defined in section 8-70-113 (1)(f), that becomes an employer because it acquires all of the organization, trade, or business or substantially all of the assets of one or more employers subject to articles 70 to 82 of this title shall succeed to the entire experience rating record of the predecessor employer, and the entire separate account, including the actual premiums, benefits, and payroll experience of the predecessor employer, shall pass to the successor for the purpose of determining the premium rate for the successor.

(b) If the successor was not an employer prior to the date of acquisition, the successor's rate shall be the rate applicable to the predecessor employer in the period immediately preceding the date of acquisition if there was only one predecessor or if there were multiple predecessors with identical rates. If there were multiple predecessor employers with rates that were not identical, the successor's rate shall be the highest rate applicable to any of the predecessor employers in the period immediately preceding the date of acquisition.

(c) (I) Repealed.

(II) (A) If, at the time of transfer, a person who is not an employer under this section acquires the trade or business of an employer and the division finds that the successor acquired the trade or business solely or primarily for the purpose of obtaining a lower rate of contributions, the unemployment experience of the predecessor employer shall not be transferred to the successor and the division shall assign the successor the applicable new employer rate determined pursuant to section 8-76-102.5 (4).

(B) This subparagraph (II) is effective December 31, 2012.

(2) (a) Notwithstanding any other provision of sections 8-76-101 to 8-76-104, if the successor employer was an employer subject to articles 70 to 82 of this title prior to the date of acquisition and, at the time of the transfer, there is no substantial common ownership, management, or control of the two employers, the successor's premium rate for the remainder of the calendar year shall be the same as the successor's rate in the period immediately preceding the date of acquisition.

(b) If an employer transfers all or a portion of its trade or business to another employer and, at the time of the transfer, there is substantially common ownership, management, or control of the two employers, the unemployment experience attributable to the predecessor employer shall be transferred to the successor employer. The rates of both employers shall be recalculated and made effective immediately upon the date of the transfer of the trade or business. If, following a transfer experience, the division determines that the purpose of the transfer of the trade or business was solely or primarily to obtain a reduced liability for contributions, the division shall combine the experience rating accounts of the employers into a single account and shall assign a single rate to the account.

(c) If an employer transfers all or a portion of its trade or business to another employer and the division finds that the successor acquired the trade or business solely or primarily for the purpose of obtaining a lower rate of contributions, the experience and reserve account attributable to the predecessor employer shall not be transferred to the successor employer and shall revert to the predecessor employer.

(3) (a) Whenever an employer in any manner transfers a clearly segregable unit of the employer's business for which the predecessor employer has maintained, in such form as to be separable, continuous records of wages, premiums, and benefits paid on account of the segregable unit, the predecessor employer and successor employer may jointly request that the division transfer a proportionate share of premium, benefit, and payroll experience attributable to the unit based on the ratio of the chargeable payrolls paid during the twelve calendar quarters immediately preceding the computation date of the segregable unit to the total employer account prior to the notice to the division of the transfer. A transfer of experience may not be made under this subsection (3) unless the segregable unit has fourteen consecutive quarters of payroll immediately preceding the computation date. If, at the time of the transfer, there is substantially common ownership, management, or control of the two employers, the unemployment experience attributable to the predecessor employer shall be transferred to the successor employer. The rates of both employers shall be recalculated and made effective immediately upon the date of the transfer of the trade or business.

(b) The division may transfer the experience and perform all other acts required by this subsection (3). The proportionate share of the predecessor employer's reserve account attributable to the transferred unit shall pass to the successor employer.

(c) The experience rate established for the predecessor employer for all units of the business shall continue in effect for the remainder of the calendar year in which the transfer is made, and, for succeeding calendar years, it shall be computed on the experience of those units retained.

(d) If the successor was an employer prior to the effective date of the transfer, the experience rate for the calendar year in which the transfer is made shall be the same as that previously established without reference to the acquired segregable unit, and, for succeeding calendar years, it shall be computed on the combined experience of all units of the successor's business.

(e) If the successor was not an employer prior to the effective date of transfer and two or more segregable units are simultaneously transferred to the successor by a single employer, the successor's premium rate shall be computed from the combined premium, benefit, and payroll experience of the units.

(f) If the successor was not an employer prior to the effective date of transfer and two or more segregable units are simultaneously transferred to the successor by different employers, the successor's premium rate shall be the highest rate applicable to any of the units unless the rates with respect to the transferred units are identical.

(g) The transfer of experience with respect to a segregable unit shall be of no force and effect unless an application for the transfer, signed by both the predecessor employer and the successor employer, is filed with the division in the form and manner prescribed by the director by rule. The application shall be filed within sixty days after the notice of employer liability from the division is mailed or transmitted by electronic means to the successor employer. The notice shall contain information pertaining to segregable unit transfers.

(h) Whenever a predecessor employer and a successor employer jointly request that the division transfer the proportionate share of premium, benefit, and payroll experience attributable to a clearly segregable unit to the successor employer, the predecessor employer shall furnish to the division any information requested by the division for such purpose.

(4) (a) In determining whether the trade or business was acquired solely or primarily for the purpose of obtaining a lower rate of contributions, the division shall use objective factors that may include, without limitation, the cost of acquiring the trade or business, whether and for how long the successor continued the business enterprise of the acquired trade or business, and whether a substantial number of new employees were hired for performance of duties unrelated to the business activity conducted prior to the acquisition.

(b) The division may void a rate determination if it finds that a successor has no business existence separate and apart from the predecessor and should not have been established as a separate employer for unemployment compensation purposes. Under the circumstances described in this paragraph (b), the experience and reserve account attributable to the predecessor employer shall not be transferred to the successor employer and shall revert to the predecessor employer.

(5) When determining whether one or more employers have common ownership, management, or control, the division may consider factors such as stock ownership, officers, employees, payroll systems, and common business interests.

(6) The division shall establish procedures to identify the transfer or acquisition of a business or trade for purposes of this section.

(7) Notwithstanding any provision of section 8-70-113 to the contrary, any subject employer whose entire reserve account has been transferred to a successor employer, as provided in subsection (1) of this section, shall immediately cease to be a subject employer and shall thereafter become a subject employer only upon any future employment experience.

(8) A transfer of experience shall not occur when a work-site employer's account is made inactive as a result of entering into a contract with an employee leasing company, as defined in section 8-70-114 (2)(a)(V), or when a contract between a work-site employer and an employee leasing company is terminated unless there is substantial common ownership, management, and control of the work-site employer and the employee leasing company. The existence of an employee leasing arrangement, without other evidence of common control, shall not constitute substantial common ownership, management, and control.

(9) When any part of the predecessor employer's trade or business utilizes the services of ninety percent or more of the total number of employees in covered employment on the payroll for each of the four pay periods immediately preceding the transfer to a successor employer, the entire separate account, including the actual premium, benefit, and payroll experience of the predecessor employer, shall pass to the successor employer for the purpose of the rate of computation of the successor.

(10) (a) If a person knowingly violates or attempts to violate any provision of this section in order to obtain a lower contribution rate, the person shall pay all owed premiums with applicable penalties and interest and may be subject to the penalties set forth in paragraph (c) of this subsection (10).

(b) If a person knowingly advises another person in a way that results in a violation of paragraph (a) of this subsection (10), the person may be subject to the penalties set forth in paragraph (c) of this subsection (10).

(c) If the person who violates this section as described in paragraph (a) or (b) of this subsection (10) is an employer, the division may assign the employer the highest contribution rate assignable under this article for the rate year during which the violation or attempted violation occurred and the next three years. If, during the rate year in which a violation occurs, the subject employer was assigned the highest contribution rate, or the amount of the rate increase would be less than two and seven-tenths percent for the rate year, the division may impose a penalty contribution rate of two and seven-tenths percent of chargeable wages for that rate year and the next three years. If the person is not an employer, the person may be subject to a civil fine of not more than five thousand dollars, which shall be deposited in the unemployment revenue fund created in section 8-77-106.

(d) In addition to any penalty imposed pursuant to paragraphs (a), (b), and (c) of this subsection (10), any violation of this section may be prosecuted as a class 1 misdemeanor pursuant to section 18-1.3-501, C.R.S.

(11) As used in this section, unless the context otherwise requires:

(a) "Knowingly" or "willfully" means being aware that one's conduct is practically certain to cause the result or having reckless disregard for the prohibition involved.

(b) "Person" means any individual, trust, estate, partnership, association, company, corporation, joint venture, limited liability company, or other legal or commercial entity.

(c) "Trade" or "business" includes an employer's work force.

(d) "Violates or attempts to violate" includes, but is not limited to, intent to evade, misrepresentation, or willful nondisclosure.

Source: L. 41: p. 773, § 7. **CSA:** C. 167A, § 7. **L. 43:** p. 602, § 4. **L. 47:** p. 887, § 3. **L. 51:** p. 810, § 6. **L. 53:** p. 632, § 7. **CRS 53:** § 82-6-4. **L. 55:** pp. 530, 531, §§ 4, 5. **C.R.S. 1963:** § 82-6-4. **L. 71:** p. 936, § 13. **L. 81:** (1) and (2) amended, p. 496, § 10, effective July 1. **L. 83:** (1) amended, p. 430, § 8, effective June 3. **L. 85:** (1) amended and (5) added, p. 374, § 4, effective July 1. **L. 90:** (1) and (4) amended, p. 604, § 9, effective April 3. **L. 93:** (6) added, p. 707, § 2, effective May 6. **L. 94:** (5)(a), (5)(b), and (5)(j) amended, p. 641, § 7, effective July 1. **L. 97:** (6) amended, p. 210, § 3, effective April 8. **L. 98:** (5)(g), (5)(h), and (5)(i) amended and (7) and (8) added, p. 70, § 7, effective March 23. **L. 2002:** (5)(g) amended, p. 338, § 6, effective April 19. **L. 2005:** Entire section R&RE, p. 543, § 1, effective July 1. **L. 2006:** (8) amended, p. 654, § 2, effective April 24. **L. 2009:** (1)(a), (2)(a), (3)(a), (3)(e), (3)(f), (3)(h), (9), (10)(a), and (10)(c) amended, (HB 09-1363), ch. 363, p. 1895, § 15, effective July 1; (8) amended, (SB 09-292), ch. 369, p. 1940, § 8, effective August 5. **L. 2011:** (1)(c) amended, (HB 11-1288), ch. 212, p. 929, § 13, effective July 1. **L. 2012, 1st Ex. Sess.:** (1)(c)(I)(B) amended, (HB 12S-1002), ch. 2, p. 2428, § 10, effective June 1.

Editor's note: Subsection (1)(c)(I)(B) provided for the repeal of subsection (1)(c)(I), effective December 31, 2012. (See L. 2012, p. 2428.)

Cross references: For the legislative declaration contained in the 1997 act amending subsection (6), see section 1 of chapter 77, Session Laws of Colorado 1997.

8-76-105. Period of employer's coverage. (1) Any employing unit which is or becomes an employer subject to articles 70 to 82 of this title within any calendar year shall be deemed to be an employer during the whole of such calendar year.

(2) No employing unit shall be deemed to be an employer liable under articles 70 to 82 of this title for any period prior to five calendar years immediately preceding the calendar year in which the division determines the employing unit to be an employer as defined in section 8-70-103.

Source: L. 36, 3rd Ex. Sess.: p. 29, § 8. **CSA:** C. 167A, § 8. **L. 41:** p. 799, § 8. **L. 49:** p. 726, § 8. **L. 51:** p. 811, § 7. **CRS 53:** § 82-6-5. **C.R.S. 1963:** § 82-6-5. **L. 73:** p. 961, § 11.

8-76-106. Termination of employer liability. (1) An employing unit shall cease to be an employer subject to articles 70 to 82 of this title only as of the first day of any calendar year, only if, not later than the last day of February of such year, it has filed with the division a written application for termination of coverage as an employer as of the first day of January, and the division finds that during the preceding calendar year:

(a) Such employing unit was not an employer as defined in the introductory portion to section 8-70-113 (1) and section 8-70-113 (1)(g);

(b) Such employing unit was not liable by having elected to become liable during such year; or

(c) Such employing unit did first become liable under and by virtue of section 8-76-104 and was not liable under the introductory portion to section 8-70-113 (1) and section 8-70-113 (1)(g) or section 8-76-107.

(2) Any employer who does not employ any individual whose services are considered in employment at any time in this state for a period of one calendar year shall cease to be an employer subject to articles 70 to 82 of this title as of the thirty-first day of December of such calendar year.

(3) Any employing unit which became liable during any calendar year preceding the calendar year in which its liability by virtue of the introductory portion to section 8-70-113 (1) and section 8-70-113 (1)(g) was determined may terminate coverage effective as of the end of the first year during which such employing unit was not an employer by virtue of the introductory portion to section 8-70-113 (1) and section 8-70-113 (1)(g) if such year was prior to the date the determination was made by the division, by filing a written application to terminate coverage as an employer within thirty days of the date of such determination.

(4) For the purposes of this section, written applications shall be filed in such form and manner as the director of the division may prescribe by rule, including in person, by mail, by telephone, or by electronic means.

Source: L. 36, 3rd Ex. Sess.: p. 29, § 8. **L. 37:** p. 1261, § 6. **CSA:** C. 167A, § 8. **L. 39:** p. 572, § 6. **L. 41:** p. 779, § 8. **L. 45:** p. 713, § 4. **L. 49:** p. 726, § 8. **L. 51:** p. 811, § 7. **CRS 53:** § 82-6-6. **C.R.S. 1963:** § 82-6-6. **L. 65:** p. 846, § 9. **L. 71:** p. 937, § 14. **L. 90:** (1)(a), (1)(c), and (3) amended, p. 604, § 10, effective April 3. **L. 2002:** (4) added, p. 338, § 7, effective April 19.

8-76-107. Election to become liable. (1) An employing unit, not otherwise subject to articles 70 to 82 of this title, which files with the division its written election to become an employer subject hereto for not less than two calendar years, with the written approval of such election by the division, shall become an employer subject hereto to the same extent as all other employers, as of the date stated in such approval, and shall cease to be subject hereto as of January first of any calendar year subsequent to such two calendar years, only if such employing unit has filed with the division a written application for termination as provided in subsection (2) of this section.

(2) Any employing unit for which services that do not constitute employment are performed may file with the division a written election that all such services performed by individuals in its employ in one or more distinct establishments or places of business shall be deemed to constitute employment for all the purposes of articles 70 to 82 of this title for not less than two calendar years. Upon the written approval of such election by the division, such services shall be deemed to constitute employment subject to articles 70 to 82 of this title from and after the date stated in such approval. Such services shall cease to be deemed employment subject hereto as of January 1 of any calendar year subsequent to such two calendar years, only if such employing unit has filed with the division a written application for termination as provided in this section.

(3) For the purposes of this section, written applications shall be filed in such form and manner as the director of the division may prescribe by rule, including in person, by mail, by telephone, or by electronic means.

Source: L. 36, 3rd Ex. Sess.: p. 29, § 8. **CSA:** C. 167A, § 8. **L. 41:** p. 779, § 8. **L. 51:** p. 811, § 7. **CRS 53:** § 82-6-7. **C.R.S. 1963:** § 82-6-7. **L. 2002:** (3) added, p. 338, § 8, effective April 19.

8-76-108. Coverage by political subdivisions. (1) (a) Political subdivisions are covered employers if employees employed by such political subdivisions perform services in employment as defined by section 8-70-119. Such political subdivisions may elect to pay premiums in lieu of reimbursements. Any political subdivision that makes reimbursement shall not be liable to make such payments with respect to the benefits paid to any individual whose base period wages include wages for previously uncovered services as defined in section 8-70-141 (1)(d) to the extent that the unemployment compensation fund is reimbursed for such benefits pursuant to section 121 of Public Law 94-566.

(b) Repealed.

(c) The amounts required to be paid in lieu of premiums by any political subdivision under this section shall be billed and payment made as provided in section 8-76-110 (3) with respect to similar payments by nonprofit organizations.

(d) An election by a contributing political subdivision to become a reimbursing employer or an election by a reimbursing political subdivision to become a contributing employer may be made by filing with the division written notice, in such form and manner as the director of the division may prescribe by rule, not later than March 1 of the calendar year in which the election is to be effective. Such election becomes effective as of the first day of the calendar year with respect to services performed after that date. Notwithstanding the effective date of any election, the political subdivision remains liable for all benefits chargeable against its account that it has not paid.

(e) Political subdivisions or their instrumentalities that are liable for payments in lieu of premiums shall pay to the division for the unemployment compensation fund the full amount of all regular and extended benefits paid that are attributable to service in their employ. Political subdivisions or their instrumentalities that have elected to pay premiums as permitted by this section shall have their accounts charged with the full amount of all regular and extended benefits that are attributable to service in their employ.

(f) Any extension of unemployment insurance coverage to political subdivisions mandated by Public Law 94-566 shall again become optional in the event such mandatory coverage is declared unconstitutional or null and void by the supreme court of the United States or is repealed by an act of congress.

Source: L. 71: p. 937, § 15. **C.R.S. 1963:** § 82-6-8. **L. 75:** (1)(a) amended, p. 322, § 4, effective June 20. **L. 76:** (1)(a) amended, p. 361, effective April 20; (1)(a) amended, p. 351, § 18, effective October 1. **L. 77:** (1)(a) amended and (1)(e) and (1)(f) added, p. 467, § 20, effective July 7. **L. 79:** (1)(a) and (1)(d) amended and (1)(b) repealed, pp. 354, 356, §§ 21, 25, effective September 30. **L. 81:** (1)(e) amended, p. 486, § 13, effective July 1; (1)(a), (1)(c), and (1)(e) amended, p. 497, § 11, effective July 1. **L. 82:** (1)(d) amended, p. 239, § 8, effective July 1. **L. 90:** (1)(a) amended, p. 604, § 11, effective April 3. **L. 2002:** (1)(d) amended, p. 338, § 9, effective April 19. **L. 2009:** (1)(a), (1)(c), and (1)(e) amended, (HB 09-1363), ch. 363, p. 1896, § 16, effective July 1.

8-76-109. Payments in lieu of premiums by state hospitals and state institutions of higher education. State hospitals and state institutions of higher education as defined in section 8-70-103 (14) and (15) may elect to make reimbursements in lieu of premiums as provided for nonprofit organizations in section 8-76-110 (1) to (3) and (5).

Source: L. 71: p. 938, § 15. **C.R.S. 1963:** § 82-6-9. **L. 81:** Entire section amended, p. 497, § 12, effective July 1. **L. 2009:** Entire section amended, (HB 09-1363), ch. 363, p. 1897, § 17, effective July 1.

8-76-110. Financing benefits paid to employees of nonprofit organizations. (1) Benefits paid to employees of nonprofit organizations shall be financed in accordance with the provisions of this section. For the purpose of this section, a nonprofit organization is an organization or group of organizations described in section 501 (c)(3) of the federal "Internal Revenue Code of 1986", as amended, which are exempt from income tax under section 501 (a) of such code.

(2) **Liability for premiums and election of reimbursement.** (a) Any nonprofit organization that, pursuant to section 8-70-113 (1)(c), is or becomes subject to articles 70 to 82 of this title shall pay premiums under the provisions of section 8-76-101, unless it elects, in accordance with this subsection (2), to pay to the division for the unemployment compensation fund an amount equal to the amount of regular benefits and one-half of the extended benefits paid, that is attributable to service in the employ of such nonprofit organization, to individuals for weeks of unemployment that begin during the effective period of such election.

(b) (Deleted by amendment, L. 2009, (HB 09-1363), ch. 363, p. 1897, § 18, effective July 1, 2009.)

(c) Any nonprofit organization that becomes subject to articles 70 to 82 of this title may elect to become liable for payments in lieu of premiums for a period of not less than the calendar year within which such subjection begins by filing a written notice of its election with the division not later than thirty days immediately following the date of the determination of such subjection. Any nonprofit organization that elects to make payments in lieu of premiums into the unemployment compensation fund as provided in this paragraph (c) shall not be liable to make such payments with respect to the benefits paid to any individual whose base period wages include wages for previously uncovered services as defined in section 8-70-141 (1)(d) to the extent that the unemployment compensation fund is reimbursed for such benefits pursuant to section 121 of Public Law 94-566.

(d) (Deleted by amendment, L. 2009, (HB 09-1363), ch. 363, p.1897, § 18, effective July 1, 2009.)

(e) Any nonprofit organization that makes an election in accordance with paragraph (c) of this subsection (2) will continue to be liable for payments in lieu of premiums until it files with the division a written notice terminating its election not later than thirty days prior to the beginning of the calendar year for which such termination is first effective.

(f) Any nonprofit organization that pays premiums under articles 70 to 82 of this title may change to a reimbursing basis by filing with the division not later than thirty days prior to the beginning of any calendar year a written notice of election to become liable for payments in lieu of premiums. Such election shall not be terminable by the organization for that and the next year. Any organization making such an election remains liable for the payment of all charges to its account and all premiums and surcharges due the division, and past due premiums and surcharges are subject to all interest and penalties as provided in articles 70 to 82 of this title.

(g) The division may for good cause extend the period within which a notice of election, or a notice of termination, must be filed and may permit an election to be retroactive.

(h) The division, in accordance with such rules as it may prescribe, shall notify each nonprofit organization of any determination that it may make of the status of the organization as an employer and of the effective date of any election and of any termination of such election.

(i) Notwithstanding any other provisions of articles 70 to 82 of this title, any nonprofit organization that, prior to January 1, 1969, paid premiums required by articles 70 to 82 of this title and that elects, pursuant to paragraph (d) of this subsection (2) as it existed prior to its repeal in 2009, to make payments in lieu of premiums shall not be required to make any such payment on account of any regular or extended benefits paid and attributable to wages paid for service performed in its employ for weeks of unemployment that begin on or after the effective date of such election until the total amount of such benefits equals the amount by which the premiums paid by such organization with respect to a period before such election exceed benefits paid for the same period and charged to the experience rating account of such organization, as of the effective date of such election.

(3) **Reimbursement payments.** (a) Payments in lieu of premiums shall be made in accordance with the provisions of this subsection (3).

(b) At the end of each calendar quarter, the division shall bill each nonprofit organization, or group of such organizations, that has elected to make payments in lieu of premiums for an amount equal to the full amount of regular benefits plus one-half of the amount of extended benefits paid during such quarter or other prescribed period that is attributable to service in the employ of such organization.

(c) Payment of any bill rendered under paragraph (b) of this subsection (3) shall be made not later than thirty days after such bill was mailed to the last-known address of the nonprofit organization or was otherwise delivered to it, unless there has been an application for review and redetermination in accordance with paragraph (e) of this subsection (3).

(d) Payments made by any nonprofit organization under the provisions of this subsection (3) shall not be deducted or deductible, in whole or in part, from the remuneration of individuals in the employ of the organization.

(e) The amount due specified in any bill from the division shall be conclusive on the organization unless, not later than fifteen days after the bill was mailed to its last-known address or otherwise delivered to it, the organization files an application for redetermination by the division setting forth the grounds for such application. The division shall promptly review and reconsider the items specified and shall thereafter issue a redetermination in any case in which such application for redetermination has been filed. The amount due on the specified items in such redetermination shall become due and payable not later than thirty days following the date of mailing of the redetermination. All other charges specified on the original bill are due and payable within thirty days as provided by paragraph (c) of this subsection (3).

(f) Past-due payments of amounts in lieu of premiums shall be subject to the same interest and penalties that, pursuant to sections 8-79-101 and 8-79-104, apply to past-due premiums and surcharges.

(4) **Provision of bond or other security.** (a) In the discretion of the division, any nonprofit organization that elects to become liable for payments in lieu of premiums shall be required, within fifteen days after the effective date of its election, to execute and file with the division a surety bond approved by the division, or it may elect instead to deposit with the division money or securities. The amount of such bond or deposit shall be determined in accordance with the provisions of this subsection (4).

(b) The amount of bond or deposit required by this subsection (4) shall be equal to three times the sum of the amount of regular benefits plus one-half the extended benefits paid, if any, that are attributable to service in the employ of the nonprofit organization during the previous calendar year or the sum of said payments during the three previous calendar years, whichever is greater, but shall not exceed three and six-tenths percent nor be less than one-tenth of one percent of the total covered payroll of such organization for the preceding calendar year. If the employer has not been subject to articles 70 to 82 of this title for a sufficient period of time to acquire three calendar years' experience, then the bond shall be an amount computed by multiplying the total covered payroll for the previous calendar year, or the equivalent thereof, by two and seven-tenths percent. Any organization that, under the provisions of paragraph (i) of subsection (2) of this section, is not required to make payments in lieu of premiums will not be required to file a surety bond or make a surety deposit with the division as provided in this paragraph (b) until such time as said organization is required to make payments in lieu of premiums.

(c) Any bond deposited under this subsection (4) shall be in force for a period of not less than two calendar years and shall be renewed with the approval of the division, at such times as the division may prescribe, but not less frequently than at two-year intervals as long as the organization continues to be liable for payments in lieu of premiums. The division shall require such adjustments to be made in a previously filed bond as it deems appropriate. If the bond is to be increased, the adjusted bond shall be filed by the organization within fifteen days after the date notice of the required adjustment was mailed or otherwise delivered to it. Failure by any organization covered by such bond to pay the full amount of payments in lieu of premiums when due, together with any applicable interest and penalties provided for in paragraph (f) of subsection (3) of this section, shall render the surety liable on said bond to the extent of the bond, as though the surety were such organization.

(d) Any deposit of money or securities in accordance with this subsection (4) shall be retained by the division in an escrow account until liability under the election is terminated, at which time it shall be returned to the organization, less any deductions as provided in this subsection (4). The division may deduct from the money deposited under this paragraph (d) by a nonprofit organization or sell the securities a nonprofit organization has so deposited to the extent necessary to satisfy any due and unpaid payments in lieu of premiums and any applicable interest and penalties provided for in paragraph (f) of subsection (3) of this section. The division shall require the organization, within fifteen days following any deduction from a money deposit or sale of deposited securities under the provisions of this paragraph (d), to deposit sufficient additional money or securities to make whole the organization's deposit at the prior level. Any cash remaining from the sale of such securities shall be a part of the organization's escrow account. The division may, at any time, review the adequacy of the deposit made by any organization. If, as a result of such review, the division determines that an adjustment is necessary, it shall require the organization to make an additional deposit within fifteen days after written notice of its determination or shall return to it such portion of the deposit as it no longer considers necessary, whichever action is appropriate. Disposition of income from securities held in escrow shall be governed by the applicable provisions of state law.

(e) If any nonprofit organization fails to file a bond or make a deposit, or to file a bond in an increased amount or to increase or make whole the amount of a previously made deposit, as provided under this subsection (4), the division may terminate the organization's election to

make payments in lieu of premiums, and the termination shall continue for not less than the four-consecutive-calendar-quarter period beginning with the quarter in which the termination becomes effective, but the division may, for good cause, extend the applicable filing, deposit, or adjustment period by not more than fifteen days.

(f) If any nonprofit organization is delinquent in making payments in lieu of premiums as required under subsection (2) of this section, the division may terminate the organization's election to make payments in lieu of premiums as of the beginning of the next calendar year, and the termination shall be effective for that and the next calendar year.

(5) **Allocation of benefit costs.** (a) A political subdivision that is liable for payments in lieu of premiums shall pay to the division for the unemployment compensation fund the full amount of all regular and extended benefits paid that are attributable to service in the employ of such employer. A nonprofit organization liable for payments in lieu of premiums shall pay to the division for the unemployment compensation fund the amount of regular benefits plus the amount of one-half of extended benefits paid that are attributable to service in the employ of such employer. If benefits paid to an individual are based on wages paid by more than one employer and one or more of such employers are liable for payments in lieu of premiums, the amount payable to the fund by each employer that is liable for such payments shall be determined in accordance with the provisions of paragraph (b) or (c) of this subsection (5).

(b) If benefits paid to an individual are based on wages paid by one or more employers that are liable for payments in lieu of premiums and on wages paid by one or more employers that are liable for premiums, the amount of benefits payable by each employer that is liable for payments in lieu of premiums shall be an amount that bears the same ratio to the total benefits paid to the individual as the total base period wages paid to the individual by such employer bear to the total base period wages paid to the individual by all of his or her base period employers.

(c) If benefits paid to an individual are based on wages paid by two or more employers that are liable for payments in lieu of premiums, the amount of benefits payable by each such employer shall be an amount that bears the same ratio to the total benefits paid to the individual as the total base period wages paid to the individual by such employer bear to the total base period wages paid to the individual by all of his or her base period employers.

(6) **Group accounts.** Two or more employers that are liable for payments in lieu of premiums, in accordance with the provisions of subsection (2) of this section and sections 8-76-108 and 8-76-109, may file a joint application with the division for the establishment of a group account for the purpose of sharing the cost of benefits paid that are attributable to service in the employ of such employers. Each application shall identify and authorize a group representative to act as the group's agent for the purposes of this subsection (6). Upon its approval of the application, the division shall establish a group account for the employers effective as of the beginning of the calendar quarter in which it receives the application and shall notify the group's representative of the effective date of the account. The account shall remain in effect for not less than two years and thereafter until terminated at the discretion of the division or upon application by the group. Upon establishment of the account, each member of the group shall be liable for payments in lieu of premiums with respect to each calendar quarter in the amount that bears the same ratio to the total benefits paid in that quarter that are attributable to service performed in the employ of all members of the group as the total wages paid for service in employment by the member in that quarter bear to the total wages paid during that quarter for service performed in the employ of all members of the group. The division shall prescribe rules as necessary with

respect to applications for establishment, maintenance, and termination of group accounts that are authorized by this subsection (6); for addition of new members to, and withdrawal of active members from, such accounts; and for the determination of the amounts that are payable under this subsection (6) by members of the group and the time and manner of such payments.

(7) Repealed.

(8) For the purposes of this section, applications, filings, and notices of election shall be filed in such form and manner as the director of the division may prescribe by rule, including in person, by mail, by telephone, or by electronic means.

Source: L. 71: p. 937, § 15. **C.R.S. 1963:** § 82-6-10. **L. 77:** (2)(c) amended and (7) repealed, pp. 468, 471, §§ 21, 27, effective July 7. **L. 81:** (2)(a) to (2)(f), (2)(i), (3)(a), (3)(b), (3)(f), (4), (5), and (6) amended, p. 498, § 13, effective July 1; (5)(a) amended, p. 487, § 14, effective July 1. **L. 83:** (2)(f) amended, p. 431, § 9, effective June 3. **L. 85:** (2)(d) and (3)(e) amended, p. 375, § 5, effective July 1. **L. 90:** (2)(a) and (2)(c) amended, p. 604, § 12, effective April 3. **L. 2000:** (1) and (2)(d) amended, p. 1839, § 6, effective August 2. **L. 2002:** (8) added, p. 339, § 10, effective April 19. **L. 2009:** (2), (3)(a), (3)(b), (3)(f), and (4) to (6) amended, (HB 09-1363), ch. 363, p. 1897, § 18, effective July 1.

8-76-111. Coverage of state employees. (1) (a) The state of Colorado hereby elects, effective January 1, 1976, with respect to all services performed in the employ of this state or any branch or department thereof or any instrumentality thereof which is not otherwise an employer subject to this title, to become a reimbursing employer subject to this title, and all services performed in the employ of this state or any branch or department or instrumentality thereof shall constitute employment. This election does not apply to political subdivisions of this state.

(b) Repealed.

(2) As used in this section, prior to January 1, 1978, "services performed in the employ of this state" means employment in the state personnel system of this state as defined in section 13 of article XII of the state constitution and article 50 of title 24, C.R.S., regular full-time employment in the legislative branch of this state, and employment in the judicial department of this state; but such employment shall not include employees of the legislative branch who serve only for the period that the general assembly is in session or judges and justices within the judicial department.

(3) Repealed.

(4) The amounts required to be paid in lieu of premiums by the state under this section shall be billed and payment made as provided in section 8-76-110 (3) with respect to similar payments by nonprofit organizations.

(5) Repealed.

(6) This state or any branch or department thereof or any instrumentality thereof shall pay to the division for the unemployment compensation fund the amount of regular benefits plus the amount of one-half of extended benefits paid through December 31, 1978, and the full amount of all regular and extended benefits paid beginning January 1, 1979, that are attributable to service in their employ.

Source: L. 75: Entire section added, p. 326, § 1, effective January 1, 1976. **L. 77:** (1)(a) and (2) amended and (5) and (6) added, p. 468, § 22, effective July 7. **L. 79:** (3) repealed, p. 1632, § 4, effective July 19; (1)(b) and (5) repealed, p. 356, § 25, effective September 30. **L. 81:** (4) amended, p. 502, § 14, effective July 1. **L. 2009:** (4) amended, (HB 09-1363), ch. 363, p. 1902, § 19, effective July 1.

8-76-112. Political subdivisions - security for collection of premiums or reimbursable payments. (1) In the event of default in payment of premiums or surcharges due or reimbursements of benefit costs, the state treasurer, upon the request of the division, shall set aside state funds otherwise payable to the political subdivision as security to ensure payment of the funds due from the political subdivision to the unemployment trust fund.

(2) Funds which may be used for this purpose include any funds in the possession of the state treasurer which are allocated to the political subdivision for any purpose, with the exception of funds earmarked for a specific purpose.

(3) The division may not request the state treasurer to set aside funds to cover obligations of the political subdivision until at least six months have elapsed since the due date for payment of the premium or surcharge or reimbursable obligation.

Source: L. 77: Entire section added, p. 469, § 23, effective July 7. **L. 81:** (1) and (3) amended, p. 502, § 15, effective July 1. **L. 2009:** (1) and (3) amended, (HB 09-1363), ch. 363, p. 1902, § 20, effective July 1.

8-76-113. Protest - appeal - filed by an employer. (1) Any employer who wishes to appeal a determination of liability for premiums or surcharges, a determination of coverage under the provisions of articles 70 to 82 of this title, or a seasonality determination pursuant to section 8-73-106 may file a written notice of appeal with the division in such form and manner as the director of the division may prescribe by rule, including in person, by mail, or by electronic means. Except as otherwise provided by this section, proceedings on appeal shall be governed by the provisions of article 74 of this title. No appeal shall be heard unless the notice of appeal has been received by the division within twenty calendar days after the date the notice of such determination is mailed or transmitted by the division to the employer in accordance with such rules as the director of the division may promulgate.

(2) Any employer who wishes to protest an assessment of premiums or surcharges, a notice of premium rate, a recomputation of premium rate, or any notice of correction of any matter set forth in this subsection (2) shall file a request for redetermination with the division, in accordance with rules promulgated by the director of the division. The division shall thereafter promptly notify the employer of its redetermination decision. Any employer who wishes to appeal from a redetermination decision may file a written notice of appeal with the division. Except as otherwise provided by this section, proceedings on appeal shall be governed by the provisions of article 74 of this title. No appeal shall be heard unless notice of appeal has been received by the division within twenty calendar days after the date the notice of such redetermination is mailed or transmitted by the division to the employer in accordance with such rules as the director of the division may promulgate.

(3) Any determination or redetermination from which appeal may be taken pursuant to subsection (1) or (2) of this section shall be final and binding upon the employer unless a notice

of appeal is filed in accordance with the time limits set forth in subsections (1) and (2) of this section or unless the employer establishes to the satisfaction of the division that he had good cause for failure to file a timely notice of appeal. Guidelines for determining what constitutes good cause shall be established by the director of the division.

(3.5) Any administrative appeal pursuant to this section shall be conducted by a referee or hearing officer of the division.

(4) In connection with any appeal proceeding conducted pursuant to this section, the referee may, upon application by any party or upon his own motion:

(a) Convene a prehearing conference to discuss the issues on appeal, the evidence to be presented, and any other relevant matters which may simplify further proceedings;

(b) Permit the parties to engage in prehearing discovery, insofar as practicable, in accordance with the Colorado rules of civil procedure and, in connection therewith, to shorten or extend any applicable response time; and

(c) Permit or require the filing by the parties of briefs, arguments of law, or statements of position.

(5) In matters involving a pending claim for benefits, the referee shall give due regard to the rights of the claimant to a speedy and informal hearing and may impose such limitations upon discovery as he deems reasonable.

(6) Repealed.

Source: L. 77: Entire section added, p. 469, § 23, effective July 7. **L. 79:** Entire section R&RE, p. 354, § 22, effective September 30. **L. 81:** (1) and (2) amended, p. 502, § 16, effective July 1. **L. 86:** (2) and (3) amended and (3.5) and (6) added, p. 494, § 101, effective July 1. **L. 86, 2nd Ex. Sess.:** (2) amended and (6) repealed, p. 56, §§ 3, 5, effective August 15. **L. 2002:** (1) and (2) amended, p. 339, § 11, effective April 19. **L. 2007:** (1) and (2) amended, p. 804, § 7, effective August 3. **L. 2009:** (1) and (2) amended, (HB 09-1363), ch. 363, p. 1902, § 21, effective July 1.

8-76-114. Local government advisory council. (Repealed)

Source: L. 77: Entire section added, p. 469, § 23, effective July 7. **L. 81:** Entire section repealed, p. 488, § 17, effective July 1.

8-76-115. Coverage of Indian tribes. (1) Indian tribes or tribal units, including all subdivisions or subsidiaries of, and business enterprises wholly owned by, such Indian tribes, subject to the provisions of articles 70 to 82 of this title shall pay premiums and surcharges under the same terms and conditions under sections 8-76-101 and 8-76-102.5 as apply to other premium-paying employers unless an election is made, in the same manner provided in section 8-76-108 (1)(d), to make payments in lieu of premiums into the unemployment compensation fund in amounts equal to the amount of benefits attributable to service in the employ of the Indian tribe.

(2) Indian tribes shall determine if payments in lieu of premiums will be elected by the tribe as a whole, by individual tribal units, or by combinations of individual tribal units. Two or more individual tribal units may apply with the division for the establishment of a group account in the same manner and subject to the same terms as set forth in section 8-76-110 (6).

(3) Indian tribes or tribal units electing to make payments in lieu of premiums shall be billed for the full amount of benefits attributable to service in the employ of said Indian tribes or tribal units, and payment shall be made with respect to said billings in the manner provided in section 8-76-108 (1)(c).

(4) The division may require any Indian tribe or tribal unit that elects to become liable for payments in lieu of premiums to execute and file with the division a surety bond or to deposit money or securities in the manner provided in section 8-76-110 (4).

(5) (a) Failure of the Indian tribe or tribal unit to make required payments pursuant to subsection (3) of this section, to pay premiums pursuant to sections 8-76-101 and 8-76-102.5, to pay assessments of interest and penalties pursuant to sections 8-79-101 and 8-79-104, or to execute and file a surety bond or deposit money or other security pursuant to section 8-76-110 (4) within ninety days after receipt of a delinquency notice by the division shall cause the Indian tribe to lose the option to make payments in lieu of premiums effective with the beginning of the following calendar year unless a division-approved payment plan is established or payment in full is received within the ninety-day period.

(b) The division shall notify the United States internal revenue service and the United States department of labor of failures by the Indian tribe or tribal unit to comply with this subsection (5).

(6) Any Indian tribe that loses the option to make payments in lieu of premiums due to late payment or nonpayment, as described in subsection (5) of this section, shall have such option reinstated effective with the beginning of the following calendar year if, by March 1 of said year, all contributions have been timely made and no premiums or surcharges, payments in lieu of premiums for benefits paid, penalties, or interest remain outstanding.

(7) (a) Failure of the Indian tribe or any tribal unit thereof to make any payment required by subsection (5) of this section, after all collection activities deemed necessary by the division have been exhausted, shall cause services performed for such tribe to not be treated as "employment" for purposes of section 8-70-125.5.

(b) The division may determine that any Indian tribe that loses coverage under the provisions of this subsection (7) may have services performed for such tribe again included as "employment" for purposes of section 8-70-125.5 if all premiums and surcharges, payments in lieu of premiums, penalties and interest, or surety bond or payment of other money or security have been paid.

(8) Notices of payment and reporting delinquency to Indian tribes or their tribal units shall include information stating that failure to make full payment within the prescribed time period:

(a) Shall cause the Indian tribe to be liable for taxes under the "Federal Unemployment Tax Act", 26 U.S.C. sec. 3301 et seq.;

(b) Shall cause the Indian tribe to lose the option to make payments in lieu of premiums; and

(c) May cause the Indian tribe to be excepted from the definition of "employer" as provided in section 8-70-113 (1)(k) and may cause services in the employ of the Indian tribe, as provided in section 8-70-125.5, to be excepted from "employment".

(9) Extended benefits paid that are attributable to service in the employ of an Indian tribe and not reimbursed by the federal government shall be financed in their entirety by such Indian tribe in the manner provided in section 8-76-108 (1)(e).

Source: L. 2001: Entire section added, p. 1548, § 5, effective December 21, 2000. **L. 2009:** (1) to (4), (5)(a), (6), (7)(b), and (8)(b) amended, (HB 09-1363), ch. 363, p. 1903, § 22, effective July 1. **L. 2015:** (1) and (5)(a) amended, (SB 15-264), ch. 259, p. 943, § 12, effective August 5.

Editor's note: The federal "Consolidated Appropriations Act, 2001", Pub.L. 106-554, which became law on December 21, 2000, required all states to amend their laws regarding how Indian tribes are treated for unemployment insurance purposes. The 2001 act enacting this section provided for an effective date of December 21, 2000. (See L. 2001, p. 1550.)

ARTICLE 77

Unemployment Compensation
and Revenue Funds

Cross references: For applicability of legislation that amends, repeals, or adds to the provisions of this article on or after May 18, 1979, see § 8-70-143.

8-77-101. Unemployment compensation fund - state treasurer custodian. (1) (a) There is hereby established the unemployment compensation fund, which is a special fund administered by the division exclusively for the purposes of articles 70 to 82 of this title. The state treasurer is the custodian of the fund and is liable under his or her official bond for the faithful performance of all his or her duties in connection with the fund. The state treasurer shall establish and maintain within the fund the accounts specified in this article and such other accounts as may be necessary to reflect the administration of the fund by the division. Notwithstanding any other law, in lieu of or in addition to the assessment described in section 29-4-710.7, C.R.S., the division may pay amounts necessary and appropriate from the unemployment compensation fund to the Colorado housing and finance authority for the repayment of the principal of bonds issued under section 29-4-710.7, C.R.S., and may apply amounts necessary and appropriate from the unemployment compensation fund to the repayment of principal of bonds issued under section 8-71-103 (2)(d).

(b) The unrestricted year-end balance of the unemployment compensation fund, created pursuant to paragraph (a) of this subsection (1), for the 1991-92 fiscal year shall constitute a reserve, as defined in section 24-77-102 (12), C.R.S., and, for purposes of section 24-77-103, C.R.S.:

(I) Any moneys credited to the unemployment compensation fund in any subsequent fiscal year shall be included in state fiscal year spending, as defined in section 24-77-102 (17), C.R.S., for such fiscal year; and

(II) Any transfers or expenditures from the unemployment compensation fund in any subsequent fiscal year shall not be included in state fiscal year spending, as defined in section 24-77-102 (17), C.R.S., for such fiscal year.

(2) The state treasurer, as treasurer and custodian of the unemployment compensation fund, is hereby authorized and directed to cancel of record and refuse to honor warrants or checks issued against any of the accounts established with the unemployment compensation fund which have not been presented for payment within one calendar year from the date of issue.

Source: L. 36, 3rd Ex. Sess.: p. 31, § 9. **CSA:** C. 167A, § 9. **L. 41:** p. 780, § 9. **L. 43:** p. 605, § 5. **L. 51:** p. 811, § 8. **CRS 53:** § 82-7-1. **C.R.S. 1963:** § 82-7-1. **L. 73:** p. 965, § 1. **L. 86:** Entire section amended, p. 546, § 11, effective May 28. **L. 93:** (1) amended, p. 1506, § 4, effective June 6. **L. 2012:** (1)(a) amended, (HB 12-1120), ch. 27, p. 105, § 16, effective June 1. **L. 2012, 1st Ex. Sess.:** (1)(a) amended, (HB 12S-1002), ch. 2, p. 2428, § 11, effective June 1.

Editor's note: The effective date for amendments to this section by House Bill 12-1120 (chapter 27, Session Laws of Colorado 2012) was changed from August 8, 2012, to June 1, 2012, by House Bill 12S-1002 (First Extraordinary Session, chapter 2, p. 2432, Session Laws of Colorado 2012).

8-77-101.5. CARES act funds - administration - transfer - unemployment compensation fund - legislative declaration. (1) The general assembly finds that:

(a) On March 27, 2020, the federal government enacted the "Coronavirus Aid, Relief, and Economic Security Act" ("CARES Act"), Pub.L. 116-136, pursuant to which Colorado received approximately one billion six hundred seventy-four million dollars from the federal coronavirus relief fund to use for necessary expenditures incurred due to the current COVID-19 public health emergency;

(b) The public health emergency caused by COVID-19 caused a historic increase in unemployment in the state and this has caused a dramatic increase in the number of claims for benefits from the unemployment compensation fund created in section 8-77-101;

(c) As a result, it is estimated that the unemployment compensation fund, created in section 8-77-101, will have a deficit of approximately two billion dollars by the end of fiscal year 2020-21;

(d) These costs will not be reimbursed by the federal government, nor are they accounted for in the budget approved as of March 27, 2020;

(e) The United States department of treasury has stated that payments to the state unemployment compensation fund, created in section 8-77-101, are an allowable use of the money from the federal coronavirus relief fund, under section 42 U.S.C. sec. 801 (d); and

(f) The transfer of money from the "CARES Act" to the state unemployment compensation fund, created in section 8-77-101, is a necessary expenditure incurred due to the public health emergency with respect to COVID-19.

(2) If, as of December 30, 2020, there is any unexpended money that the state received through section 42 U.S.C. sec. 801 (d) of the "CARES Act", then just prior to the close of business on December 30, 2020, the state treasurer shall transfer the unexpended amount of federal funds to the unemployment compensation fund created in section 8-77-101.

Source: L. 2020: Entire section added, (SB 20-207), ch. 296, p. 1475, § 10, effective July 14.

8-77-102. Collection and transmittal of receipts - clearing account - refunds - transfers. (1) The division or its agent shall collect or receive all premiums, surcharges, payments in lieu of premiums, fines, and penalties provided for in articles 70 to 82 of this title, all interest on delinquent premiums and surcharges provided for in section 8-79-101, and all other moneys accruing to the fund from the federal government or any other source whatsoever

and shall transmit all such moneys to the state treasurer, who shall cause the same to be deposited in a clearing account in his or her name in a state or national bank doing business in this state.

(2) Repealed.

(3) As instructed by the division, the state treasurer shall transfer from the clearing account to the employment security administration fund all amounts received pursuant to the provisions of section 8-72-110 (5). All interest collected by the division pursuant to the provisions of section 8-79-101, all penalties collected by the division pursuant to sections 8-79-104 (1)(a) and (1)(c) and 8-81-101 (4)(a)(II), and all investigative costs collected by the division pursuant to section 8-81-101 (4)(a)(III) shall be paid into the unemployment revenue fund.

(4) All amounts remaining in the clearing account after payment of refunds and the transfers provided for in subsection (3) of this section shall be paid to the secretary of the treasury of the United States for credit to the account of the state of Colorado in the federal unemployment trust fund established and maintained pursuant to section 904 of the federal "Social Security Act", as amended.

Source: L. 36, 3rd Ex. Sess.: p. 31, § 9. **L. 37:** p. 1262, § 7. **CSA:** C. 167A, § 9. **L. 41:** p. 780, § 9. **L. 43:** p. 605, § 5. **L. 51:** p. 811, § 8. **CRS 53:** § 82-7-2. **C.R.S. 1963:** § 82-7-2. **L. 71:** p. 943, § 16. **L. 73:** p. 965, § 2. **L. 80:** (3) amended, p. 791, § 33, effective June 5. **L. 81:** (1) amended, p. 503, § 18, effective July 1. **L. 85:** (2) repealed, p. 376, § 8, effective July 1. **L. 2000:** (3) amended, p. 814, § 1, effective July 1. **L. 2009:** (1) amended, (HB 09-1363), ch. 363, p. 1904, § 23, effective July 1.

Cross references: For section 904 of the "Social Security Act", see 42 U.S.C. § 1104.

8-77-103. Advances from federal unemployment trust fund. (1) The division may apply for advances to the state of Colorado from its account in the federal unemployment trust fund and accept responsibility for repayment of advances in accordance with the conditions specified in Title XII of the "Social Security Act", as amended, in order to secure to this state the advantages available under the federal act.

(2) (a) Advances from the federal unemployment trust fund which are interest-bearing shall have such interest cost together with all associated administrative costs assessed against each employer subject to experience rating. This interest assessment shall not apply to the covered employers of state and local government nor to those nonprofit organizations that are reimbursable. This interest assessment shall not apply to the political subdivisions electing the special rate.

(a.1) The interest cost assessment provided for in paragraph (a) of this subsection (2) shall not apply to any employer whose benefit-charge account balance is zero or to any employer with a positive excess of plus seven percent or more.

(b) Using the most recently available data to the division, the total covered wages of all employers subject to the interest assessment, as found for the calendar quarter nearest to the quarter in which a trust fund deficit occurred, shall be summed. This sum shall be divided into the amount of interest due on the advance. The percent resulting from this calculation shall contain four significant figures. The percent shall be applied by the employer to the total covered wages reported on the next contribution report received or that contribution report indicated in

the notification of the percent sent to the employer by the division. The amount resulting shall be submitted in the same manner as normal contributions, but as a separate payment, to the division. Each interest-bearing advance may be treated separately.

(c) The amounts received as a result of paragraph (b) of this subsection (2) shall be segregated and collected in the federal advance interest repayment fund.

Source: L. 36, 3rd Ex. Sess.: p. 31, § 9. **L. 37:** p. 1262, § 7. **CSA:** C. 167A, § 9. **L. 41:** p. 780, § 9. **L. 51:** p. 811, § 8. **CRS 53:** § 82-7-3. **C.R.S. 1963:** § 82-7-3. **L. 73:** p. 966, § 3. **L. 82:** Entire section amended, p. 239, § 9, effective July 1. **L. 84:** (2)(a) and (2)(a.1) amended, pp. 324, 330, § 4, effective July 1. **L. 85:** (2)(a) amended, p. 376, § 6, effective July 1; (2)(a) amended, p. 1359, § 5, effective July 1. **L. 2012:** (1) amended, (HB 12-1120), ch. 27, p. 106, § 17, effective June 1.

Editor's note: The effective date for amendments to this section by House Bill 12-1120 (chapter 27, Session Laws of Colorado 2012) was changed from August 8, 2012, to June 1, 2012, by House Bill 12S-1002 (First Extraordinary Session, chapter 2, p. 2432, Session Laws of Colorado 2012.)

Cross references: (1) For the federal advance interest repayment fund, see § 8-77-108.

(2) For Title XII of the "Social Security Act", see 42 U.S.C. §§ 1321 to 1324.

8-77-103.5. Issuance of unemployment revenue bonds and notes - unemployment bond repayment account - creation. (1) The executive director of the department of labor and employment is authorized to request the Colorado housing and finance authority to issue such bonds and notes as are necessary to maintain adequate balances in the unemployment compensation fund or to repay moneys advanced to the state from the federal unemployment trust fund, or both. Such requests shall be made in accordance with the provisions of section 29-4-710.7, C.R.S.

(2) There is hereby created the unemployment bond repayment account, which shall be credited with bond assessments for nonprincipal-related bond costs collected on behalf of the Colorado housing and finance authority under section 29-4-710.7, C.R.S., or by the division under section 8-71-103. After the division's costs have been deducted from the bond repayment account, moneys in the fund shall be paid to the account or accounts maintained by the Colorado housing and finance authority under section 29-4-710.7, C.R.S., or by the division with respect to bonds issued under section 8-71-103.

Source: L. 91: Entire section added, p. 717, § 3, effective July 1. **L. 2012, 1st Ex. Sess.:** (2) amended, (HB 12S-1002), ch. 2, p. 2429, § 12, effective June 1.

8-77-104. Benefit account - requisitions - payment of benefits. (1) The benefit account shall consist of moneys requisitioned by the division from the account of the state of Colorado in the federal unemployment trust fund. Expenditures from the benefit account shall be made by the division solely for payment of benefits provided in articles 70 to 82 of this title, in accordance with regulations prescribed by the director of the division. Such expenditures shall not be subject to any provisions of law requiring specific appropriations for payment thereof.

(2) From time to time the division shall requisition from such account such amounts as it deems necessary to provide for payment of benefits for a reasonable future period of time. Upon receipt of such requisitioned amounts, the state treasurer shall cause the same to be deposited in an account in the name of the division in some state or national bank doing business in this state.

(3) The division is authorized to make all lawful benefit payments by checks drawn against said bank account. The state treasurer shall have no responsibility whatsoever with respect to such benefit payments, nor shall he be responsible for any amounts requisitioned as provided in subsection (2) of this section other than to deposit the same in said bank account.

(4) Any unexpended balance remaining in the benefit account after the expiration of the period of time for which amounts were requisitioned may be used by the division for payment of benefits during a subsequent period of time, or deducted from the amount of a subsequent requisition, or, at the discretion of the division, redeposited with the secretary of the treasury of the United States for credit to the account of the state of Colorado in the federal unemployment trust fund.

(5) Benefits shall be deemed to be due and payable under the provisions of articles 70 to 82 of this title, only to the extent provided for in said articles, and only to the extent that moneys are available in the unemployment compensation fund, and neither the state nor the division shall be liable for payments in excess of the amount of such available moneys.

Source: L. 36, 3rd Ex. Sess.: p. 31, § 9. **CSA:** C. 167A, § 9. **L. 41:** p. 780, § 9. **L. 51:** p. 811, § 8. **CRS 53:** § 82-7-4. **C.R.S. 1963:** § 82-7-4. **L. 73:** p. 966, § 4. **L. 86:** (1) amended, p. 494, § 102, effective July 1.

8-77-105. Discontinuance of unemployment trust fund. The provisions of sections 8-77-101 to 8-77-104, to the extent that they relate to the unemployment trust fund, shall be operative only so long as such unemployment trust fund continues to exist and so long as the secretary of the treasury of the United States of America continues to maintain for this state a separate book account of all funds deposited therein by this state for benefit purposes, together with this state's proportionate share of the earnings of such unemployment trust fund, from which no other state is permitted to make withdrawals. If such unemployment trust fund ceases to exist, or such separate book account is no longer maintained, all moneys, properties, or securities therein belonging to the unemployment compensation fund of this state shall be transferred to the treasurer of the unemployment compensation fund, who shall hold, invest, transfer, sell, deposit, and release such moneys, properties, or securities in a manner approved by the director of the division in accordance with provisions of articles 70 to 82 of this title. Such moneys shall be invested in readily marketable classes of securities as now provided by law with respect to public moneys of the state. Such investment, at all times, shall be so made that all the assets of the fund shall always be readily convertible into cash when needed for the payment of benefits. The treasurer shall dispose of securities or other properties belonging to the unemployment compensation fund only under the direction of the director of the division.

Source: L. 39: p. 588, § 1. **L. 41:** p. 782, § 9. **CSA:** C. 167A, § 9. **L. 43:** p. 607, § 6. **L. 51:** p. 811, § 8. **CRS 53:** § 82-7-5. **C.R.S. 1963:** § 82-7-5. **L. 86:** Entire section amended, p. 494, § 103, effective July 1.

8-77-106. Unemployment revenue fund. (1) There is hereby created the unemployment revenue fund, to which shall be credited all interest collected by the division on delinquent premiums or surcharges pursuant to the provisions of section 8-79-101, all penalties collected by the division pursuant to sections 8-79-104 (1)(a) and (1)(c) and 8-81-101 (4)(a)(II), all remaining moneys in the federal advance interest repayment fund after all known interest charges and associated administrative costs pursuant to section 8-77-103 have been paid pursuant to section 8-77-108 (3), and all investigative costs collected by the division pursuant to section 8-81-101 (4)(a)(III).

(2) All moneys accruing to the unemployment revenue fund in any manner whatsoever shall be maintained in a separate account by the state treasurer and shall be annually appropriated by the general assembly to the division for the purpose of enforcing compliance with the "Colorado Employment Security Act". Moneys in the unemployment revenue fund shall first be used to make refunds of interest erroneously collected under the provisions of section 8-79-101.

(3) and (4) Repealed.

(5) Prior to the beginning of any fiscal year in which the department requests an allocation diversion from the unemployment revenue fund, the joint budget committee in conjunction with the state auditor shall certify that the department has met the goals and time lines established in the work plans submitted the previous year. No additional money shall be appropriated until all such prior conditions of the work plan are satisfied.

(6) Of the moneys appropriated to the department for allocation to the division for administrative services, not less than fifty percent shall be used to fund enforcement activities. None of the remaining moneys shall be allocated to services which compete directly with services available in the private sector.

(7) Notwithstanding any other provision of this section, on June 30, 2020, the state treasurer shall transfer two million dollars from the unemployment revenue fund to the general fund.

Source: L. 36, 3rd Ex. Sess.: p. 49, § 18. **CSA:** C. 167A, § 18. **L. 41:** p. 801, § 18. **CRS 53:** § 82-7-6. **C.R.S. 1963:** § 82-7-6. **L. 73:** p. 967, § 5. **L. 77:** (2) amended, p. 470, § 24, effective July 7. **L. 79:** (1) amended, p. 355, § 23, effective September 30. **L. 81:** (1) amended, p. 503, § 19, effective July 1. **L. 87:** (3) amended, p. 414, § 1, effective June 20. **L. 90:** (2) amended and (5) and (6) added, p. 1765, § 6, effective June 8; (3) and (4) repealed, p. 1766, § 8, effective June 8. **L. 2000:** (1), (2), and (5) amended, p. 814, § 2, effective July 1. **L. 2009:** (1) amended, (HB 09-1363), ch. 363, p. 1904, § 24, effective July 1. **L. 2020:** (7) added, (HB 20-1406), ch. 178, p. 811, § 3, effective June 29.

Editor's note: The provisions of the "Colorado Employment Security Act" are contained in articles 70 to 82 of this title.

8-77-107. Appropriation of administrative costs. (1) Moneys credited to the account of the state of Colorado in the federal unemployment trust fund pursuant to section 903 of the federal "Social Security Act" may be requisitioned only for payment of the costs incurred by the division for administration of the provisions of articles 70 to 82 of this title, and for benefits. Such administrative costs shall be expended only pursuant to specific appropriations made by the

general assembly and only if such costs are incurred and requisitions made therefor after enactment of an appropriation act.

(2) Any appropriation act enacted shall:

(a) Specify the amount of money appropriated and the purpose for which appropriated; and

(b) (Deleted by amendment, L. 2003, p. 2047, § 1, effective May 22, 2003.)

(c) Limit the amount which may be obligated during any twelve-month period beginning on July 1 and ending on the following June 30 to an amount which does not exceed the amount by which the aggregate of the amounts credited to such unemployment trust fund pursuant to section 903 of the federal "Social Security Act" during the same twelve-month period and the thirty-four preceding twelve-month periods exceeds the aggregate of the amounts paid out for benefits and obligated for administrative costs during such thirty-five twelve-month periods.

(3) Amounts credited to the unemployment trust fund pursuant to section 903 of the federal "Social Security Act" which are obligated for payment of administrative costs or paid out for benefits shall be charged against equivalent amounts which were first credited and which are not already so charged; except that no amount obligated for administrative costs during any twelve-month period specified in subsection (2) of this section may be charged against any amount credited during any twelve-month period earlier than the thirty-fourth twelve-month period preceding such period.

(4) Moneys appropriated as provided in subsection (2) of this section for payment of administrative costs shall be requisitioned from time to time by the division as required for payment of such costs as incurred, and upon receipt shall be credited to an appropriately designated account to which all payments shall be charged. Any unexpended portion of moneys appropriated for payment of administrative costs shall be returned for credit to the account of the state of Colorado in the federal unemployment trust fund.

Source: L. 73: p. 967, § 6. **C.R.S. 1963:** § 82-7-7. **L. 83:** (2)(c) and (3) amended, p. 436, § 6, effective April 12. **L. 2003:** (2)(a) and (2)(b) amended, p. 2047, § 1, effective May 22.

Cross references: For section 903 of the "Social Security Act", see 42 U.S.C. § 1103.

8-77-108. Federal advance interest repayment fund. (1) There is hereby created the federal advance interest repayment fund, to which shall be credited all assessments collected by the division on total wages pursuant to the provisions of section 8-77-103 (2).

(2) All moneys accruing to the fund in any manner whatsoever shall be maintained in a separate account by the state treasurer; except that all funds in the fund are hereby appropriated to the division for use in repayment of interest due and associated administrative costs pursuant to section 8-77-103.

(3) After all known interest charges and associated administrative costs pursuant to section 8-77-103 have been paid, any remaining moneys in the fund may be transferred to the unemployment revenue fund. Interest required to be paid under section 8-77-103 shall not be paid, directly or indirectly, from amounts in the unemployment compensation fund.

Source: L. 82: Entire section added, p. 240, § 10, effective July 1. **L. 85:** (2) and (3) amended, p. 376, § 7, effective July 1.

Cross references: For the unemployment revenue fund, see § 8-77-106; for the unemployment compensation fund, see § 8-77-101.

8-77-109. Employment support fund - employment and training technology fund - created - uses - repeal.

(1) (a) Repealed.

(b) There is hereby established the employment support fund. This fund consists of the first 0.0011 assessed as part of each employer's premium under section 8-76-102.5 (3)(a).

(2) (a) The state treasurer shall credit the moneys collected pursuant to this section to the employment support fund created in subsection (1) of this section. The general assembly shall appropriate the moneys in the employment support fund annually to the department of labor and employment:

(I) To be used to offset funding deficits for program administration, including information technology initiatives, under the provisions of articles 70 to 83 of this title and to further support programs to strengthen unemployment fund solvency; and

(II) (A) To fund labor standards, labor relations, and the Colorado works grievance procedure under the provisions of articles 1 to 6, 9, 10, 12, and 13 of this title and section 26-2-716 (3)(b), C.R.S.

(B) (Deleted by amendment, L. 2003, p. 2181, § 1, effective June 3, 2003.)

(C) To fund the administration of article 14.4 of this title 8. This subsection (2)(a)(II)(C) is repealed, effective July 1, 2022.

(a.5) (Deleted by amendment, L. 2003, p. 2181, § 1, effective June 3, 2003.)

(a.7) and (a.8) Repealed.

(a.9) (I) Repealed.

(II) (A) Notwithstanding any provision of this subsection (2) to the contrary, on and after July 1, 2011, 0.0004 assessed against each employer's premium under section 8-76-102.5 (3)(a) or ten million dollars of all revenue collected annually under section 8-76-102.5 (3)(a), whichever is less, shall be credited to the employment and training technology fund, also referred to in this paragraph (a.9) as the "fund", which is hereby created in the state treasury. Any amount collected in excess of ten million dollars under this subparagraph (II) shall be credited to the unemployment compensation fund. Moneys in the fund shall be used for employment and training automation initiatives established by the director of the division. Moneys in the fund are subject to annual appropriation by the general assembly for the purposes of this paragraph (a.9) and shall not revert to the general fund or any other fund at the end of any fiscal year. The moneys in the fund are exempt from section 24-75-402, C.R.S. If the balance of the unemployment compensation fund created in section 8-77-101 falls below one hundred million dollars, the moneys in the employment and training technology fund shall be allocated to the unemployment compensation fund. Once cumulative revenue to the employment and training technology fund equals one hundred million dollars, less any moneys transferred to the unemployment compensation fund, no additional moneys shall be credited to the employment and training technology fund but instead shall be allocated to the unemployment compensation fund. At any other time, the moneys in the employment and training technology fund may be allocated to the unemployment compensation fund at the discretion of the executive director of the department of labor and employment.

(B) This subparagraph (II) is effective December 31, 2012.

(b) The unexpended and unobligated moneys in the employment support fund shall not revert to the general fund at the end of any fiscal year, and any unobligated amounts remaining in the fund at the end of any fiscal year shall be retained in the employment support fund for purposes of this subsection (2).

(c) On and after July 1, 2001, moneys from the statewide indirect cost allocation agreement with the federal government may be used to supplement moneys in the employment support fund, in a manner that is consistent with the provisions of this subsection (2).

(d) (Deleted by amendment, L. 2002, p. 207, § 1, effective August 7, 2002.)

(3) (Deleted by amendment, L. 99, p. 974, § 2, effective May 28, 1999.)

(4) Repealed.

Source: L. 90: Entire section added, p. 1766, § 7, effective June 8. **L. 92:** (3) amended, p. 1796, § 8, effective April 10. **L. 96:** (1) amended, p. 996, § 2, effective May 23; (4) repealed, p. 1229, § 47, effective August 7. **L. 99:** (1), (2), and (3) amended, p. 974, § 2, effective May 28. **L. 2001:** (2) amended, p. 1218, § 1, effective June 5. **L. 2002:** (2)(a.5) added, p. 151, § 3, effective March 27; (2)(a)(II) and (2)(d) amended, p. 207, § 1, effective August 7. **L. 2003:** (2)(a.7) added, p. 455, § 5, effective March 5; (2)(b) amended, p. 1540, § 2, effective May 1; (2)(a)(II)(B), (2)(a.5), and (2)(c) amended, p. 2181, § 1, effective June 3. **L. 2009:** (2)(a.8) added, (SB 09-208), ch. 149, p. 619, § 4, effective April 20; (1) amended and (2)(a.9) added, (SB 09-076), ch. 409, p. 2252, §§ 2, 3, effective July 1; (1) and (2)(a.9) amended, (HB 09-1363), ch. 363, p. 1904, §§ 25, 26, effective July 1. **L. 2011:** (1) and (2)(a.9) amended, (HB 11-1288), ch. 212, p. 929, § 14, effective July 1. **L. 2012:** IP(2)(a) and (2)(a)(I) amended, (HB 12-1120), ch. 27, p. 106, § 18, effective June 1. **L. 2012, 1st Ex. Sess.:** (1)(a)(II), (1)(b)(I), and (2)(a.9)(I)(B) amended, (HB 12S-1002), ch. 2, p. 2429, § 13, effective June 1. **L. 2020:** (2)(a)(II)(C) added, (HB 20-1415), ch. 276, p. 1356, § 2, effective July 11; (1)(b) amended and (2)(a.7) and (2)(a.8) repealed, (SB 20-207), ch. 296, p. 1474, § 8, effective July 14.

Editor's note: (1) Amendments to subsection (1) by Senate Bill 09-076 and House Bill 09-1363 were harmonized.

(2) The effective date for amendments to this section by House Bill 12-1120 (chapter 27, Session Laws of Colorado 2012) was changed from August 8, 2012, to June 1, 2012, by House Bill 12S-1002 (First Extraordinary Session, chapter 2, p. 2432, Session Laws of Colorado 2012).

(3) Subsections (1)(a)(II) and (2)(a.9)(I)(B) provided for the repeal of subsections (1)(a) and (2)(a.9)(I), effective December 31, 2012. (See L. 2012, p. 2429.)

(4) Section 4 of chapter 276 (HB 20-1415), Session Laws of Colorado 2020, provides that the act changing this section applies to conduct occurring on or after July 11, 2020.

Cross references: For the legislative declaration contained in the 1996 act repealing subsection (4), see section 1 of chapter 237, Session Laws of Colorado 1996.

8-77-110. Office of future of work - study - report. (1) The office of future of work in the department of labor and employment, created by executive order B 2019 009, shall, within the scope of the executive order, study unemployment assistance as part of its study on the modernization of worker benefits and protections.

(2) On or before January 15, 2021, the office of the future of work shall submit an initial report as directed by the executive order to the governor and to the business, labor, and technology committee of the senate and the business affairs and labor committee of the house of representatives, or their successor committees.

Source: L. 2020: Entire section added, (SB 20-207), ch. 296, p. 1476, § 11, effective July 14.

ARTICLE 78

Employment Security Administration Fund

Cross references: For applicability of legislation that amends, repeals, or adds to the provisions of this article on or after May 18, 1979, see § 8-70-143.

8-78-101. Establishment of administration fund. There is hereby created in the state treasury a special fund to be known as the employment security administration fund. All money deposited or paid into this fund shall be continuously available to the division for expenditure in accordance with the provisions of articles 70 to 82 of this title, and shall not lapse at any time or be transferred to any other fund. The fund shall consist of all money received from the United States of America, or any agency thereof; all money received from any agency of the United States or any other state as compensation for services or facilities supplied to such agency; all amounts received pursuant to any surety bond or insurance policy or from other sources for losses sustained by the employment security administration fund or by reason of damage to property, equipment, or supplies purchased from money in such fund; and all proceeds realized from the sale or disposition of any such property, equipment, or supplies which may no longer be necessary for the proper administration of articles 70 to 82 of this title.

Source: L. 36, 3rd Ex. Sess.: p. 42, § 13. **CSA:** C. 167A, § 13. **L. 39:** p. 577, § 10. **L. 41:** p. 792, § 13. **L. 49:** p. 727, § 9. **L. 51:** p. 818, § 12. **CRS 53:** § 82-8-1. **L. 54:** p. 138, § 2. **C.R.S. 1963:** § 82-8-1.

8-78-102. Protection against loss. Such money shall be secured by the depository in which it is held to the same extent and in the same manner as required by the general depository law of this state. The state treasurer shall be liable on his official bond for the faithful performance of his duties in connection with the employment security administration fund provided under this article. The liability imposed under this section shall exist in addition to any liability upon any separate bond existent on March 15, 1951, or which may be given in the future.

Source: L. 36, 3rd Ex. Sess.: p. 43, § 13. **CSA:** C. 167A, § 13. **L. 51:** p. 818, § 12. **CRS 53:** § 82-8-2. **C.R.S. 1963:** § 82-8-2.

8-78-103. Deposit and disbursement. All money in the employment security administration fund shall be deposited, administered, and disbursed in the same manner and

under the same conditions and requirements as provided by law for other special funds in the state treasury. All money in this fund shall be expended solely for the purposes and in the amounts found necessary by the secretary of labor for the proper and efficient administration of the employment security program; except that moneys received pursuant to the federal "Social Security Act", as amended, which constitute this state's share of the excess remaining in the federal unemployment account on July 1 of any fiscal year shall be disbursed solely for the purposes and in the amounts found necessary for the proper and efficient administration of articles 70 to 82 of this title, as determined and mutually agreed upon by the director of the division, the controller, and the governor.

Source: L. 51: p. 818, § 12. **CSA:** C. 167A, § 13. **CRS 53:** § 82-8-4. **C.R.S. 1963:** § 82-8-4. **L. 76:** Entire section amended, p. 352, § 19, effective October 1.

Cross references: For the "Social Security Act" generally, see 42 U.S.C. § 301 et seq.

8-78-104. Reimbursement of fund. If any money received in the employment security administration fund, which is not a part of this state's share of the excess remaining in the federal unemployment account on July first of any fiscal year, is found by the secretary of labor, because of any action or contingency, to have been lost or to have been expended for purposes other than, or in amounts in excess of, those found necessary by the secretary of labor for the proper administration of the employment security program, it is the policy of this state that such money shall be replaced by money appropriated for such purpose from the general funds of this state to the employment security administration fund for expenditures as provided in section 8-78-103 or by those funds which constitute this state's share of the excess remaining in the federal unemployment account on July first of any fiscal year. Upon receipt of such a finding by the secretary of labor, the division shall promptly report the amount required for such replacement to the governor, and the governor, at the earliest opportunity, shall submit to the general assembly a request for the appropriation of such amount.

Source: L. 51: p. 818, § 12. **CSA:** C. 167A, § 13. **CRS 53:** § 82-8-5. **C.R.S. 1963:** § 82-8-5.

ARTICLE 79

Collection of Contributions, Penalties, Interest

Cross references: For applicability of legislation that amends, repeals, or adds to the provisions of this article on or after May 18, 1979, see § 8-70-143.

8-79-101. Interest on past-due premiums and surcharges. Premiums or surcharges unpaid on the date on which they are due and payable, as prescribed by the division, shall bear interest at the rate of eighteen percent per annum or one and one-half percent per month or any portion thereof on and after such date until payment plus accrued interest is received by the division. Interest collected pursuant to this section shall be paid into the unemployment revenue fund.

Source: L. 36, 3rd Ex. Sess.: p. 44, § 14. **CSA:** C. 167A, § 14. **L. 41:** p. 794, § 14. **L. 45:** p. 715, § 7. **L. 51:** p. 820, § 13. **CRS 53:** § 82-9-1. **C.R.S. 1963:** § 82-9-1. **L. 76:** Entire section amended, p. 352, § 20, effective October 1. **L. 81:** Entire section amended, p. 503, § 20, effective July 1. **L. 83:** Entire section amended, p. 2045, § 9, effective October 1. **L. 86:** Entire section amended, p. 495, § 104, effective July 1. **L. 2009:** Entire section amended, (HB 09-1363), ch. 363, p. 1905, § 27, effective July 1.

Editor's note: Section 10 of chapter 510, Session Laws of Colorado 1983, provides that the section of the act amending this section is effective October 1, 1983, but the governor did not approve the act until October 14, 1983.

8-79-102. Collection of premiums and surcharges, benefit overpayments, penalties, and interest - rules. (1) The division shall institute such practices and procedures as it deems necessary to collect any money due the division in the form of delinquent premiums, surcharges, or overpaid benefits, including all penalties and interest thereon. In the case of overpaid benefits, the division may, in addition to instituting collection procedures, withhold subsequent benefit payments to which the claimant is or becomes entitled and apply the amount withheld as an offset against the overpayment. However, any amount withheld shall not exceed twenty-five percent of a claimant's benefit payments except in those cases where overpayments have occurred on an established current claim or as a result of false representation or willful failure to disclose a material fact.

(2) The division, in its role as guardian of unemployment insurance trust fund dollars, is exempt from the provisions of section 24-30-202.4, C.R.S. If the division determines an account to be uncollectible, such account may be referred to the controller for collection. Reasonable fees for collection, as determined by the director of the division and the controller, shall be added to the amount of debt. The debtor shall be liable for repayment of the total of the amount outstanding plus the collection fee. All money collected by the controller shall be returned to the division for credit to the fund; except that, all fees collected shall be retained by the controller. If less than the full amount is collected, the controller shall retain only a proportionate share of the collection fee.

(3) If, after due notice, any employer or claimant defaults in any payment of premiums or surcharges, the repayment of overpaid benefits, or the payment of any interest or penalties thereon, the amount due may be collected by civil action, which shall include the right of attachment in the name of the division. Court costs shall not be charged to the division, but any employer or claimant against whom judgment is taken shall be charged with all costs of such action. All costs collected by the division shall be paid into the registry of the court.

(4) The collection efforts of the division shall be in accordance with subsections (1) and (2) of this section; except that, in instances involving willful violation of any provision of articles 70 to 82 of this title, or if deemed appropriate by the director of the division, the division may seek relief under subsection (3) of this section.

(5) (a) Notwithstanding any other provision of this title, the division shall charge an employer's account for an improper payment from the unemployment compensation fund if the division determines that:

(I) The payment was made because the employer, or an agent of the employer, was at fault for failing to respond timely or adequately to the request of the division for information relating to the claim for compensation; and

(II) The employer or agent has established a pattern of failing to respond timely or adequately to such requests.

(b) The division shall promulgate rules to specify what factors and frequency constitute a pattern of failing to respond timely or adequately for purposes of enforcing this subsection (5).

Source: L. 36, 3rd Ex. Sess.: p. 44, § 14. **CSA:** C. 167A, § 14. **L. 39:** p. 578, § 11. **L. 41:** p. 794, § 14. **CRS 53:** § 82-9-2. **C.R.S. 1963:** § 82-9-2. **L. 81:** Entire section amended, p. 504, § 21, effective July 1. **L. 83:** Entire section R&RE, p. 431, § 10, effective June 3. **L. 85:** (1) amended, p. 368, § 6, effective July 1. **L. 2009:** (1) and (3) amended, (HB 09-1363), ch. 363, p. 1905, § 28, effective July 1. **L. 2013:** (5) added, (HB 13-1124), ch. 97, p. 312, § 1, effective August 7.

8-79-103. Premiums, surcharges, and assessments a lien on property. (1) The premiums and surcharges imposed by sections 8-76-101 to 8-76-104 and any assessments imposed pursuant to section 29-4-710.7, C.R.S., shall be a first and prior lien upon the real and personal property of any employer subject to articles 70 to 82 of this title, except as to the lien of general property taxes and except as to valid liens existing at the time of the filing of the notice provided for in section 8-79-105, and shall take precedence over all other liens or claims of whatsoever kind or nature. Any employer that sells, assigns, transfers, conveys, loses by foreclosure of a subsequent lien, or otherwise disposes of its business, or any part thereof, shall file with the division such reports as the director of the division, by rule, may prescribe within ten days after the date of any such transaction. The employer's successor shall be required to withhold from the purchase money an amount of money sufficient to cover the amount of premiums or surcharges and assessments due and unpaid until such time as the former owner produces a receipt from the division showing that the premiums, surcharges, or assessments have been paid or a certificate that no premiums, surcharges, or assessments are due. Any successor that fails to comply with this subsection (1) shall be personally liable for the payment of any premiums, surcharges, or assessments due and unpaid.

(2) When the business or property of any employer is placed in receivership, seized under distraint for property taxes, or assigned for the benefit of creditors, all premiums, surcharges, assessments, penalties, and interest imposed by articles 70 to 82 of this title and section 29-4-710.7, C.R.S., shall be a prior and preferred claim against all of the property of said employer, except as to the lien of general property taxes, and as to valid liens existing at the time of the filing of the notice provided for in section 8-79-105, and as to claims for wages of not more than two hundred fifty dollars to each claimant earned within six months after the commencement of the proceeding. No sheriff, receiver, assignee, or other officer shall sell the property of any employer under process or order of court in such cases without first ascertaining from the division the amount of any premiums, surcharges, or assessments due and payable under articles 70 to 82 of this title and section 29-4-710.7, C.R.S. If any premiums, surcharges, or assessments are due, owing, and unpaid, it is the duty of such sheriff, receiver, assignee, or other officer to first pay the outstanding amount of premiums, surcharges, or assessments out of the proceeds of the sale before making payment of any moneys to any judgment creditor or other

claims of whatsoever kind or nature, except the costs of the proceedings. In the event of an employer's being subject to an order for relief, judicially confirmed extension proposal, or composition under the federal bankruptcy code of 1978, title 11 of the United States Code, premiums, surcharges, or assessments then or thereafter due shall be entitled to such priority as is provided in section 507 of that code for taxes due the state of Colorado.

Source: L. 36, 3rd Ex. Sess.: p. 44, § 14. **CSA:** C. 167A, § 14. **L. 39:** p. 578, § 11. **L. 41:** p. 794, § 14. **CRS 53:** § 82-9-3. **C.R.S. 1963:** § 82-9-3. **L. 80:** (2) amended, p. 782, § 2, effective June 5. **L. 81:** Entire section amended, p. 504, § 22, effective July 1. **L. 86:** (1) amended, p. 495, § 105, effective July 1. **L. 91:** Entire section amended, p. 718, § 4, effective July 1. **L. 2009:** Entire section amended, (HB 09-1363), ch. 363, p. 1906, § 29, effective July 1.

8-79-104. Failure to file true report - penalty.

(1) (a) (I) Repealed.

(II) (A) It is the responsibility of each employer subject to articles 70 to 82 of this title to file true and accurate reports, whether or not premiums or surcharges are due, and to pay all premiums and surcharges when due. Whenever an employer fails to furnish premium reports required by the division by the due date, the division shall assess against the employer a penalty of fifty dollars for each occurrence; except that an "employer newly subject" as defined by section 8-76-102.5 (4) shall be assessed a penalty of ten dollars for each occurrence during the first four quarters of coverage. Each subsequent quarter in which the employer continues the failure to file the reports shall be considered a separate occurrence. Penalties collected by the division pursuant to this sub-subparagraph (A) shall be paid into the unemployment revenue fund.

(B) This subparagraph (II) is effective December 31, 2012.

(b) If any employer fails or neglects to make and file such reports, as required by articles 70 to 82 of this title or by the rules of the division pursuant thereto, or willfully makes a false or fraudulent report, the division may make an assessment of the premiums or surcharges due from its own knowledge and from such information as it can obtain through testimony or otherwise.

(c) An employer who is delinquent in paying premiums or surcharges on the computation date shall have a penalty assessed by the division. The amount of the penalty shall be the amount of delinquent premiums or surcharges; except that the penalty shall not exceed an amount equal to one percent of the employer's chargeable wages paid that were subject to unemployment insurance in the preceding calendar year. The amount of the penalty for an employer that was not subject to the provisions of articles 70 to 82 of this title in the preceding calendar year shall be the amount of delinquent premiums or surcharges. Such penalty shall be in addition to any payments and interest due under articles 70 to 82 of this title. The penalty shall be payable in four quarterly installments during the current calendar year and shall be remitted to the division with the employer's quarterly report. Penalties collected by the division pursuant to this paragraph (c) shall be paid into the unemployment revenue fund.

(d) Any penalty imposed pursuant to this subsection (1) shall be waived if good cause is shown for failing to pay the premiums or surcharges or to make premium reports, as prescribed by rule of the division. Penalties under this subsection (1) that are unpaid on the date on which they are due shall bear interest at the same rate and in the same manner as unpaid premiums and surcharges under articles 70 to 82 of this title. The provisions of section 13-80-108 (9), C.R.S.,

shall be used for determining when an offense is committed for the purposes of this subsection (1).

(2) Any assessment so made and certified by the division shall be prima facie good and sufficient for all legal purposes. Notice and demand for premiums or surcharges plus any interest and penalties imposed by articles 70 to 82 of this title shall be made upon forms as prescribed by the division, and the notice and demand shall become final fourteen calendar days after the date of delivery of the notice and demand to the employer in person or after the date of the transmittal by electronic means or by registered mail to the employer's last-known address or place of business. The employer may file a request for review or modification of the assessment with the division within the fourteen days in the manner and form prescribed by the division. The division, on the basis of evidence submitted by the employer disclosing the correct amount of premiums or surcharges, may amend or otherwise modify its previous assessments.

Source: L. 36, 3rd Ex. Sess.: p. 44, § 14. **CSA:** C. 167A, § 14. **L. 39:** p. 578, § 11. **L. 41:** p. 794, § 14. **L. 43:** p. 609, § 10. **CRS 53:** § 82-9-4. **C.R.S. 1963:** § 82-9-4. **L. 81:** Entire section amended, p. 505, § 23, effective July 1. **L. 84:** (1) amended, p. 319, § 11, effective July 1. **L. 86:** (1) amended, p. 703, § 9, effective May 23; (1) amended, p. 496, § 106, effective July 1. **L. 91:** (1) amended, p. 1359, § 1, effective September 1. **L. 96:** (1)(a) amended, p. 384, § 11, effective January 1, 1997. **L. 2000:** (1)(a) and (1)(c) amended, p. 815, § 3, effective July 1. **L. 2002:** (2) amended, p. 339, § 12, effective April 19. **L. 2009:** Entire section amended, (HB 09-1363), ch. 363, p. 1907, § 30, effective July 1. **L. 2011:** (1)(a) amended, (HB 11-1288), ch. 212, p. 931, § 15, effective July 1. **L. 2012, 1st Ex. Sess.:** (1)(a)(I)(B) amended, (HB 12S-1002), ch. 2, p. 2430, § 14, effective June 1.

Editor's note: Subsection (1)(a)(I)(B) provided for the repeal of subsection (1)(a)(I), effective December 31, 2012. (See L. 2012, p. 2430.)

8-79-105. Levy on property - sale. (1) If any premiums, surcharges, penalties, or interest imposed by articles 70 to 82 of this title, as shown by reports filed by the employer or as shown by assessment duly made as provided in section 8-79-104 or 8-79-107, are not paid within five days after they are due and demand is made therefor, the division may issue a notice setting forth the name of the employer, the amount of the premiums, surcharges, penalties, and interest, the date of the accrual thereof, and a statement that the division claims a first and prior lien therefor, except as provided in this article. Such notice shall be on forms prepared by the division and shall be verified by any duly qualified representative of the division and may be filed or recorded in the office of the county clerk and recorder of any county in the state in which the employer owns property. After such notice has been filed or recorded, the division may issue a warrant under its official seal directed to the sheriff of any county of the state or any duly authorized agent of the division commanding him or her to levy upon, seize, and sell such of the real and personal property of the employer found within his or her county necessary for the payment of the amount due, together with interest and penalties, as provided by law.

(2) It is the duty of any county clerk and recorder to whom such notices are sent to file or record the same without cost. Upon the payment of all premiums, surcharges, penalties, and interest, a lien for such premiums, surcharges, penalties, and interest, as shown upon the records

of the county clerk and recorder, shall be released by the division in the same manner as judgments are released.

(3) The sheriff, or any duly authorized agent of the division, shall forthwith levy upon the property of the employer, and personal property so levied upon shall be sold in all respects with like effect and in the same manner as prescribed by law with respect to executions of distraint warrants issued by a county treasurer for the collection of taxes levied upon personal property. Real property shall be levied upon and sold in the same manner as prescribed by law with respect to executions against property upon judgment of a court of record. The sheriff shall be entitled to such fees for executing such warrants as are allowed by law for similar services.

Source: L. 36, 3rd Ex. Sess.: p. 44, § 14. **CSA:** C. 167A, § 14. **L. 39:** p. 578, § 11. **L. 41:** p. 794, § 14. **CRS 53:** § 82-9-5. **C.R.S. 1963:** § 82-9-5. **L. 77:** (1) amended, p. 470, § 25, effective July 7. **L. 81:** (1) and (2) amended, p. 505, § 24, effective July 1. **L. 2009:** (1) and (2) amended, (HB 09-1363), ch. 363, p. 1908, § 31, effective July 1.

8-79-106. No indemnity bond required. In any action of whatever nature brought under articles 70 to 82 of this title, no bond shall be required of the division, nor shall any sheriff or agent of the division require from said division an indemnifying bond for executing the writs of attachment and warrants provided for in this article. No sheriff or agent of the division shall be liable in damages to any person when acting in accordance with such writs and warrants.

Source: L. 36, 3rd Ex. Sess.: p. 44, § 14. **CSA:** C. 167A, § 14. **L. 39:** p. 578, § 11. **L. 41:** p. 794, § 14. **CRS 53:** § 82-9-6. **C.R.S. 1963:** 82-9-6. **L. 64:** p. 288, § 219. **L. 73:** p. 1410, § 66.

8-79-107. Immediate assessment - when. If the division believes that the collection of any premiums, surcharges, penalties, or interest under the provisions of articles 70 to 82 of this title will be jeopardized by delay, whether or not the time otherwise prescribed by articles 70 to 82 of this title or any rules issued pursuant thereto for making reports and paying such premiums or surcharges has expired, it may immediately assess such premiums and surcharges, together with all penalties and interest, the assessment of which is provided for by articles 70 to 82 of this title. Such premiums, surcharges, penalties, and interest shall thereupon become immediately due and payable, and immediate notice and demand shall be made by the division for the payment thereof.

Source: L. 36, 3rd Ex. Sess.: p. 44, § 14. **CSA:** C. 167A, § 14. **L. 39:** p. 578, § 11. **L. 41:** p. 794, § 14. **CRS 53:** § 82-9-7. **C.R.S. 1963:** § 82-9-7. **L. 81:** Entire section amended, p. 506, § 25, effective July 1. **L. 2009:** Entire section amended, (HB 09-1363), ch. 363, p. 1908, § 32, effective July 1.

8-79-108. Refunds. (1) An employing unit may file an application for the refund of money paid erroneously in such form and manner as the director of the division may prescribe by rule, including in person, by mail, by telephone, or by electronic means. If the division determines that such payment, or any portion thereof, was paid erroneously, the division shall either issue to the employing unit a credit memo therefor, or make a refund thereof, in either

event without interest thereon. Where no application is received, and the division determines that premiums or surcharges have been paid erroneously, the division may, at its option, correct any erroneous payments. Any such correction, if it involves less than one hundred dollars, may be by credit memo. In no event may an employing unit recover money paid erroneously, or otherwise, that has been paid prior to January 1 of the first year of the five calendar years immediately preceding the date of the filing of the application for refund. If such application for refund is refused, or if no final action is taken thereon within six months, an employing unit may commence an action in the district court for the city and county of Denver for the collection thereof. In the event of court action, no recovery of any money paid prior to January 1 of the first year of the five calendar years immediately preceding the date of the filing of the application shall be allowed. For like cause and for the same period, a recovery, as above indicated, may be allowed on the division's own initiative.

(2) Repealed.

(3) Refunds of interest that was paid into the unemployment compensation fund shall be paid from the unemployment compensation fund, and refunds of interest that was paid into the unemployment revenue fund shall be paid from the unemployment revenue fund. All refunds of premiums and surcharges shall be made from the unemployment compensation fund.

Source: L. 36, 3rd Ex. Sess.: p. 44, § 14. **CSA:** C. 167A, § 14. **L. 39:** p. 578, § 11. **L. 41:** p. 794, § 14. **L. 43:** p. 609, § 10. **L. 49:** p. 729, § 10. **CRS 53:**§ 82-9-9. **C.R.S. 1963:** § 82-9-9. **L. 81:** (2) and (3) amended, p. 506, § 26, effective July 1. **L. 83:** (1) amended, p. 432, § 11, effective June 3. **L. 88:** (1) amended, p. 396, § 1, effective July 1. **L. 2001:** (2) repealed, p. 58, § 1, effective August 8. **L. 2002:** (1) amended, p. 340, § 13, effective April 19. **L. 2009:** (1) and (3) amended, (HB 09-1363), ch. 363, p. 1908, § 33, effective July 1.

ARTICLE 80

Protection of Rights and Benefits

Cross references: For applicability of legislation that amends, repeals, or adds to the provisions of this article on or after May 18, 1979, see § 8-70-143.

8-80-101. Waiver of rights void. Any agreement by an individual to waive, release, or commute his or her rights to benefits or any other rights under articles 70 to 82 of this title shall be void. Any agreement by any individual in the employ of any person or concern to pay all or any portion of an employer's premiums or surcharges required under articles 70 to 82 of this title from the employer shall be void. No employer shall directly or indirectly make, require, or accept any deduction from wages to finance the employer's premiums or surcharges required from him or her or require or accept any waiver of any rights under articles 70 to 82 of this title by any individual in his or her employ. Any employer or officer or agent of any employer who violates this section is guilty of a misdemeanor and, upon conviction thereof, for each offense, shall be punished by a fine of not less than one hundred dollars nor more than one thousand dollars, or by imprisonment in the county jail for not more than six months, or by both such fine and imprisonment.

Source: L. 36, 3rd Ex. Sess.: p. 45, § 15. **L. 37:** p. 1269, § 11. **CSA:** C. 167A, § 15. **L. 41:** p. 799, § 15. **CRS 53:** § 82-10-1. **C.R.S. 1963:** § 82-10-1. **L. 81:** Entire section amended, p. 506, § 27, effective July 1. **L. 2009:** Entire section amended, (HB 09-1363), ch. 363, p. 1909, § 34, effective July 1.

8-80-102. Limitation of fees. No individual claiming benefits shall be charged fees of any kind in any proceeding under articles 70 to 82 of this title by the division or its representatives or by any court or any officer thereof; except that the controller may charge a reasonable fee as provided in section 8-79-102 (2) for the recoupment of benefit overpayments, and any party appealing the decision of a referee shall be assessed the actual costs of preparing a transcript according to rules promulgated by the director of the division except if the appellant is successful the cost of preparing the transcript will be refunded. Any person who violates this provision is guilty of a misdemeanor. Any individual claiming benefits in any proceeding before the division or a court may be represented by counsel. Unless approved by the division, no lien shall be allowed or suit brought for attorney fees, contingent or otherwise, for services rendered for the collection of any individual's claim for benefits.

Source: L. 71: p. 943, § 17. **C.R.S. 1963:** § 82-10-2. **L. 83:** Entire section amended, p. 432, § 12, effective June 3. **L. 86:** Entire section amended, p. 496, § 107, effective July 1.

8-80-103. Assignment of benefits void - exemptions. Any assignment, pledge, or encumbrance of any right to benefits which are or may become due or payable under articles 70 to 82 of this title shall be void. Except as provided in the "Colorado Child Support Enforcement Procedures Act", article 14 of title 14, C.R.S., such rights to benefits shall be exempt from levy, execution, attachment, or any other remedy provided for the collection of debt. Benefits received by any individual, so long as they are not mingled with other funds of the recipient, shall be exempt from any remedy for the collection of all debts except debts incurred for necessaries furnished to such individual, his spouse, or dependents during the time when such individual was unemployed or child support debt or arrearages as specified in article 14 of title 14, C.R.S. Any waiver of any exemption provided for in this section shall be void.

Source: L. 36, 3rd Ex. Sess.: p. 45, § 15. **L. 37:** p. 1269, § 11. **CSA:** C. 167A, § 15. **L. 41:** p. 799, § 15. **CRS 53:** § 82-10-3. **C.R.S. 1963:** § 82-10-3. **L. 85:** Entire section amended, p. 587, § 2, effective July 1.

ARTICLE 81

Penalties and Enforcement

Cross references: For applicability of legislation that amends, repeals, or adds to the provisions of this article on and after May 18, 1979, see § 8-70-143.

8-81-101. Penalties. (1) (a) Any person who makes false statement or representation of a material fact knowing it to be false, or knowingly fails to disclose a material fact, with intent to defraud by obtaining or increasing any benefit under articles 70 to 82 of this title or under an

employment security law of any other state, of the federal government, or of a foreign government, either for himself or for any other person, is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than twenty-five dollars nor more than one thousand dollars, or by imprisonment in the county jail for not more than six months, or by both such fine and imprisonment.

(b) Any person who, in the opinion of the division, has received a benefit to which he was not entitled by reason of his false representation or failure to disclose a material fact with intent to obtain or increase any benefit for himself or any other person and his trial by court is prevented by the inability of the court to establish its jurisdiction over said person shall be ineligible to receive any benefits under articles 70 to 82 of this title from the date of the discovery of the said act until such time as he makes himself available to the court for trial.

(c) If any employer makes or causes to be made a false statement as to the reason for a claimant's separation from employment or makes or causes to be made a false offer of work to a claimant, which statement or offer shall result in a delay in the payment of benefits to any such claimant, such employer shall be penalized by having his account charged with one and one-half times the amount of benefits due during the period of the delay and with one hundred percent of all other benefit payments paid to the claimant thereafter during his current benefit year, any other provisions of articles 70 to 82 of this title to the contrary notwithstanding, and the claimant shall be compensated by being paid one and one-half times his weekly benefit amount for the period of the delay. "The period of delay" as used in this section shall be determined by the division, and such determination shall be binding upon all parties affected and shall not be subject to review. The penalty imposed by this paragraph (c) shall be in addition to and not in lieu of any other penalty, civil or criminal, provided in articles 70 to 82 of this title.

(2) Any employing unit, or any officer or agent of an employing unit, or any other person who makes a false statement or representation knowing it to be false or who knowingly fails to disclose a material fact either to cause an individual to receive benefits to which such individual is otherwise not entitled or to defraud an individual by preventing or reducing the payment of benefits to which such individual would otherwise be entitled, or to avoid becoming or remaining a subject employer, or to avoid or reduce any premium, surcharge, or other payment required from an employing unit under articles 70 to 82 of this title or under the employment security law of any other state, the federal government, or a foreign government or any such employing unit, officer or agent, or other person who willfully fails or refuses to pay any such premiums or surcharges or make any other payment, or to furnish any reports required under section 8-72-107, or to produce or permit the inspection or copying of records as required under section 8-72-107 is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than twenty-five dollars nor more than one thousand dollars, or by imprisonment in the county jail for not more than six months, or by both such fine and imprisonment. Each false statement or representation or failure to disclose a material fact and each day such failure or refusal continues shall constitute a separate offense.

(3) Any person who willfully violates any provision of articles 70 to 82 of this title or any rule or regulation thereunder, the violation of which is made unlawful or the observance of which is required under the terms of articles 70 to 82 of this title and for which a penalty is neither prescribed in this article nor provided by any other applicable statute, is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than twenty dollars nor more than two hundred dollars, or by imprisonment in the county jail for not more

than sixty days, or by both such fine and imprisonment. Each day such violation continues shall be deemed a separate offense.

(4) (a) (I) Any person who has received any sum as benefits under articles 70 to 82 of this title to which he was not entitled shall be required to repay such amount to the division for the fund. Such sum shall be collected in the manner provided in section 8-79-102; except that the division may waive the repayment of an overpayment if the division determines such repayment to be inequitable.

(II) If any person receives an overpayment because of his or her false representation or willful failure to disclose a material fact, inequitability must not be a consideration in any civil, administrative, or criminal action, and the person shall pay to the division the total amount of the overpayment plus a sixty-five percent monetary penalty. Of the monetary penalty, the division shall pay twenty-three percent into the unemployment compensation fund, created in section 8-77-101, and the remainder into the unemployment revenue fund, created in section 8-77-106. In addition, the person may be denied benefits, when otherwise eligible, for a four-week period for each one-week period in which the person filed claims for or received benefits to which he or she was not entitled. The provisions of section 13-80-108 (9), C.R.S., shall be used for determining when an offense is committed for the purposes of this subparagraph (II).

(III) All investigative costs awarded by the court and collected by the division in connection with the conviction, in any criminal action, of a person who has received any overpayment because of his or her false representation or willful failure to disclose a material fact shall be paid into the unemployment revenue fund.

(IV) The penalties associated with an overpayment pursuant to subparagraph (II) of this paragraph (a) shall be made known to individuals upon filing an unemployment claim as defined in section 8-70-112.

(b) Pursuant to rules and regulations promulgated by the director of the division, the division may write off all or a part of the amount of any overpayment which it finds to be uncollectible or the recovery of which it finds to be administratively impracticable. Amounts which remain uncollected for more than five years, or seven years for overpayments due to false representation or willful failure to disclose a material fact, may be written off as uncollectible.

(c) Any person aggrieved by a determination of the division made under this subsection (4) may appeal that determination and obtain a hearing before a hearing officer with the right to further appeal as provided by article 74 of this title. The initial appeal must be received within twenty calendar days after the date of notification of such determination by the division; otherwise, the determination shall be final.

(d) Upon final determination pursuant to paragraph (c) of this subsection (4), repayment of an overpayment that is a result of the individual's false representation or willful failure to disclose a material fact pursuant to subparagraph (II) of paragraph (a) of this subsection (4) shall be made within thirty days.

Source: L. 36, 3rd Ex. Sess.: p. 47, § 16. **CSA:** C. 167A, § 16. **L. 39:** p. 581, § 12. **L. 41:** p. 800, § 16. **L. 51:** p. 821, § 14. **CRS 53:** § 82-11-1. **L. 63:** p. 682, § 10. **C.R.S. 1963:** § 82-11-1. **L. 65:** p. 847, § 10. **L. 67:** p. 73, §§ 1, 2. **L. 69:** p. 671, § 10. **L. 77:** (1)(a) amended, p. 478, § 3, effective July 1; (4)(b) R&RE, p. 478, § 4, effective July 1; (4)(c) added, p. 479, § 5, effective July 1. **L. 79:** (4)(a) and (4)(c) amended, p. 355, § 24, effective September 30. **L. 81:** (2) and (4)(a)(I) amended, p. 507, § 28, effective July 1; (4)(a)(I) and (4)(b) amended, p. 487, §

15, effective July 1. **L. 83:** (4)(a) amended, p. 433, § 13, effective June 3; (4)(d) added, p. 438, § 1, effective June 15. **L. 84:** (2) amended and (4) R&RE, pp. 319, 320, §§ 12, 13, effective July 1. **L. 86:** (4)(a)(II) amended, p. 703, § 10, effective July 1; (4)(b) and (4)(c) amended, p. 496, § 108, effective July 1. **L. 86, 2nd Ex. Sess.:** (4)(c) amended, p. 56, § 4, effective August 15. **L. 90:** (4)(a)(II) amended, p. 608, § 6, effective April 16. **L. 92:** (4)(b) amended, p. 1796, § 9, effective April 10. **L. 2000:** (4)(a)(II) amended and (4)(a)(III) added, p. 815, § 4, effective July 1. **L. 2002:** (4)(c) amended, p. 340, § 14, effective April 19. **L. 2007:** (4)(c) amended, p. 805, § 8, effective August 3. **L. 2009:** (2) amended, (HB 09-1363), ch. 363, p. 1909, § 35, effective July 1. **L. 2011:** (4)(a)(IV) and (4)(d) added, (HB 11-1288), ch. 212, p. 932, §§ 16, 17, effective July 1. **L. 2013:** (4)(a)(II) amended, (HB 13-1124), ch. 97, p. 312, § 2, effective August 7.

8-81-102. Penalties in prior law continue in force. Any penalty, forfeiture, or liability, either civil or criminal, which has been incurred in former statutes relating to unemployment compensation shall be held as remaining in force for the purpose of sustaining any and all proper actions, suits, proceedings, and prosecutions for the enforcement of such penalty, forfeiture, or liability which are now pending, or which may hereafter be commenced within the time provided by law for the commencement of such actions, suits, proceedings, and prosecutions, as well as for the purpose of sustaining any judgment, decree, or order which has been or which may be entered or made in such actions, suits, proceedings, or prosecutions.

Source: L. 41: p. 813, § 23. **CSA:** C. 167A, § 22. **CRS 53:** § 82-11-2. **C.R.S. 1963:** § 82-11-2.

8-81-103. Representation in court. (1) In any civil action to enforce the provisions of articles 70 to 82 of this title, the division and the state shall be represented by the attorney general. Such assistant attorneys general shall be appointed as are necessary for this purpose.

(2) All criminal actions for violation of any provision of articles 70 to 82 of this title, or of any rules issued pursuant to those articles, must be prosecuted by the attorney general of the state or, at his or her request and under his or her direction, by the district attorney of the judicial district in which the employer has a place of business or the violator resides.

Source: L. 36, 3rd Ex. Sess.: p. 49, § 17. **CSA:** C. 167A, § 17. **L. 41:** p. 801, § 17. **CRS 53:** § 82-11-3. **C.R.S. 1963:** § 82-11-3. **L. 2016:** (2) amended, (HB 16-1094), ch. 94, p. 265, § 5, effective August 10.

ARTICLE 82

Acquisition of Lands and Buildings

Cross references: For applicability of legislation that amends, repeals, or adds to the provisions of this article on or after May 18, 1979, see § 8-70-143.

8-82-101. Nonprofit corporation - authorization and purposes. For the purpose of performing the functions required under the provisions of the "Colorado Employment Security Act", articles 70 to 82 of this title, the division is hereby authorized to create a nonprofit

corporation or authority under the laws of this state and, in the name of such nonprofit corporation or authority, to purchase land and cause to be erected thereon a building or buildings suitable for offices, or for housing equipment, or for both such purposes. Any land so purchased or buildings so constructed may be thereafter sold or exchanged when, in the determination of the directors of the corporation or authority, the division no longer has need for such property, and any funds or proceeds obtained from such sale or exchange shall be the sole property of the division and distributed by it as required by the terms of articles 70 to 82 of this title.

Source: L. 55: p. 535, § 1. **CRS 53:** § 82-12-1. **C.R.S. 1963:** § 82-12-1. **L. 77:** Entire section amended, p. 470, § 26, effective July 7. **L. 93:** Entire section amended, p. 1797, § 103, effective June 6.

8-82-102. Anticipation warrants - issuance and investment. For the purpose of defraying the cost of land and for the construction of the proposed buildings, the nonprofit corporation or authority is authorized, with the approval of the governor, to issue and sell anticipation warrants in an amount not to exceed one million eight hundred fifty thousand dollars at an interest rate of not more than four percent per annum. Any state trust funds, and only such funds as may be available for permanent investment, may be used to purchase said anticipation warrants. Such anticipation warrants shall be redeemed and the interest thereon paid in the manner and from the funds enumerated in section 8-82-103.

Source: L. 55: p. 535, § 2. **L. 56:** p. 160, § 1. **CRS 53:** § 82-12-2. **C.R.S. 1963:** § 82-12-2.

8-82-103. Purchase and leasehold by division - terms. The divisions of employment and training and unemployment insurance may enter into rental or leasehold agreements with a nonprofit corporation or authority created pursuant to section 8-82-101. The agreements must provide that the particular division acquire title to the land or buildings, or both, upon the payment of stipulated aggregate annual rentals. The plans, specifications, bids, and contracts for the buildings and the terms of all leasehold or rental agreements are not valid until approved by the governor, the director of the division of employment and training or the director of the division of unemployment insurance, as appropriate, and the director of the office of state planning and budgeting. The rentals must be paid solely out of the employment security administration fund, the unemployment revenue fund, or both, or the funds of any other state agency if any part of the buildings are made available to other state agencies. The obligation to pay the rentals does not constitute an indebtedness of the state and must not be paid out of any other funds. The division that enters an agreement pursuant to this section shall include the rental in its annual budgets and shall certify, audit, and pay the rentals in the same manner as all other accounts and expenditures payable out of those funds.

Source: L. 55: p. 536, § 3. **L. 56:** p. 160, § 2. **CRS 53:** § 82-12-3. **C.R.S. 1963:** § 82-12-3. **L. 75:** Entire section amended, p. 819, § 7, effective July 18. **L. 83:** Entire section amended, p. 969, § 20, effective July 1, 1984. **L. 86:** Entire section amended, p. 1215, § 5, effective May 30. **L. 2012:** Entire section amended, (HB 12-1120), ch. 27, p. 106, § 19, effective June 1.

Editor's note: The effective date for amendments to this section by House Bill 12-1120 (chapter 27, Session Laws of Colorado 2012) was changed from August 8, 2012, to June 1, 2012, by House Bill 12S-1002 (First Extraordinary Session, chapter 2, p. 2432, Session Laws of Colorado 2012).

8-82-104. Tax exemption - when. Property acquired or occupied pursuant to this article shall be exempt from taxation so long as it is used for the purposes of the division or other public purposes.

Source: L. 55: p. 536, § 4. **CRS 53:** § 82-12-4. **C.R.S. 1963:** § 82-12-4.

8-82-105. Judicial remedies. Purchase or leasehold agreements entered into by the division pursuant to this article shall be enforceable in any court of competent jurisdiction.

Source: L. 55: p. 536, § 5. **CRS 53:** § 82-12-5. **C.R.S. 1963:** § 82-12-5.

EMPLOYMENT AND TRAINING

ARTICLE 83

Work Force Development

Editor's note: (1) This article was added with relocations in 2012. Former C.R.S. section numbers are shown in editor's notes following those sections that were relocated. For a detailed comparison of this article, see the comparative tables located in the back of the index.

(2) The effective date for the addition of this article by House Bill 12-1120 (chapter 27, Session Laws of Colorado 2012) was changed from August 8, 2012, to June 1, 2012, by House Bill 12S-1002 (First Extraordinary Session, chapter 2, p. 2432, Session Laws of Colorado 2012.)

PART 1

DIVISION OF EMPLOYMENT AND TRAINING

8-83-101. Definitions. As used in this article, unless the context otherwise requires:

(1) "Department" means the department of labor and employment created in section 24-1-121, C.R.S.

(2) "Director" means the director of the division.

(3) "Division" means the division of employment and training in the department.

Source: L. 2012: Entire article added with relocations, (HB 12-1120), ch. 27, p. 79, § 6, effective June 1.

8-83-102. Division of employment and training created - director. There is hereby created a division of employment and training within the department of labor and employment, the head of which is the director of the division of employment and training.

Source: L. 2012: Entire article added with relocations, (HB 12-1120), ch. 27, p. 79, § 6, effective June 1.

8-83-103. Powers, duties, and functions - acceptance of moneys. (1) The functions of the division comprise all administrative functions of the state in relation to the administration of this article. The director shall exercise his or her powers, duties, and functions prescribed under this article under the direction and supervision of the executive director of the department, as prescribed by section 24-1-105 (4), C.R.S. Any vacancy in the office of director shall be filled in the manner provided by law.

(2) The division may accept and expend moneys from intergovernmental partnerships, gifts, grants, donations, and other contributions for the purposes for which the division is authorized.

(3) Repealed.

Source: L. 2012: Entire article added with relocations, (HB 12-1120), ch. 27, p. 79, § 6, effective June 1. **L. 2015:** (2) amended, (HB 15-1276), ch. 225, p. 836, § 2, effective May 26; (3) added, (HB 15-1230), ch. 226, p. 844, § 2, effective August 5.

Editor's note: Subsection (3)(b) provided for the repeal of subsection (3), effective July 1, 2020. (See L. 2015, p. 844.)

8-83-104. State employment service. (1) The Colorado state employment service is established as a section in the division. The division, through the section, shall establish and maintain free public employment offices in the number and locations as may be necessary for the proper administration of this article and for the purposes of performing the duties that are within the purview of the act of congress entitled "An Act To provide for the establishment of a national employment system and for cooperation with the States in the promotion of such system, and for other purposes.", approved June 6, 1933 (48 Stat. 113; 29 U.S.C. sec. 49 (c)), as amended, and referred to in this section as the "federal act".

(2) The division shall:

(a) Cooperate with any official or agency of the United States having powers or duties under the provisions of the federal act, as amended, or under such other federal acts as may be created for similar purposes;

(b) Cooperate with or enter into agreements with the railroad retirement board with respect to the establishment, maintenance, and use of free employment service facilities; and

(c) Perform all acts necessary to secure to this state the benefits of the federal act, as amended, in the promotion and maintenance of a system of public employment offices.

(3) The state accepts the provisions of the federal act, as amended, in conformity with section 4 of the federal act, and this state will observe and comply with the requirements of the federal act. The division is designated as the agency of this state for the purposes of the federal

act. The division shall appoint such officers and employees of the Colorado state employment service as necessary for the proper administration of this article.

Source: L. 2012: Entire article added with relocations, (HB 12-1120), ch. 27, p. 80, § 6, effective June 1.

Editor's note: This section is similar to former § 8-71-106 as it existed prior to 2012.

8-83-105. Personnel. Subject to other provisions of this article and the state personnel system regulations, the division is authorized to appoint, fix the compensation, and prescribe the duties and powers of such officers, accountants, attorneys, experts, and other persons as may be necessary in the performance of its duties. The division may delegate to any person so appointed such power as it deems reasonable and proper for the effective administration of this article. In its discretion, the division may bond any person handling moneys or signing checks under this article.

Source: L. 2012: Entire article added with relocations, (HB 12-1120), ch. 27, p. 80, § 6, effective June 1.

8-83-106. Division - offer waiver of confidentiality for employment purposes. Notwithstanding the confidentiality requirements in section 8-72-107 (1), the division may offer veterans and other persons seeking employment the opportunity to waive the confidentiality of certain information including the person's name, address, telephone number, and e-mail address so that the division may make available the waived information to bona fide employers seeking employees.

Source: L. 2013: Entire section added, (HB 13-1123), ch. 148, p. 475, § 2, effective August 7.

Cross references: For the legislative declaration in the 2013 act adding this section, see section 1 of chapter 148, Session Laws of Colorado 2013.

PART 2

CAREER ADVANCEMENT ACT

8-83-201. Short title. The short title of this part 2 is the "Colorado Career Advancement Act".

Source: L. 2012: Entire article added with relocations, (HB 12-1120), ch. 27, p. 81, § 6, effective June 1. **L. 2016:** Entire section amended, (HB 16-1302), ch. 183, p. 627, § 3, effective May 19.

Editor's note: This section is similar to former § 8-71-201 as it existed prior to 2012.

8-83-202. Legislative declaration. (1) The general assembly hereby finds and declares that:

(a) Passage of the federal "Workforce Innovation and Opportunity Act", 29 U.S.C. sec. 3101 et seq., gives the state a unique opportunity to develop a work force program and employment system designed to meet the needs of employers, job seekers, and those who want to further their careers;

(b) The federal act requires that training and employment programs be designed and managed at the local government level, where the needs of businesses and individuals are best understood;

(c) The federal act requires the involvement of business, both to provide information and leadership and to play an active role in ensuring that the system prepares people for current and future jobs;

(d) Passage of the federal act provided local governments with the control and flexibility to carry out the federal act's purposes, subject to the final authority and approval of the governor; and

(e) Therefore, it is in the state's best interest to adopt the Colorado work force development program set forth in this part 2.

(2) The general assembly recommends that:

(a) To the extent possible, counties or multi-county areas integrate their work force development program sources of funding to maximize the resources available at the local level to provide the services authorized under this part 2; and

(b) As the responsibility for implementing work force programs continues to be devolved to local governments, Title I moneys identified for state administration of programs implemented at the local level be as specified in Title I of the federal "Workforce Investment Act of 1998".

Source: L. 2012: Entire article added with relocations, (HB 12-1120), ch. 27, p. 81, § 6, effective June 1. **L. 2016:** (1)(a), (1)(e), and (2)(a) amended, (HB 16-1302), ch. 183, p. 627, § 4, effective May 19.

Editor's note: This section is similar to former § 8-71-202 as it existed prior to 2012.

8-83-203. Definitions. As used in this part 2, unless the context otherwise requires:

(1) "Colorado work force development program" or "work force development program" means the program of work force development created in this part 2.

(2) "Department" means the department of labor and employment created in section 24-1-121, C.R.S., or any other state agency specified by the governor through executive order or otherwise.

(3) "Federal act" means the federal "Workforce Innovation and Opportunity Act", 29 U.S.C. sec. 3101 et seq.

(4) "Local elected officials" means the boards of county commissioners of the county or counties operating work force development programs; except that, in the case of a city and county, "local elected officials" means the mayor.

(5) "Local plan" means a plan, developed and executed by a work force development board and subarea board, that outlines the functions and responsibilities for delivery of services within a work force development area.

(6) "National program grant" means a grant under subtitle D of Title I.

(7) "One-stop operator" means the entity selected by a work force board, with concurrence by the local elected officials, to operate the one-stop career center in a local area.

(8) "One-stop partner" means a person or organization described in section 8-83-216.

(9) "Planning region" means a single local area or multiple local areas that have been designated by the state as a planning region for the purposes of developing a regional plan.

(10) "Rural consortium local elected officials board" means the local elected officials appointed by each subarea board in the rural consortium work force development area to serve as the local elected official for the rural consortium work force development area.

(11) "Rural consortium work force development area" or "rural consortium area" means an area designated by the governor as a federal work force development area for which the department is the grant recipient. A rural consortium work force development area may contain one or more subareas.

(12) "Rural consortium work force development board" or "rural consortium board" means the work force board appointed by the rural consortium local elected officials board. The rural consortium work force development board serves, on behalf of the subarea boards in the rural consortium area, as the work force development board for specific functions under the federal act.

(13) "State council" means the state work force development council created in section 24-46.3-101, C.R.S.

(14) "State plan" means a plan, developed by the governor with the assistance of the state council and based upon local plans, for the delivery of services statewide under the federal act.

(15) "Student" means an individual who is eighteen years of age or older and is enrolled in an adult education program or postsecondary education program through an institution of higher education, a technical college, a private occupational school, or an employer-sponsored training program.

(16) "Subarea board" means the optional work force advisory board of a subarea within the rural consortium work force development area.

(17) "Title I" means Title I of the federal act.

(18) "Title I money" means money distributed pursuant to Title I.

(19) "Wagner-Peyser Act" means the federal "Wagner-Peyser Act", 29 U.S.C. sec. 49a et seq.

(20) "Wagner-Peyser funds" means federal moneys received by the department pursuant to the "Wagner-Peyser Act".

(21) "Work force board" means either a local work force development board or a subarea board.

(22) "Work force development area" means a county, municipality, city and county, or group of counties, municipalities, or cities and counties that have banded together through an intergovernmental agreement to provide a work force development program and is designated by the governor as a federal work force development area. The rural consortium is a work force development area.

(23) "Work force development board" means the work force development board for a federally designated work force development area.

(24) "Work force development subarea" or "subarea" means a county or group of counties within the rural consortium that work together for the purpose of implementing programs authorized under the federal act and has a subarea board.

Source: L. 2012: Entire article added with relocations, (HB 12-1120), ch. 27, p. 81, § 6, effective June 1. **L. 2016:** Entire section R&RE, (HB 16-1302), ch. 183, p. 627, § 5, effective May 19.

Editor's note: This section is similar to former § 8-71-203 as it existed prior to 2012.

8-83-204. Work force development program - legislative declaration - purposes. (1) The general assembly finds, determines, and declares that this part 2 is adopted pursuant to the requirements of the federal act and is intended to comply with the federal act's express requirements for participants in the operation of work force development programs.

(2) The purposes of this part 2 are to:

(a) Establish a central, coordinated delivery system at the local or regional level through which any citizen may look for a job, explore work preparation and career development services, and access a range of employment, training, and occupational education programs offering their services through local or regional work force development programs;

(b) Develop strategies and policies that encourage job training, education and literacy, and vocational programs;

(c) Consolidate and coordinate programs and services to ensure a more streamlined and flexible work force development system at the local or regional level;

(d) Establish single contact points for employers; and

(e) Allow counties increased responsibility for the administration of the work force development program, including determination of any expenditures of TANF funds for the purpose of cash contributions to infrastructure of the one-stop delivery system or delivery contracts. Counties are encouraged to include all the partners outlined in the federal act.

Source: L. 2012: Entire article added with relocations, (HB 12-1120), ch. 27, p. 83, § 6, effective June 1. **L. 2016:** (1), (2)(a), and (2)(e) amended, (HB 16-1302), ch. 183, p. 629, § 6, effective May 19.

Editor's note: This section is similar to former § 8-71-204 as it existed prior to 2012.

Cross references: "TANF", referenced in this section, is the temporary assistance for needy families program. For more information regarding this program, see article 2 of title 26.

8-83-205. Work force development program - creation - administration. (1) Under authority of the governor, the department shall cooperate with the state council to help establish and operate a network of work force development areas as set forth in this part 2.

(2) Work force development areas may be established at a local government level or at a multi-government level through intergovernmental agreements reached by the applicable local elected officials of the work force development area and subject to approval by the governor.

(3) Local elected officials shall govern the operation of local work force development areas with policy guidance from work force boards appointed by the local elected officials. At the option of the local elected officials and the work force board, work force development programs may be operated by a county, the department, other governmental agencies, nonprofit or not-for-profit organizations, or private entities; except that Wagner-Peyser funds shall not be used to award contracts to nonprofit or not-for-profit organizations or private entities. Beginning July 1, 2017, the one-stop operator must be selected in accordance with the federal act and local policy in the work force development area. An entity that applies to become a one-stop operator and is not selected may appeal the decision through any available appeal process of the applicable local governmental entity.

(3.5) If no qualified one-stop operator responds to the procurement process in a local work force development area, the local elected officials for that area may designate the one-stop operator.

(4) If federal or state financial support for the provision of employment and training services is eliminated or is reduced by an amount that is considered substantial by the local elected officials, the local elected officials are not required to continue funding or operating work force development programs.

(5) The state council shall ensure that a local work force development area may function as a federally designated work force development area in applying for available national program grants under the federal act. Each work force board may apply for a grant for its own area in the manner it deems most appropriate. A work force board may apply for a grant for its own area and receive any corresponding money awarded exclusively or may apply through other means and with other work force areas. Any grant money awarded to a work force development area is a direct pass-through from the federal government to the applicable work force development area.

(6) A local work force development area created pursuant to this part 2 is authorized to operate with the same authority and functions as if the area were a federally designated work force development area.

(7) A data system that is used to administer a program pursuant to this article 83 must not link or collect data systems maintained by education entities serving children under eighteen years of age.

Source: L. 2012: Entire article added with relocations, (HB 12-1120), ch. 27, p. 83, § 6, effective June 1. **L. 2016:** Entire section amended, (HB 16-1302), ch. 183, p. 630, § 7, effective May 19.

Editor's note: This section is similar to former § 8-71-205 as it existed prior to 2012.

8-83-206. Local elected officials - function - authority. The local elected officials shall maintain a strong role in all phases and levels of implementation of the federal act. The local elected officials of a work force development area, upon favorable recommendation of the work force board, are authorized to award contracts for the administration, implementation, or

operation of any aspect of the work force development program to any appropriate public, private, or nonprofit entity in accordance with applicable county regulations and federal law; except that Wagner-Peyser funds shall not be used to award contracts to private or nonprofit entities.

Source: L. 2012: Entire article added with relocations, (HB 12-1120), ch. 27, p. 84, § 6, effective June 1. **L. 2016:** Entire section amended, (HB 16-1302), ch. 183, p. 631, § 8, effective May 19.

Editor's note: This section is similar to former § 8-71-206 as it existed prior to 2012.

8-83-207. Local work force development boards - authority - functions. Local work force development boards are subject to this part 2 and the federal act. Local work force development boards operate for a federally designated work force development area.

Source: L. 2012: Entire article added with relocations, (HB 12-1120), ch. 27, p. 84, § 6, effective June 1. **L. 2016:** Entire section amended, (HB 16-1302), ch. 183, p. 631, § 9, effective May 19.

Editor's note: This section is similar to former § 8-71-207 as it existed prior to 2012.

8-83-208. Implementation - local plans. (1) (a) The Colorado work force development program shall be administered according to the state four-year plan prepared in accordance with the local plans created pursuant to this section. Each local work force development area shall submit a plan that meets the requirements of this section to the governor for approval.

(b) The rural consortium work force development board shall develop a local plan that consists of a compilation of local plans submitted by each subarea board. The rural consortium work force development board shall ensure that the local plan for the consortium area, in total, meets the requirements specified in this section and shall submit such plan to the governor for approval. Subarea boards within the rural consortium work force development area shall submit local plans to the rural consortium work force development board for approval.

(c) The details of the local plans must be in accordance with federal law.

(2) to (4) Repealed.

Source: L. 2012: Entire article added with relocations, (HB 12-1120), ch. 27, p. 85, § 6, effective June 1. **L. 2016:** (1) amended and (2) to (4) repealed, (HB 16-1302), ch. 183, p. 632, § 10, effective May 19.

Editor's note: This section is similar to former § 8-71-208 as it existed prior to 2012.

8-83-209. State work force development plan. (1) In accordance with the federal act, the governor shall submit to the federal government a state plan that outlines a four-year strategy for the Colorado work force development program that meets the requirements of the federal act. In addition to the plan requirements specified in the federal act, the state plan must be based

upon and consistent with the local plans submitted to the governor pursuant to section 8-83-208. The details of the state plan must be in accordance with federal law.

(2) and (3) Repealed.

Source: L. 2012: Entire article added with relocations, (HB 12-1120), ch. 27, p. 87, § 6, effective June 1. **L. 2016:** (1) amended and (2) and (3) repealed, (HB 16-1302), ch. 183, p. 634, § 11, effective May 19.

Editor's note: This section is similar to former § 8-71-209 as it existed prior to 2012.

8-83-210. Work force boards - membership. (1) There shall be established, in each local work force development area of the state, a work force board, which the local elected officials of the local work force development area shall appoint to oversee the one-stop operator, one-stop career center, or local work force development programs in that county or area. Work force boards operate in partnership with and subject to the approval of the local elected officials for the work force development area. Such boards are authorized to operate only with the approval of the local elected officials. Subject to requirements under the federal act, the local elected officials shall determine the membership and functions of the boards.

(2) Membership of each such board must include, at a minimum:

(a) Repealed.

(b) Representatives of local educational entities, which may include public schools, boards of cooperative educational services, private occupational schools, and private or charter schools;

(c) Repealed.

(d) Representatives of community-based organizations, at least one of whom may represent the needs of persons with disabilities; and

(e) Representatives of economic development agencies, including private sector economic development entities.

(f) Repealed.

(3) Members of the work force board who represent organizations, agencies, or other entities must be individuals with optimum policy-making authority within such organizations, agencies, or entities.

(4) A majority of the members of each work force board must be business representatives specified in paragraph (a) of subsection (2) of this section.

(5) Each work force board shall elect a chairperson for the board from among the business representatives specified in paragraph (a) of subsection (2) of this section.

Source: L. 2012: Entire article added with relocations, (HB 12-1120), ch. 27, p. 89, § 6, effective June 1. **L. 2016:** (1) amended and (2)(a), (2)(c), and (2)(f) repealed, (HB 16-1302), ch. 183, p. 636, § 12, effective May 19.

Editor's note: This section is similar to former § 8-83-210 as it existed prior to 2012.

8-83-211. Functions of work force boards. (1) Each work force board shall, in partnership with and subject to the approval of the local elected officials for the work force development area, conduct the following functions:

(a) Develop the local plan;

(b) Designate and certify one-stop operators and certify and oversee work force development programs;

(c) Select one-stop operators to operate the one-stop career center in a local area;

(d) Authorize grants for youth services;

(e) Identify eligible providers of intensive services, if one-stop operators do not provide such services, and training services;

(f) Develop and enter into memorandums of understanding with work force partners specified in section 8-83-216 (1);

(g) Develop a budget for the purpose of carrying out the duties of the work force board;

(h) Negotiate local performance measures;

(i) Oversee and assist in statewide employment statistics systems;

(j) Coordinate and develop employer linkages with work force development activities carried out in the local area, including coordination of economic development strategies;

(k) Promote participation of private employers with the work force development program while ensuring the effective provision, through the work force system, of connecting, brokering, and coaching activities through intermediaries such as the one-stop operator in the local area or through other organizations to assist such employers in meeting their hiring needs; and

(l) Fulfill other functions outlined in the federal act.

(2) The work force board shall not provide training services; except that the governor may waive this prohibition annually if the work force board is a qualified provider of training that is in demand and in short supply for that county or area.

(3) Work force boards are authorized to operate only with the approval of the local elected officials and governor.

Source: L. 2012: Entire article added with relocations, (HB 12-1120), ch. 27, p. 90, § 6, effective June 1. **L. 2016:** IP(1), (1)(b), (1)(j), and (1)(k) amended and (1)(l) added, (HB 16-1302), ch. 183, p. 636, § 13, effective May 19.

Editor's note: This section is similar to former § 8-71-211 as it existed prior to 2012.

8-83-212. Youth council. (Repealed)

Source: L. 2012: Entire article added with relocations, (HB 12-1120), ch. 27, p. 91, § 6, effective June 1. **L. 2016:** Entire section repealed, (HB 16-1302), ch. 183, p. 637, § 14, effective May 19.

Editor's note: This section is similar to former § 8-71-212 as it existed prior to 2012.

8-83-212.5. Work force development board standing committees. (1) A work force development board may designate standing committees that include work force development board members and members of the public with appropriate experience, as follows:

(a) A standing committee that includes representatives of one-stop partners to provide information and assist with operational and other issues relating to the one-stop delivery system as established in section 121 of the federal act;

(b) A standing committee that includes representatives of community-based organizations with a demonstrated record of success in serving youth to provide information and assist with planning, operational, and other issues relating to the provision of services to youth;

(c) A standing committee to provide information and to assist with operational and other issues relating to the provision of services to individuals with disabilities, including issues relating to compliance with 29 U.S.C. sec. 3248, and applicable sections of the "Americans with Disabilities Act of 1990", 42 U.S.C. sec. 12101 et seq., regarding programmatic and physical access to the services, programs, and activities of the one-stop delivery system and appropriate training for staff concerning the provision of support or accommodation to, and finding employment opportunities for, individuals with disabilities; and

(d) Any additional standing committees that the work force development board deems necessary.

(2) This section does not prohibit another entity from addressing the issues specified in subsection (1) of this section.

Source: L. 2016: Entire section added, (HB 16-1302), ch. 183, p. 638, § 15, effective May 19.

8-83-213. Rural consortium work force development board. (1) The rural consortium local elected officials board in the rural consortium work force development area shall establish and appoint a rural consortium work force development board. At a minimum, the membership of the rural consortium board must consist of representatives who are members of subarea boards. The rural consortium board shall meet the membership requirements under the federal act for a work force board for each subarea of the rural consortium area; except that members, as appropriate, may represent more than one entity specified by the federal act for the purpose of meeting subarea board membership requirements. The rural consortium board shall develop its own operational procedures.

(2) **Functions of rural consortium board - delegation to subarea boards.** Unless otherwise specified in this section and subject to federal law, the rural consortium board may delegate to the subarea boards, where they have been established, in the rural consortium area such subarea board authority and functions specified under this part 2 and the federal act. Authority and functions of the rural consortium board are limited to the following:

(a) Meeting the federal membership requirements for a local work force development board for the local work force subareas;

(b) Negotiating with, and approving local plans submitted by, subarea boards;

(c) Compiling and consolidating each approved local plan of the consortium area into one local plan for the consortium area and ensuring that the plan meets the requirements under the federal act for a local plan;

(d) Submitting the local plan to the governor for approval;

(e) Negotiating with the governor for performance standards for the consortium area;

(f) Making recommendations to the governor concerning procedures to temporarily replace or correct a development area that is out of compliance with its local plan, as appropriate;

(g) Facilitating and coordinating work force subarea grant applications, as appropriate;

(h) Ensuring that any grant money awarded to a work force development area is a direct pass-through from the federal government to the eligible work force development area;

(i) Establishing standing committees pursuant to section 8-83-212.5;

(j) Subject to federal law, delegating to the subarea boards in the rural consortium area duties and functions specified in the federal act and in section 8-83-216 outlining requirements for one-stop partners.

(3) **Work force development subarea boards.** (a) To the extent possible and as outlined in the applicable local plan, each work force development subarea board shall function as set forth in the federal act. In carrying out its duties, the work force development subarea board shall operate in partnership with, and be subject to the approval of, the local elected officials for the local work force development area.

(b) **Membership.** Notwithstanding section 8-83-210 (3), the local elected officials shall appoint members of each work force development subarea board. Membership, to the extent possible, must meet the requirements of the federal act.

(c) **Functions.** Notwithstanding section 8-83-211, at a minimum, functions of the work force development subarea board must be as set forth in this part 2 and the federal act. In addition, each subarea board shall:

(I) Upon the approval of and in partnership with the local elected officials, develop a comprehensive four-year local plan for its work force development subarea and submit the local plan for approval to the rural consortium work force development board. The plan must include a description of those requirements under the federal act that the work force development subarea board determines cannot be reasonably met while still fulfilling the intent and purposes of the federal act.

(II) Apply for federal grants. Each work force development subarea board may apply for national program grants on behalf of the subarea or in partnership with any other work force development area. Any national program grant money awarded to a work force development subarea is a direct pass-through from the federal government to the applicable work force development subarea.

(III) To the extent possible and as outlined in the local plan, with the agreement of the local elected officials and notwithstanding section 8-83-216, designate or certify the one-stop partners; and

(IV) (Deleted by amendment, L. 2016.)

(V) Oversee the one-stop system in the work force development area.

Source: L. 2012: Entire article added with relocations, (HB 12-1120), ch. 27, p. 92, § 6, effective June 1. **L. 2016:** (1), IP(2), (2)(a), (2)(b), (2)(f) to (2)(j), and (3) amended, (HB 16-1302), ch. 183, p. 638, § 16, effective May 19.

Editor's note: This section is similar to former § 8-71-213 as it existed prior to 2012.

8-83-214. Rural consortium local elected officials board. (1) In order to satisfy requirements under the federal act for the role of local elected officials in a work force area, there shall be a rural consortium local elected officials board for the rural consortium work force development board. The rural consortium local elected officials board consists of one local elected official appointed by each work force development area in the consortium. Membership is for a term of two years, which term may be renewable.

(2) Functions of the rural consortium local elected officials board are to appoint members to the rural consortium work force development board and ensure that the rural consortium work force development board meets federal requirements for membership and delegate fiscal responsibility and contractual responsibility to the local elected officials of work force development areas. The rural consortium local elected officials board shall develop its own operational procedures.

Source: L. 2012: Entire article added with relocations, (HB 12-1120), ch. 27, p. 94, § 6, effective June 1. **L. 2016:** Entire section amended, (HB 16-1302), ch. 183, p. 640, § 17, effective May 19.

Editor's note: This section is similar to former § 8-71-214 as it existed prior to 2012.

8-83-215. Designation of local work force development areas. (1) Subject to section 106 of chapter 2 of the federal act concerning designation of work force development areas, on an annual basis, any county, municipality, city and county, or combination may petition the governor to form a new work force development area.

(2) (Deleted by amendment, L. 2016.)

(3) Subject to the governor's approval, counties, municipalities, or a city and county may choose, through intergovernmental agreements, to band together to form a work force development area for an area consisting of more than one county, municipality, or city and county or may choose to operate a work force development area as a single unit. If the proposed work force development area meets the minimum federal requirements for an area as set forth in the federal act, the governor should not unreasonably withhold approval of the work force development area.

(4) (a) The governor may authorize and approve as a federally designated work force development area any area that applies and qualifies as specified in subsection (1) of this section.

(b) and (c) (Deleted by amendment, L. 2016.)

(5) (a) The governor shall designate an additional federally designated work force development area for the state, specified as the "rural consortium work force subarea", which consists of all approved work force development subareas. Such decision shall be allowed on an annual basis, with notice to be given by February 1, for any designation to go into effect for the subsequent program year by July 1 of the same year.

(b) Any approved work force development area in the rural consortium work force development area shall operate with the same authority as, and function as if it were, a local work force development area.

Source: L. 2012: Entire article added with relocations, (HB 12-1120), ch. 27, p. 94, § 6, effective June 1. **L. 2016:** Entire section amended, (HB 16-1302), ch. 183, p. 641, § 18, effective May 19.

Editor's note: This section is similar to former § 8-71-215 as it existed prior to 2012.

8-83-215.5. Designation of planning regions. (1) In accordance with 29 U.S.C. sec. 3121, every two years the state council, in consultation with local elected officials, shall conduct a process to identify planning regions. A local area must not be placed in a planning region without the support and agreement of the work force development board and the chief elected official.

(2) Local chief elected officials may review the regional planning area designation every two years before an updated state plan is submitted.

Source: L. 2016: Entire section added, (HB 16-1302), ch. 183, p. 642, § 19, effective May 19.

8-83-216. Required and optional partners of work force boards. (1) **Required partners.** Each work force board, with the agreement of the local elected officials, is authorized to designate or certify partners outlined in the federal act for purposes of participating in the delivery of services for the one-stop system or work force development program in the local work force development area:

(a) Repealed.

(b) Adult education and literacy programs;

(c) Welfare-to-work programs;

(d) Programs under the federal "Carl D. Perkins Vocational and Applied Technology Education Act", 20 U.S.C. sec. 2301 et seq.;

(e) Community service block grants;

(f) Unemployment insurance;

(g) "Wagner-Peyser Act" services;

(h) Vocational rehabilitation programs;

(i) Programs under the federal "Older Americans Act of 1965";

(j) Programs under the federal "Trade Adjustment Assistance Reform and Extension Act of 1986";

(k) Programs under 38 U.S.C. sec. 4100 et seq., concerning local veterans' employment representatives and disabled veterans' outreach programs; and

(l) Employment and training programs administered by the federal department of housing and urban development.

(2) Repealed.

(3) **Functions of required partners.** All required one-stop partners shall perform the following functions:

(a) Make available to participants through the one-stop system the core services that are required of and applicable to the partner's programs;

(b) Serve as representatives on the work force board;

(c) Use a portion of moneys, personnel, and other available resources to create and maintain a one-stop system; except that, to the extent such use would violate federal law or lead to a loss of federal moneys, this paragraph (c) does not apply; and

(d) Enter into a memorandum of understanding with the work force board relating to the operation of the one-stop career center, including a description of services, how the cost of the identified services and operating costs of the system will be funded, and methods for referrals of individuals.

(4) **Functions of optional partners.** (a) Optional one-stop partners shall perform the following functions:

(I) Make available to participants through the one-stop system the core services that are required of and applicable to the partner's programs;

(II) Participate in the operation of such one-stop system, consistent with the terms of the memorandum of understanding approved by the work force board and with the requirements of the federal act in which the program is authorized, if the work force board and local elected official approve such participation.

(b) If an optional partner is designated or certified pursuant to subsection (1) of this section, its functions and responsibilities are the same as those of a required partner as set forth in subsection (3) of this section.

Source: L. 2012: Entire article added with relocations, (HB 12-1120), ch. 27, p. 95, § 6, effective June 1. **L. 2016:** IP(1) amended and (1)(a) and (2) repealed, (HB 16-1302), ch. 183, p. 642, § 20, effective May 19.

Editor's note: This section is similar to former§ 8-71-216 as it existed prior to 2012.

8-83-217. Memorandum of understanding - one-stop partners. (1) (a) The work force board, with the agreement of the local elected officials, shall develop and enter into a memorandum of understanding between the work force board and the one-stop partners concerning the provision of services in the one-stop system in the local area.

(b) Each memorandum of understanding must contain provisions describing:

(I) The services to be provided through the one-stop system;

(II) How the costs of such services and the operating costs of the system will be funded;

(III) Methods for referral of individuals between the one-stop operator and one-stop partners for the appropriate services and activities;

(IV) The duration of the memorandum of understanding and the procedures for amending the memorandum of understanding during the term of the memorandum of understanding; and

(V) Such other provisions, consistent with the federal act, as the parties to the agreement determine to be appropriate.

(2) Repealed.

Source: L. 2012: Entire article added with relocations, (HB 12-1120), ch. 27, p. 97, § 6, effective June 1. **L. 2016:** (2) repealed, (HB 16-1302), ch. 183, p. 643, § 21, effective May 19.

Editor's note: This section is similar to former § 8-71-217 as it existed prior to 2012.

8-83-218. Core services. (1) The work force investment program, as implemented through one-stop career centers, shall provide a core set of services, as defined by the federal act, to individuals who are adults or dislocated workers, including, at a minimum, access for job seekers to a comprehensive array of services and information, which may include:

(a) Registration into the centralized computer system;

(b) Career center operations;

(c) Education and training program information;

(d) A multimedia resource library providing access to internet-based services;

(e) Labor market information;

(f) Skill assessment services that are designed to determine each participant's employability, aptitudes, abilities, and interests, by means of individual interviews whenever possible;

(g) Job referral and placement;

(h) Self-help resume preparation resources;

(i) Referral services for community and social services, including welfare-to-work programs, employment programs for persons with disabilities, employment programs for older workers, community-based organizations, vocational rehabilitation, adult literacy, supportive services, and youth programs and services;

(j) Veterans' benefits and services information, subject to the availability of Wagner-Peyser funds and to the following:

(I) Any one-stop career center receiving Wagner-Peyser funds or housing Wagner-Peyser Act staff shall provide veterans with priority employment and training services in accordance with chapter 41 of title 38, U.S.C.;

(II) In one-stop career centers that have been assigned disabled veteran outreach program and local veteran employment representative positions, such positions must be held by state employees and are in addition to, and do not supplant, Wagner-Peyser staff in providing priority employment and training services; and

(III) All one-stop career centers shall make the full array of core services available to veterans in the following order of priority: Disabled veterans, Vietnam-era veterans, veterans, and other eligible persons.

(2) Work force boards are encouraged to consider and determine, at a minimum, the feasibility of providing access for employers to a comprehensive array of services and information, which may include:

(a) Professional account representatives and management;

(b) Assistance in individual and mass recruiting;

(c) Referrals of skilled applicants;

(d) Labor market information;

(e) Education and training program information;

(f) Access to internet-based services;

(g) Information and referral for community and social services;

(h) Layoff assistance; and

(i) Other employment-related services and information.

(3) At the option of the local elected officials, other services for job seekers and employers may be offered to meet the needs of a work force development area.

Source: L. 2012: Entire article added with relocations, (HB 12-1120), ch. 27, p. 98, § 6, effective June 1. **L. 2016:** (3) amended, (HB 16-1302), ch. 183, p. 644, § 22, effective May 19.

Editor's note: This section is similar to former § 8-71-218 as it existed prior to 2012.

8-83-219. Intensive services - training services - individual training accounts. (1) Access to intensive services, as specified in the federal act, must be available to individuals who are adults or dislocated workers who are unemployed, unable to obtain employment through core services, and have been determined by a one-stop operator to be in need of more intensive services to obtain employment or who are employed but are determined by a one-stop operator to be in need of such services. Such services may include diagnostic testing, individual or group counseling and career planning, case management and follow-up services, and training services specified in subsection (2) of this section.

(2) Participants who have met the eligibility requirements for intensive services, are unable to obtain or retain employment through such services, are determined by the one-stop operator to be in need of such services, and are eligible for such services as specified in the federal act must have access to training services, as specified in the federal act. Such training services include occupational skills training, on-the-job training, and training programs operated by the private sector.

(3) The one-stop system shall provide training services authorized under this section to eligible individuals through the use of individual training accounts, as specified in the federal act. Exceptions to the use of individual training accounts, as set forth in the federal act, include customized training, training services not provided by a training provider within the work force area, or training services that are offered by community-based organizations or other private organizations that serve such special populations that face multiple barriers to employment.

Source: L. 2012: Entire article added with relocations, (HB 12-1120), ch. 27, p. 100, § 6, effective June 1.

Editor's note: This section is similar to former § 8-71-218.5 as it existed prior to 2012.

8-83-220. Encouragement of in-demand programs - legislative declaration. (1) The state work force development council shall encourage work force development programs and work force development areas to enroll individuals in educational programs related to industries that are in demand in that work force development area. The general assembly finds that Colorado is facing a shortage in several different industries and that having local areas encouraging individuals to follow a career path in a marketable industry in that area further benefits Colorado residents.

(2) The general assembly finds, determines, and declares that educating individuals eligible to receive moneys from welfare-to-work or temporary assistance to needy families will benefit such individuals. In addition, the general assembly finds, determines, and declares that Colorado is facing a shortage of licensed practical nurses and that encouraging individuals to follow such a career path further benefits Colorado and its residents.

Source: L. 2012: Entire article added with relocations, (HB 12-1120), ch. 27, p. 100, § 6, effective June 1. **L. 2016:** (1) amended, (HB 16-1302), ch. 183, p. 644, § 23, effective May 19.

Editor's note: This section is similar to former § 8-71-218.7 as it existed prior to 2012.

8-83-221. Title I and Title III allocation. The local elected officials or their designee shall serve as the local grant recipient for the Title I and Title III money allocated to the work force development area by the governor for the purposes of a work force development area's administration and implementation of the work force investment program pursuant to the allocation formula described in section 8-83-223. The department shall contract directly with each local work force investment area board. In order to assist in the administration of Title I and Title III money, the local elected officials may designate an entity to serve as a local grant sub-recipient for the money or as a local fiscal agent. Except when the designee is the department, a designation does not relieve the local elected officials of the liability for any misuse of grant money.

Source: L. 2012: Entire article added with relocations, (HB 12-1120), ch. 27, p. 221, § 6, effective June 1. **L. 2016:** Entire section amended, (HB 16-1302), ch. 183, p. 644, § 24, effective May 19.

Editor's note: This section is similar to former § 8-71-219 as it existed prior to 2012.

8-83-222. County distribution formula - use of money. Subject to available appropriations by the general assembly, the department shall allocate Title I and Title III money to each work force development area for the operation of the work force development program in that work force development area.

Source: L. 2012: Entire article added with relocations, (HB 12-1120), ch. 27, p. 101, § 6, effective June 1. **L. 2016:** Entire section amended, (HB 16-1302), ch. 183, p. 644, § 25, effective May 19.

Editor's note: This section is similar to former § 8-71-220 as it existed prior to 2012.

8-83-223. Allocation process. Subject to federal law and available appropriations, within thirty days after receipt of the federal appropriation from the United States department of labor, the local elected officials from each work force development area in the state shall recommend an allocation formula for Title I and Title III money for each work force development area to be implemented in the following program year. Development of the allocation formula by the local elected officials must be facilitated through a statewide association of county commissioners. The statewide association of county commissioners shall ensure that the local elected officials from each work force development area have an opportunity to participate in the development and final approval of the recommendations for allocation formulas. The department and the state council shall provide technical assistance to the statewide association of county commissioners. The local elected officials shall recommend the allocation formula to be applied to each allocation for adult, youth, and dislocated worker

services under Title I and employment services under Title III. The statewide association of county commissioners shall forward the local elected officials' recommendations to the state council pursuant to section 8-83-224 (2)(f) for review and comment. The state council shall then submit such recommendations, together with the state council's comments, to the joint budget committee of the general assembly for review and comment before forwarding such recommendations to the governor for final determination and Untied States department of labor approval. If the local elected officials cannot agree on an allocation, the local elected officials shall prepare, with comment, alternatives and the statewide association of county commissioners shall submit the alternatives to the state council for review and comment and submission to the joint budget committee, which shall select one alternative and forward it to the governor for final determination and United States department of labor approval. The local elected officials and the statewide association of county commissioners shall develop their own operational procedures. Any money received by the state under Title I and Title III of the federal act, together with any associated state full-time equivalent personnel positions, is subject to appropriation by the general assembly.

Source: L. 2012: Entire article added with relocations, (HB 12-1120), ch. 27, p. 101, § 6, effective June 1. **L. 2016:** Entire section amended, (HB 16-1302), ch. 183, p. 645, § 26, effective May 19.

Editor's note: This section is similar to former § 8-71-221 as it existed prior to 2012.

8-83-224. State council - duties. (1) The state council shall function as, and is intended to meet the requirements for, the state work force development board referred to in the federal act. In addition to performing the functions set forth in subsection (2) of this section and the federal act, the state council shall serve in an advisory role to the governor for those areas specified by the federal act and shall serve as a conduit for information to local work force development areas, including facilitation of grant applications and assistance to work force development areas to enable work force development areas to successfully implement programs under the federal act.

(2) The state council shall assist the governor in the following:

(a) Development of the comprehensive five-year state plan as specified in section 8-83-209;

(b) Development and continuous improvement of a statewide system of activities that are funded pursuant to the federal act or carried out through a one-stop system as set forth in this part 2 that receives Title I moneys. Such improvement shall include the development of linkages in order to ensure coordination and prevent duplication among the programs and activities authorized in this part 2.

(c) Review of local plans submitted by the work force development boards and the rural consortium work force development board;

(d) Designation of local work force development areas;

(e) Commenting at least once annually on the measures taken pursuant to the federal "Carl D. Perkins Vocational and Applied Technology Education Act", 20 U.S.C. sec. 2301 et seq.;

(f) Review and comment on, and submission to the joint budget committee for review and comment on, allocation formulas for the distribution of Title I moneys for adult employment and training activities and youth activities to work force investment areas in accordance with the process established in section 8-83-223;

(g) Preparation of the annual report to the secretary of the United States department of labor;

(h) Development of the statewide employment statistics system described in the "Wagner-Peyser Act";

(i) Development of an application for an incentive grant authorized pursuant to the federal act;

(j) Any other functions as requested by the governor; and

(k) Other duties outlined in the federal act.

(3) The state council shall work in partnership with the business community, local work force area representatives, and other state and local partners to convene a state-level work group to address branding, marketing, and outreach to the public about the opportunities available in the work force development areas throughout the state. The work group shall convene not later than July 31, 2016. On or before January 15, 2017, the work group shall make recommendations for adoption into the biannual state plan regarding the updating of existing statutes and policies to ensure consistency and advancement in the work force program throughout the state.

Source: L. 2012: Entire article added with relocations, (HB 12-1120), ch. 27, p. 101, § 6, effective June 1. **L. 2016:** (1), (2)(c), (2)(d), (2)(i), and (2)(j) amended and (2)(k) and (3) added, (HB 16-1302), ch. 183, p. 645, § 27, effective May 19.

Editor's note: This section is similar to former § 8-71-222 as it existed prior to 2012.

8-83-225. Colorado department of labor and employment - functions. (1) The department shall serve as the administrative entity for Title I money received and money received pursuant to Title III of the federal act. The department also is responsible for:

(a) Administering the statewide labor market information and fiscal systems to the extent such systems pertain to activities under the federal act;

(b) Assisting in the establishment and operation of one-stop career centers as requested by a local work force area;

(c) Disseminating lists of eligible training providers;

(d) Contracting and administering Title I moneys appropriated by the general assembly in accordance with the federal act;

(e) With input from the applicable work force development areas, continuing the centralized computer system that links work force development programs and includes training and technical support. A description of the state centralized system and procedures for developing, maintaining, and training must be included in the state plan required in section 8-83-209.

(f) Providing staff development and training services and technical assistance to work force development areas.

(2) The department shall provide ongoing consultation and technical assistance to each work force development area for the operation of work force investment programs.

(3) The department shall encourage work force investment areas to inform individuals of the career possibilities in the field of nursing and the availability of practical nursing education programs.

Source: L. 2012: Entire article added with relocations, (HB 12-1120), ch. 27, p. 102, § 6, effective June 1. **L. 2016:** IP(1), (1)(e), (1)(f), and (2) amended, (HB 16-1302), ch. 183, p. 646, § 28, effective May 19.

Editor's note: This section is similar to former § 8-71-223 as it existed prior to 2012.

8-83-226. Responsibilities of governor. (1) The governor shall perform the following functions, as specified in the federal act:

(a) Appoint members to the state council in accordance with section 24-46.3-101 (2), C.R.S.;

(b) Establish criteria for local elected officials to use in appointing members of local work force investment boards;

(c) Designate federal work force development areas in consultation with the local elected officials, including local work force investment areas requesting to be a part of the federal work force investment area comprising a consortium of work force areas;

(d) Designate, modify, and terminate work force investment areas in the state, including temporary designation, and establish an appeal process for review of such decisions;

(e) Certify designated work force investment boards and the local consortium work force development board;

(f) Negotiate with the federal department of labor concerning the contents of the state plan; and

(g) Carry out such other duties and functions as may be required under the federal act.

Source: L. 2012: Entire article added with relocations, (HB 12-1120), ch. 27, p. 103, § 6, effective June 1. **L. 2016:** (1)(c) and (1)(e) amended, (HB 16-1302), ch. 183, p. 647, § 30, effective May 19.

Editor's note: This section is similar to former § 8-71-224 as it existed prior to 2012.

PART 3

SKILLED WORKER OUTREACH,
RECRUITMENT, AND KEY TRAINING

8-83-301. Short title. This part 3 shall be known and may be cited as the "Skilled Worker Outreach, Recruitment, and Key Training Act" or the "WORK Act".

Source: L. 2015: Entire part added, (HB 15-1276), ch. 225, p. 828, § 1, effective May 26.

Editor's note: Section 8-83-307.5 provides for the repeal of this section, effective September 30, 2021.

8-83-302. Legislative declaration. (1) The general assembly hereby finds and declares that:

(a) The state is facing a serious shortage of skilled workers to fill openings in various industries in the state, and it is predicted that the skilled work force shortage will continue;

(b) Many government and nongovernment entities and organizations offer skilled training programs throughout the state to train individuals in various skill sets needed in the work force;

(c) While skilled workers are needed and training programs are available, many Coloradans are not aware of the availability of these programs and the potential for entry into a new career;

(d) According to the department, more than one hundred thirty thousand Coloradans are unemployed, and more than forty thousand Coloradans have been unemployed for at least twenty-six weeks, based on the United States department of labor's current population survey;

(e) Colorado has a reputation for meeting its work force needs, in part, by importing a large share of highly educated workers from outside the state;

(f) The state must ensure that the education and training pipelines within Colorado are adequately preparing youth and adults for the work force and are aligned with the needs of the economy;

(g) It is important to actively seek out and recruit individuals throughout the state to encourage them to enroll in and complete a skilled worker training program, thereby enabling participating individuals to gain access to openings in skilled industries in Colorado; and

(h) Further, it is important to coordinate skilled worker training and education programs throughout the state and Colorado's key industries, as identified in the current economic development blueprint produced by the office of economic development and the annual Colorado talent report. The coordination should include:

(I) Identifying current, future, and critical work force needs;

(II) Partnering with industry associations and businesses to assess and determine their work force needs; and

(III) Coordinating with skilled worker training providers on skill sets being developed and the quality of applicants being trained.

Source: L. 2015: Entire part added, (HB 15-1276), ch. 225, p. 828, § 1, effective May 26.

Editor's note: Section 8-83-307.5 provided for the repeal of this section 8-83-302, effective September 30, 2021. (See L. 2020, p. 594.)

8-83-303. Definitions. As used in this part 3, unless the context otherwise requires:

(1) "Annual Colorado talent report" means the annual report prepared pursuant to section 24-46.3-103 (3), C.R.S.

(2) "Apprenticeship program" means a Colorado-based apprenticeship training program that is registered with the United States department of labor's office of apprenticeship.

(2.5) "Council" means the state work force development council created in section 24-46.3-101.

(3) "Department" means the department of labor and employment created in section 24-1-121, C.R.S.

(4) "Eligible applicant" means any government or nongovernment entity or organization that offers or plans to offer a skilled worker training program and that has partnered with industry to offer or fund a skilled worker training program.

(5) "Fund" or "WORK fund" means the skilled worker outreach, recruitment, and key training grant program fund created in section 8-83-307.

(6) "Grant program" or "WORK grant program" means the skilled worker outreach, recruitment, and key training grant program established in section 8-83-304.

(7) "Grant review committee" or "WORK grant review committee" means the skilled worker outreach, recruitment, and key training grant review committee created in section 8-83-305.

(8) "Industry" means either one or more individual employers or an industry association.

(9) "Office of economic development" or "office" means the Colorado office of economic development, created in section 24-48.5-101, C.R.S.

(10) (a) "Skilled worker training program" means an accredited educational, occupational education, as defined in section 23-60-103 (2), C.R.S., apprenticeship, or similar training program that:

(I) Trains or retrains individuals to perform a skill that is needed in the work force; and

(II) Awards an industry- or state-recognized certificate, credential, associate degree, professional license, or similar evidence of achievement upon completion of the program.

(b) "Skilled worker training program" does not include an educational program that awards a bachelor's or higher degree upon completion of the program.

Source: L. 2015: Entire part added, (HB 15-1276), ch. 225, p. 829, § 1, effective May 26. **L. 2018:** (2.5) added, (HB 18-1316), ch. 241, p. 1498, § 1, effective May 24.

Editor's note: Section 8-83-307.5 provided for the repeal of this section 8-83-303, effective September 30, 2021. (See L. 2020, p. 594.)

8-83-304. Skilled worker outreach, recruitment, and key training grant program - creation - award criteria. (1) (a) (I) There is established in the department the skilled worker outreach, recruitment, and key training grant program, also referred to as the "WORK grant program". The purpose of the WORK grant program is to increase the state's skilled work force by awarding matching grants to eligible applicants to:

(A) Engage in outreach and recruiting efforts to increase enrollment in and completion of skilled worker training programs and, by partnering with business and industry, to determine current, future, and critical work force needs;

(B) Provide skilled worker training; or

(C) Both engage in outreach and recruiting and provide skilled worker training.

(II) Eligible applicants awarded matching grants shall not use the grant money for tuition subsidies or to reduce tuition for a skilled worker training program.

(b) (I) The department shall administer the grant program by accepting and processing matching grant applications submitted pursuant to this section, and the grant review committee shall review and make recommendations for awarding matching grants. The department shall develop application guidelines, establish deadlines for the grant program, and develop an expedited application process in accordance with subsection (1)(d) of this section.

(II) To assist with implementation of the grant program, the department shall assess current and future work force needs and coordinate skilled worker training and education programs throughout the state and Colorado's key industries, as identified in the current economic development blueprint produced by the office of economic development and the annual Colorado talent report. The coordination must include:

(A) Identifying current, future, and critical work force needs;

(B) Partnering with industry associations and businesses to assess and determine their work force needs; and

(C) Coordinating with skilled worker training program providers on skill sets being developed and the quality of applicants being trained.

(c) A matching grant awarded under the WORK grant program may extend past one year.

(d) Notwithstanding the requirements of the "Procurement Code", articles 101 to 112 of title 24, the department shall use an expedited procedure for accepting and reviewing applications from eligible applicants.

(2) (a) Except as provided in subsection (2)(b) of this section, the department shall start accepting grant applications for matching grants by January 1 of each year; shall award grants pursuant to section 8-83-305 within ninety days, but no later than the April 1 following the application submittal deadline; and shall issue grant awards to recipients within forty-five days after notifying the award recipients of the grant award.

(b) On and after June 26, 2020, the department shall not accept grant applications, award grants, or issue grant awards.

(3) (a) An eligible applicant may apply for a matching grant from the grant program based on the guidelines and deadlines established by the department pursuant to paragraph (b) of subsection (1) of this section.

(b) To be considered for a matching grant, an eligible applicant with an existing skilled worker training program shall include, at a minimum, the following information in its application, if relevant to the purposes for which the matching grant is sought:

(I) A description of how the matching grant will be used to recruit participants to and provide outreach for its skilled worker training program;

(II) A description of the skilled worker training program it offers, including the number of years it has been in operation, the location of the program, and the particular skills taught;

(III) Past, current, and projected enrollment in the skilled worker training program and estimated increases in enrollment anticipated if the eligible applicant is awarded a matching grant;

(IV) A comparison of the number of participants who enroll in its skilled worker training program and the number of participants who complete the program over a five-year period, if available;

(V) Specific industry needs or gaps in the work force that the skilled worker training program addresses;

(VI) Demonstration of partnerships with industry members, including those where program participants have the opportunity to earn income or credit hours;

(VII) Costs to operate the skilled worker training program;

(VIII) Existing resources that the eligible applicant has invested in recruiting, outreach, and funding of its skilled worker training program and resources the eligible applicant will commit in matching dollars if a grant is awarded; and

(IX) Any other information the department requires.

(c) To be considered for a matching grant, an eligible applicant that is planning to offer a skilled worker training program shall include, at a minimum, the following information in its application, if relevant to the purposes for which the grant is sought:

(I) A description of how the matching grant will be used to recruit participants to and provide an outreach plan for its proposed skilled worker training program;

(II) A description of the skilled worker training program it plans to offer, including the location of the program and the particular skills to be taught;

(III) Projected enrollment in the skilled worker training program;

(IV) Specific industry needs or gaps in the work force that the planned skilled worker training program will address;

(V) A description of intended partnerships with industry members, including those where program participants will have the opportunity to earn income or credit hours;

(VI) Anticipated costs to operate the skilled worker training program;

(VII) Resources that the eligible applicant will commit in matching dollars if a grant is awarded; and

(VIII) Any other information the department requires.

(4) Upon receipt of an application that satisfies the requirements of subsection (3) of this section, the department shall send the application to the grant review committee for its consideration in accordance with section 8-83-305.

(5) The department may disburse all of the money in the fund that is approved for a matching grant pursuant to section 8-83-305 to the eligible applicants selected in accordance with said section.

Source: L. 2015: Entire part added, (HB 15-1276), ch. 225, p. 830, § 1, effective May 26. **L. 2017:** (1)(b)(I) and (2) amended and (1)(d) added, (HB 17-1357), ch. 360, p. 1887, § 1, effective June 5. **L. 2018:** (1)(b)(I), (1)(d), and (2) amended, (HB 18-1316), ch. 241, p. 1498, § 2, effective May 24. **L. 2020:** (2) and (5) amended, (HB 20-1395), ch. 137, p. 592, § 1, effective June 26.

Editor's note: Section 8-83-307.5 provides for the repeal of this section, effective September 30, 2021.

8-83-305. Skilled worker outreach, recruitment, and key training grant review committee - creation - membership - duties - grant award recommendations. (1) There is created the skilled worker outreach, recruitment, and key training grant review committee, also referred to as the "WORK grant review committee". The grant review committee consists of thirteen members appointed by the council as follows:

(a) A representative from the department, who shall chair the grant review committee;

(b) A representative from the Colorado office of economic development;

(c) A representative from the department of higher education, created in section 24-1-114, C.R.S.;

(d) Two members from business, trade, or professional organizations in the state that represent industries with specific work force needs as identified in the annual Colorado talent report;

(e) Two members from labor organizations that represent industries with specific work force needs as identified in the annual Colorado talent report;

(f) Two representatives from apprenticeship programs;

(g) Two members from institutions of higher education that offer state-accredited career and technical education;

(h) One member who represents a subcontractors' trade association; and

(i) One member of the council.

(2) (a) The grant review committee shall establish criteria for ranking eligible applicants for matching grant awards. Among the criteria, the grant review committee shall consider and rank eligible applicants based on which eligible applicants have:

(I) The highest potential to:

(A) Reach a broad audience through their recruitment and outreach efforts;

(B) Significantly increase enrollment in and completion of their skilled worker training program; and

(C) Fill existing needs for skilled workers in the market; and

(II) Partnered with industry to provide training programs targeted at training and providing skilled workers who can perform jobs in that industry and demonstrated positive outcomes.

(b) In developing criteria under paragraph (a) of this subsection (2), the grant review committee shall give priority to eligible applicants that:

(I) Will provide outreach, recruitment, or training in areas that are listed as key industries or key industry jobs in the annual Colorado talent report; and

(II) Have demonstrated the following, prioritized in the following order:

(A) That the eligible applicant will provide monetary contributions from its own resources;

(B) That the eligible applicant has contributed its own resources in the form of monetary or in-kind matching contributions;

(C) That the eligible applicant has secured an industry partner; or

(D) That the eligible applicant has secured from an industry partner a monetary or in-kind contribution or conditional job placement guarantees or that the industry partner has contributed other meaningful investment in skilled worker training programs.

(c) (I) After reviewing the grant applications and subject to subsection (2)(c)(II) of this section, the grant review committee shall make recommendations about which eligible applicants should be awarded matching grants and the amounts of the matching grants. Recommendations shall be based on the committee's determination as to which eligible applicants best satisfy the grant criteria pursuant to subsections (2)(a) and (2)(b) of this section. The grant review committee shall submit its recommendations to the executive committee of the council, which includes the executive directors of the departments of labor and employment and higher education and the director of the office. After considering the grant review committee's

recommendations and subject to subsection (2)(c)(II) of this section, the executive committee shall determine to whom and in what amounts to award matching grants. Except as provided in section 8-83-304 (2)(b), grants shall be awarded within ninety days, but no later than the April 1 following the application submittal deadline, and, to the extent possible, the department shall issue the grant awards within forty-five days after notifying the award recipients of the grant awards.

(II) For the 2018-19 and 2019-20 state fiscal years, the grant review committee shall ensure, to the extent possible, that it recommends matching grant amounts, and the executive directors and director of the office shall ensure, to the extent possible, that they award matching grants, in accordance with the allocation of available money in the WORK fund specified in section 8-83-307 (3)(b).

Source: L. 2015: Entire part added, (HB 15-1276), ch. 225, p. 833, § 1, effective May 26. **L. 2018:** IP(1), (1)(i), and (2)(c) amended, (HB 18-1316), ch. 241, p. 1499, § 3, effective May 24. **L. 2020:** (2)(c) amended, (HB 20-1395), ch. 137, p. 592, § 2, effective June 26.

Editor's note: Section 8-83-307.5 provides for the repeal of this section, effective September 30, 2021.

8-83-306. Reports. (1) Each eligible applicant that receives a matching grant pursuant to this part 3 shall submit a report or, if the matching grant extends over more than one year, an annual report to the grant review committee on the measurable outcomes achieved. The grant recipient shall include in the report at least the following measurable outcomes, if relevant to the purposes for which the matching grant was awarded:

(a) The manner in which the grant recipient has used the grant moneys to provide outreach and recruit participants in its skilled worker training program;

(b) The number of participants enrolled in the skilled worker training program, both before the matching grant was awarded and since the matching grant was received;

(c) The number of participants who completed the skilled worker training program, both before the matching grant was awarded and since the matching grant was received;

(d) The number of skilled worker training participants who obtained employment in an industry for which the participant was trained under the program, including information about the industry in which the participants are employed;

(e) The number of participants recruited; and

(f) Any other information the grant review committee determines appropriate related to measurable outcomes achieved by the grant recipient.

(2) (a) By December 31, 2018, and by each December 31 thereafter through December 31, 2020, the grant review committee shall submit, as part of the Colorado talent pipeline report prepared pursuant to section 24-46.3-103, an annual report to the governor, the senate committee on business, labor, and technology or its successor committee, and the house of representatives committee on business affairs and labor or its successor committee. The grant review committee shall include in the report at least the following information:

(I) The number of matching grants awarded in the prior year, including the amount, recipient, and duration of each grant;

(II) The number of individuals who enrolled in and completed a skilled worker training program offered by each grant recipient;

(III) The number of individuals who obtained employment in a position that uses the skills for which they were trained through a skilled worker training program offered by a grant recipient; and

(IV) Other information obtained from grant recipients pursuant to subsection (1) of this section.

(b) By August 31, 2021, the grant review committee shall submit a final report to the governor, the senate committee on business, labor, and technology or its successor committee, and the house of representatives committee on business affairs and labor or its successor committee that includes the information specified in subsection (2)(a) of this section:

(I) For each year of operation of the grant program; and

(II) As a total in each category specified, reflecting the overall results of the operation of the grant program.

(3) Section 24-1-136 (11)(a)(I) does not apply to the reporting requirement specified in subsection (2) of this section.

Source: L. 2015: Entire part added, (HB 15-1276), ch. 225, p. 835, § 1, effective May 26. **L. 2017:** IP(2) amended, (HB 17-1357), ch. 360, p. 1888, § 2, effective June 5. **L. 2018:** IP(2) amended and (3) added, (HB 18-1316), ch. 241, p. 1500, § 4, effective May 24. **L. 2020:** (2) amended, (HB 20-1395), ch. 137, p. 593, § 3, effective June 26.

Editor's note: Section 8-83-307.5 provides for the repeal of this section, effective September 30, 2021.

8-83-307. Skilled worker outreach, recruitment, and key training grant program fund - creation. (1) (a) There is created in the state treasury the skilled worker outreach, recruitment, and key training grant program fund, also referred to as the "WORK fund", which consists of:

(I) Any moneys that may be appropriated to the fund by the general assembly;

(II) Any federal funds or grants for which the WORK grant program is eligible; and

(III) Any gifts, grants, or donations the department may receive for the WORK grant program.

(b) Except as provided in subsection (5) of this section, the money in the fund is subject to annual appropriation by the general assembly to the department for the direct and indirect costs associated with implementing this part 3.

(c) The state treasurer may invest any moneys in the WORK fund not expended for the purpose of this part 3 as provided by law. The state treasurer shall credit all interest and income derived from the investment and deposit of moneys in the fund to the fund.

(2) The department may accept and expend gifts, grants, and donations for the purposes of this part 3, but the implementation of this part 3 is not dependent on the receipt of gifts, grants, and donations. The department shall transmit all moneys received through gifts, grants, or donations to the state treasurer, who shall credit them to the fund.

(3) (a) For the 2018-19 and 2019-20 state fiscal years, the general assembly shall appropriate a total of four million three hundred thousand dollars to the fund, of which not more

than three million three hundred thousand dollars may be appropriated in any given state fiscal year.

(b) The money in the fund that is available for matching grants should be allocated, to the extent possible, to eligible applicants approved for a matching grant award pursuant to section 8-83-305 (2)(c) as follows:

(I) Two-thirds to eligible applicants that were awarded matching grants in a prior fiscal year; and

(II) One-third to eligible applicants that have not received a matching grant previously.

(4) The department may expend up to five percent of the moneys annually appropriated from the fund to offset the costs incurred in implementing this part 3.

(5) The state treasurer shall transfer any unexpended and unencumbered money remaining in the WORK fund on September 1, 2020, to the general fund. If, as of September 1, 2021, there is any unexpended and unencumbered balance remaining in the WORK fund, the state treasurer shall transfer the remaining balance to the general fund.

Source: L. 2015: Entire part added, (HB 15-1276), ch. 225, p. 836, § 1, effective May 26. **L. 2017:** (3) amended, (HB 17-1357), ch. 360, p. 1888, § 3, effective June 5. **L. 2018:** (1)(b), (3), and (5) amended, (HB 18-1316), ch. 241, p. 1500, § 5, effective May 24. **L. 2020:** (3)(a) and (5) amended, (HB 20-1395), ch. 137, p. 594, § 4, effective June 26.

Editor's note: Section 8-83-307.5 provides for the repeal of this section, effective September 30, 2021.

8-83-307.5. Repeal. This section and sections 8-83-301 to 8-83-307 are repealed, effective September 30, 2021.

Source: L. 2020: Entire section added, (HB 20-1395), ch. 137, p. 594, § 5, effective June 26.

8-83-308. Colorado state apprenticeship resource directory - collection of apprenticeship program information - promotion of public awareness - definitions. (1) On or before January 1, 2020, the department shall create the Colorado state apprenticeship resource directory, referred to in this section as the "directory". The directory must include, for each apprenticeship program listed in the directory, the information collected by the department pursuant to this subsection (1). At least annually, the department shall update the information in the directory. The department shall require apprenticeship programs to provide the following information to the department for inclusion in the directory:

(a) Program name and United States department of labor registration number;

(b) Program contact information, including primary mailing address, and website address, if any;

(c) A brief description of the industry for which the program provides workforce training;

(d) A statement describing the professional license, certification, or other qualification an enrollee would receive upon successful completion of the program;

(e) The total number of months required or allowed to complete the program, the total number of hours an enrollee must complete, and, of the total hours an enrollee must complete, a breakdown of the number of on-the-job hours and other training hours an enrollee must complete;

(f) The total number of individuals enrolled in the program in the previous year and the anticipated attendance and enrollee tuition for the current year;

(g) The percentage of enrollees who completed the program in the previous year who are currently working in the industry for which the program provides workforce training and, if known, the percentage for each year the program has been offered;

(h) The average current annual, monthly, weekly, or hourly compensation of enrollees who completed the program; and

(i) A brief description of the application process, selection criteria, and required or preferred prerequisites for enrollment.

(1.5) (a) On or before January 1, 2021, the department shall include in the directory the name and contact information for at least one designated apprenticeship training program contact for every school district and public high school. The contact information must include, at a minimum, the contact's mailing address, e-mail address, telephone number, and high school or school district that the contact represents.

(b) The department shall cooperate with the department of education, created and existing pursuant to section 24-1-115, to receive and annually update the information required pursuant to subsection (1.5)(a) of this section no later than September 1 of each year.

(c) As used in this subsection (1.5), unless the context otherwise requires:

(I) "Designated apprenticeship training program contact" means a designee of a school district or public high school that is the preferred point of contact for students, parents, or apprenticeship programs to interface with the school districts and high schools on matters related to apprenticeship training opportunities and workforce training.

(II) "Public high school" means a public school as defined in section 22-1-101, including a district charter school or an institute charter school that covers any grade from ninth through twelfth.

(III) "School district" means a school district authorized by section 15 of article IX of the state constitution and organized pursuant to article 30 of title 22. "School district" also includes a board of cooperative services created pursuant to article 5 of title 22 if it is operating a public high school.

(2) The department shall promote public awareness of the directory by, at a minimum:

(a) Prominently posting the directory on the department's website;

(b) Notifying work force development boards, as defined in section 8-83-203 (23), when the directory is first posted on the department's website and each time an annual revised directory is posted. The department shall provide each board with information on how to access the full directory and shall require each board to include a link to the directory information on the board's website.

(c) Identifying and informing the appropriate contact persons at Colorado educational institutions of the availability of the directory. The educational institutions include high school guidance offices, community colleges, state colleges and universities, and private higher education institutions.

(d) Informing relevant private industry and business associations of the availability of the directory and requesting that the associations promote the directory to association members.

(3) As used in this section, unless the context otherwise requires:

(a) "Apprenticeship program" means a Colorado-based apprenticeship training program that is registered with the United States department of labor's office of apprenticeship.

(b) "Industry" means either one or more individual employers or an industry association.

Source: L. 2019: Entire section added, (SB 19-171), ch. 317, p. 2958, § 1, effective August 2. **L. 2020:** (3) added, (HB 20-1395), ch. 137, p. 594, § 6, effective June 26; (1.5) added, (SB 20-081), ch. 33, p. 108, § 1, effective September 14.

PART 4

EMPLOYMENT SUPPORT AND JOB RETENTION
SERVICES PROGRAM

8-83-401. Definitions. As used in this part 4, unless the context otherwise requires:

(1) "Administering entity" means the nonprofit entity selected pursuant to section 8-83-403 to administer the program.

(2) "Eligible individual" means an individual that satisfies the eligibility criteria specified in section 8-83-404 (4).

(3) "Federal poverty line" has the same meaning as "poverty line", as defined in 42 U.S.C. sec. 9902 (2).

(4) "Program" means the employment support and job retention services program created in section 8-83-402.

(5) "Service provider" means a public agency or nonprofit community organization that provides employment, employment preparation, and job retention services to eligible individuals pursuant to a memorandum of understanding with the administering entity.

(6) "Services" means services provided by a service provider to eligible individuals, which services are eligible for reimbursement from the program pursuant to section 8-83-404 (5).

Source: L. 2019: Entire part added, (HB 19-1107), ch. 322, p. 2981, § 1, effective July 1.

8-83-402. Employment support and job retention services program - creation. There is hereby created in the division the employment support and job retention services program. Within six months after the date of the first appropriation by the general assembly to the employment support and job retention services program cash fund pursuant to section 8-83-406, the program shall fund employment preparation, job training, employment pursuit, and job retention activities for eligible individuals as they pertain to the individuals' job training and employment goals.

Source: L. 2019: Entire part added, (HB 19-1107), ch. 322, p. 2982, § 1, effective July 1.

8-83-403. Program purpose - duties of the director. (1) The purpose of the program is to provide assistance to eligible individuals who may not be eligible for or have access to other employment resources or who are preparing for, seeking, or attempting to retain employment.

(2) The director shall:

(a) Enter into a competitive solicitation process pursuant to the "Procurement Code", articles 101 to 112 of title 24, to contract with an administering entity;

(b) Establish procedures and guidelines for:

(I) The selection of the administering entity to operate the program;

(II) The development and implementation of the memorandums of understanding with service providers;

(III) Requesting and distributing reimbursements to service providers; and

(IV) Any additional parameters for the operation and evaluation of the program, subject to data available to the division.

(3) The director shall solicit feedback from stakeholders when establishing procedures and guidelines pursuant to subsection (2) of this section.

Source: L. 2019: Entire part added, (HB 19-1107), ch. 322, p. 2982, § 1, effective July 1.

8-83-404. Administration of the program. (1) The administering entity shall:

(a) Develop formal memorandums of understanding with service providers and guidelines for the operation of the program in coordination with the director;

(b) Establish procedures and guidelines for reimbursing service providers in accordance with the terms of the memorandums of understanding;

(c) Reimburse service providers up to four hundred dollars per year for each eligible individual to whom the service provider delivered services authorized for reimbursement pursuant to subsection (5) of this section;

(d) Ensure the fiscal responsibility of the program in compliance with the director;

(e) Participate in evaluation activities as required by the director; and

(f) Be responsible for all other requirements outlined by the director.

(2) A service provider shall:

(a) Submit reports as specified by the administering entity that outline the type of service provided, reason for the service, basic demographics of the eligible individual, and geographic location where the service was provided; and

(b) Participate in an analysis process throughout the service provider's participation in the program.

(3) The administering entity must not reimburse a service provider for expenses incurred to provide employment preparation, job training, employment pursuit, or job retention activities to an eligible individual if the services are currently provided to the individual by another source.

(4) Notwithstanding any other federal or state law, in order to be eligible to receive services for which a service provider may be reimbursed under the program, an individual must:

(a) Have a household income at or below the federal poverty line;

(b) Be at least sixteen years of age;

(c) Be eligible to work in the United States; and

(d) Be underemployed or unemployed and actively pursuing employment, employment preparation, job training, or job retention activities, with the assistance of a service provider.

(5) (a) The administering entity may reimburse a service provider for expenses incurred in providing:

(I) Employment support services to an eligible individual to assist with an individual's employment, employment preparation, or job training goals; and

(II) Services to assist an eligible individual with ongoing job retention for up to six months after the date of employment.

(b) Employment support and job retention services that are eligible for reimbursement include:

(I) Transportation or vehicle;

(II) Emergency child care;

(III) Emergency housing;

(IV) Fees related to employment preparation, job training, employment pursuit, or job retention activities;

(V) Work tools and equipment;

(VI) Food and nutrition;

(VII) Utility, telephone, and internet bills;

(VIII) Prepaid cell phones;

(IX) Licenses and certifications;

(X) Legal services and fees related to employment;

(XI) Language, communication, interpretation, and translation expenses;

(XII) Emergency and work-related medical, behavioral, and mental health, dental, and vision services and expenses that impede an individual's ability to prepare for, obtain, or retain employment; and

(XIII) Other expenses as they pertain to employment preparation, job training, employment pursuit, or job retention services as determined by the director.

Source: L. 2019: Entire part added, (HB 19-1107), ch. 322, p. 2982, § 1, effective July 1.

8-83-405. Reports required. (1) On or before July 1 of each year, the administering entity shall report to the division:

(a) The information provided by a service provider pursuant to section 8-83-404 (2);

(b) A qualitative analysis based on interviews conducted with service providers statewide concerning the efficacy of the program; and

(c) An account of the program's expenditures.

(2) On or before December 1, 2021, the division shall report to the business, labor, and technology committee of the senate and the business affairs and labor committee of the house of representatives, or their successor committees, a comprehensive analysis concerning the efficacy of the program.

Source: L. 2019: Entire part added, (HB 19-1107), ch. 322, p. 2984, § 1, effective July 1.

8-83-406. Employment support and job retention services program cash fund - created. (1) (a) The employment support and job retention services program cash fund, referred to in this section as the "fund", is hereby created in the state treasury. For the 2019-20 state fiscal

year, the general assembly shall appropriate seven hundred fifty thousand dollars from the general fund to the fund.

(b) The state treasurer shall credit all interest and income derived from the deposit and investment of money in the fund to the fund. At the end of any fiscal year, all unexpended and unencumbered money in the fund remains in the fund and shall not be credited or transferred to the general fund or any other fund.

(c) Money in the fund is subject to annual appropriation by the general assembly to the department for the purposes of this part 4, to the extent that in each fiscal year the general assembly may only appropriate up to two hundred fifty thousand dollars plus any unexpended money and interest accrued from the previous fiscal year.

(2) The department may seek, accept, and expend gifts, grants, and donations from private or public sources for the purposes of this part 4.

(3) The division may use the money in the fund for the purposes of this part 4, including administrative costs related to the program. The administering entity may use money in the fund to operate the program. The remainder of the money may be used only for reimbursements made pursuant to section 8-83-404. The director or the director's designee may expend money from the fund for the purposes of this part 4.

Source: L. 2019: Entire part added, (HB 19-1107), ch. 322, p. 2985, § 1, effective July 1.

8-83-407. Repeal of part. This part 4 is repealed, effective September 30, 2022.

Source: L. 2019: Entire part added, (HB 19-1107), ch. 322, p. 2985, § 1, effective July 1.

PART 5

JUST TRANSITION SUPPORT
FOR COAL-RELATED JOBS

8-83-501. Legislative declaration. (1) The general assembly hereby:

(a) Finds that:

(I) Coal provides more than half of Colorado's net power generation. There were approximately one thousand three hundred workers employed in Colorado coal mines at the end of 2018, and half of the domestic consumption of Colorado's mined coal is for power generation within the state.

(II) Colorado's power sector, and the nation's, is moving away from coal as a fuel source based on consumer demand for cleaner power and the declining cost of natural gas and renewable resources. Electricity generated from renewable sources has doubled since 2010 to approximately twenty-five percent of Colorado's power generation in 2017.

(b) Determines that:

(I) In addition to the changing economics of power generation, there is a scientific consensus that greenhouse gas emissions, which are primarily the result of fossil fuel combustion, must be reduced in order to mitigate the worst effects of climate change. These effects are already being experienced by Coloradans in forms that include more extreme weather, snow pack melt, and higher temperatures.

(II) The effects of coal plant closures on workers and communities have the potential to be significant if not managed correctly. The closure of coal-fired plants nationwide is also likely to have a serious impact on employment in the state's coal mines and the transportation and logistics supply chains that move coal from mine to market. Many of these jobs provide family-supporting wages and benefits. The communities that host retiring power plants may lose principal contributors to their tax base and revenue for vital local government services. The enactment of this part 5 will help alleviate these impacts.

(III) While Colorado companies and policymakers have worked to drive new investment from the clean energy economy into transitioning communities and rural parts of the state, there does not exist at the state or federal level sufficient resources to assist workers and communities impacted by changes in Colorado's coal economy, and there does not exist sufficient coordinated leadership within Colorado's state government to align and deliver assistance to these coal communities and workers; and

(c) Declares that:

(I) A strong and comprehensive policy is also needed to invest new financial resources in coal communities that are seeking to diversify and grow their local and regional economies in a manner that is both sustainable and equitable; and

(II) Colorado must ensure that the clean energy economy fulfills a moral commitment to assist the workers and communities that have powered Colorado for generations, as well as the disproportionately impacted communities who have borne the costs of coal power pollution for decades, and to thereby support a just and inclusive transition.

Source: L. 2019: Entire part added, (HB 19-1314), ch. 323, p. 2987, § 1, effective May 28.

8-83-502. Definitions. As used in this part 5, unless the context otherwise requires:

(1) "Coal transition community" means a municipality, county, or region that has been affected in the previous twelve months, or that demonstrates it will be impacted in the next thirty-six months, by the loss of fifty or more jobs in total from a coal mine, coal-fueled electrical power generating plant, or the manufacturing and transportation supply chains of either.

(2) "Coal transition worker" means a Colorado worker laid off from employment on or after May 28, 2019, in a coal mine, coal-fueled electrical power generating plant, or the manufacturing and transportation supply chains of either.

(3) "Director" means the director of the office.

(4) "Disproportionately impacted community" means any community of color, low-to-middle income community, or indigenous community that is or has been directly impacted by coal pollution.

(5) "Eligible entity" means the following entities that serve a coal transition community and that may apply for a grant:

(a) An economic development district;

(b) A county, municipality, city and county, or other political subdivision of the state;

(c) An Indian tribe;

(d) An apprenticeship program that is registered with the United States department of labor or a state apprenticeship council;

(e) An institution of higher education; and

(f) A public or private nonprofit organization or association.

(6) "Fund" means the just transition cash fund created in section 8-83-504.

(7) "Just transition plan" means the plan, in draft or final form, prepared by the just transition advisory committee as outlined in section 8-83-503 (6) and submitted by the director as outlined in section 8-83-503 (4).

(8) "Office" means the just transition office created in section 8-83-503 (1).

(9) "Wage differential benefit" means supplemental income covering all or part of the difference between an individual's previous employment in a coal mine, coal-fueled electrical power generating plant, or the manufacturing and transportation supply chains of either and new employment or supplemental income during job retraining.

Source: L. 2019: Entire part added, (HB 19-1314), ch. 323, p. 2988, § 1, effective May 28.

8-83-503. Just transition office - advisory committee - repeal. (1) There is hereby created within the division a just transition office. The office shall exercise its powers and perform its duties and functions under the department as if the office were transferred to the department by a **type 2** transfer as defined in section 24-1-105.

(2) The director of the division shall appoint the director of the office. The director shall manage the operations of the office.

(3) It is the purpose of the office to:

(a) Identify or estimate, to the extent practicable, the timing and location of facility closures and job layoffs in coal-related industries and their impact on affected workers, businesses, and coal transition communities and make recommendations to the just transition advisory committee, as part of its work outlined in subsection (6) of this section, as to how the office can most effectively respond to these economic dislocations;

(b) Provide administrative, logistical, research, and policy support to the just transition advisory committee's work as outlined in subsection (6) of this section; and

(c) Participate in the department's presentation to the general assembly during the "State Measurement for Accountable, Responsive, and Transparent (SMART) Government Act" hearings, held pursuant to part 2 of article 7 of title 2, regarding requirements for financing components of the just transition plan, the administration of this part 5, and the expected results.

(4) Based on the draft just transition plan recommended by the advisory committee pursuant to subsection (6) of this section, and with the approval of the executive director of the department and the executive director of the department of local affairs, on or before December 31, 2020, the director shall submit to the governor and the general assembly a final just transition plan for Colorado. This final plan must include, at a minimum:

(a) Benefits, grants, and other components that the office, the department, or the department of local affairs shall coordinate and implement under existing authority;

(b) Benefits, grants, and other components that require additional legislative authority to implement;

(c) Sources of funding that may be accessed from federal, state, local, and other sources without additional legislative authority or approval; and

(d) Sources of funding that require legislative or voter approval.

(5) To further the purposes of the office created in this part 5, the director shall engage in relevant administrative proceedings, such as matters before the public utilities commission and the air quality control commission.

(6) (a) There is hereby created the just transition advisory committee to develop and recommend a just transition plan for the state of Colorado.

(b) On or before July 1, 2020, the advisory committee shall present a draft just transition plan to the executive director of the department and the executive director of the department of local affairs.

(c) In developing the draft just transition plan, the advisory committee shall consider options to:

(I) Align and target local, state, and federal resources and leverage additional resources to invest in communities and workers whose coal-related industries are subject to significant economic transition;

(II) Align and target existing local, state, and federal programming and establish additional programming to support communities and workers whose coal-related industries are subject to significant economic transition;

(III) Establish benefits for coal transition workers, including consideration of:

(A) Benefits similar in type, amount, and duration to federal benefits available pursuant to 20 CFR 617.20 to 617.49; and

(B) Wage differential benefits for affected workers, including consideration of eligibility and the duration of the benefits;

(IV) Educate dislocated workers, in collaboration with employers of dislocated workers and relevant labor unions, regarding how to apply for just transition benefits; and

(V) Establish and structure a grant program and other potential programmatic support for coal transition communities and organizations that support coal transition communities, including eligible entities.

(d) In developing the draft just transition plan, the advisory committee shall identify and consider:

(I) The projected short-term and long-term costs and benefits to the state of each plan component, including worker benefits, grant programs, and other supports;

(II) Potential sources for sustainable short-term and long-term funding for a just transition plan and its components;

(III) The potential fiscal, economic, workforce, and other implications of extending components of the just transition plan to other sectors and industries affected by similar economic disruptions; and

(IV) Which components of the just transition plan can be implemented by the departments under existing authority and which require additional legislation.

(e) The advisory committee consists of the following members:

(I) Ex officio members as follows:

(A) The executive director of the department of labor and employment or a designee;

(B) The director of the office of economic development or a designee;

(C) The director of the Colorado energy office or a designee;

(D) The executive director of the department of local affairs or a designee; and

(E) A representative of the office of the governor;

(II) One member of the senate, appointed by the president of the senate, and one member of the house of representatives, appointed by the speaker of the house of representatives; and

(III) The following members appointed by the director:

(A) Three representatives of coal transition workers;

(B) Three representatives from coal transition communities;

(C) Two representatives with professional economic development or workforce retraining experience;

(D) Two representatives of disproportionately impacted communities; and

(E) Two representatives of utilities that, on May 28, 2019, operated a coal-fueled electric generating unit.

(f) The term of appointment or designation is four years; except that the initial term of members appointed pursuant to subsection (6)(e)(II) of this section is two years and the initial term of members appointed pursuant to subsection (6)(e)(III) of this section is three years. Each legislative member is entitled to receive payment of a per diem and reimbursement for actual and necessary expenses as authorized in section 2-2-326, appointed members are entitled to the same per diem and expense reimbursement, and ex officio members are entitled to the same expense reimbursement; except that all payments authorized by this subsection (6)(f) are at a rate fifty percent less than that authorized by law.

(g) The advisory committee shall elect a chair from among its members to serve for a term not to exceed two years, as determined by the advisory committee. The advisory committee shall meet at least once every quarter. The chair may call such additional meetings as are necessary for the advisory committee to complete its duties.

(h) The advisory committee may engage additional nonvoting members or advisors to provide additional expertise as needed.

(i) This subsection (6) is repealed, effective September 1, 2025. Before the repeal, this subsection (6) is scheduled for review in accordance with section 2-3-1203.

Source: L. 2019: Entire part added, (HB 19-1314), ch. 323, p. 2989, § 1, effective May 28.

8-83-504. Just transition cash fund. (1) There is hereby created in the state treasury the just transition cash fund. The fund consists of money credited to the fund and any other money that the general assembly may appropriate or transfer to the fund. The state treasurer shall credit all interest and income derived from the deposit and investment of money in the fund to the fund. Subject to annual appropriation by the general assembly, the office may expend money from the fund for purposes specified in this part 5, including paying for the office's direct and indirect costs in administering this part 5.

(2) The general assembly may appropriate money from the general fund for the purposes specified in this part 5. The office may seek, accept, and expend gifts, grants, or donations from private or public sources for the purposes of this part 5.

(3) Each construction project financed through the fund must comply with sections 24-92-115 and 24-92-201.

Source: L. 2019: Entire part added, (HB 19-1314), ch. 323, p. 2993, § 1, effective May 28.

8-83-505. Utility workforce transition plans - reemployment of affected workers. (1) Within thirty days after the approval to accelerate retirement of a generating unit by the utility's governing body and in no case less than six months before the retirement of an electric coal-fueled generating unit that has a nameplate capacity of at least fifty megawatts, the owner or operating agent of that unit shall submit to the office and to the affected community a workforce transition plan.

(2) To the extent practicable, a workforce transition plan must include estimates of:

(a) The number of workers employed by the electric utility or a contractor of the utility at the coal-fueled electric generating facility, which number must include all workers that directly deliver coal to the electric utility;

(b) The total number of workers whose existing jobs, as a result of the retirement of the coal-fueled electric generating facility:

(I) Will be retained; and

(II) Will be eliminated;

(c) With respect to the workers whose existing jobs will be eliminated due to the retirement of the coal-fueled electric generating facility, the total number and the number by job classification of workers:

(I) Whose employment will end without them being offered other employment;

(II) Who will retire as planned, be offered early retirement, or leave on their own;

(III) Who will be retained by being transferred to other electric generating facilities or offered other employment by the electric utility; and

(IV) Who will be retained to continue to work for the electric utility in a new job classification; and

(d) If the electric utility is replacing the coal-fueled electric generating facility being retired with a new electric generating facility, the number of:

(I) Workers from the retired coal-fueled electric generating facility who will be employed at the new electric generating facility; and

(II) Jobs at the new electric generating facility that will be outsourced to contractors or subcontractors.

(3) This section does not apply to an electric coal-fueled generating unit owned in whole or in part by a qualifying retail utility for which the qualifying retail utility, as that term is used in section 40-2-124, has submitted a workforce transition plan in an electric resource plan filed with the public utilities commission.

Source: L. 2019: Entire part added, (HB 19-1314), ch. 323, p. 2993, § 1, effective May 28.

8-83-506. Report - recommendations - repeal. (1) No later than January 1, 2024, the director shall provide written recommendations to the general assembly and the governor about changes to this part 5 that should be considered in order to better achieve the purposes of this part 5.

(2) This section is repealed, effective September 1, 2025.

Source: L. 2019: Entire part added, (HB 19-1314), ch. 323, p. 2994, § 1, effective May 28.

ARTICLE 84

Vocational Rehabilitation

Editor's note: This article was added with relocations in 2015. Former C.R.S. section numbers are shown in editor's notes following those sections that were relocated. For a detailed comparison of this article, see the comparative tables located in the back of the index.

Cross references: For the legislative declaration in SB 15-239, see section 2 of chapter 160, Session Laws of Colorado 2015.

PART 1

VOCATIONAL REHABILITATION PROGRAMS

8-84-101. Definitions. As used in this article, unless the context otherwise requires:

(1) "Department" means the department of labor and employment created in section 24-1-121, C.R.S.

(2) "Person with a disability" means a person who has a physical or mental impairment that constitutes or results in a substantial impediment to employment, and who can benefit in terms of an employment outcome from the provision of vocational rehabilitation services.

(3) "Vocational rehabilitation services" means those services described in section 103 of the federal "Rehabilitation Act of 1973", Public Law 93-112, as amended.

Source: L. 2015: Entire section added with relocations, (SB 15-239), ch. 160, p. 478, § 2, effective July 1, 2016.

Editor's note: Subsection (2) was originally numbered as § 26-8-105 (2), and the amendments to it by House Bill 15-1188 were further amended by Senate Bill 15-239 and relocated to subsection (2) of this section, effective July 1, 2016.

Cross references: For the federal "Rehabilitation Act of 1973", see also 29 U.S.C. sec. 701.

8-84-102. Rehabilitation programs. In carrying out the provisions of this article, the department shall coordinate and strengthen the programs of rehabilitation for persons with disabilities to the end that they may attain or maintain their maximum potential in employment, self-sufficiency, and independent living. Nothing in this article is to be construed as an eligibility-based entitlement to a vocational rehabilitation service provided by the state.

Source: L. 2015: Entire article added with relocations, (SB 15-239), ch. 160, p. 478, § 2, effective July 1, 2016.

Editor's note: Section 8-84-102 was originally numbered as § 26-8-101, and the amendments to it by House Bill 15-1188 were further amended by Senate Bill 15-239 and relocated to this section, effective July 1, 2016.

8-84-103. Personnel. Subject to the availability of duly appropriated funds, the executive director of the department may appoint necessary personnel to administer rehabilitation programs in accordance with this article.

Source: L. 2015: Entire article added with relocations, (SB 15-239), ch. 160, p. 479, § 2, effective July 1, 2016.

Editor's note: This section is similar to § 26-8-102 (1) as it existed prior to 2016.

8-84-104. Functions of the department. (1) The department shall manage, control, and supervise all rehabilitation programs provided in this article, including:

(a) Repealed.

(b) All duties and functions previously assigned to the division of rehabilitation for the blind;

(c) All duties and functions regarding vocational rehabilitation programs previously assigned to the division of vocational rehabilitation in the department of human services or any other duties and functions relating to vocational rehabilitation previously assigned to the department of human services; and

(d) Repealed.

(e) Other duties and functions assigned by this article.

Source: L. 2015: Entire article added with relocations, (SB 15-239), ch. 160, p. 479, § 2, effective July 1, 2016. **L. 2016:** (1)(a) and (1)(d) repealed and (1)(c) amended, (SB 16-182), ch. 255, p. 1048, § 2, effective July 1.

Editor's note: This section is similar to former § 26-8-103 as it existed prior to 2016.

8-84-105. Administration - rules. (1) The department shall:

(a) Adopt rules governing personnel standards, the protection of records and confidential information, the manner and form of filing applications, eligibility, the investigation and determination of eligibility for vocational rehabilitation services, procedures for fair hearings, and other rules as necessary to carry out the purposes of this article;

(b) Certify, in accordance with rules, disbursements of funds available for carrying out the purposes of this article;

(b.5) Accept and expend money from governmental and nongovernmental entities to carry out the division's authorized powers and duties; and

(c) Accept and use gifts, grants, or donations made unconditionally, by will or otherwise, for carrying out the purposes of this article. The department may accept and expend gifts, grants, or donations made under conditions that the executive director determines are proper and consistent with this article and shall hold, invest, reinvest, and use the gifts, grants, or donations in accordance with the conditions.

Source: L. 2015: Entire article added with relocations, (SB 15-239), ch. 160, p. 479, § 2, effective July 1, 2016. **L. 2016:** (1)(a) amended and (1)(b.5) added, (SB 16-182), ch. 255, p. 1049, § 3, effective July 1.

Editor's note: This section is similar to former § 26-8-104 as it existed prior to 2016.

8-84-106. Rehabilitation of persons with disabilities - rules. (1) Except as otherwise provided by law, the department shall provide rehabilitation services to persons with disabilities who the department determines are eligible for the services.

(2) The department shall:

(a) Cooperate with other departments, agencies, and institutions, both public and private, in:

(I) Providing the services authorized by this article to persons with disabilities;

(II) Studying the problems involved in providing the services; and

(III) Establishing, developing, and providing, in conformity with the purposes of this article, programs, facilities, and services that are necessary;

(b) Enter into collaborative agreements with other states, in accordance with applicable federal law and regulations, to provide services authorized by this article;

(c) Repealed.

(d) Operate through contract and supervise the operation of vending stands and other small businesses, established pursuant to this article and in accordance with the requirements of the federal government for the receipt of federal funds, to be conducted by individuals with severe disabilities, particularly the blind;

(e) Repealed.

(f) Provide home teaching of and teachers for the adult blind; and

(g) Provide medical, diagnostic, physical restoration, training, and other rehabilitation services as needed to enable persons with disabilities to attain the maximum degree of self-sufficiency.

(3) (a) The department shall provide vocational rehabilitation services directly or through public or private instrumentalities to or for the benefit of an applicant or eligible person with a disability who:

(I) Is present in the state at the time of filing an application for the services; and

(II) The department determines, after full investigation, can satisfactorily achieve rehabilitation.

(b) The department shall:

(I) Complete a comprehensive assessment and work with the person with a disability to develop an employment outcome or goal based on the person's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice;

(II) Authorize those services that are appropriate and necessary to address the rehabilitation needs of the person with a disability, based on his or her documented disabilities and impairments, so that he or she might achieve his or her employment outcome or goal;

(III) Give preference to cost-effective services provided in the state of Colorado, but the department may authorize payment for out-of-state services on a case-by-case basis. The department shall not pay for any services provided outside the United States.

(III.5) (A) Promulgate rules in conjunction with the state medical services board, no later than July 1, 2019, requiring all vendors of supported employment services, including supported employment professionals who provide individual competitive integrated employment outcomes, and excluding those professionals exclusively providing group or other congregate services, to obtain a nationally recognized supported employment training certificate or nationally recognized supported employment certification. The department's rules must include time frames for compliance with the training or certification requirement for existing staff and for newly hired staff and requirements for supervision of newly hired staff until the staff member has completed the training or certification. The time frames established in the department's rules must provide for training to be completed over a five-year period, subject to the availability of appropriations for reimbursement of vendors pursuant to subsection (3)(b)(III.5)(B) of this section.

(B) The training or certification requirement in subsection (3)(b)(III.5)(A) of this section is contingent upon appropriations to the department of health care policy and financing for reimbursement to vendors of supported employment services for the cost of training and certification pursuant to section 25.5-10-204.

(IV) Establish a fee schedule for goods and services that is designed to ensure reasonable cost to the program. The fee schedule established by the department must include the discovery process, as defined in section 8-84-301, as an alternative assessment pursuant to subsection (3)(b)(I) of this section.

(V) Limit payment for services to Colorado in-state tuition or the equivalent for all education and vocational schooling; except that, if the department finds, through its comprehensive assessment, that the person with a disability needs specialized education outside of Colorado to address his or her barriers to employment, the department may authorize payment for out-of-state tuition on a case-by-case basis;

(VI) Establish reasonable time frames within each employment plan for individuals to attain the established employment outcomes or goals;

(VII) Close the record of services in a timely manner and in accordance with federal guidelines for a person with a disability who has achieved his or her employment outcomes or goals; and

(VIII) Establish a review process to allow for exceptions to the requirements of subparagraphs (I) to (VII) of this paragraph (b) in unique cases, in accordance with federal regulations.

(c) (I) Except as provided in subparagraph (II) of this paragraph (c), the department shall provide goods or services to a person with a disability only to the extent the department determines, in accordance with paragraph (d) of this subsection (3) and department rules, that the person with a disability requires financial assistance.

(II) The department shall provide the following services at public cost without consideration of financial need:

(A) Diagnostic and related assessments, including transportation necessary to obtain the assessment, that are required to determine eligibility for services and the nature and scope of the services to be provided;

(B) Vocational rehabilitation counseling and guidance;

(C) Referral;

(D) Personal assistance services;

(E) Auxiliary aids or services, including interpreter and reader services;

(F) Job search and placement assistance; and

(G) Job retention services.

(d) (I) The department shall determine a person with a disability's need for financial assistance based on the person's need and income, or the income of the person's legally and financially responsible relative. The department shall determine the need for financial assistance for a person with a disability, or for the person's legally and financially responsible relative, prior to providing vocational rehabilitation services, except for diagnostic, guidance, job placement, and related services. The person with a disability, or the person's legally and financially responsible relative, shall contribute toward the cost of his or her vocational rehabilitation services to the extent that the department determines that he or she is financially able; except that, if the person with a disability has been determined eligible for social security benefits under Title II or XVI of the federal "Social Security Act", 42 U.S.C. sec. 301 et seq., as amended, he or she is not required to further contribute to the costs of any services provided.

(II) As used in this paragraph (d), a "person's legally and financially responsible relative" means the relative who identifies the person as a dependant for federal income tax purposes.

(4) To the extent that the department determines that any goods or services received by the person with a disability were acquired through misrepresentation, fraud, collusion, or criminal conduct, payment for those goods and services may be recovered by the department from the person with a disability.

Source: L. 2015: Entire article added with relocations, (SB 15-239), ch. 160, p. 480, § 2, effective July 1, 2016. **L. 2016:** (2)(b), (2)(g), (3)(a), (3)(b)(VIII), and (3)(c)(II) amended and (2)(c) and (2)(e) repealed, (SB 16-182), ch. 255, p. 1049, § 4, effective July 1; IP(3)(b), (3)(b)(III), (3)(b)(V), (3)(d)(I), and (4) amended, (SB 16-189), ch. 210, p. 755, § 11, effective July 1. **L. 2018:** (3)(b)(III.5) added and (3)(b)(IV) amended, (SB 18-145), ch. 215, p. 1369, § 2, effective August 8.

Editor's note: (1) Section 26-8-105 (3)(a), (3)(h), (4), and (5), and the amendments to them by House Bill 15-1188 were further amended by Senate Bill 15-239 and relocated to subsections (2), (3), and (4) of this section, effective July 1, 2016.

(2) The provisions of this section are similar to several former provisions of § 26-8-105 as they existed prior to 2016. For a detailed comparison, see the comparative tables located in the back of the index.

Cross references: (1) For Title II of the federal "Social Security Act", see 42 U.S.C. sec. 401 et seq.; for Title XVI of the federal "Social Security Act", see 42 U.S.C. sec. 1381 et seq.

(2) For the legislative declaration in SB 18-145, see section 1 of chapter 215, Session Laws of Colorado 2018.

8-84-107. Cooperation with federal government. The department shall cooperate with the federal government in carrying out the purposes of any federal statutes pertaining to the purposes of this article, including the licensing of blind persons to operate vending stands on federal property. The department may adopt by rule methods of administration that are

reasonably required by the federal government for the proper and efficient operation of the agreements with the federal government and to comply with the conditions necessary to secure the full benefits of the federal statutes.

Source: L. 2015: Entire article added with relocations, (SB 15-239), ch. 160, p. 483, § 2, effective July 1, 2016.

Editor's note: This section is similar to former § 26-8-106 as it existed prior to 2016.

8-84-108. Transfer of functions - transition plan - report. (1) (a) On and after July 1, 2016, the rights, powers, duties, and functions regarding vocational rehabilitation programs, including the business enterprise program, vested in the department of human services prior to that date are transferred from the department of human services to the department of labor and employment by a **type 2** transfer, as such transfer is defined in the "Administrative Organization Act of 1968", article 1 of title 24, C.R.S.

(b) By July 1, 2016, the department of labor and employment shall execute, administer, perform, and enforce the rights, powers, duties, functions, and obligations regarding vocational rehabilitation programs, including the business enterprise program, that are transferred to the department pursuant to this article.

(c) By July 1, 2016, the officers and employees of the department of human services prior to that date whose duties and functions concerned the duties and functions transferred to the department pursuant to this article and whose employment in the department is deemed necessary by the executive director to carry out the purposes of this article are transferred to the department and become employees of the department. The employees retain all rights to the personnel system and retirement benefits pursuant to the laws of this state, and their services are deemed to be continuous. All transfers and any abolishment of positions in the state personnel system shall be made and processed in accordance with state personnel system laws and regulations.

(d) By July 1, 2016, all items of property, real and personal, including office furniture and fixtures, books, documents, and records of the department of human services prior to that date pertaining to the duties and functions transferred to the department pursuant to this article are transferred to the department and become the property of the department.

(e) (I) On and after July 1, 2016, whenever the functions of the department of human services or the division of vocational rehabilitation in the department of human services relating to vocational rehabilitation programs or services, including the business enterprise program, are referred to or designated by a contract or other document in connection with the duties and functions transferred to the department pursuant to this article, the reference or designation is deemed to apply to the department.

(II) All contracts entered into by the department of human services prior to July 1, 2016, in connection with the duties and functions transferred to the department pursuant to this article are hereby validated, with the department succeeding to all the rights and obligations of the contracts. Any appropriations of funds from prior fiscal years open to satisfy obligations incurred pursuant to those contracts are transferred and appropriated to the department for the payment of those obligations.

(2) (a) Starting on July 1, 2016, the department shall begin working with partners, stakeholders, and respective staff from both departments to transition vocational rehabilitation programs, including the business enterprise program, from the department of human services to the department of labor and employment. In addition to preparing and presenting a detailed transition plan as required by paragraph (b) of this subsection (2), starting in September 2015, the department shall present quarterly reports to the joint budget committee on the status of the transition of vocational rehabilitation programs, including the business enterprise program, from the department of human services to the department of labor and employment.

(b) By December 1, 2015, the department of human services and the department of labor and employment shall prepare a detailed transition plan, including statutory and budgetary recommendations, to be presented to the joint budget committee and the oversight standing committees for each department on any additional statutory changes that may be necessary to effectuate the transfer of vocational rehabilitation programs, including the business enterprise program, to the department of labor and employment and ensure the protection of vocational rehabilitation clients. In developing the transition plan, the departments shall include input and recommendations from interested stakeholders, including the state rehabilitation council.

Source: L. 2015: Entire article added with relocations, (SB 15-239), ch. 160, p. 483, § 2, effective May 8.

Editor's note: This article takes effect July 1, 2016; however, this section, as enacted by section 2 of Senate Bill 15-239, takes effect May 8, 2015.

PART 2

VENDING FACILITIES IN STATE BUILDINGS -
BUSINESS ENTERPRISE PROGRAM

8-84-201. Short title. This part 2 shall be known and may be cited as the "Business Enterprise Program Act".

Source: L. 2015: Entire article added with relocations, (SB 15-239), ch. 160, p. 484, § 2, effective July 1, 2016.

Editor's note: This section is similar to former § 26-8.5-100.1 as it existed prior to 2016.

8-84-202. Definitions. As used in this part 2, unless the context otherwise requires:

(1) "Person who is blind" means a person who has not more than 20/200 central visual acuity in the better eye with correcting lenses or an equally disabling loss of the visual field as evidenced by a limitation to the field of vision in the better eye to such a degree that its widest diameter subtends an angle of no greater than twenty degrees.

(2) "Satisfactory site" means an area determined by the department to have sufficient space, electrical and plumbing outlets, and other facilities as prescribed by department rule for the location and operation of a vending facility or other business operated by a person who is blind.

(3) "State property" means any building, land, or other real property owned, leased, or occupied by any department or agency of the state of Colorado. "State property" does not include any property owned, leased, or occupied by any institution of higher education, the Auraria higher education center established in article 70 of title 23, C.R.S., or the board of commissioners of the Colorado state fair authority.

(4) "Vending facility" means automatic vending machines, a caf, a cafeteria, a restaurant, a snack bar, a concession stand, or any other facility at which food, drinks, drugs, novelties, souvenirs, tobacco products, notions, or related items are regularly sold.

Source: L. 2015: Entire article added with relocations, (SB 15-239), ch. 160, p. 484, § 2, effective July 1, 2016. **L. 2016:** (2) amended, (HB 16-1048), ch. 146, p. 437, § 1, effective July 1.

Editor's note: This section is similar to former § 26-8.5-101 as it existed prior to 2016.

8-84-203. Priority for persons who are blind - licensing. The department shall issue licenses to persons who are blind and who are qualified to operate vending facilities, in accordance with the criteria used for the licensing of operators of vending facilities on federal property pursuant to section 8-84-107 and the federal "Randolph-Sheppard Vending Stand Act", as amended. In addition, the department may issue licenses to persons who are blind and who are qualified to own, operate, or own and operate a business other than a vending facility. In authorizing vending facilities or other businesses on state property, the department shall give priority to persons who are blind and who are licensed by the department in order to enlarge the economic opportunities of persons who are blind by providing remunerative employment and to stimulate persons who are blind to greater efforts in striving to make themselves self-supporting.

Source: L. 2015: Entire article added with relocations, (SB 15-239), ch. 160, p. 485, § 2, effective July 1, 2016. **L. 2016:** Entire section amended, (HB 16-1048), ch. 146, p. 437, § 2, effective July 1.

Editor's note: This section is similar to former § 26-8.5-102 as it existed prior to 2016.

Cross references: For the federal "Randolph-Sheppard Vending Stand Act", see 20 U.S.C. sec. 107 et seq.

8-84-204. Satisfactory sites for vending facilities - other businesses operated by persons who are blind. (1) (a) A department or agency of the state of Colorado shall not construct, acquire by ownership, rent, lease, or other means, or undertake to substantially alter or renovate, in whole or in part, a building unless, after consultation with the department of labor and employment, it is determined that the building will include a satisfactory site or sites for the location and operation of a vending facility by a person who is blind.

(b) Before a state department or agency constructs, acquires, rents, leases, or otherwise undertakes to alter or renovate a state property, the state department or agency shall consult with the department of labor and employment to determine if the state property can include a

satisfactory site for the location and operation of a business, other than a vending facility, that is owned, operated, or owned and operated by a person who is blind.

(2) Each department or agency shall provide notice to the department of labor and employment of its plans for the occupation, acquisition, construction, alteration, or renovation of a building adequate to permit the department of labor and employment to determine whether the building includes a satisfactory site for a vending facility or other business that can be operated by a person who is blind and is licensed pursuant to section 8-84-203.

(3) This section does not apply when the department of labor and employment determines that the number of people using the building will be insufficient to support a vending facility or other business.

(4) The department of labor and employment shall not be charged for:

(a) The use of state-furnished space;

(b) Maintenance or janitorial services;

(c) Repair of the building structure in and adjacent to the vending facility or other business area, including any necessary initial and periodical painting and decorating;

(d) Utilities required to operate vending facilities and vending machines or equipment required for other businesses operated by persons who are blind; or

(e) Repairing and replacing floor coverings, cleaning windows, or providing other related building services in accordance with the normal level of building service applicable to the state building in which the vending facility or other business is located.

Source: L. 2015: Entire article added with relocations, (SB 15-239), ch. 160, p. 485, § 2, effective July 1, 2016. **L. 2016:** Entire section amended, (HB 16-1048), ch. 146, p. 438, § 3, effective July 1.

Editor's note: This section is similar to former § 26-8.5-103 as it existed prior to 2016.

8-84-205. Vending machines - income. One hundred percent of all commission income from vending machines on state property accrues to the department of labor and employment, which shall disburse the income in accordance with the rules of the department. The office of state planning and budgeting shall notify the department of the location of all vending machines on state property, and the department shall collect and provide an accounting of income from these vending machines.

Source: L. 2015: Entire section added with relocations, (SB 15-239), ch. 160, p. 486, § 2, effective July 1, 2016.

Editor's note: This section is similar to former § 26-8.5-104 as it existed prior to 2016.

8-84-206. Cooperation - locations - rules. (1) The heads of all state departments and agencies shall negotiate and cooperate in good faith to accomplish the purposes of this article relating to vending facilities and other businesses operated by persons who are blind.

(2) If the department determines that the operation of a vending facility or other business on state property by a person who is blind would adversely affect the operations or functions of

the state property, the office of state planning and budgeting may authorize another person to operate the vending facility or other business.

(3) When no person is immediately available on the premises for the management of vending machines or other businesses, the commission income from the machines shall be given to the department in accordance with section 8-84-205.

(4) The department shall operate the program authorized by this part 2 in accordance with its rules and in accordance with federal guidelines under the federal "Randolph-Sheppard Vending Stand Act", as amended.

Source: L. 2015: Entire article added with relocations, (SB 15-239), ch. 160, p. 486, § 2, effective July 1, 2016. **L. 2016:** Entire section amended, (HB 16-1048), ch. 146, p. 439, § 4, effective July 1.

Editor's note: This section is similar to former § 26-8.5-105 as it existed prior to 2016.

Cross references: For the federal "Randolph-Sheppard Vending Stand Act", see 20 U.S.C. sec. 107 et seq.

8-84-207. Status of existing contracts. This part 2 does not extend to existing contracts until the expiration of those contracts.

Source: L. 2015: Entire article added with relocations, (SB 15-239), ch. 160, p. 487, § 2, effective July 1, 2016.

Editor's note: This section is similar to former § 26-8.5-106 as it existed prior to 2016.

8-84-208. Business enterprise program cash fund - creation. There is hereby created in the state treasury the business enterprise program cash fund, referred to in this article as the "fund", which consists of moneys accruing to the department from assessments against the net proceeds of each vending facility operator consistent with this part 2, any income from vending machines on federal or state property that accrues to the department, and any federal moneys that may become available. Any moneys currently attributed to the business enterprise program and any reserves shall be transferred to this fund for future use consistent with this part 2. The moneys in the fund are subject to annual appropriation by the general assembly for the direct and indirect costs associated with the administration of this part 2. The state treasurer may invest any moneys in the fund not expended for the purposes of this part 2 as provided in sections 24-36-109, 24-36-112, and 24-36-113, C.R.S. All interest and income derived from the investment and deposit of moneys in the fund shall be credited to the fund. Any unexpended and unencumbered moneys remaining in the fund at the end of any fiscal year shall remain in the fund and shall not be credited or transferred to the general fund or any other fund.

Source: L. 2015: Entire article added with relocations, (SB 15-239), ch. 160, p. 487, § 2, effective July 1, 2016.

Editor's note: This section is similar to former § 26-8.5-107 as it existed prior to 2016.

8-84-209. Working group to address expanding opportunities for blind vendors - report - repeal. (Repealed)

Source: L. 2016: Entire section added, (HB 16-1048), ch. 146, p. 439, § 5, effective May 4.

Editor's note: Subsection (5) provided for the repeal of this section, effective September 1, 2017. (See L. 2016, p. 439.)

PART 3

EMPLOYMENT FIRST FOR
PERSONS WITH DISABILITIES

Cross references: For the legislative declaration in SB 16-077, see section 1 of chapter 360, Session Laws of Colorado 2016.

8-84-301. Definitions. As used in this part 3, unless the context otherwise requires:

(1) "Agency partners" means the department, the department of health care policy and financing, the department of education, the department of higher education, and the department of human services.

(2) "Career development planning" means a person-centered process that identifies the individual's employment goals and objectives; the services and supports needed to achieve those goals and objectives; the persons, agencies, and providers assigned to assist the individual in attaining the goals; and the obstacles faced by the individual working in competitive integrated employment. Career development planning reflects a presumption that all persons with disabilities are capable of working in a competitive integrated employment setting.

(3) "Competitive integrated employment" means work paid directly by employers at the greater of the state or federal minimum wage or prevailing wage with commensurate benefits, occurring in a typical work setting where the employee with a disability interacts or has the opportunity to interact continuously with coworkers without disabilities, not including supervisory personnel or individuals who are providing services to the employee with a disability, and the employee with a disability has an opportunity for advancement or job mobility, and is engaged, preferably, in full-time work.

(4) "Discovery process" means a process to discover already existing information about a job seeker that is based on information obtained from a person's entire life and not from short instances of job performance. The information is gathered from the job seeker and others to determine the job seeker's interests, skills, and preferences related to potential employment that guide the development of a customized job.

(5) "Employment first" means a framework for change in the provision of services that is centered on the premise that all persons, including persons with significant disabilities, are capable of full participation in competitive integrated employment and community life. Under this framework, in providing publicly funded services, employment in the general workforce is the first and preferred outcome for all working-age persons with disabilities, regardless of the level of disability. Publicly funded agencies and systems align policies, service delivery

practices, funding, and reimbursement structures in order to achieve competitive integrated employment.

(6) "Employment first advisory partnership" or "partnership" means the partnership described in section 8-84-303.

(7) "Persons with intellectual and developmental disabilities" has the same meaning as "person with an intellectual and developmental disability"as set forth in section 25.5-10-202, C.R.S.

(8) "State employment leadership network" means the joint partnership between the national association of state directors of developmental disabilities services and the institute for community inclusion at the university of Massachusetts Boston or another similar organization that facilitates collaboration with other states to share effective solutions to increase employment outcomes for persons with disabilities.

Source: L. 2016: Entire part added, (SB 16-077), ch. 360, p. 1500, § 2, effective July 1.

8-84-302. Duties of the department. (1) Pursuant to its statutory authority and available appropriations, the department shall:

(a) Review and make recommendations for amendments, if necessary, to Colorado's combined plan for execution of workforce development activities developed in accordance with the federal "Workforce Innovation and Opportunity Act", Pub.L. 113-128, as amended, to ensure that persons with intellectual and developmental disabilities are supported in achieving employment;

(b) Develop practices that reflect a presumption that all persons with disabilities are capable of working in competitive integrated employment if they choose to do so, and ensure that options for competitive integrated employment with appropriate supports are explored before consideration of segregated activities;

(c) Promote youth transitions that focus on public-private collaboration, and employer engagement that emphasizes free-market solutions;

(d) Provide department input and assistance to the employment first advisory partnership described in section 8-84-303 in carrying out its duties; and

(e) Present the reports and recommendations of the employment first advisory partnership to the department's legislative committee of reference pursuant to section 8-84-303 (7).

Source: L. 2016: Entire part added, (SB 16-077), ch. 360, p. 1501, § 2, effective July 1.

8-84-303. Employment first advisory partnership - memorandum of understanding - reporting - repeal. (1) The employment first advisory partnership is hereby established as a partnership of existing entities including the state rehabilitation council, established by the department, the state work force development council, created in article 46.3 of title 24, C.R.S., and the employment first state leadership mentoring program core state advisory group, established by the department. The partnership shall also consult with the state leadership employment network for best practices in developing employment first policies and increasing competitive integrated employment for persons with disabilities. The state rehabilitation council shall serve as the lead agency to coordinate cross-departmental and inter-agency collaboration

within the department and among the agency partners and to make recommendations to the general assembly and agency partners relating to employment first policies.

(2) On or before December 30, 2016, each agency partner shall identify the staff member or members within the agency charged with providing agency input and assistance relating to the memorandum of understanding pursuant to subsection (3) of this section and the duties of the partnership set forth in section 8-84-304.

(3) On or before January 30, 2017, the state rehabilitation council shall convene a meeting or meetings of the partnership and agency partners to develop a memorandum of understanding for the partnership relating to the duties of the partnership set forth in section 8-84-304. At a minimum, the memorandum of understanding shall include the responsibilities of each member of the partnership and each agency partner and a plan for completing the work of the partnership, including time frames.

(4) It is the intent of the general assembly that, through the employment first advisory partnership, employment first policies are considered and recommended that reflect not only the perspective of the agency partners but also persons with disabilities, advocates, service providers, employers, and members of the community. Therefore, unless provided through the membership of the partnership, the partnership shall seek stakeholder participation from, at a minimum:

(a) Representatives of a national association of persons supporting the implementation of employment first policies;

(b) Advocates for persons with intellectual and developmental disabilities;

(c) Persons with disabilities who have secured or are seeking competitive integrated employment; and

(d) Members of the community who are not connected to any service agency.

(5) At its discretion, the partnership may form subgroups comprised of members and stakeholders to consider specific issues relating to the strategic plan and the recommendations of the partnership.

(6) The partnership shall meet as often as necessary to complete its duties but shall meet at least once every quarter.

(7) (a) The agency partners shall present the initial report of the strategic plan and recommendations developed pursuant to section 8-84-304 to the legislative committees of reference for the agency partners as part of each agency's annual presentation made pursuant to section 2-7-203 during the interim between November 1, 2017, and the start of the 2018 regular legislative session. Thereafter, each agency partner shall inform the legislative committee of reference of revisions to the strategic plan and the implementation of employment first policies as part of the agency's annual presentation made pursuant to section 2-7-203.

(b) After the presentation of the initial report of the strategic plan, the employment first advisory partnership shall continue to meet, as necessary, to work on the duties set forth in section 8-84-304; to consider revisions to the plan; and to provide advice and expertise relating to the subsequent implementation of the plan.

(8) (a) This section is repealed, effective September 1, 2021.

(b) Prior to repeal of the employment first advisory partnership, the department of regulatory agencies shall conduct a sunset review pursuant to the provisions of section 2-3-1203, C.R.S.

Source: L. 2016: Entire part added, (SB 16-077), ch. 360, p. 1502, § 2, effective July 1. **L. 2017:** (7)(a) amended, (HB 17-294), ch. 264, p. 1385, § 9, effective May 25.

8-84-304. Duties of the employment first advisory partnership - strategic plan - repeal. (1) (a) After considering the duties set forth in subsection (2) of this section, the employment first advisory partnership shall develop a strategic plan to expand competitive integrated employment outcomes for persons with disabilities through employment first policies and practices. The strategic plan must include recommendations to the general assembly and the relevant policy-making boards concerning any changes to state statutes or rules necessary to implement the strategic plan, along with a fiscal analysis of implementation costs, where practicable.

(b) The employment first advisory partnership shall prepare an initial report of the strategic plan no later than November 1, 2017, and shall revise the strategic plan as the partnership considers additional issues described in subsection (2) of this section.

(2) In developing the strategic plan to expand competitive integrated employment outcomes for persons with disabilities through employment first policies and practices, and in formulating the recommendations of the employment first advisory partnership, the employment first advisory partnership shall:

(a) Make recommendations to ensure that, in providing publicly funded services, competitive integrated employment is the primary objective and preferred outcome for all working-age persons with disabilities, regardless of the level of disability;

(b) Identify the barriers to competitive integrated employment for persons with disabilities, including policy, procedural, financial, educational, transportation, service delivery, and other barriers;

(c) Identify unnecessary, inefficient, or conflicting agency rules and regulations that make it more difficult for employers to hire persons with disabilities;

(d) Identify training and knowledge gaps among agency staff, agency vendors, and individuals with disabilities and their families that may create obstacles and perceived obstacles for persons with disabilities, including significant disabilities, to participating in competitive integrated employment;

(e) Identify the data available and the gaps in data collection that prohibit the measurement of Colorado's progress towards compliance with the United States supreme court's decision in *Olmstead v. L.C.*; and

(f) Make recommendations relating to prevocational services to ensure that, in compliance with federal law, the services are time limited and reasonably lead to competitive integrated employment. The employment first advisory partnership's consideration shall include the average time currently spent in preemployment services by persons through the home- and community-based services intellectual and developmental disabilities waiver combined with the time previously spent in sheltered workshops.

(3) The employment first advisory partnership may consider employment first issues and make recommendations on issues that are not described in subsection (2) of this section, which issues may include career development planning and the discovery process. The partnership may also prioritize its work on the issues, including deciding not to pursue an issue, in order to achieve an efficient use of the employment first advisory partnership's time and resources.

(4) (a) This section is repealed, effective September 1, 2021.

(b) Prior to repeal of the employment first advisory partnership, the department of regulatory agencies shall conduct a sunset review pursuant to the provisions of section 2-3-1203.

Source: L. 2016: Entire part added, (SB 16-077), ch. 360, p. 1503, § 2, effective July 1. **L. 2018:** (4) added, (SB 18-145), ch. 215, p. 1371, § 4, effective August 8.

Cross references: (1) For the legislative declaration in SB 16-077, see section 1 of chapter 360, Session Laws of Colorado 2016. For the legislative declaration in SB 18-145, see section 1 of chapter 215, Session Laws of Colorado 2018.

(2) For the *Olmstead v. L.C.* case referenced in subsection (2)(e), see 527 U.S. 581 (1999).

INDEPENDENT LIVING SERVICES

ARTICLE 85

Independent Living Services

Editor's note: This article was added with relocations in 2016. Former C.R.S. section numbers are shown in editor's notes following those sections that were relocated.

8-85-101. Legislative declaration. The general assembly recognizes omissions in the delivery of independent living services to individuals with disabilities and desires to remedy such inadequacies in the delivery system through services at the community level. The general assembly finds that independent living centers pave the pathways to full participation in professional and community life for all individuals with disabilities. To advance and support the independence of individuals with disabilities and to assist those individuals to live outside of institutions, the general assembly hereby enacts this article.

Source: L. 2016: Entire article added with relocations, (SB 16-093), ch. 54, p. 126, § 1, effective March 23.

Editor's note: This section is similar to former § 26-8.1-101 as it existed prior to 2016.

8-85-102. Definitions. As used in this article, unless the context otherwise requires:

(1) "Base amount" means the equal amount of funding an independent living center would receive to provide the five independent living core services throughout its service catchment area, regardless of any other factors.

(2) "Cross-disability" means, with respect to an independent living center, that the center provides independent living services to individuals representing a range of disabilities.

(3) "Department" means the department of labor and employment created in section 24-21-121, C.R.S.

(4) "Executive director" means the executive director of the department of labor and employment.

(5) "Independent living center" means a consumer-controlled, community-based, cross-disability, nonresidential, private nonprofit agency that is designated as an eligible agency under Title VII, section 725 of the federal "Rehabilitation Act of 1973", as amended, and that:

(a) Is designed and operated within a local community by individuals with disabilities; and

(b) Provides required independent living core services and programs and an array of expanded services.

(6) "Independent living core services" means:

(a) Information and referral services;

(b) Independent living skills training;

(c) Peer counseling, including cross-disability peer counseling;

(d) Individual and systems advocacy; and

(e) Transition services or diversion from nursing homes and institutions to home- and community-based living, or upon leaving secondary education.

(7) "Independent living services" means:

(a) Independent living core services; and

(b) Other services and assistance as defined by federal regulations.

(8) "Individual with a disability" means an individual:

(a) With a physical or mental impairment that substantially limits one or more major life activities of such individual;

(b) With a record of such an impairment; or

(c) Regarded as having such an impairment.

(9) "Office" means the office of independent living services created pursuant to section 8-85-103 within the department.

Source: L. 2016: Entire article added with relocations, (SB 16-093), ch. 54, p. 126, § 1, effective March 23.

Editor's note: This section is similar to former § 26-8.1-102 as it existed prior to 2016.

8-85-103. Functions of office - functions of department - appropriations - rules. (1) There is hereby created within the department the office of independent living services. The purpose of the office is to oversee the contracts with independent living centers pursuant to this article.

(2) (a) Subject to available appropriations, the office may contract with independent living centers for independent living core services.

(b) The executive director shall review expenditures in accordance with the standards for independent living services set by the office pursuant to section 8-85-105 and the evaluation standards prescribed in section 8-85-107. The office may withhold state funds if the executive director determines that the programs of such independent living centers do not comply with said standards.

(3) For purposes of allocating money under this article, each independent living center shall submit to the office a proposed budget, which must include proposed expenditures, including proposed expenditures for services that the center intends to provide.

(4) On or before July 1, 2016, the department shall promulgate a rule for the block distribution of state money to independent living centers. The rule must include at least:

(a) A base amount of not less than six hundred thousand dollars; and

(b) Other factors agreed to by the independent living centers, which may include a per capita adjustment, a per county adjustment, or other adjustments.

Source: L. 2016: Entire article added with relocations, (SB 16-093), ch. 54, p. 128, § 1, effective March 23.

Editor's note: This section is similar to former § 26-8.1-103 as it existed prior to 2016.

8-85-104. Written plan - consumer choice. Each independent living center shall maintain an individual consumer service record indicating the consumer's choice of services, including an individualized independent living plan regarding the consumer's choice of services or a written waiver of such plan.

Source: L. 2016: Entire article added with relocations, (SB 16-093), ch. 54, p. 128, § 1, effective March 23.

Editor's note: This section is similar to former § 26-8.1-104 as it existed prior to 2016.

8-85-105. Rules. The department shall promulgate rules setting forth standards for levels and types of core services. The rules and standards must comply with federal rules as defined in Title VII, section 725 of the federal "Rehabilitation Act of 1973", as amended. The department shall also adopt rules that set standards for certification of independent living centers and shall require that any center must be designated as an eligible agency under Title VII, section 725 of the federal "Rehabilitation Act of 1973", as amended, and must meet all federal requirements for independent living centers.

Source: L. 2016: Entire article added with relocations, (SB 16-093), ch. 54, p. 129, § 1, effective March 23.

Editor's note: This section is similar to former § 26-8.1-105 as it existed prior to 2016.

8-85-106. State plan. The statewide independent living council created pursuant to the federal "Rehabilitation Act of 1973", as amended, shall develop and revise the state plan for independent living to reflect the provisions of this article.

Source: L. 2016: Entire article added with relocations, (SB 16-093), ch. 54, p. 129, § 1, effective March 23.

Editor's note: This section is similar to former § 26-8.1-106 as it existed prior to 2016.

8-85-107. Approval of independent living centers - evaluation standards. (1) Each independent living center must meet the following requirements as a condition of the approval of its program:

(a) The program must be under the control and direction of a board of directors or trustees of a nonprofit corporation. The members must be persons with a demonstrated interest in programs for persons with disabilities and fifty-one percent or more of the members of the board must be persons with disabilities.

(b) The independent living center must be staffed with fifty-one percent or more of persons with disabilities.

(c) The independent living center must comply with all of the provisions of this article and the rules promulgated thereunder.

(2) In addition to the requirements of subsection (1) of this section, each independent living center, as a condition of approval of its program by the state department, must agree to comply with the following evaluation standards:

(a) **Philosophy.** The independent living center shall promote and practice the independent living philosophy of:

(I) Consumer control of the center regarding decision-making, service delivery, management, and establishment of the policy and direction of the center;

(II) Self-help and self-advocacy;

(III) Development of peer relationships and peer role models;

(IV) Equal access of individuals with significant disabilities to all of the center's services, programs, activities, resources, and facilities, whether publicly or privately funded, without regard to the type of significant disability of the individual; and

(V) Promoting equal access of individuals with all types of significant disabilities to all services, programs, activities, resources, and facilities in the community, whether public or private, and regardless of funding source, on the same basis that access is provided to other individuals with disabilities and to individuals without disabilities.

(b) **Provision of services.** The independent living center shall provide independent living services to individuals with a range of significant disabilities. The independent living center shall provide independent living services on a cross-disability basis. The independent living center shall determine eligibility for independent living services and shall not exclude eligibility on the presence of any one specific significant disability.

(c) **Independent living goals.** The independent living center shall facilitate the development and achievement of independent living goals selected by individuals with significant disabilities who seek assistance in the development and achievement of independent living goals from the center.

(d) **Community options.** The independent living center shall conduct outreach and activities to increase the availability and improve the quality of community options for independent living to facilitate the development and achievement of independent living goals by individuals with significant disabilities.

(e) **Independent living core services.** The independent living center shall provide independent living core services and, as appropriate, a combination of any of the other independent living services referred to in Title VII, section 725, standards and assurances, of the federal "Rehabilitation Act of 1973", as amended.

(f) **Activities to increase community capacity.** The independent living center shall conduct activities to increase the capacity of communities within the service area of the center to meet the needs of individuals with significant disabilities.

(g) **Resource development activities.** The independent living center shall conduct resource development activities to obtain funding from sources other than federal and state sources.

(3) The independent living center shall submit annually to the office a performance report that provides evidence that the center has met the evaluation standards set forth in subsection (2) of this section.

Source: L. 2016: Entire article added with relocations, (SB 16-093), ch. 54, p. 129, § 1, effective March 23.

Editor's note: This section is similar to former § 26-8.1-107 as it existed prior to 2016.

8-85-108. Acceptance of federal grants. The executive director is authorized to accept, on behalf of the state, any grants of federal funds made available for any purposes consistent with the provisions of this article. As indicated in the general appropriations act, the executive director, with the approval of the governor, has the power to direct the disposition of any such grants so accepted in conformity with the terms and conditions under which given.

Source: L. 2016: Entire article added with relocations, (SB 16-093), ch. 54, p. 130, § 1, effective March 23.

Editor's note: This section is similar to former § 26-8.1-108 as it existed prior to 2016.

8-85-109. Transfer of functions - transition plan - report. (1) On and after July 1, 2016, the rights, powers, duties, and functions regarding independent living services vested in the department of human services prior to that date are transferred from the department of human services to the department of labor and employment by a **type 2** transfer, as such transfer is defined in the "Administrative Organization Act of 1968", article 1 of title 24, C.R.S.

(2) On and after March 23, 2016, the department of labor and employment shall prepare to execute, administer, perform, and enforce the rights, powers, duties, functions, and obligations regarding independent living services that are transferred to the department of labor and employment pursuant to this article.

(3) Effective July 1, 2016, the officers and employees of the department of human services whose duties and functions prior to that date concerned the duties and functions transferred to the department of labor and employment pursuant to this article and whose employment in the department of labor and employment is deemed necessary by the executive director to carry out the purposes of this article are transferred to the department of labor and employment and become employees of the department of labor and employment. The employees retain all rights to the personnel system and retirement benefits pursuant to the laws of this state, and their services are deemed to be continuous. All transfers and any abolishment of positions in the state personnel system shall be made and processed in accordance with state personnel system laws and regulations.

(4) Effective July 1, 2016, all items of property, real and personal, including office furniture and fixtures, books, documents, and records of the department of human services prior to that date pertaining to the duties and functions transferred to the department of labor and employment pursuant to this article are transferred to the department of labor and employment and become the property of the department of labor and employment.

(5) (a) On and after July 1, 2016, whenever the functions of the department of human services relating to independent living services is referred to or designated by a contract or other document in connection with the duties and functions transferred to the department of labor and employment pursuant to this article, the reference or designation is deemed to apply to the department of labor and employment.

(b) All contracts entered into by the department of human services prior to July 1, 2016, in connection with the duties and functions transferred to the department of labor and employment pursuant to this article are hereby validated, with the department of labor and employment succeeding to all the rights and obligations of the contracts. Any appropriations of funds from prior fiscal years open to satisfy obligations incurred pursuant to those contracts are transferred and appropriated to the department of labor and employment for the payment of those obligations.

(c) All rules adopted by the department of human services prior to July 1, 2016, concerning independent living services continue to be effective until revised, amended, or nullified pursuant to law.

Source: L. 2016: Entire article added with relocations, (SB 16-093), ch. 54, p. 131, § 1, effective March 23.

ARTICLE 86

Study of Transportation Access
for People with Disabilities

8-86-101 to 8-86-106. (Repealed)

Editor's note: (1) This article 86 was added in 2017 and was not amended prior to its repeal in 2018. For the text of this article 86 prior to 2018, consult the 2017 Colorado Revised Statutes and the Colorado statutory research explanatory note beginning on page vii in the front of this volume.

(2) Section 8-86-106 provided for the repeal of this article 86, effective July 1, 2018. (See L. 2017, p. 190.)