1-1989

# 0334 Workmen's Compensation and Unemployment Insurance Programs

Colorado Legislative Council

# 0334 Workmen's Compensation and Unemployment Insurance Programs

# COLORADO
# LEGISLATIVE COUNCIL

## WORKMEN'S COMPENSATION AND UNEMPLOYMENT INSURANCE PROGRAMS

Legislative Council
Research Publication No. 334

JANUARY 1989

COLORADO LEGISLATIVE COUNCIL

# COMMITTEE ON WORKMEN'S COMPENSATION AND UNEMPLOYMENT INSURANCE PROGRAMS

## RECOMMENDATIONS FOR 1989

## REPORT TO THE COLORADO GENERAL ASSEMBLY

Legislative Council
Research Publication No. 334
January, 1989

# COLORADO GENERAL ASSEMBLY


## LEGISLATIVE COUNCIL

ROOM 029 STATE CAPITOL
DENVER, COLORADO 80203-1784
(303) 866-3521



January 31, 1989

To Members of the Fifty-seventh Colorado General Assembly:

Submitted herewith is the final report of the Committee on Workmen's Compensation and Unemployment Programs. The committee was appointed by the President of the Senate and the Speaker of the House of Representatives Council pursuant to House Joint Resolution No. 1039, 1988 session.

At its meeting on January 10, 1989, the Legislative Council reviewed this report. A motion to forward the report and recommendations of the Committee on Workmen's Compensation and Unemployment Insurance Programs to the Fifty-seventh General Assembly was also approved.

Respectfully submitted,

/s/ Senator Ted Strickland
Chairman
Colorado Legislative Council

TS/cg

TABLE OF CONTENTS

LEGISLATIVE COUNCIL

COMMITTEE ON WORKMEN'S COMPENSATION AND
UNEMPLOYMENT INSURANCE PROGRAMS

Members of the Committee

Rep. Don Ament,
Chairman
Sen. Wayne Allard,
Vice Chairman
Sen. Brian McCauley
Sen. Tom Norton
Sen. Ray Powers
Sen. Donald Sandoval
Sen. Claire Traylor

Rep. Jim Dyer
Rep. John Irwin
Rep. Margaret Masson
Rep. Richard Mutzebaugh
Rep. Jeannie Reeser
Rep. Kathi Williams

Legislative Council Staff

Stanley Elofson
Assistant Director

Evonne Okonski
Research Assistant

Cindy Baouchi
Economist-B

Legislative Legal Services Staff

John Berry
Senior Staff Attorney

Bart Miller
Senior Staff Attorney

Dianne Eret
Staff Attorney

## Summary of Committee Activity

The Committee on Workmen's Compensation and Unemployment Compensation Programs was established in the 1988 session and was given the following directives:

(1) That the committee's inquiries shall include, but not be limited to, the following areas and issues:

(a) What constitutes fair and adequate compensation for various types of injuries, given the general purposes of the workmen's compensation system;

(b) The economic effect of workmen's compensation and unemployment insurance rates upon various industries and their effect upon the economic competitiveness of Colorado as a whole when compared with other states;

(c) Criteria of eligibility for all forms of workmen's compensation and unemployment insurance benefits;

(d) Who should be covered by the workmen's compensation act;

(e) The criteria for the payment of medical benefits under workmen's compensation, including problems of preexisting conditions, intervening injuries, and the possible applicability of a deductible arrangement;

(f) The function and discretion of administrative law judges, the scope of interpretation permitted to them, their qualifications, and standards of accountability to be applied to them; and

(g) What shall be included as wages in the calculation of workmen's compensation or unemployment insurance benefits, including the wage basis and the employee's length of time on the job.

(2) That the committee shall take account of the study currently being conducted by the Department of Labor and Employment regarding the workmen's compensation system and shall endeavor to incorporate the results of that study into its findings and recommendations. (House Joint Resolution No. 1039)

Meetings were held beginning in June and the committee completed its deliberations on January 5, 1989. A total of eight meetings of the full committee were held.

The following subcommittees were established to review in detail the numerous recommendations offered the committee and to prepare draft bills for the full committee:

Benefits -- Representative K. Williams, chairman; Senators Allard and Norton; Representatives Irwin and Reeser.

Litigation -- Senator Allard, chairman; Senator R. Powers; Representative Mutzebaugh.

Permanent Partial and Permanent Total Disability -- Senator Norton, chairman; Senator Traylor; Representative Reeser.

Medical Care Cost Containment -- Senator Traylor, chairman; Representatives Irwin and Reeser.

Penalties and Incentives -- Representative Irwin, chairman; Representative K. Williams.

Premiums -- Representative Mutzebaugh, chairman; Senator R. Powers, Representatives Irwin, Masson, and K. Williams.

Unemployment Insurance -- Representatives Masson and Dyer, co-chairmen; Representative Reeser.

The committee's recommendations include eight bills, the first five concerning workmen's compensation and the final three relating to unemployment insurance:

Bill 1 -- Concerning the Provision of Benefits under the "Workmen's Compensation Act of Colorado".

Bill 2 -- Concerning the Provision of Health Care to Injured Employees under the "Workmen's Compensation Act of Colorado".

Bill 3 -- Concerning the Resolution of Disputes Arising under the "Workmen's Compensation Act of Colorado".

Bill 4 -- Concerning Insurance Coverage under the "Workmen's Compensation Act of Colorado", and, in Connection Therewith, Providing for Repayments from Employers From Insurers in the Case of Cancellations or Changes in Rates by Classification.

Bill 5 -- Concerning Personal Liability of Corporate Officers and Shareholders for Failure to Secure Insurance as Required under the "Workmen's Compensation Act of Colorado".

Bill 6 -- Concerning Unemployment Insurance under the "Colorado Employment Security Act".

Bill 7 -- Concerning the Industrial Claim Appeals Panel.

Bill 8 -- Concerning Benefits Under the "Colorado Employment Security Act" When an Employee Quits, and, in Connection Therewith, Providing that No Benefits shall be Awarded when an Employee Quits for a Better Job or to Seek Other Work.

Data Management

The committee also recommends that the Joint Budget Committee provide increased funding to improve the data management capabilities of the Division of Labor in the Department of Labor and Employment. This recommendation was presented to the Joint Budget Committee (JBC) in a letter that is included as Appendix A of this report. The Division of Labor needs improved computer facilities to provide basic information for the management and analysis of the workmen's compensation system in Colorado.

With their present facilities, the Division is unable to meet many fundamental information needs for an efficient and effective system. As the letter to the JBC indicates, Colorado lacks the capability of finding where delays are occurring in the system. The Division is unable to foresee trends, and, therefore, unable to counteract problems in their early stages. Dealing with problems such as the backlog of cases becomes a matter of guesswork. These are only a few of the areas that improved data would help to manage, but they illustrate the frustration of both the legislative and executive branches in trying to understand a massive system with limited information, or more commonly, none at all.

Lewis Study of the Colorado Workmen's Compensation System

The committee's perspective was enhanced by a study of the workmen's compensation system in Colorado conducted by a nationally recognized consultant to the Division of Labor, John H. Lewis. The Lewis study was completed in mid-December, and Mr. Lewis met with the committee in November to indicate his preliminary findings and met with the committee again in December and January after the report had been completed.

One central aspect of the Lewis report is that it presents alternative directions for Colorado's workmen's compensation system. These approaches may be viewed as administrative contrasted with litigious. To paraphrase Mr. Lewis' comments at the November meeting, the choice is a philosophical one, whether to have more cases handled through administrative processes or whether cases can be handled most fairly through a litigation based system. The administrative system requires financial and other resources for implementation, but a litigation system could well be more expensive in total costs.

The committee members agreed that more thought and consideration needs to be given to many major issues, including which overall direction the Colorado workmen's compensation system should take. Continued study of the system is necessary, as is oversight of recent legislative changes in workmen's compensation. Representative Ament, committee chairman, reports that he plans to introduce a resolution to continue committee work, to monitor recent changes, and to recommend further changes. With more complete data and continued study, changes based on a more thorough understanding of the system will be possible over the next several years.

## Recommendations for Legislation

### Bill 1 - HB 1322

### Provision of Benefits Under the Workmen's Compensation Act of Colorado

Topics covered by the Benefits Subcommittee are included in Bill 1. The bill clarifies the status of inmates in regard to workmen's compensation, amends two definitions, and changes three sections under which benefits are calculated.

#### Exemption of Inmates from Workmen's Compensation

This bill clarifies the workmen's compensation status of inmates in correctional institutions by specifically excluding them from workmen's compensation coverage. Two exceptions are made:

(a) inmates working for private employers under contracts for hire while serving their sentences in community corrections programs; and

(b) inmates working in correctional industries in programs with joint ventures with private investors or businesses.

Excepting inmates from workmen's compensation coverage may result in inmates being entitled to sue the state under the tort system for injuries in their work stations. The annual cost for including inmates under workmen's compensation coverage is estimated to cost over $2.0 million.

#### Definition of State Average Weekly Wage

This provision changes the determination of the average weekly wage so that it is based on the average weekly earnings in all industries. The current level ($354.67 per week) is based only on construction and manufacturing industries. For temporary total and partial disability cases, the injured worker now receives two-thirds of his average weekly wage, not to exceed 80 percent of the state average ($354.67). The 80 percent figure is changed to 91 percent to compensate for the lowering of the average weekly wage. The result is that benefits will stay at approximately their current level.

#### Definition of Individual's Average Weekly Wage

The definition of "wages" is amended to provide greater certainty in determination of a worker's wage. As amended, this section

includes tips in the definition of wages and specifically excludes any benefits that are not listed from the definition of employee wages.

Waiting Period for Benefits

This provision extends from three to seven days the period for which disability indemnity is not paid to an injured worker. Approximately 20 percent fewer cases will be reported under this recommendation. Medical and related expenses will continue to be paid from the time of injury.

Offsets for Social Security

Under this provision, retirement benefits from Social Security and employer programs are included as benefits that require a reduction in workmen's compensation benefits. The amount to be reduced is one-half of the amount of the Social Security retirement or the employer contribution to the retirement plan. Offsets for Social Security disability payments are required under present law, and the retirement offset parallels the disability provision.

Benefits for Actual Wage Loss

This section states that temporary disability benefits shall be awarded only during the time an injured employee sustains a wage loss due to the injury.

Bill 1 - HB 1322

BY REPRESENTATIVES K. Williams, Masson, and Reeser;
also SENATOR Norton.

A BILL FOR AN ACT

CONCERNING THE PROVISION OF BENEFITS UNDER THE "WORKMEN'S COMPENSATION ACT OF COLORADO".

---

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments which may be subsequently adopted.)

Excludes inmates of correctional facilities who are working from the definition of "employee" for purposes of the "Workmen's Compensation Act of Colorado", except if such inmate is working for a private employer who carries workmen's compensation insurance for his employees or for certain joint ventures. Makes such a privately employed inmate an employee of such private employer for workmen's compensation purposes. Makes an inmate working for a joint venture an employee of such joint venture for workmen's compensation purposes.

Provides that the state average weekly wage be based upon the average of the average weekly earnings in all covered industries in Colorado as furnished by the division of employment and training in the department of labor and employment instead of upon the average of the average weekly earnings in selected industries in the state.

Changes the definition of "wages" under the act to include only the reasonable value of the enumerated benefits.

Extends the period for which no disability indemnity, except for medical and related expenses, is available under the act from three days to seven calendar days, measured from the day the employee leaves work as a result of the injury.

Includes federal social security retirement benefits and employer retirement benefits in the category of benefits that requires a reduction in the workmen's compensation benefits by one-half the amount of such federal or employer benefits. Provides that, if federal law requires a reduction in such

retirement benefits because of the workmen's compensation benefits, the amount of reduction in workmen's compensation benefits shall be in proportion to such reduction of federal benefits.

Provides that temporary disability benefits under the act shall be awarded only for periods of time when the injured employee actually sustains a wage loss attributable to the injury, subject to the limitations set forth in sections 8-51-102 and 8-51-103, Colorado Revised Statutes.

Changes the percentage of the state average weekly wage that is the basis of the limits on the amount of temporary total disability benefits and temporary partial disability benefits that a worker's compensation claimant may receive per week.

Makes conforming amendments.

---

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

SECTION 1. 8-41-106 (1) (a) (IV), Colorado Revised Statutes, 1986 Repl. Vol., is amended, and the said 8-41-106 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

8-41-106. Employee. (1) (a) (IV) Except as provided in section 8-41-105 (7) (a) AND SUBSECTION (4) OF THIS SECTION, 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. The rate of compensation for such person if accidentally injured or, if killed, for his dependents shall be based upon the wages normally paid in the community in which he resides or in the community where said work or job training or rehabilitation program is being conducted for the type of work in which he 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 his dependents shall be paid at the maximum rate of compensation payable under articles 40 to 54 of this title at the time of the determination of such disability or death.

(4) (a) Notwithstanding the provisions of subparagraph (IV) of paragraph (a) of subsection (1) of this section, "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.

(b) The provisions of paragraph (a) of this subsection (4) do not apply to an inmate who is working for a private employer under a contract of hire wherein the private employer





Inmates of correctional facilities are excluded from the definition of "employee" in workmen's compensation, except those working for a private employer who carries workmen's compensation insurance for such inmate (e.g., inmates employed while in community corrections) or for certain joint ventures (inmates working in correctional industries engaged in joint ventures with private business). A privately employed inmate becomes an employee of such private employer under workmen's compensation, and an inmate working for a joint venture becomes an employee of such joint venture for workmen's compensation purposes.

Community corrections inmates working for a private employer are excepted.

is required to maintain workmen's compensation insurance for its employees pursuant to articles 40 to 54 of this title. Such inmate shall be an employee of such private employer for purposes of articles 40 to 54 of this title.

(c) The provisions of paragraph (a) of this subsection (4) 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 54 of this title.

Correctional industries exception for inmates engaged with businesses or investors in joint ventures with correctional industries. Cross-references to C.R.S. sections are to correctional industry statutes which permit numerous types of programs and venture agreements.

SECTION 2. 8-46-113 (1), Colorado Revised Statutes, 1986 Repl. Vol., is amended to read:

8-46-113. State average weekly wage - method of computation. (1) 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 statistics furnished the director by the division of employment and training and shall be based upon the average of the average weekly earnings in ~~selected~~ ALL COVERED industries in Colorado, ~~as published by the United States bureau of labor statistics~~, weighted by the volume of employment according to the records of the division of employment AND TRAINING in each of the ~~selected~~ COVERED industries, as computed by the division in June for the ensuing twelve months beginning July 1, on the basis of the most recent available figures. Such state average weekly wage shall automatically form the basis for establishing maximum benefits under the "Workmen's Compensation Act of Colorado" as of 12:01 a.m., July 1, 1974,

Amends present law to provide that the state average weekly wage shall be based on the average of the average weekly earnings in all industries in Colorado instead of upon the average earnings in only construction and manufacturing industries.

and at each succeeding time and date annually thereafter.

SECTION 3. 8-47-101 (2), Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

8-47-101. Basis of compensation - "wages" defined - average weekly wage. (2) Whenever the term "wages" is used, it 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. ~~and shall not include gratuities received from employers or others, nor shall it include the amounts deducted by the employer under the contract of hire for materials, supplies, tools, and other things furnished and paid for by the employer and necessary for the performance of such contract by the employee; but~~ The term "wages" shall include TIPS AND the reasonable value of board, rent, housing, AND lodging ~~or any other similar advantages~~ 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 SHALL NOT INCLUDE ANY SIMILAR ADVANTAGE OR FRINGE BENEFIT NOT SPECIFICALLY ENUMERATED ABOVE. The term "wages" as applied to farm and ranch labor employees and as applied to employees of agricultural corporations shall be based solely upon the income reported on the employees' W-2 form for federal income tax purposes.

SECTION 4. 8-51-101 (1) (a), Colorado Revised Statutes, 1986 Repl. Vol., is amended to read:

8-51-101. Disability indemnity payable as wages - period

This section amends the definition of "wages" to include only the reasonable value of the enumerated benefits and specifies certain additional benefits that are to be included in the definition.

of disability. (1) (a) If the period of disability does not last longer than ~~three~~ SEVEN CALENDAR 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 54 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.

SECTION 5. 8-51-101 (1) (c), Colorado Revised Statutes, 1986 Repl. Vol., as amended, are amended to read:

8-51-101. Disability indemnity payable as wages - period of disability. (1) (c) (I) In cases where it is determined that periodic disability benefits granted by the federal old-age, survivors, and disability insurance act are payable to an individual and his dependents, 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 as nearly as practical to one-half such federal periodic benefits; but, if provisions of the federal old-age, survivors, and disability insurance act should be amended to provide for a reduction of an individual's disability benefits thereunder because of compensation benefits payable under articles 40 to 54 of this title, the reduction of compensation benefits provided in said articles shall be decreased by an amount equal to such federal

This amendment extends the period for which no disability indemnity, except medical and related expenses, is available from 3 days to 7 calendar days, measured from the day the employee leaves work as a result of the injury.

reduction. Upon request of the insurer or employer, the employee shall apply for such federal periodic 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.

(II) IN CASES WHERE IT IS DETERMINED THAT PERIODIC BENEFITS GRANTED BY THE FEDERAL OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE ACT ARE PAYABLE TO AN INDIVIDUAL AND HIS DEPENDENTS, 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 ONE-HALF SUCH FEDERAL BENEFITS; BUT, IF PROVISIONS OF THE FEDERAL OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE ACT SHOULD BE AMENDED TO PROVIDE FOR A REDUCTION OF AN INDIVIDUAL'S PERIODIC BENEFITS THEREUNDER BECAUSE OF COMPENSATION BENEFITS PAYABLE UNDER ARTICLES 40 TO 54 OF THIS TITLE, THE REDUCTION OF COMPENSATION BENEFITS PROVIDED IN SAID ARTICLES SHALL BE DECREASED BY AN AMOUNT EQUAL TO SUCH FEDERAL REDUCTION. UPON REQUEST OF THE INSURER OR EMPLOYER, THE EMPLOYEE SHALL APPLY FOR SUCH FEDERAL 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.

SECTION 6. 8-51-101, Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

8-51-101. Disability indemnity payable as wages - period





"Offset" Provisions. Social security retirement and employer retirement are included as benefits that require a reduction in the workmen's compensation benefits. The amount of the reduction is one-half the amount of the social security or the amount of an employer contribution to the retirement plan. If federal law requires a reduction in such retirement benefits because of the workmen's compensation benefits, the workmen's compensation benefits shall be reduced in proportion to such reduction of federal benefits.

As in present law concerning social security disability, the new language requires that, if requested, an employee must apply for social security retirement benefits or risk the suspension of workmen's compensation benefits.

of disability. (2) Subject to the limitations set forth in sections 8-51-102 and 8-51-103, temporary disability benefits shall be awarded only for periods of time when the injured employee actually sustains a wage loss attributable to the injury.

Temporary disability benefits shall be awarded only for the time when the injured employee actually sustains a wage loss attributable to the injury.

SECTION 7. 8-51-102, Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

8-51-102. Temporary total disability. In case of temporary disability of more than ~~three~~ SEVEN days' duration, the employee shall receive sixty-six and two-thirds percent of his average weekly wages so long as such disability is total, not to exceed a maximum of ~~eighty~~ NINETY-ONE percent of the state average weekly wage per week. Except where vocational rehabilitation is offered and accepted as provided in section 8-51-107 (3), temporary total disability payments shall cease when the employee reaches maximum improvement from medical care or returns to work or is able to return to work or as otherwise determined by the director. 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.

Sections 7 and 8 change the percentage of the state average weekly wage that is the basis of the caps on the amount of temporary total disability benefists and temporary partial disability benefits an injured employee may receive per week.

**SECTION 8. 8-51-103, Colorado** Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

8-51-103. Temporary partial disability. In case of temporary partial disability, the employee shall receive sixty-six and two-thirds percent of the impairment of his earning capacity during the continuance thereof, not to exceed a maximum of ~~eighty~~ NINETY-ONE percent of the state average weekly wage per week. Temporary partial disability payments shall cease when the employee reaches maximum improvement from medical care or as otherwise determined by the director.

SECTION 9. 8-53-102 (1), Colorado Revised Statutes, 1986 Repl. Vol., is amended to read:

8-53-102. Notice concerning liability. (1) The employer or, if insured, his insurance carrier shall notify in writing the division and the injured employee or, if deceased, his dependents within twenty-five days after notice or knowledge of an injury to an employee which disables said employee for more than ~~three~~ SEVEN shifts or ~~three~~ SEVEN calendar days or results in permanent physical impairment or death of said employee, whether liability is admitted or contested; but, for the purpose of this section, any knowledge on the part of the employer, if insured, is not knowledge on the part of his insurance carrier. Where the employer's report of injury shows that the employee is temporarily disabled for ~~three~~ SEVEN days or less and medical attention as provided by section 8-49-101, if required, has been afforded at the expense of the employer or the insurance carrier, then

no admission or denial of liability need be filed until the employer or, if insured, his insurance carrier has knowledge of or notice of claim for compensation benefits and then within fifteen days from the date of such knowledge or notice.

SECTION 10. Effective date - applicability. This act shall take effect July 1, 1989, and shall apply to all claims under the "Workmen's Compensation Act of Colorado" which are filed on or after said date.

SECTION 11. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

## Bill 2 - SB 183

## Provision of Health Care to Injured Employees Under The Workmen's Compensation Act of Colorado

This bill deals with several major issues, including clarifying the current statutes on the provision of medical care, as well as providing stronger mechanisms to reduce excess medical costs, for example, by guarding against overtreatment.

### Key Definitions, Including "Maximum Medical Improvement"

In the first two sections, four key definitions used throughout the bill are provided, including "authorized treating physician", "emergency", and "medical case management services". "Maximum medical improvement" (MMI)is defined as when the underlying physical condition causing the claimant's disability becomes stable and no further reasonable treatment will measurably improve the condition.

Part of the committee's intent is to make MMI more of a medical determination than it is at present. The MMI determination is important because temporary benefits are ended at the point of MMI, and the level of permanent impairment is then determined. Problems have occurred in the past because MMI is not specifically defined in current statute, and medical benefits may continue beyond the point necessary to the claimant's recovery.

### Medical Transportation and Prosthesis Costs

Section 3 provides that travel to and from places of medical treatment is not medical aid that the employer must provide, unless the travel is medically necessary by a medical vehicle, or the average distance travelled to and from places of medical treatment exceeds the average mileage that the claimant would have travelled to and from work.

This section also removes the limit on the number of prosthetic devices that the employer is required to furnish for the employee. The prostheses and other equipment include braces, dentures, glasses, and artificial limbs.

### Provision of Medical Care

The next several sections of this bill are related generally to the provision of medical care, especially focusing on mechanisms to strengthen medical case management. Some of the major provisions of these sections include:

-- Specifying the insurer's and employer's right to contract for medical services;

-- Including the authorized treating physician (ATP) under the provisions of utilization review;

-- Providing for the appointment of an ATP, including:

  - Selecting the ATP;

  - Removing chiropractors from the definition of ATP;

  - Providing stronger mechanisms for case-management through the ATP; and

  - Allowing an employee to select or request that his physician become the ATP. (Section 8-49-103)

-- Implementing an independent medical examination (IME) process and listing issues that may be reviewed through the IME, including:

  - Change of the authorized treating physician;

  - Whether maximum medical improvement has been reached;

  - Questions of whether the injury was work related; and

  - Whether an employee is able to return to work. (Section 8-49-102.5)

-- Stating that maximum medical improvement determination is made by the ATP, and that temporary total and temporary partial benefits shall cease when MMI is reached.

Release of Medical Records

The final section of the bill provides that medical information regarding the evaluation, treatment, and progress of an injury covered under workmen's compensation insurance shall be made available to the insurer upon written request. Currently, the only way for an insurer to get information relevant to a claimant's medical treatment is through utilization review, which is a lengthy process and one that is relatively expensive to the system.

Bill 2 - SB 183

BY SENATOR Traylor;
also REPRESENTATIVES Irwin, Masson, and Reeser.

A BILL FOR AN ACT

CONCERNING THE PROVISION OF HEALTH CARE TO INJURED EMPLOYEES UNDER THE PROVISIONS OF THE "WORKMEN'S COMPENSATION ACT OF COLORADO".

---

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments which may be subsequently adopted.)

Defines "authorized treating physician", "emergency", "maximum medical improvement", and "medical case management services". Provides that at the time of the injury or as soon thereafter as the employer has notice of the injury, the employer may select the authorized treating physician who attends the injured employee, and that such physician shall be a medical doctor or a doctor of osteopathy. In the absence of such selection, allows the employee to select the authorized treating physician.

Provides that the authorized treating physician is responsible for the overall management of the medical treatment of the injured employee, including the initiation of all referrals to other health care providers and institutions; the development of a treatment plan for the injured employee and the monitoring of progress toward accomplishment of the treatment plan, including periodic review of the patient's current status and the treatment goals and methods; the determination of the time at which a claimant has reached maximum medical improvement; and the review of medical treatment provided to the injured employee in an emergency.

Allows insurers or self-insured employers to contract for medical services and supplies for those entitled to benefits under the "Workmen's Compensation Act of Colorado". Eliminates the provision that the state compensation insurance

authority can contract for such services and supplies only after a determination that such contracting might tend to reduce the employee's period of disability.

Allows the employee to request his own choice of authorized treating physician by written request to the insurer or employer, if self-insured.

Allows the employee to request the division of labor's permission to have a physician of his own selection attend him as the authorized treating physician.

Provides that the utilization review process may include a review of the performance of the authorized treating physician and the provision of medical case management services.

Provides that the order of the director of the division of labor that a provider refund fees charged for services when a utilization review committee has so recommended is enforceable in district court.

Provides that a physician's report of maximum medical improvement, the absence of a determination of maximum medical improvement, or the issues of whether the authorized treating physician should be changed, whether the employee's physical problem is due to the job-related injury, or whether the employee is able to return to work may be appealed to the division of labor by means of a written request for an independent medical examination to be conducted by a physician appointed from a list developed by the director. Requires that the person requesting the examination shall pay for it. Authorizes the director to enter orders affirming any determination made by the reviewing physician in an independent medical examination, and specifies that such orders may be appealed and that the report and order shall be admissible in evidence in proceedings under the act. Provides that the physician's determination shall be entitled to a presumption of validity that may be overcome only by clear and convincing evidence.

Clarifies the persons who are eligible for payment under the act and the conditions under which medical care provided to the employee in an emergency is reimbursable. Makes conforming amendments.

Specifies that travel to and from places where medical aid is provided is not medical aid which must be furnished by the employer unless the travel is by means of a medical vehicle and such means is medically necessary or unless the average total distance traveled per month for medical aid exceeds the average total distance traveled per month to and from work. Provides that, when the total distance traveled to and from work exceeds the total average distance traveled for medical aid, then the employer must reimburse the employee for the cost of the excess.

Allows for the replacement of prosthetic devices, hearing aids, or artificial limbs, as necessary, when an injury has resulted in certain losses.

Specifies that all medical information regarding the

evaluation, treatment, and progress of an injury, including the existence of any preexisting condition which directly affects the treatment and severity of the injury, covered under workmen's compensation insurance shall be made available to the insurer upon written request.

---

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

SECTION 1. 8-41-108, Colorado Revised Statutes, 1986 Repl. Vol., is amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS to read:

8-41-108. Additional definitions. (2.6) "Authorized treating physician" means the medical doctor or doctor of osteopathy selected pursuant to the provisions of section 8-49-103 who provides medical treatment and, if necessary, medical case management services to an injured employee, which treatment and services are intended to facilitate the recovery of the employee from his injury. The authorized treating physician is reimbursed by the employer pursuant to the provisions of article 49 of this title.

(2.7) "Emergency" means a sudden change in an employee's physical condition related to the on-the-job injury requiring immediate medical or surgical intervention.

(2.8) "Maximum medical improvement" means the point when the underlying physical condition causing a disability becomes stable and no further reasonable medical treatment will measurably improve the condition.

(2.9) "Medical case management services" means the overall management of the medical treatment of an injured employee, including the initiation of all referrals to other





The bill provides four definitions used throughout the act:

The "Authorized treating physician" (ATP) provides medical treatment and acts as medical case manager if necessary.

"Emergency" is defined to differentiate between the person who provides emergency treatment and treatment by the authorized treating physician.

"Maximum medical improvement" (MMI) is not defined in current statute. This provision defines MMI. The committee's intent is to make MMI more of a medical determination than it is at present.

"Medical case management" is the overall management of medical treatment of an injured employee by the authorized treating physician.

health care providers and institutions; the development of a treatment plan for the injured employee; and the monitoring of the employee's progress towards accomplishment of the treatment plan, including periodic review of the patient's current status and the treatment goals and methods.

SECTION 2. 8-49-101 (1) (a) and (1) (b), Colorado Revised Statutes, 1986 Repl. Vol., as amended, are amended to read:

8-49-101. Employer must furnish medical aid - approval of plan - fee schedule - contracting for treatment - no recovery from employee. (1) (a) Every employer, regardless of his 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. TRAVEL TO AND FROM PLACES WHERE MEDICAL AID IS PROVIDED IS NOT MEDICAL AID WHICH MUST BE FURNISHED BY THE EMPLOYER UNLESS SUCH TRAVEL IS BY MEANS OF A MEDICAL VEHICLE AND SUCH MEANS IS MEDICALLY NECESSARY OR UNLESS THE AVERAGE TOTAL DISTANCE TRAVELED PER MONTH FOR MEDICAL AID EXCEEDS THE AVERAGE TOTAL DISTANCE TRAVELED PER MONTH BY THE EMPLOYEE BETWEEN HIS RESIDENCE AND HIS PLACE OF EMPLOYMENT ON THE DATE OF THE INJURY, AND THEN ONLY TO THE EXTENT OF SUCH EXCESS.

(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





Extraordinary transportation costs and special modes of transportation, when medically necessary, are included in benefits for injured workers.

device, the employer shall furnish within the limits of the medical benefits provided in paragraph (a) of this subsection (1) ~~one~~ artificial ~~member~~ MEMBERS, glasses, a hearing ~~aid~~ AIDS, ~~a brace~~ BRACES, and any other prosthetic ~~device~~ 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, at any time within two years from the date ANY such artificial member, glasses, hearing aid, brace, and other prosthetic device, including dentures, was ~~originally~~ furnished, petition the division for one additional replacement upon grounds that the employee has undergone an anatomical change since the ~~original~~ LAST PROSTHETIC DEVICE was furnished, and that the anatomical change 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. Every employer subject to the terms and provisions of articles 40 to 54 of this title must insure his 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.

SECTION 3. 8-49-101, Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS to read:

8-49-101. Employer must furnish medical aid - approval

Current law does not allow for replacement of any prosthetic device, hearing aid, or artificial limb. Since such devices may wear out over time, the committee changed the singular language to plural, to provide for replacement of equipment.

of plan - fee schedule - contracting for treatment - no recovery from employee. (7) Any insurer or employer, if self-insured, may 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 under the "Workmen's Compensation Act of Colorado".

Insurer's and employer's right to contract for medical services for workmen's compensation is specified in this subsection.

(8) Once it has been determined by a final order 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.

If an insurance carrier or employer is determined to be liable for costs or fees, medical providers shall not seek to recover fees from the employee.

SECTION 4. 8-49-102 (1), (2) (a), (2) (c), and (3) (c), Colorado Revised Statutes, 1986 Repl. Vol., as amended, are amended to read:

8-49-102. Utilization review process. (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~~ TO REVIEW THE PERFORMANCE OF AN AUTHORIZED TREATING PHYSICIAN OR ANY PROVIDER OF MEDICAL SERVICES ELIGIBLE FOR PAYMENT UNDER SECTION 8-49-104, AND TO PROVIDE A REMEDY IF SUCH PERFORMANCE OR SERVICES ARE not be reasonably necessary or reasonably appropriate according to accepted professional standards.

(2) (a) Any insurer, self-insured employer, or claimant may request review under the provisions of this section of services rendered pursuant to this article by a health care provider OR AUTHORIZED TREATING PHYSICIAN. Requests for utilization review shall be submitted on forms specified by the director by rule and regulation. At the time of submission of any such request, the person making the request shall pay to the division a fee prescribed by the director by rule and regulation for use of the utilization review process. Such fee shall be set at a level which covers the administrative cost to the division of administering this section. If a claimant is successful in his utilization review case pursuant to this section, the division shall reimburse the fee charged pursuant to this paragraph (a) and assess such fee against the insurer or self-insured employer. Fees collected pursuant to this section shall be credited by the state treasurer to the utilization review cash fund, which fund is hereby created. Moneys in the utilization review cash fund are hereby continuously appropriated to the division for

-27-

This amendment includes the authorized treating physician under provisions of utilization review and states that a remedy be provided if the performance or services of the provider are not reasonably appropriate.

purposes of administering the utilization review program and shall not revert to the the general fund at the end of any fiscal year. The division shall notify any claimant, insurer, or self-insured employer that his case is to be reviewed and that he 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 the notice required by this subsection (2) to examine the medical records submitted by the claimant, insurer, or self-insured employer requesting review and may add medical records to the utilization review file that he 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.

(c) A claimant may request a utilization review pursuant to this section if he has been refused a request pursuant to section ~~8-51-110--(5)~~ 8-49-103 (1) (c) to have his own physician ~~or--chiropractor~~ attend him AS THE AUTHORIZED TREATING PHYSICIAN. Any claimant requesting a utilization review pursuant to this paragraph (c) shall file such request on forms specified by the director by rule and regulation and shall pay the fee for requesting such review as required by paragraph (a) of this subsection (2).

(3) (c) A committee appointed pursuant to this subsection (3) shall review the medical necessity and appropriateness of care AND MEDICAL CASE MANAGEMENT SERVICES

A chiropractor may not be an authorized treating physician under this amendment.

provided pursuant to this article by conducting an extensive review of the medical records of each case referred by the director pursuant to paragraph (a) of this subsection (3). Each committee shall issue a report to the director on the findings for each case reviewed. For each case, a committee may recommend by a majority vote of such committee that no change be ordered with respect to a case or that a change of provider, INCLUDING A CHANGE IN THE AUTHORIZED TREATING PHYSICIAN, be ordered. A committee, by a unanimous vote, may recommend that the director order that payment for fees charged for services in the case be retroactively denied. The director shall accept the recommendation of a committee and base his order entered pursuant to this section thereon. THE DIRECTOR'S ORDER REQUIRING THE PROVIDER TO REFUND SUCH FEES IS ENFORCEABLE IN DISTRICT COURT. If the director's order specifies that payment for fees charged for services in a case be retroactively denied, the provider whose fees are so denied payment may not contract with, bill, or charge the claimant for such fees.

SECTION 5. Article 49 of title 8, Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended BY THE ADDITION OF THE FOLLOWING NEW SECTIONS to read:

8-49-103. Disputes concerning medical treatment - review process - orders of director. (1) An employee or the insurer or employer, if self-insured, may file a written request with the division for an independent medical examination, conducted by a physician appointed by the division, to determine any one

or more of the following issues:

(a) Whether the authorized treating physician should be changed;

(b) Whether the employee's physical problem is due to the job-related injury;

(c) In the absence of a determination of maximum medical improvement, whether the injured employee has reached maximum medical improvement;

(d) Whether the injured employee has reached maximum medical improvement when such a determination has been made in a physician's report of maximum medical improvement and impairment;

(e) Whether the employee is able to return to work.

(2) The physician appointed to conduct the independent medical examination shall be selected on a systematic basis from a list of impartial physicians established by the director.

(3) The party requesting the independent medical examination shall pay the fee charged by the physician for such examination.

(4) A request to review a physician's final report of maximum medical improvement and impairment must be made within twenty days of the appellant's receipt of such report. If the employee files such a request, he shall simultaneously send a copy of such request to the insurer or the employer, if self-insured. If the insurer or the employer, if self-insured, files such request, it shall simultaneously send





This section provides for an independent medical examination (IME) process to determine any one of five issues:

(a) Change in ATP;
(b) Whether the injury is job-related.
(c) Absent determination of MMI, whether MMI has been reached.
(d) With a physician's report of MMI, whether MMI has been reached; and
(e) Whether return to work is possible.

Procedure for appointing physician for IME is set forth in (2).

Party requesting the IME shall pay for it.

Review of report on MMI may be requested by the employee, the employer, or the insurer.

a copy of such request to the employee.

(5) The physician conducting the independent medical examination shall be immune from suit in any civil proceeding based upon any action taken in good faith within his scope and function under this section, if such physician has made a reasonable effort to obtain the facts of the matter as to which he acted and acted in the reasonable belief that the action taken was warranted by the facts. Such immunity shall extend to any person who participates in good faith in any proceeding conducted pursuant to this section.

(6) The division shall supply the physician conducting the independent medical examination with a copy of the record of the treatment the employee has undergone and, for a review of a physician's report of maximum medical improvement, a copy of the physician's report of maximum medical improvement and impairment. Such physician shall review such record and report and may, if necessary, conduct an actual physical examination of the employee.

(7) (a) In a review of the issue of whether the authorized treating physician should be changed, the reviewing physician may determine, and the director may order, a change in physician. The selection of a new authorized treating physician shall be made in the manner set forth pursuant to the provisions of section 8-49-102 (4).

(b) In a review of the issue of whether the employee's physical problem is due to job-related injury, the reviewing physician may determine, and the director may order, either





Immunity from suit is provided to the physician conducting the IME.

Reviewing physician obtains medical records and may conduct physical exam of employee.

The reviewing physician may determine, and the director may order:

(a) Change in ATP;
(b) Continuation or termination of medical benefits based on whether or not the physical problem is due to a job-related injury;
(c) and (d) That MMI has or has not been reached;
(e) That the employee is or is not able to return to work.

continuation or termination of medical benefits.

(c) In a review of the absence of a determination of maximum medical improvement, the reviewing physician may determine, and the director may by order affirm, that maximum medical improvement has been reached.

(d) In a review of the authorized treating physician's report of maximum medical improvement and impairment, the reviewing physician may determine, and the director may by order affirm, that maximum medical improvement has not been reached.

(e) In a review of the authorized treating physician's determination of whether the employee is able to return to work, the reviewing physician may determine, and the director may order, that the employee is or is not able to return to work, without prejudice to the right of either party to a hearing.

(f) In any review by a physician conducted pursuant to this section, the reviewing physician shall indicate the reasons for the determination.

(8) Any party dissatisfied with an order of the director made pursuant to this section may request a hearing pursuant to section 8-53-103.

(9) The report of the independent medical examination conducted by the reviewing physician and any resultant order of the director shall be admissible in evidence in any proceeding under the provisions of the "Workmen's Compensation Act of Colorado". The determination of the physician





A party dissatisfied with the Director's order may request a hearing.

An order of the reviewing physician is admissible in WC proceedings.

conducting the independent medical examination shall be entitled to a presumption of validity which may be overcome only by clear and convincing evidence.

8-49-104. Selection of authorized treating physician - responsibilities of authorized treating physician. (1) (a) The employer has the right to select the authorized treating physician who shall treat the employee under the provisions of articles 40 to 54 of this title. The authorized treating physician shall be a medical doctor or a doctor of osteopathy. Such selection shall be made prior to or at the time of the injury or as soon thereafter as the employer has notice of the employee's injury.

(b) In the absence of such selection under paragraph (a) of this subsection (1), the employee shall have the right to select his own authorized treating physician. Within ten days after such physician's initial examination or treatment of such employee, the physician shall notify the employer in writing that he has been selected as the employee's authorized treating physician. If such notification is not made, the division may order that any subsequent treatment provided by such physician shall not be reimbursable. The employee may designate only one physician under the provisions of this paragraph (b) to be his authorized treating physician. Any further change in authorized treating physician may be made only in keeping with other provisions of articles 40 to 54 of this title.

(c) (I) Upon written request to the insurer or employer,

Employer's right to select the authorized treating physician is stated. The ATP shall be a medical doctor or doctor of osteopathy. A chiropractor may not be selected as the ATP. If the employer does not select an ATP, the employee has the right to select.

Physician must notify the employer in writing that he has been selected as the ATP.

The employee may designate only one physician as the ATP.

if self-insured, the employee may procure permission to have a physician of his own choice become the authorized treating physician.

(II) (A) Within twenty days of its receipt of the request for the change, the insurer or employer, if self-insured, shall supply the employee with its written denial or approval of the employee's request for a change in authorized treating physician.

(B) If such request to the insurer or employer is neither approved nor denied within twenty days of the insurer's or self-insured employer's receipt of such request, the employer or insurer shall be deemed to have waived any objection thereto. The physician selected by the employee shall become the authorized treating physician. The employee shall then notify the insurer or employer, if self-insured, of such choice in writing.

On written request, employee may receive permission to have physician of his own choice. Approval or denial shall be given in 20 days or, if no response is received, the insurer's or employer's right to select shall be deemed to be waived.

(C) If such request to the insurer or employer is denied, the employee may apply to the division for its permission to have a physician of his own selection attend him as the authorized treating physician under section 8-49-105.

Employee may request of the division permission to have his own physician attend him or to have his own physician become the ATP.

(d) A provider of emergency care shall not become the authorized treating physician, unless such provider is specifically designated as the authorized treating physician by the insurer or employer, if self-insured, or by the employee under the provisions of paragraph (b) of this subsection (1).

A provider of emergency care shall not become the ATP.

(2) The authorized treating physician shall be

responsible for:

(a) The overall management of the medical treatment of the injured employee, including the initiation of all referrals to other health care providers and institutions;

(b) The development of a treatment plan for the injured employee and the monitoring of progress towards accomplishment of the treatment plan, including periodic review of the patient's current status and the treatment goals and methods;

(c) The determination of maximum medical improvement under section 8-51-102 or 8-51-103. Such determination shall be contained in a report that the authorized treating physician sends to the employee and to the insurer or employer, if self-insured.

(d) The review and approval or disapproval of emergency medical care pursuant to section 8-49-104 (1) (c).

(3) The performance of any authorized treating physician with respect to the provision of medical treatment and with respect to the provision of medical case management services shall be subject to the utilization review process described in section 8-49-102 and to the appeal to the division described in section 8-49-105 (1). While the authorized treating physician may make referrals to other practitioners for additional treatment, this does not change his designation as authorized treating physician. The designation of authorized treating physician is subject to change pursuant to other provisions of articles 40 to 54 of this title.

8-49-105. Eligibility for payment. (1) The following

The duties of authorized treating physicians are enumerated. Provides stronger mechanisms for medical case management by the ATP.

The ATP is responsible for the determination of maximum medical improvement.

The review and approval of disapproval of emergency care is one of the duties of the ATP.

The performance of an ATP is subject to utilization review.

A change in the authorized treating physician could be ordered under the process of utilization review.

are eligible for payment under the provisions of articles 40 to 54 of this title and shall be compensated in accordance with the payment for services authorized by the medical fee schedule established pursuant to section 8-49-101 (3):

(a) The authorized treating physician;

(b) Any provider of medical services to whom the employee is referred by the authorized treating physician, including a provider of chiropractic care;

(c) Any provider who supplies medical treatment to the injured employee in an emergency that is related to the employee's on-the-job injury when an authorized treating physician has not been designated or is otherwise unavailable if after such care is rendered it is reviewed and approved by the authorized treating physician. The injured employee shall return to treatment by the authorized treating physician as soon as possible after the rendering of emergency care.

(d) Any provider who provides medical treatment that is related to the on-the-job injury and that is reasonably necessary to the injured employee's physical well-being prior to the designation of an authorized treating physician.

(2) An employer or insurer shall not be liable for treatment provided pursuant to article 41 of title 12, C.R.S., unless such treatment has been prescribed by the authorized treating physician.

8-49-106. Request to division for own physician - examination requested by insurer or employer or division - presence of employee's physician - refusal to be examined -



Providers are eligible for payment. Payment is not required unless prescribed by the ATP (subsection (2)).

testimony of physicians - waiver of privilege. (1) Upon the proper showing to the division, the employee may procure its permission at any time to have a physician of his own selection attend him or to become the authorized treating physician, 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 such treatment to receive such fees therefor under the medical provisions of articles 40 to 54 of this title as may be fixed by the division.

(2) If in case of injury the right to compensation under articles 40 to 54 of this title exists in favor of an employee, upon the written request of his employer or the insurer carrying such risk, he shall submit himself from time to time 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 he shall likewise submit to examination from time to time by any regular physician selected and paid for by the division.

(3) The employee shall be entitled to have a physician, provided and paid for by such 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 such employee present at any such examination. The employee shall also be entitled to receive from the examining physician or chiropractor a copy of any report which said physician or





The employee shall submit himself to physical examination or vocational evaluation provided by an employer or the insurer or by a physician selected by the division.

The employee has right to have his own physician (or chiropractor when appropriate) present at physical examination.

chiropractor makes to the employer, insurer, or division upon said examination, said copy to 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 him upon the same terms and conditions and at the same time the reports are furnished by the physician to the employer. The employer shall be entitled to receive reports from any physician or chiropractor selected by the employee to treat or examine him 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.

(4) So long as the employee, after written request by the employer or insurer, refuses to submit himself to medical examination or vocational evaluation or in any way obstructs the same, his right to collect, or to begin or maintain any proceeding for the collection of, compensation shall be suspended. If he 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 8-46-107 (1) or in any way obstructs the same, his 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 his recovery or refuses to submit to such medical or surgical treatment or vocational evaluation as is reasonably essential





The employee's refusal to have a physical exam results in suspension of workmen's compensation benefits.

to promote his recovery, the director, in his discretion, may reduce or suspend the compensation of any such injured employee.

(5) 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 him for the purpose of treatment and which are unnecessary to a proper understanding of the case.

Physicians or chiropractors having attended an employee may be required to testify before the division.

(6) Application for 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 8-49-102.

SECTION 6. 8-51-102, Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

8-51-102. Temporary total disability - maximum medical improvement - physician's final report. (1) In case of temporary disability of more than three days' duration, the employee shall receive sixty-six and two-thirds percent of his average weekly wages so long as such disability is total, not to exceed a maximum of eighty percent of the state average weekly wage per week.

(2) (a) Except where vocational rehabilitation is

offered and accepted as provided in section 8-51-107 (3), temporary total disability payments shall cease when the employee reaches maximum MEDICAL improvement ~~from medical care~~ or returns to work or is able to return to work or as otherwise determined by the director. MAXIMUM MEDICAL IMPROVEMENT SHALL BE DETERMINED BY THE AUTHORIZED TREATING PHYSICIAN DESIGNATED PURSUANT TO SECTION 8-49-103.

(b) 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.

SECTION 7. 8-51-103, Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

8-51-103. Temporary partial disability. In case of temporary partial disability, the employee shall receive sixty-six and two-thirds percent of the impairment of his earning capacity during the continuance thereof, not to exceed a maximum of eighty percent of the state average weekly wage per week. Temporary partial disability payments shall cease when the employee reaches maximum MEDICAL improvement ~~from medical care~~ or as otherwise determined by the director.



This section states that temporary total disability benefits cease when maximum medical improvement is reached or when the employee returns to work.

MAXIMUM MEDICAL IMPROVEMENT SHALL BE DETERMINED BY THE AUTHORIZED TREATING PHYSICIAN DESIGNATED PURSUANT TO SECTION 8-49-103.

SECTION 8. 8-51-110 (6), Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

8-51-110. Examination - refusal - personal responsibility - physicians to testify and furnish results. (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 8-49-102.~~ ALL MEDICAL INFORMATION REGARDING THE EVALUATION, TREATMENT, AND PROGRESS OF AN INJURY GIVING RISE TO A CLAIM, INCLUDING THE EXISTENCE OF ANY PREEXISTING CONDITION WHICH DIRECTLY AFFECTS THE TREATMENT AND SEVERITY OF THE INJURY, SHALL BE MADE AVAILABLE TO THE INSURER UPON WRITTEN REQUEST.

The insurer is entitled to all relevant medical information regarding the injury upon written request. In current law, the only way to acquire such information is through the utilization review process.

SECTION 9. 8-54-105 (2) (c), 1986 Repl. Vol., is amended to read:

8-54-105. Board to fix rates - manager to administer rates - sue and be sued - contracts - care of injured. (2) (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 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--manager--may--determine--that--the~~

This section allows insurers and self-insured employers to contract for medical services and supplies.

~~contracting--of--such--extra--medical,-surgical,-hospital,-and nursing-services-and-supplies-might-tend-to-reduce-the--period of--disability--for--which--said--fund-would-be-liable-for-the payment-and-compensation.~~

SECTION 10. Repeal. 8-51-110 (4), Colorado Revised Statutes, 1986 Repl. Vol., is repealed.

SECTION 11. Effective date - applicability. This act shall take effect July 1, 1989, and shall apply to all claims and proceedings under the "Workmen's Compensation Act of Colorado" occurring on or after said date.

SECTION 12. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

## Bill 3 - SB 179

## Resolution of Disputes Arising Under the Workmen's Compensation Act of Colorado

Changes recommended in Bill 3 include provisions stating that legislative intent is that neither the employee's nor the employer's side be favored in workmen's compensation cases, that the time limits for filing cases be reduced, that procedures for mediation be expanded, and that administrative law judges be subject to performance review.

### Rule of Liberal Construction

The legislative declaration repeals the rule of liberal construction and states instead that legislative intent is that workmen's compensation cases be decided on their own merits, not in favor of either the employee or employer. The primary intent of this provision is to overturn existing case law which has favored employees in close decisions.

### Time Limitations on Filing Claims

This provision reduces the time limitations for filing certain workmen's compensation claims from three years to two years after the injury occurs. Filing of occupational disease claims is reduced from five to three years.

### Mediation

This section creates a mediation process for the handling of claims in the Division of Labor. The main purpose of this proposal is to have a non-adversarial method of solving claims without adjudication. Presently, if there are disputes over the provision of workmen's compensation, the parties must go through a lengthy hearing process. This review process is extremely backlogged, and disputants may have to wait from six to nine months for a hearing. The Division of Labor would like to clear smaller cases out of the system in a more timely and efficient manner.

### Performance Review of the Division of Administrative Hearings

This final section provides for a performance review by the General Assembly of the Division of Administrative Hearings every four years. The review will include length of time taken to make decisions and the overall performance of administrative law judges (ALJs). The committee's intent is to increase the accountability of ALJs.

-- Including the authorized treating physician (ATP) under the provisions of utilization review;

-- Providing for the appointment of an ATP, including:

  - Selecting the ATP;

  - Removing chiropractors from the definition of ATP;

  - Providing stronger mechanisms for case-management through the ATP; and

  - Allowing an employee to select or request that his physician become the ATP. (Section 8-49-103)

-- Implementing an independent medical examination (IME) process and listing issues that may be reviewed through the IME, including:

  - Change of the authorized treating physician;

  - Whether maximum medical improvement has been reached;

  - Questions of whether the injury was work related; and

  - Whether an employee is able to return to work. (Section 8-49-102.5)

-- Stating that maximum medical improvement determination is made by the ATP, and that temporary total and temporary partial benefits shall cease when MMI is reached.

Release of Medical Records

The final section of the bill provides that medical information regarding the evaluation, treatment, and progress of an injury covered under workmen's compensation insurance shall be made available to the insurer upon written request. Currently, the only way for an insurer to get information relevant to a claimant's medical treatment is through utilization review, which is a lengthy process and one that is relatively expensive to the system.

Bill 3 - SB 179

BY SENATORS Allard and Powers;
also REPRESENTATIVE Masson.

A BILL FOR AN ACT

CONCERNING THE RESOLUTION OF DISPUTES ARISING UNDER THE "WORKMEN'S COMPENSATION ACT OF COLORADO".

---

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments which may be subsequently adopted.)

States that it is the intent of the general assembly that the "Workmen's 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. Specifies that it is the intent of the general assembly that workmen's compensation cases shall be decided on the merits and that the rule of "liberal construction" shall not apply to such cases. Declares that the workmen's compensation laws are not remedial in any sense and are not to be given a broad liberal construction in favor of either the employee or the employer.

Decreases the amount of time in which a claimant under the workmen's compensation statutes must file notice claiming compensation under the provisions of such statutes.

Provides that disputes arising under the "Workmen's Compensation Act of Colorado" may be resolved through mediation under a program established by the division of labor. Authorizes the director of the division of labor in the department of labor and employment to adopt rules and regulations to implement the program. Makes such mediation proceedings confidential and prohibits mediators from testifying about information obtained thereby.

Authorizes the director of the division of labor to promulgate rules and regulations establishing time schedules for the hearing of workmen's compensation cases by administrative law judges.

Requires the general assembly to provide for the conduct of performance reviews of the division of administrative hearings with respect to matters arising under the "Workmen's Compensation Act of Colorado" beginning in 1989 and not less than every four years thereafter. Specifies some of the topics that shall be included in such review.

---

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

SECTION 1. Article 40 of title 8, Colorado Revised Statutes, 1986 Repl. Vol., is amended BY THE ADDITION OF A NEW SECTION to read:

8-40-101.5. Legislative declaration. It is the intent of the general assembly that the "Workmen's 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 the employers. It is the specific intent of the general assembly that workmen's compensation cases shall be decided on their merits and that the rule of "liberal construction" shall not apply in such cases. The workmen's compensation system in Colorado is based on a mutual renunciation of common law rights and defenses by employers and employees alike. Accordingly, the general assembly hereby declares that the workmen's compensation laws are not remedial in any sense and are not to be given a broad liberal construction in favor of the employee on the one hand or of the employer on the other hand.

SECTION 2. 8-52-105 (2) and (3), Colorado Revised Statutes, 1986 Repl. Vol., are amended to read:

8-52-105. Notice of injury - time limit. (2) The

This section repeals the rule of liberal construction, stating that legislative intent is that workmen's compensation cases be decided on their own merits, not in favor of either the employee or employer. The interpretation of provisions of the workmen's compensation law should be neutral, not favoring one side or the other.

director 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 54 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 ~~three~~ 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 ~~five~~ 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 his dependents in the event of his death until the required report has been filed with the division.





The statute of limitations for filing workmen's compensation claims, exluding certain occupational disease claims, is reduced from 3 years to 2 years. Also, the delayed filing of claims, if established to the satisfaction of the director that a reasonable excuse exists for failure to file, is reduced from 5 to 3 years.

(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~~ THREE years after the commencement of disability or death, a notice claiming compensation is filed with the division.

Filing of occupational disease claims is reduced from 5 to 3 years.

SECTION 3. Article 53 of title 8, Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW SECTION to read:

8-53-105.5. Mediation. (1) As used in this section, unless the context otherwise requires:

Section 4 creates a mediation process for the handling of claims in the Division of Labor. The program is to provide a simple, non-adversarial method for the resolution of workmen's compensation disputes.

(a) "Mediation" means a process through which parties involved ~~in~~ a dispute concerning matters arising under articles 40 to 54 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.

(b) "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.

(2) Any person involved in a dispute arising under articles 40 to 54 of this title may request mediation services from the division.

(3) 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 54 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 54 of this title.

(4) 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 54 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.

SECTION 4. Article 53 of title 8, Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW SECTION to read:

8-53-130. Time schedule for hearings - establishment. The director shall establish by rule and regulation a time schedule for hearings by administrative law judges. Such time schedule shall establish the length of time within which specified hearings shall be held by administrative law judges in workmen's compensation cases. Extensions of time may be

granted by an administrative law judge upon written request by any party to the case. Such extensions may be granted when the interests of all parties will be served.

SECTION 5. 24-30-1003, Colorado Revised Statutes, 1988 Repl. Vol., is amended BY THE ADDITION OF A NEW SUBSECTION to read:

24-30-1003. Administrative law judges - appointment - qualifications - performance review of division. (3) Commencing in the 1989 legislative session and not less than every four years thereafter, the general assembly shall provide for the conduct of a performance review of the division of administrative hearings with respect to the services such division provides to the division of labor in the department of labor and employment to hear matters arising under the "Workmen's Compensation Act of Colorado", articles 40 to 54 of title 8, C.R.S. Such review shall include, but not be limited to, the following topics: The time elapsed before decisions are rendered by such administrative law judges; the number of decisions that are either remanded or reversed upon appeal to the court of appeals; the workload or number of cases assigned to each administrative law judge; and the public perception of the quality of the performance of the division of administrative hearings with respect to matters arising under the "Workmen's Compensation Act of Colorado".

SECTION 6. Effective date - applicability. This act shall take effect July 1, 1989, and section 2 shall apply to all injuries subject to the "Workmen's Compensation Act of

This section provides for legislative review of the division of administrative hearings every four years, and sets the criterion for evaluating the performance of administrative law judges.

Colorado" which occur on or after said date.

SECTION 7. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

## Bill 4 - HB 1311

### Employer Notifications from Insurers Under the Workmen's Compensation Act of Colorado

The purpose of this bill is to improve communication between insurance companies and employers.

#### Repayment for Job Misclassification Errors

This provision authorizes insurance companies to require repayments for misclassifications of jobs under the terms of coverage.

#### Employer Notification of Insurance Cancellation

This section requires insurance companies to notify employers when their workmen's compensation insurance is being cancelled.

#### Notice of Rate Change for Classification

Insurance companies are required to notify employers when rate changes occur in their workmen's compensation insurance classifications.

Bill 4 - HB 1311

BY REPRESENTATIVES Irwin and Masson;
also SENATOR Allard.

A BILL FOR AN ACT

CONCERNING INSURANCE COVERAGE UNDER THE "WORKMEN'S COMPENSATION ACT OF COLORADO", AND, IN CONNECTION THEREWITH, PROVIDING FOR REPAYMENTS FROM EMPLOYERS TO INSURERS FOR JOB MISCLASSIFICATIONS AND REQUIRING CERTAIN NOTIFICATIONS TO EMPLOYERS FROM INSURERS IN THE CASE OF CANCELLATIONS OR CHANGES IN RATES BY CLASSIFICATION.

---

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments which may be subsequently adopted.)

Authorizes an insurance company to require repayments for misclassifications of jobs under the terms of coverage for workmen's compensation for the term of the contract plus an additional reasonable amount of time only.

Requires insurance companies to notify the division of labor in the department of labor and employment, the employer, and the employer's agent or representative if the employer's workmen's compensation insurance is being cancelled. Requires advance written notice of such cancellation except under certain specified circumstances.

Requires insurance companies to notify an employer when the rate by classification for the employer's workmen's compensation insurance is changed.

---

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

SECTION 1. Article 44 of title 8, Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended BY THE ADDITION OF THE FOLLOWING NEW SECTIONS to read:

8-44-113. Repayments for misclassifications. Every insurance carrier authorized to transact business in this state, including the state compensation insurance authority, which insures employers against liability for compensation under the provisions of articles 40 to 54 of this title, is authorized to charge and collect any amount of money which should have been included in premiums paid by an insured but were not 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.

This section authorizes an insurance company to require repayments for misclassifications of jobs under the terms of coverage.

8-44-114. Notice of cancellation. Every insurance carrier authorized to transact business in this state, including the state compensation insurance authority, which insures employers against liability for compensation under the provisions of articles 40 to 54 of this title shall notify the division, any employer insured by the carrier or the authority, and any agent or representative of such employer, if applicable, by 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 unless the cancellation is due to one or more of the following reasons: Fraud; material misrepresentation; nonpayment of premium; or any other reason approved by the

Insurance companies are required to notify employers when their workmen's compensation insurance is being cancelled.

commissioner of insurance.

8-44-115. Notice of change in rate by classification. Every insurance carrier authorized to transact business in this state, including the state compensation insurance authority, which insures employers against liability for compensation under the provisions of articles 40 to 54 of this title, shall notify employers insured by the carrier or the authority by mail of a change in the rate by classification to be paid by such employer. If rate approval occurs forty-five or more days prior to the effective date of the change, such notice shall be sent at least thirty days prior to the effective date of the rate change or, if rate approval occurs less than forty-five days prior to the effective date of the change the notice shall be sent within fifteen days after such approval is granted.

SECTION 2. Effective date - applicability. This act shall take effect July 1, 1989, and shall apply to contracts for workmen's compensation insurance entered into or renewed on or after said date.

SECTION 3. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Insurance companies are required to notify employers when the rate for their workmen's compensation insurance classification changes.

## Bill 5 - HB 1137

### Personal Liability of Corporate Officers and Shareholders for Failure to Secure Insurance as Required under the Workmen's Compensation Act of Colorado

This bill establishes the right of an injured worker to collect workmen's compensation awards from officers and shareholders of corporations which are not covered by a worker's compensation policy at the time of a worker's on-the-job injury. Remedies under the act are extended to include personal liability of corporate officers and shareholders if the corporate assets are not sufficient or are not available to pay an award.

Instances have been reported of corporations failing to carry workmen's compensation insurance, and then, after a claim, filing for dissolution or bankruptcy, or reorganizing to avoid payment of debts. The statutes contain penalties for failure to carry workmen's compensation insurance, but the injured worker presently has no means of collection if a company chooses to evade its responsibilities by some type of reorganization.

The bill has the effect of allowing an injured employee to pierce the corporate veil of employers who fail to obtain workmen's compensation insurance.

Bill 5 - HB 1137

BY REPRESENTATIVE Irwin

A BILL FOR AN ACT

CONCERNING PERSONAL LIABILITY OF CORPORATE OFFICERS AND SHAREHOLDERS FOR FAILURE TO SECURE INSURANCE AS REQUIRED UNDER THE "WORKMEN'S COMPENSATION ACT OF COLORADO".

---

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments which may be subsequently adopted.)

Provides for personal liability of corporate officers and shareholders in corporations which fail to obtain insurance as required by the "Workmen's Compensation Act of Colorado".

---

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

SECTION 1. 8-44-107, Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

8-44-107. Default of employer - additional liability. (5) The officers and shareholders of any corporation which is subject to the provisions of articles 40 to 54 of this title and which, at the time of injury, has not complied with the insurance provisions of said articles, or has allowed its

insurance to terminate, or has not effected a renewal thereof, shall be personally liable to an injured employee if corporate assets are insufficient or unavailable to pay any award awarded under said articles. Such personal liability shall extend to the additional penalties imposed under subsections (1), (2), (3), and (4) of this section.

SECTION 2. Effective date. This act shall take effect July 1, 1989.

SECTION 3. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Injured workers are given remedies to collect workmen's compensation awards from officers and shareholders of corporations which fail to obtain workmen's compensation insurance, even if the company has sought reorganization to avoid payment of debts.

Bill 6 - HB ~~1294~~ 1313

Unemployment Insurance under the
Colorado Employment Security Act

There are two distinct parts to this bill:

(a) Technical amendments (sections 1, 2, and 3); and

(b) The state unemployment insurance trust fund (sections 1 and 4).

Technical amendments, with one substantive amendment

The first change corrects a reference to federal law. The definition of "crew leader" in Colorado law contains a reference to the federal Farm Labor Contractor Registration Act which no longer exists. The correct reference should be to the federal Migrant and Seasonal Agricultural Worker Protection Act. (8-70-103 (10) (f.3) (II) (A), C.R.S.)

Cafeteria plan benefits are also addressed in the first section. As of January 1, 1987, the Federal Unemployment Tax Act provides that the definition of wages is not to include payments to or made on behalf of an employee or his beneficiary for a cafeteria plan. The bill conforms Colorado law with federal law to specifically exclude cafeteria plan benefits from the Colorado definition of wages for unemployment insurance benefits. (8-70-103 (22) (b) (IV) (H), C.R.S.)

Section 2 addresses penalties and assessments. Colorado law provides that employers who fail or refuse to furnish job separation and other pertinent information shall be assessed a penalty of $25.00, but that this penalty may be overcome by a showing of good cause. Changing the word "shall" to "may" would provide administrative flexibility for the division but would still allow for administration of the penalty where appropriate. (8-73-107 (1) (h), C.R.S.)

Two changes in eligibility requirements are also contained in section 2:

(a) Substantive provision: A person receiving unemployment benefits and seeking benefits for a subsequent benefit period is required to be employed in work for which he has received payment of at least $2,000. (8-73-107 (2), C.R.S.)

(b) Technical change: Determining whether the above requirement for employment has been satisfied has been difficult for the division, particularly when the claimant has received money for doing odd-jobs for a relative, for example. The bill requires that wages received in order to requalify for unemployment insurance be earned from "covered" employment, meaning insured employment, as a means of increasing the

accuracy in determining benefit payments. (8-73-107 (1) (h), C.R.S.)

The statute on voluntary "quits for health" is clarified in section 3. In cases involving a worker quitting a job for reasons of health, the statute lists several criteria for receiving benefits, including that a person be able and available for work at the time of filing a claim for benefits. Eligibility requirements are specified in another section of the law and include that a person be able and available for work and be actively seeking employment. Striking the word "available" in the statute pertaining to benefit awards will eliminate confusion resulting from the word appearing in two sections of the statutes and will reduce the possibility of "able and available" being used in appeals relating to voluntary quitting for health reasons. (8-73-108 (4) (b) (I), C.R.S.)

Section 3 also contains a provision allowing for an employee receiving unemployment compensation to be hired or rehired for up to a ten day period before the employee is eligible to receive new unemployment insurance benefits. This will allow former employees to be rehired on a temporary basis during emergency situations.

Finally, a reference to student learner programs is deleted because the division is not certain of its intent or the meaning of the term. The present law provides that an individual will not be denied benefits for quitting employment in a program of occupational education, but this reference was considered unnecessary. This paragraph is repealed in section 5 of the bill.

Unemployment Trust Fund

The solvency of the Colorado unemployment insurance trust fund needs continuing review to assure adequate resources in the fund in case of an economic downturn or unexpected layoffs with resulting high unemployment. Bill 6 provides a mechanism for increasing unemployment tax collections by extending the taxable wages on which the tax is based from the first $10,000 of payroll to the first $11,000 of payroll. (Section 1) The tax change is based on a triggering mechanism that will implement the increase if the fund balance is not at least $350 million as of June 30, 1989. The fund balance will almost certainly not reach that threshold.

The bill is similar in format to legislation enacted in 1986 that increased the taxable wage rate from $8,000 to $9,000 in 1987 and from $9,000 to the current $10,000 in 1988. The change could result in a fund reserve of $420.6 million by the end of 1993, a projection of about $65 million more in the fund than if no change were made. If the taxable wage base were to remain at $10,000, the trust fund will have an estimated reserve of $355.6 million by the end of 1993. These projections are from the Division of Employment and Training, Department of Labor and Employment.

Bill 6 - HB ~~1304~~ 1313

BY REPRESENTATIVES Masson and Reeser;
also SENATOR Traylor.

A BILL FOR AN ACT

CONCERNING THE INDUSTRIAL CLAIM APPEALS PANEL.

---

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments which may be subsequently adopted.)

Authorizes an increase in the number of appeals examiners on the industrial claim appeals panel.

Authorizes the industrial claim appeals panel to make findings of fact when reviewing unemployment compensation appeals. Allows such panel to utilize its experience, technical competence, and specialized knowledge in the evaluation of the evidence presented. Specifies that the "State Administrative Procedure Act" shall not apply to industrial claim appeals panel review.

Authorizes decisions of the industrial claim appeals panel to be made by two appeals examiners. Provides that, in the event of a disagreement between such two 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.

---

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

SECTION 1. 8-1-102 (1), Colorado Revised Statutes, 1986 Repl. Vol., is amended to read:

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 ~~shall~~ MAY consist of ~~three~~ 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 ~~his~~ powers ~~and~~ perform ~~his~~ 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.

SECTION 2. 8-74-104 (2), Colorado Revised Statutes, 1986 Repl. Vol., is amended to read:

8-74-104. Industrial claim appeals office review. (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. THE INDUSTRIAL CLAIM APPEALS PANEL MAY MAKE FINDINGS OF FACT BASED ON SUCH PREVIOUSLY SUBMITTED EVIDENCE.

SECTION 3. 8-74-106 (1) (f) (II), Colorado Revised Statutes, 1986 Repl. Vol., is amended to read:

8-74-106. Time limits and procedures for appeal within the division. (1) (f) (II) Evidence and requirements of proof shall conform, to the extent practicable, with those in





This section increases the number of examiners on the industrial claims appeals panel. The Department of Labor and Employment would increase the number from 3 to 4 initially, reserving the 5th member until the workload warrants another member. The 4th member will be paid by federal unemployment insurance administration and this member would work exclusively on UI.

This section specifically provides that the panel may make findings of fact on UI cases, which will clarify present law and will assist the panel in reaching closure in cases heard.

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 AND THE INDUSTRIAL CLAIM APPEALS PANEL may utilize ~~its~~ THEIR 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, INDUSTRIAL CLAIM APPEALS PANEL REVIEW, and court review under this article. However, the rule-making provisions of section 24-4-103, C.R.S., shall apply to this article.

SECTION 4. Article 74 of title 8, Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW SECTION to read:

8-74-110. Decisions of industrial claim appeals panel. Decisions and final 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.

SECTION 5. Effective date - applicability. This act shall take effect July 1, 1989, and shall apply to all decisions or orders of the industrial claim appeals panel occurring on or after said date.

SECTION 6. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

-88-

This section provides a revised procedure for the panel in reaching decisions. Decisions and final orders will be made by two panel members, and, if they disagree, a third panel member would review the case. The final order is to reflect the collective decision of all three examiners.

Presently, all three members of the panel must review the specifics of each case, so this bill should reduce the backlog of cases before the panel.

Bill 7 - HB ~~1319~~ 1304

## Industrial Claim Appeals Panel

Three recommendations are submitted concerning the Industrial Claim Appeals Panel, all relevant to unemployment insurance, and one also pertaining to workmen's compensation. There are significant delays in unemployment insurance appeals hearings. The backlog of four to six months is due to the high number of unemployment insurance claim appeals, which reached 2,400 in 1987. An additional problem causing delays is that because of different statutory deadlines, workmen's compensation appeals often take precedence over unemployment insurance appeals. Colorado currently exceeds the federal deadlines for disposition of unemployment insurance appeals.

### Additional Appeals Examiners

In order to help solve these problems, the committee recommends authorizing the appointment of five industrial claim appeals examiners, an increase of two examiners. These positions would be paid for by federal funds for the administration of unemployment insurance. The department plans to fill only one of the two newly-authorized positions immediately. Filling the fifth position would depend on whether the panel is able to significantly reduce its existing backlog with four members. The position would remain vacant, but the department would not need to seek the General Assembly's approval in a few years to amend the law to provide for the fifth examiner.

### Procedures of the Panel

With the addition of the extra panel member or members, a revised procedure for making panel decisions is recommended. Instead of having a majority of the members deciding each case, whether for workmen's compensation or unemployment insurance, Bill 7 provides that decisions and final orders of the panel may be made by two of the appeals examiners. If the two examiners disagree, a third examiner shall review the case, and the decision and final order shall reflect the collective decision of all of the appeals examiners.

### Findings of Fact by the Panel

The third recommendation is that the appeals panel be specifically authorized to make findings of fact when reviewing unemployment insurance appeals. A recent decision of the Colorado Court of Appeals, Clark v. Colorado State University (762 P.2nd 698 (Colo. App. 1988)), held that the panel did not have such authority and, lacking this power, the panel is restricted in its ability to reach closure in cases heard. When the panel was established in 1987, the intent was for the panel to make as many final decisions as possible, to avoid further appeal to the Court of Appeals or the necessity of having cases remanded to the unemployment insurance hearing officers for more fact-finding.

A second change raises the maximum unemployment insurance tax rate from 5.4 percent to 5.5 percent and, in 1991, to 5.6 percent. (Section 4) This change primarily impacts employers who have benefit amounts paid out larger than their taxes paid in. In other words, there are "negative excess" employers who are paying unemployment insurance tax at the top bracket, but the benefits paid to thier former employees from the state trust fund are in excess of the amount the employers pay into the fund. The negative excess employers whose unemployment insurance taxes will be increased. One purpose of this change is to create an incentive for employers with negative balances to bring their accounts into better balance and to reduce their subsidy from the fund. (Section 4)

The tax recommendations are submitted as a vehicle to provide increased security for fund solvency. In 1982 and 1983, Colorado experienced a fund deficit requiring the borrowing, with interest, of federal monies for the fund. The state's previous experience shows that tax changes to increase reserves in the fund need to be considered with greatest care in the 1989 session in order to avoid fund insolvency in the future.

Bill 7 - ~~HB 1313~~ 1304

BY REPRESENTATIVES Reeser, Masson, and Dyer;
also SENATOR Allard.

A BILL FOR AN ACT

CONCERNING UNEMPLOYMENT INSURANCE UNDER THE "COLORADO EMPLOYMENT SECURITY ACT".

---

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments which may be subsequently adopted.)

Corrects a reference to a federal act for purposes of determining whether a crew leader is the employer of an individual who is furnished by the crew leader to perform services is agricultural labor for another person. Provides that the term "wages" shall not include any payment to, or on behalf of, an employee or his beneficiary under a cafeteria plan. Allows the division of employment and training to impose a twenty-five-dollar fine on employers who fail to file required reports instead of requiring the imposition of such fine. Clarifies that an individual must have been employed in insured work before he or she is eligible for unemployment insurance benefits during a subsequent benefit year. Deletes requirements relating to separations from employment for health reasons from consideration of the award of benefits. Repeals the statute that provided that an individual may not be denied benefits for quitting employment to participate in a student-learner program.

Increases the amount of taxable wages subject to the "Colorado Employment Security Act" if the amount of money in the trust fund decreases below a specified amount.

Increases the amount of wages a person must earn in insured work before he qualifies for unemployment insurance benefits in a subsequent benefit period.

Specifies that, if the last separation for an employee is one from which a determination has been made, then the employee must work a specified number of days before a full

award may be granted on the most recent separation.

Increases the tax rates under the "Colorado Employment Security Act".

---

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

SECTION 1. 8-70-103 (10) (f.3) (II) (A), (20.4), and (22) (b) (IV) (G), Colorado Revised Statutes, 1986 Repl. Vol., are amended, and the said 8-70-103 (22) (b) (IV) is further amended BY THE ADDITION OF A NEW SUB-SUBPARAGRAPH, to read:

8-70-103. Definitions. (10) (f.3) (II) (A) If such crew leader holds a valid certificate of registration under the ~~"Farm Labor Contractor Registration Act of 1963"~~ "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

(20.4) "Taxable wages" means those wages paid an individual employee during a calendar year on which the employer of that employee is required to pay tax 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 taxes required to be paid into a state unemployment fund. For the calendar year commencing January 1, 1983, the taxable wage is the first seven thousand dollars paid an individual. For the calendar years commencing January 1, 1984, 1985, and 1986, the taxable wage is the first eight thousand dollars paid an individual. For the calendar year

Technical change. This section corrects a reference to federal law.

Defines "taxable wage" for the purposes of UI.

commencing January 1, 1987, the taxable wage is the first nine thousand dollars paid an individual. Commencing ~~January 1, 1988~~ JANUARY 1, 1990, and each calendar year thereafter, the taxable wage will be the first ~~ten~~ ELEVEN thousand dollars paid an individual, unless the trust fund resources available for benefits are more than three hundred fifty million dollars, as of ~~June 30, 1987~~, JUNE 30, 1989, in which case, commencing ~~January 1, 1988~~ JANUARY 1, 1990, and each calendar year thereafter, the taxable wage will be the first ~~nine~~ TEN thousand dollars paid an individual.

(22) (b) (IV) (G) 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

(H) Under a cafeteria plan (within the meaning of 26 U.S.C. section 125);

SECTION 2. 8-73-107 (1) (h) and (2), Colorado Revised Statutes, 1986 Repl. Vol., are amended to read:

8-73-107. Eligibility conditions - penalty. (1) (h) He has furnished the division with separation and other reports containing such information deemed necessary by the division to determine his eligibility for benefits, but this provision shall not apply if he proves to the satisfaction of the division that he 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 regulations pursuant





Increases the amount of taxable wages subject to the Colorado Employment Security Act if the amount of money in the trust fund decreases below a specified amount.

Technical change. Cafeteria plan benefits are optional benefits an employee receives based on individual needs (e.g., child day-care). The IRS does not consider these benefits as wages. This section conforms Colorado law with federal law in regard to cafeteria plan benefits. The definition of wages for UI is not to include payments to or made on behalf of an employee or his beneficiary for a cafeteria plan and this section accomplishes this change.

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 deemed an interested party to any such determination. 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, ~~shall~~ MAY be assessed a penalty of twenty-five dollars, which shall be collected in the same manner as taxes due under articles 70 to 82 of this title.

(2) An individual who has received compensation during his benefit year is required to have had ~~work~~ EMPLOYMENT since the beginning of such year and to have received at least ~~one~~ TWO thousand dollars as remuneration for such ~~work~~ EMPLOYMENT in order to qualify for compensation in his next benefit year.

SECTION 3. 8-73-108 (3) (a) and (4) (b) (I), Colorado Revised Statutes, 1986 Repl. Vol., are amended to read:

8-73-108. Benefit awards. (3) (a) (I) Separations since the beginning of the base period, including the claimant's most recent separation, but excluding other separations from employment for which wages were paid since the end of the base period and prior to the most recent employment, unless such employment was performed for an employer who is also a base period employer, shall be considered. In the event that a claimant has more than one separation from the same employer in the base period or in the





Technical change. Eliminates a mandatory fine for employers who fail to report information concerning eligibility of an employee for UI benefits. The fine is made optional in this section.

Substantive change. Increases the amount of pay a person must have received from $1,000 to $2,000 to qualify for UI benefits in his next benefit year.

benefit year, or a combination thereof, the most recent separation from such employer shall be controlling as to the determination of eligibility for remaining benefit credits attributable to that employer; except that attributable benefits previously reduced because of a disqualification will become available when a full award is granted on the most recent separation.

(II) IF THE LAST SEPARATION FOR AN EMPLOYEE IS ONE FOR WHICH A DETERMINATION HAS BEEN MADE, THEN THE EMPLOYEE MUST WORK TEN DAYS BEFORE A FULL AWARD MAY BE GRANTED ON THE MOST RECENT SEPARATION.

(4) Full award. (b) (I) The health of the worker is such that he is separated from his employment ~~and must refrain from working for a period of time; but at the time of filing his claim he is able and available for work; or the worker's health is such that he must seek a new occupation;~~ or the health of the worker, his spouse, or his dependent child is such that the worker must leave the vicinity of his employment; except that, if the health of the worker or that of his spouse or his 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 his employer of the condition of his health or the health of his spouse or dependent child prior to his separation from employment; substantiated the cause by a competent written medical statement issued prior to the date of his separation from employment when so requested by the

This provision will permit an employee to be rehired for a short period of time, for example, to fill in temporarily during an emergency shortage and not have that time count as employment for additional UI benefits.

Technical change. Changes the statute to provide UI for eligible persons on the basis of being able to return to work, not on the basis of when they file for UI.

Striking the words "and available" is recommended to eliminate confusion which has resulted from these words appearing in both the section on benefits (this section) and the section on eligibility. Also, the possibility of "able and available" being used in appeals relating to voluntary quitting for health reasons will be reduced.

employer prior to the date of his separation from employment or within a reasonable period thereafter; submitted himself or his spouse or his dependent child to an examination by a licensed practicing physician selected and paid by the interested employer when so requested by the employer prior to the date of his separation from employment or within a reasonable period thereafter; and submitted himself, his spouse, or his dependent child to an examination by a licensed practicing physician selected and paid by the division when so requested by the division. Award of benefits pursuant to this subparagraph (I) shall include benefits to a worker who, either voluntarily or involuntarily, is separated from employment because of pregnancy and who otherwise satisfies the requirements of this subparagraph (I).

SECTION 4. 8-76-103 (3) (b) (II) (A) and (3) (b) (II) (C), Colorado Revised Statutes, 1986 Repl. Vol., are amended to read:

8-76-103. Future rates based on benefit experience. (3) (b) (II) (A) The total of all an employer's taxes paid on his own behalf on or before thirty-one days immediately after the computation date and the total benefits which were chargeable to his account and were paid before the computation date, with respect to weeks, or any established payroll period of unemployment, beginning prior to the computation date, shall be used to compute his tax rate for the ensuing calendar year in accordance with the table set forth in either sub-subparagraph (B) or (C) of this subparagraph (II); except





This tax change will raise the maximum UI tax rate from 5.4% to 5.5%, and, in 1991, to 5.6%. The impact would be placed on employers who have benefit amounts paid out larger than UI taxes paid in, which would otherwise put them in a tax bracket higher than allowed under present law.

that, for rate year ~~1984~~ 1990, the negative excess employer rate schedule shall be effective for a maximum of ~~.045~~ .055 for employers with a negative excess of minus ~~seventeen~~ TWENTY-SEVEN percent or more, and for rate years ~~1985~~ 1991 and thereafter, the maximum rate for negative excess employers shall be ~~.054~~ .056 as shown in the table set forth in sub-subparagraph (C) of this subparagraph (II). "Percent of excess", in both said tables, means the percentage resulting from dividing the excess of taxes paid over benefits charged by the average taxable 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".

(C)

TAX RATE SCHEDULE - NEGATIVE EXCESS EMPLOYERS

Fund Level in Millions of Dollars

| Percent of Excess | 350 Million Plus | 308 to 350 Million | 266 to 308 Million | 238 to 266 Million | 210 to 238 Million | 182 to 210 Million | 154 to 182 Million | 126 to 154 Million | 98 to 126 Million | 70 to 98 Million | More than Zero to 70 Million | 0 or Deficit |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| -0 | .028 | .028 | .028 | .028 | .028 | .028 | .028 | .028 | .028 | .028 | .028 | .030 |
| -1 | .029 | .029 | .029 | .029 | .029 | .029 | .029 | .029 | .029 | .029 | .029 | .031 |
| -2 | .030 | .030 | .030 | .030 | .030 | .030 | .030 | .030 | .030 | .030 | .030 | .032 |
| -3 | .031 | .031 | .031 | .031 | .031 | .031 | .031 | .031 | .031 | .031 | .031 | .033 |
| -4 | .032 | .032 | .032 | .032 | .032 | .032 | .032 | .032 | .032 | .032 | .032 | .034 |
| -5 | .033 | .033 | .033 | .033 | .033 | .033 | .033 | .033 | .033 | .033 | .033 | .035 |
| -6 | .034 | .034 | .034 | .034 | .034 | .034 | .034 | .034 | .034 | .034 | .034 | .036 |
| -7 | .035 | .035 | .035 | .035 | .035 | .035 | .035 | .035 | .035 | .035 | .035 | .037 |
| -8 | .036 | .036 | .036 | .036 | .036 | .036 | .036 | .036 | .036 | .036 | .036 | .038 |
| -9 | .037 | .037 | .037 | .037 | .037 | .037 | .037 | .037 | .037 | .037 | .037 | .039 |
| -10 | .038 | .038 | .038 | .038 | .038 | .038 | .038 | .038 | .038 | .038 | .038 | .040 |
| -11 | .039 | .039 | .039 | .039 | .039 | .039 | .039 | .039 | .039 | .039 | .039 | .041 |
| -12 | .040 | .040 | .040 | .040 | .040 | .040 | .040 | .040 | .040 | .040 | .040 | .042 |
| -13 | .041 | .041 | .041 | .041 | .041 | .041 | .041 | .041 | .041 | .041 | .041 | .043 |
| -14 | .042 | .042 | .042 | .042 | .042 | .042 | .042 | .042 | .042 | .042 | .042 | .044 |
| -15 | .043 | .043 | .043 | .043 | .043 | .043 | .043 | .043 | .043 | .043 | .043 | .045 |
| -16 | .044 | .044 | .044 | .044 | .044 | .044 | .044 | .044 | .044 | .044 | .044 | .046 |
| -17 | .045 | .045 | .045 | .045 | .045 | .045 | .045 | .045 | .045 | .045 | .045 | .047 |
| -18 | .046 | .046 | .046 | .046 | .046 | .046 | .046 | .046 | .046 | .046 | .046 | .048 |
| -19 | .047 | .047 | .047 | .047 | .047 | .047 | .047 | .047 | .047 | .047 | .047 | .049 |
| -20 | .048 | .048 | .048 | .048 | .048 | .048 | .048 | .048 | .048 | .048 | .048 | .050 |
| -21 | .049 | .049 | .049 | .049 | .049 | .049 | .049 | .049 | .049 | .049 | .049 | .051 |
| -22 | .050 | .050 | .050 | .050 | .050 | .050 | .050 | .050 | .050 | .050 | .050 | .052 |
| -23 | .051 | .051 | .051 | .051 | .051 | .051 | .051 | .051 | .051 | .051 | .051 | .053 |
| -24 | .052 | .052 | .052 | .052 | .052 | .052 | .052 | .052 | .052 | .052 | .052 | .054 |
| -25 | .053 | .053 | .053 | .053 | .053 | .053 | .053 | .053 | .053 | .053 | .053 | .054 |
| ~~More than -25~~ | | | | | | | | | | | | |
| -26 | .054 | .054 | .054 | .054 | .054 | .054 | .054 | .054 | .054 | .054 | .054 | .054 |
| -27 | .055 | .055 | .055 | .055 | .055 | .055 | .055 | .055 | .055 | .055 | .055 | .055 |
| MORE THAN -27 | .056 | .056 | .056 | .056 | .056 | .056 | .056 | .056 | .056 | .056 | .056 | .056 |

SECTION 5. Repeal. 8-73-108 (5) (d), Colorado Revised Statutes, 1986 Repl. Vol., is repealed.

SECTION 6. Effective date. This act shall take effect July 1, 1989, and shall apply to all claims decided on or after said date.

SECTION 7. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Technical change. The section referring to "student learner programs" is repealed because the meaning of the term is not clear and is inconsistent with another section that refers to occupational education programs.

## Bill 8 - HB 1321

### Limitations on Awards of Benefits for Quitting for a Better Job Under the Colorado Employment Security Act

This bill repeals two provisions of the "Colorado Employment Security Act" that include eligibility credit for unemployment insurance benefits for wages earned at the first job when an employee quits a job to accept a better job and then is subsequently separated from his new job.

Whether an employee should be eligible for unemployment insurance after quitting to take a better job has been discussed during the last two legislative sessions. The following declaration from the Colorado statutes reveals an emphasis in the unemployment insurance law on employees who are involuntarily unemployed, not persons who have voluntarily quit their employment:

> 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 protection against this greatest hazard of our economic life .... (Section 8-70-102, C.R.S., emphasis added)

Section 8-73-108, C.R.S., contains the provision for eligibility when a person has quit for a better job but also states that in administering the system, the General Assembly should "be guided by the principle that unemployment insurance is for the benefit of persons unemployed through no fault of their own ...." (emphasis added). The committee believes that former employment, which did not cause the situation of unemployment, should not be included in the calculation of unemployment benefits.

Bill 8 - HB 1321

BY REPRESENTATIVES Dyer and Masson;
also SENATORS Allard, Powers, and Traylor.

A BILL FOR AN ACT

CONCERNING BENEFITS UNDER THE "COLORADO EMPLOYMENT SECURITY ACT" WHEN AN EMPLOYEE QUITS, AND, IN CONNECTION THEREWITH, PROVIDING THAT NO BENEFITS SHALL BE AWARDED WHEN AN EMPLOYEE QUITS FOR A BETTER JOB OR TO SEEK OTHER WORK.

---

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments which may be subsequently adopted.)

Repeals the provisions of the "Colorado Employment Security Act" that allow an award of unemployment insurance benefits when an employee quits a job to accept a better job and then is subsequently separated from his new job.

---

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

SECTION 1. 8-73-108 (5) (e) (IV) and (5) (e) (V), Colorado Revised Statutes, 1986 Repl. Vol., are amended to read:

8-73-108. Benefit awards. (5) Disqualification. (e) (IV) Quitting to move to another area as a matter of personal preference or to maintain contiguity with another

Removes eligibility for UI benefits from a former job if a person has quit to accept a better job.

person or persons, unless such move was for health reasons; ~~or to accept a better job;~~

(V) Quitting to seek other work; ~~not having first accepted an offer of other employment, or quitting to accept other employment which could not be construed as a better job as provided in paragraph (f) of subsection (4) of this section;~~

SECTION 2. Repeal. 8-73-108 (4) (f), Colorado Revised Statutes, 1986 Repl. Vol., as amended, is repealed.

SECTION 3. Effective date. This act shall take effect July 1, 1989.

SECTION 4. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

**COLORADO GENERAL ASSEMBLY**

**LEGISLATIVE COUNCIL**

ROOM 029 STATE CAPITOL
DENVER, COLORADO 80203-1784
(303) 866-3521



January 25, 1988

Senator Michael C. Bird, Chairman
Representative Elwood Gillis, Vice Chairman
and Members, Joint Budget Committee
Legislative Services Building
14th Avenue and Sherman Street
Denver, CO 80203

Dear Senator Bird, Representative Gillis, and Members:

The interim Committee on Workmen's Compensation and Unemployment Insurance has completed its work on draft legislation and has submitted its report and recommendations to the Legislative Council. Included in our report, and approved by the Legislative Council, is a funding recommendation for a new information system in the Division of Labor. We are submitting this recommendation directly to your committee for the reason that the matter is a budgetary concern and that no legislation needs to be enacted in conjunction with this request.

There are several reasons for the recommended expenditure. First, neither a legislative committee, the division, or any other agency or individual can analyze what is happening in workmen's compensation in Colorado. We do not have the capability of finding where delays are occurring in the system so that the problems of backlog can be addressed in legislation or by administrative action. We do not know which insurers have a consistent pattern of delay in payments to injured workers. We cannot detect trends and problems in the system until they become major areas of difficulty. The cost of workmen's compensation in the state is well over one-half billion dollars and we believe that an investment in the capability of understanding the system is well worth it.

As you know, the Director of the Division of Labor contracted with a nationally recognized consultant on workmen's compensation, John H. Lewis, to conduct a study of the Colorado system, pursuant to a directive in Senate Bill 79, 1987. The legislative appropriation for the study was $125,000. Absent the type of data system recommended for the division, it is likely that another consultant's study of the Colorado system will be necessary in a few years in order

to find how the system has responded to recent administrative and legislative changes.

Our committee received detailed briefings from Mr. Husson on the cost and implementation period to establish a data system for the division. We are in support of his recommendations and urge that your committee consider the need for improved capability in managing workmen's compensation in Colorado. One of the bills that I will be carrying this session is to create for the next few years a legislative oversight committee for workmen's compensation. If a funds are appropriated for the purposes outlined in this letter, be assured that I will do everything I can to follow the progress of an information system and will be pleased to keep your committee informed and involved with the progress made in this area.

This letter was approved by the Legislative Council on January 10, as part of the committee's report and recommendations to the 1989 session. The letter was held, however, until members of the Legislative Council were assured that the Division of Labor was cooperating fully in its computer planning with the Information Management Commission. Having received this assurance, the letter was released.

Thank you for your consideration of this matter.

Very truly yours,

Don Ament

Representative Don Ament
Chairman, Committee on Workmen's
Compensation and Unemployment Insurance

Copies: Mr. John Donlan
Mr. Bob Husson