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COLORADO EMPLOYMENT SECURITY ACT 2014

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RECAP OF 2014 LEGISLATIVE CHANGES

There were no 2014 legislative changes.

COLORADO
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TITLE 8

LABOR AND INDUSTRY

ARTICLE 70

DEFINITIONS–GENERAL PROVISIONS

8-70-101. Short title. Articles 70 to 82 of this title shall be known and may be cited as the "Colorado Employment Security Act".

8-70-102. Legislative declaration. As a guide to the interpretation and application of this article, the public policy of this state is declared to be as follows: Economic insecurity due to unemployment is a serious menace to the health, morals, and welfare of the people of this state. Involuntary unemployment is therefore a subject of general interest and concern which requires appropriate action by the general assembly to prevent its spread and to lighten its burden which now so often falls with crushing force upon the unemployed worker and his family. The achievement of social security requires protection against this greatest hazard of our economic life. This can be provided by encouraging employers to provide more stable employment and by the systematic accumulation of funds during periods of employment to provide benefits for periods of unemployment, thus maintaining purchasing power and limiting the serious social consequences of poor relief assistance. The general assembly, therefore, declares that in its considered judgment the public good and the general welfare of the citizens of this state require the enactment of this measure, under the police powers of the state, for the compulsory setting aside of unemployment reserves to be used for the benefit of persons unemployed through no fault of their own.

8-70-103. Definitions. As used in articles 70 to 82 of this title, unless the context otherwise requires:

(1) "Agricultural labor" has the meaning set forth in section 8-70-109.

(1.5) "Alternative base period" means the last four completed calendar quarters immediately preceding the benefit year.

(2) "Base period" means the first four of the last five completed calendar quarters immediately preceding the first day of the individual's benefit year.

(3) "Benefits" means the money payments payable to an individual with respect to his unemployment. The different classifications of benefits are set forth in section 8-70-110.

(4) "Benefit year" has the meaning set forth in section 8-70-111.

(5) "Calendar day" means a full day beginning and ending at 12 midnight. As used in connection with appeal or protest periods, calendar days begin to be counted on the day after the date appearing on a notice issued by the division and continue consecutively for the number of days in the appeal or protest period. If the last day of any period set forth in articles 70 to 82 of this title is a Saturday, Sunday, or legal holiday, the period is extended to include the next day that is not a Saturday, Sunday, or legal holiday.

(6) "Calendar quarter" means the period of three consecutive calendar months ending on March 31, June 30, September 30, or December 31.

(6.3) "Chargeable payroll" means the sum of chargeable wages.

(6.5) "Chargeable wages" means those wages paid to an individual employee during a calendar year on which the employer of that employee is required to pay premiums as provided by article 76 of this title, including all wages subject to a tax under federal law, which imposes a tax against which credit may be taken for premiums required to be paid into a state unemployment fund. For each calendar year, chargeable wages is the first ten thousand dollars paid to an individual; except that, effective January 1, 2012, chargeable wages for each calendar year is the first eleven thousand dollars paid to an individual and except that, after December 31 of the calendar year in which the revisor of statutes receives the written report pursuant to section 8-76-102.5 (1) indicating that the fund balance of the unemployment compensation fund on any June 30 is equal to or greater than zero dollars and all advances in accordance with the conditions specified in Title XII of the federal

"Social Security Act", as amended, have been repaid, chargeable wages is the first eleven thousand dollars paid to an individual, adjusted by the change in the average weekly earnings prescribed in section 8-73-102, rounded to the nearest one hundred dollars. As used in articles 70 to 82 of this title, chargeable wages paid includes chargeable wages constructively paid as well as chargeable wages actually paid.

(7) "Claims" includes any of the divisions of the classifications set forth in section 8-70-112.

(8) "Division" means the division of unemployment insurance.

(8.5) "Electronic" has the meaning set forth in section 24-71.3-102 (5), C.R.S.; except that "electronic" shall not include use of the telephone to transmit audio or voice communication.

(9) "Employer" has the meaning set forth in section 8-70-113.

(10) "Employing unit" has the meaning set forth in section 8-70-114.

(11) "Employment" has the meaning set forth in sections 8-70-115 to 8-70-125, exclusive of the exceptions set forth in sections 8-70-126 to 8-70-140.7.

(12) "Employment office" means a free public employment office or branch thereof operated by this state or maintained as a part of a state-controlled system of public employment offices.

(12.5) "Fully employed" means any employee who is employed thirty-two hours or more for any week and is not included in the definition of "partially employed" as set forth in subsection (19) of this section.

(13) "Fund" means the unemployment compensation fund, established in section 8-77-101 (1), to which all premiums required and from which all benefits under articles 70 to 82 of this title and bonds issued under section 8-71-103 (2) (d) are paid and from which payments may be made to the Colorado housing and finance authority under section 29-4-710.7, C.R.S.

(14) "Hospital" means an institution which has been licensed, certified, or approved by the department of public health and environment as a hospital.

(15) (a) "Institution of higher education" means an educational institution which:

(I) Admits as regular students only individuals having a certificate of graduation from a high school or the recognized equivalent of such a certificate; and

(II) Is legally authorized in this state to provide a program of education beyond high school; and

(III) Provides an educational program for which it awards a bachelor's or higher degree or a program which is acceptable for full credit toward such a degree, a program of postgraduate or postdoctoral studies, or a program of training to prepare students for gainful employment in a recognized occupation; and

(IV) Is a public or other nonprofit institution.

(b) Notwithstanding any of the provisions of paragraph (a) of this subsection (15), all colleges and universities in this state are institutions of higher education for purposes of this section.

(16) "Insured work" means employment for employers.

(17) (a) "Interested party" to any benefit decision means the individual who is claiming benefits, the division, and any employer who has complied with the reporting requirements of the division with respect to wages or other information regarding such individual.

(b) "Interested party" to a premium liability determination means the division and the employer whose business has been issued a liability determination by the division.

(18) "Inverse chronological order", when applied to the charging of employers' accounts, means that the most recent base period employer is the first employer charged and all other employers shall follow in reverse order of dates of employment.

(19) "Partially employed" refers to an individual whose wages payable to him by his regular employer for any week of less than full-time work are less than the weekly benefit amount he would be entitled to receive if totally unemployed and eligible or, in any established payroll period not longer than one month, are less than full-time work in which wages payable to him by his regular employer are less than an amount determined in accordance with the general rule proportionately equivalent for such pay period to the individual's weekly benefit amount. Any employee who is employed thirty-two hours or more for any week is deemed to be employed full time for such week and is not included in the definition of "partially employed" under this subsection (19).

(20) "Payments in lieu of premiums" means the money payments made into the fund by an employer pursuant to the provisions of sections 8-76-108 to 8-76-110.

(21) "Payroll period" means a period of not more than thirty-one consecutive days for which a payment of remuneration is ordinarily made to the employee by the employing unit employing him. If the services performed during one-half or more of any payroll period by an employee for the employing unit employing him constitute employment, all the services of the employee for such period shall be deemed to be employment; but, if the services performed during more than one-half of any such payroll period by an employee for the employing unit employing him do not constitute employment, none of the services of the employee for such period shall be deemed to be employment.

(22) "Period of unemployment" commences only after registration by the individual at an employment office, except as the division, by regulation, otherwise may prescribe.

(23) "Political subdivision" means a county, municipality, school district, local junior college district, special district formed pursuant to title 32, C.R.S., cooperative agency formed pursuant to part 2 of article 1 of title 29, C.R.S., or regional commission formed pursuant to section 30-28-105, C.R.S.

(23.5) "Premiums" means the money payments to the unemployment compensation fund required by articles 70 to 82 of this title.

(24) "State" includes the states of the United States of America, the District of Columbia, the commonwealth of Puerto Rico, and the Virgin Islands.

(25) to (27) (Deleted by amendment, L. 2009, (HB 09-1363), ch. 363, p. 1877, § 2, effective July 1, 2009.)

(28) "Totally unemployed" means an individual who performs no services in any week with respect to which no wages are payable to him. Should such week occur within an established payroll period in which the individual is not totally separated from his regular employer, he shall be deemed not totally unemployed but partially employed, as defined in subsection (19) of this section, and subject to the conditions pertaining to partial employment.

(29) "Wages" has the meaning set forth in section 8-70-141.

(30) "Week" means such period of seven consecutive days as the director of the division may prescribe by regulations.

(31) "Weekly benefit amount" means the amount of benefits an individual is entitled to receive for one week of total unemployment.

8-70-104. Additional definitions. (Repealed)

8-70-105. Banks as instrumentalities of United States. (1) For all purposes of articles 70 to 82 of this title and in conformity with federal laws, national banks doing business in Colorado and state bank members of the federal reserve system shall be deemed and held to be instrumentalities of the United States, as referred to in articles 70 to 82 of this title.

(2) Banks doing a commercial banking business in Colorado and maintaining an account with the federal reserve bank or with a member of the federal reserve system, for the purposes of articles 70 to 82 of this title, shall not be deemed to be instrumentalities of the United States.

8-70-106. No vested rights or immunities. The general assembly reserves the right to extend the time of operation, amend, or repeal all or any part of articles 70 to 74 and 76 to 81 of this title at any time; and there shall be no vested private right of any kind against such extension, amendment, or repeal. All the rights, privileges, or immunities conferred by said articles or by acts done pursuant thereto shall exist subject to the power of the general assembly to amend or repeal said articles at any time.

8-70-107. Disposition of funds in event of unconstitutionality. (1) Articles 70 to 74 and 76 to 81 of this title are enacted for the purpose of participating in the advantages available to the state of Colorado under the federal "Social Security Act", as amended. In the event that Title IX of the federal "Social Security Act" or any amendments to the federal act are amended or repealed by congress or are held unconstitutional by the supreme court of the United States, with the result that no portion of the premiums required under articles 70 to 74 and 76 to 81 of this title may be credited against the tax imposed by Title IX of the federal "Social Security Act", the division shall requisition from the unemployment trust fund all moneys in the trust fund standing to the credit of the state of Colorado, and such moneys, together with any other moneys in the unemployment compensation fund, shall be refunded to the contributors proportionate to their unexpended balances in the fund.

(2) In the event that the provisions of articles 70 to 74 and 76 to 81 of this title requiring the payment of premiums and benefits are held invalid under the constitution of this state by the supreme court of this state or the supreme court of the United States or are held invalid under the United States constitution by the supreme court of the United States or the supreme court of this state, the division shall requisition from the unemployment trust fund all moneys in the trust fund standing to the credit of the state of Colorado, and such moneys, together with any other moneys in the unemployment compensation fund, shall be held in custody by the state treasurer in the same manner as provided in section 8-77-105 until such time as the general assembly provides for the disposition of the moneys; except that the general assembly shall not dispose of the moneys other than for unemployment compensation purposes or for reimbursements to the contributors under the provisions of articles 70 to 74 and 76 to 81 of this title, proportionate to their unexpended balances in the fund.

8-70-108. Conformity with federal statutes. If any provisions contained in articles 70 to 82 of this title are determined to be in nonconformity with federal statutes, as determined by the United States secretary of labor or an assistant secretary of labor, the division, with the concurrence of the attorney general of the state of Colorado, is authorized to administer said articles so as to conform with the provisions of the federal statutes until such time as the general assembly meets in its next regular session and has an opportunity to amend said articles.

8-70-109. Agricultural labor. (1) "Agricultural labor" means any remunerated service performed:

(a) On a farm in the employ of any person, in connection with cultivating the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and fur-bearing animals and wildlife;

(b) In the employ of the owner, tenant, or other operator of a farm, in connection with the operation, management, conservation, improvement, or maintenance of such farm and its tools and equipment, or in salvaging timber or clearing land of brush and other debris left by an act of nature, if the major part of the service is performed on a farm;

(c) In connection with the production or harvesting of any commodity defined as an agricultural commodity in section 15 (g) of the "Agricultural Marketing Act", as amended (46 Stat. 1550, sec. 3; 12 U.S.C. section 1141J), or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways, not owned or operated for profit, used exclusively for supplying and storing water for farming purposes;

(d) In the employ of the operator of a farm in handling, planting, drying, packing, packaging,

processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, in its unmanufactured state, any agricultural or horticultural commodity, but only if such operator produced more than one-half of the commodity with respect to which the service is performed; except that the provisions of this paragraph (d) are not applicable with respect to service performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption;

(e) In the employ of a group of operators of farms (or a cooperative organization of which such operators are members) in the performance of service described in paragraph (d) of this subsection (1), but only if such operators produced more than one-half of the commodity with respect to which the service is performed; except that the provisions of this paragraph (e) are not applicable with respect to service performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption; or

(f) On a farm operated for profit if the service is not in the course of the employer's trade.

(2) As used in this section, the term "farm" includes stock, dairy, poultry, fruit, fur-bearing animal, and truck farms, plantations, ranches, nurseries, ranges, greenhouses, or other similar structures used primarily for the raising of agricultural or horticultural commodities and orchards.

8-70-110. Benefits - classifications. (1) Benefits are divided into classifications, as follows:

(a) Regular benefits: Benefits payable to an individual under this article or under any other state law, including benefits payable to federal civilian employees and to ex-servicemen pursuant to chapter 85 of title 5 of the United States Code, other than extended benefits;

(b) Extended benefits: Benefits payable to an individual under part 1 of article 75 of this title, including benefits payable to federal civilian employees and to former members of the armed forces pursuant to chapter 85 of title 5 of the United States Code, for weeks of unemployment in his or her eligibility period;

(c) Additional benefits: Benefits payable to exhaustees, as defined in section 8-75-101

(2), by reason of conditions of high unemployment or by reason of special factors under the provisions of any state law;

(d) Benefits not effectively charged: Those regular benefits, including the state share of extended benefits, paid but not charged to any active employer account.

8-70-111. Benefit year - definitions. (1) "Benefit year" means the period of fifty-two consecutive calendar weeks beginning with the first week of a claims series established by the filing of a valid initial claim; except that the benefit year shall be fifty-three weeks if filing a new valid claim would result in overlapping any quarter of the base year of a previously filed new claim.

(2) As used in this section:

(a) A "valid initial claim" means an application for the determination of benefit rights which includes the claimant's social security number and which establishes that the claimant has met the eligibility condition set forth in section 8-73-107 (1) (e).

(b) A calendar week shall be deemed to be entirely within that calendar quarter which contains the first day of such week.

8-70-112. Claims - classifications. (1) Claims are divided into classifications, as follows:

(a) Initial claim, which establishes a benefit year and is valid as defined in section 8-70-111 (2) (a); or

(b) Additional claim, which reopens a claim series within an existing benefit year after a second or subsequent period of unemployment; or

(c) Reopened claim, which reopens a claim within an existing benefit year when there has been no intervening employment since the last claim for a week of unemployment.

8-70-113. Employer - definition. (1) "Employer" means:

(a) (I) Any employing unit that, after December 31, 1985, and prior to January 1, 1999, had in employment at least one individual performing services at any time; except that this paragraph (a) shall not apply to employing units for which service in employment, as defined in sections 8-70-118 to 8-70-121, is performed.

(II) Any employing unit that, after December 31, 1998:

(A) Paid wages of one thousand five hundred dollars or more during any calendar quarter in the calendar year or the preceding calendar year; or

(B) Employed at least one individual in employment for some portion of the day on each of twenty days during the calendar year or during the preceding calendar year, each day being in a different calendar week.

(III) After December 31, 1998, this paragraph (a) shall not apply to employing units for which service in employment, as defined in sections 8-70-118 to 8-70-121, is performed.

(IV) For purposes of this paragraph (a), employment shall include service that would constitute employment but for the fact that such service is deemed to be performed entirely within another state pursuant to an arrangement entered into in accordance with section 8-72-110 (3) by the division and an agency charged with the administration of any other state or federal unemployment compensation law.

(V) For the purposes of this paragraph (a), if any calendar week includes both December 31 and January 1, the days of that week up to January 1 shall be deemed one calendar week and the days beginning January 1 another such week.

(b) Any employing unit for which service in employment as defined in section 8-70-118 is performed after December 31, 1971, except as provided in subsections (2) and (3) of this section. For purposes of this paragraph (b), employment shall include service which would constitute employment but for the fact that such service is deemed to be performed entirely within another state pursuant to an arrangement entered into in accordance with section 8-72-110 (3) by the division and an agency charged with the administration of any other state or federal unemployment compensation law.

(c) Any employing unit for which service in employment as defined in section 8-70-119 is performed, except as provided in subsections (2) and (3) of this section;

(d) Any employing unit for which agricultural labor as defined in section 8-70-109 is performed and is defined as employment in section 8-70-120;

(e) Any employing unit for which domestic service in employment as defined in section 8-70-121 is performed;

(f) Any employing unit (whether or not an employing unit at the time of acquisition) which acquired the organization, trade, or business, or substantially all of the assets of an employer subject to articles 70 to 82 of this title, or which acquired a part of the organization, trade, or business of an employer subject to articles 70 to 82 of this title, if such part would have been an employer under this section had it constituted the entire organization, trade, or business;

(g) Any employing unit that is not defined as an employer under this section but for which, within either the current or the preceding calendar year, service is or was performed with respect to which such employing unit is liable for any federal tax against which credit may be taken for premiums required to be paid into a state unemployment fund;

(h) Any employing unit that, as a condition for approval of articles 70 to 82 of this title for full credit against the tax imposed by the "Federal Unemployment Tax Act" for premiums paid, is required, pursuant to such act, to be an employer under articles 70 to 82 of this title;

(i) Any employing unit which, having become an employer under paragraphs (a) to (h) of this subsection (1), has not under section 8-76-106, ceased to be an employer subject to articles 70 to 82 of this title;

(j) For the effective period of its election pursuant to section 8-76-107, any employing unit which has become subject to articles 70 to 82 of this title; or

(k) Any Indian tribe for which service in employment as defined under section 8-70-125.5 is performed.

(2) In determining whether or not an employing unit for which service other than agricultural labor is also performed is an employer under paragraphs (b) and (e) of subsection (1) of this section, the wages earned or the employment of an employee performing service in agricultural labor after December 31, 1977, shall not be taken into account. If an employing unit is determined to be an employer of agricultural labor, such employing unit shall be determined to be an employer for the purposes of paragraph (a) of subsection (1) of this section.

(3) In determining whether or not an employing unit for which service other than domestic service is also performed is an employer under paragraph (b), (c), or (d) of subsection (1) of this section, the wages earned or the employment of an employee performing domestic service after December 31, 1977, shall not be taken into account.

8-70-114. Employing unit - definitions - rules - employee leasing company certification fund. (1) "Employing unit" means any individual or type of organization, including any partnership, limited liability partnership, limited liability company, limited liability limited partnership, association, trust, estate, joint stock company, insurance company, or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or successor thereof, or legal representative of a deceased person, who employs one or more individuals performing services within this state. All individuals performing services within this state for any employing unit that maintains two or more separate establishments within this state shall be deemed to be employed by a single employing unit for all the purposes of articles 70 to 82 of this title. Each individual employed to perform or to assist in performing the work of any agent or employee of an employing unit shall be deemed to be employed by such employing unit for all the purposes of articles 70 to 82 of this title, whether such individual was hired or paid directly by such employing unit or by the agent or employee if the employing unit had actual or constructive knowledge of the work. Nothing in this section shall be construed to mean that a common paymaster may be considered a single employing unit for purposes of considering the services performed by another employing unit subject to a single or common payroll.

(2) (a) For purposes of this section:

(I) "Coemployer" means either an employee leasing company or a work-site employer.

(II) "Coemployment relationship" means a relationship that is intended to be an ongoing relationship rather than a temporary or project specific one, wherein the rights, duties, and obligations of an employer that arise out of an employment relationship have been allocated between coemployers pursuant to an employee leasing company contract and this section. In a coemployment relationship:

(A) The employee leasing company is entitled to enforce only such employer rights and is subject to only those obligations specifically allocated to the employee leasing company by the employee leasing company contract and this section;

(B) The work-site employer may enforce those rights and shall provide and perform those employer obligations allocated to the work-site employer by the employee leasing company contract and this section; and

(C) The work-site employer may enforce any right and shall perform any obligation of an employer not specifically allocated to the employee leasing company by the employee leasing company contract or this section.

(III) (A) "Covered employee" or "work-site employee" means an individual who is in an employment relationship with both an employee

leasing company and a work-site employer and has received written notice of the coemployment with the employee leasing company.

(B) The provisions of sub-subparagraph (A) of this subparagraph (III) relate solely to the employee leasing contract and not to any contract for workers' compensation insurance or entitlement to workers' compensation benefits.

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

(V) "Employee leasing company" means any person, business, or other entity that provides services to a work-site employer, as defined in subparagraph (VII) of this paragraph (a), pursuant to an employee leasing company contract, as defined in subparagraph (VI) of this paragraph (a).

(VI) "Employee leasing company contract" means any written staff leasing contract, extended employee staffing or supply contract, or other contract under which an employee leasing company procures or receives from a work-site employer specified coemployer responsibilities for specified employees, designating itself as employer of such employees, and retaining the right of direction and control of such employees with regard to those employer responsibilities, including the rights and responsibilities set forth in paragraph (b) of this subsection (2). An employee leasing company may have other responsibilities pursuant to an employee leasing company contract, including provision of professional guidance with regard to employment matters.

(VII) "Work-site employer" means any person, business, or other entity that procures the services of an employee leasing company under an employee leasing company contract and otherwise retains direction and control of the employees specified in the contract regarding responsibilities not specified in the contract pertaining to the business of the work-site employer.

(b) Notwithstanding subsection (1) of this section, an employee leasing company shall be considered an employing unit or the coemployer of a work-site employer's employees if, pursuant to an employee leasing company contract with the work-site employer, it has the following rights and responsibilities:

(I) The employee leasing company, as the employing unit or the co-employer, assigns employees to the work-site employer's locations;

(II) The employee leasing company, as the employing unit or co-employer, retains the right to set the employees' rate of pay;

(III) The employee leasing company, as the employing unit or co-employer, retains the right to pay the employee from its own account or accounts;

(IV) The employee leasing company, as the employing unit or co-employer, retains the right to direct and control the employees and such rights and responsibilities may be shared as specified in the employee leasing company contract;

(V) The employee leasing company, as the employing unit or co-employer, has the right to discharge, reassign, or hire employees to perform services for the work-site employer and the employee leasing company;

(VI) The employee leasing company, as the employing unit or co-employer, has the responsibility for payment of wages to the workers pursuant to the employee leasing company contract. The employee leasing company, as the employing unit or co-employer, has responsibility for reporting, withholding, and paying any applicable taxes and premiums with respect to the employee's wages or payment of sponsored employee benefit plans pursuant to the employee leasing company contract.

(VII) (A) Each employee leasing company shall pay wages and collect, report, and pay all payroll-related taxes and premiums from its own accounts for all covered employees. Each employee leasing company shall be responsible for the payment of unemployment compensation insurance premiums and provide, maintain, and secure all records and documents required of work-site employers under the unemployment insurance laws of this state for covered employees.

(B) No later than the end of the calendar quarter immediately following August 5, 2009, each employee leasing company shall notify the division of unemployment insurance as to whether the employee leasing company elects to report and pay unemployment insurance premiums as the employing unit under its own unemployment accounts and premium rates or whether it elects to report unemployment premiums attributable to covered employees under the respective unemployment accounts and premium rates for each work-site employer. Under either election, the employee leasing company shall have the responsibility for unemployment compensation insurance as required of an employer pursuant to the "Colorado Employment Security Act", articles 70 to 82 of this title. If the employee leasing company fails to make an election, the employee leasing company shall report unemployment premiums attributable to covered employees under the respective unemployment accounts and premium rates for each work-site employer.

(C) The election made in sub-subparagraph (B) of this subparagraph (VII) shall be binding on all employers and the employing unit's related enterprises, subsidiaries, or other entities that share common ownership management or control with the employee leasing company. Employee leasing companies electing to report and pay unemployment insurance as the employing unit under its own unemployment accounts and premium rates following August 5, 2009, are permitted to change the election one time after the initial election to report unemployment premiums attributable to covered employees under the respective unemployment accounts of each work-site employer by notifying the division no later than the end of the current calendar quarter. An employee leasing company's election to pay unemployment premiums under the respective unemployment accounts and premium rates of the work-site employer is final and may not be reversed.

(VIII) An employee leasing company, as the employing unit or coemployer, may aggregate all employees for the purpose of sponsoring and administering workers' compensation plans pursuant to article 44 of this title and fully insured health coverage plans, as defined in section 10-16-102 (34), C.R.S., employee pension benefit plans, and provision of benefits pursuant to such plans. As employing units or coemployers, employee leasing companies shall be entitled to sponsor fully insured employer plans and offer employee benefits to the full extent afforded employers by law. A health plan sponsored by an employee leasing company with an aggregate of more than fifty employees shall comply with all the provisions of Colorado law that apply to large employer health plans, including consumer and provider protections, mandated benefits, nondiscrimination and fair marketing rules, preexisting limitations, and other required health plan policy provisions, and the carrier underwriting the plan shall be responsible for assuring compliance with this requirement pursuant to section 10-16-214 (5), C.R.S. Notwithstanding any provision of this section to the contrary, any workers' compensation insurance carrier may issue an insurance policy that insures either the employee leasing company or the work-site employer as the employer pursuant to the "Workers' Compensation Act of Colorado", articles 40 to 47 of this title. Article 41 of this title shall apply to both the employee leasing company and the work-site employer, regardless of whether the policy is issued to the employee leasing company or the work-site employer. Notwithstanding any provision of this section to the contrary, any insurance carrier may issue an insurance policy that insures the employee leasing company as the employer pursuant to article 16 of title 10, C.R.S. An insurance carrier that issues an insurance policy to an employee leasing company shall be entitled to rely upon a copy of the certification filed by the employee leasing company with the department under paragraph (e) of this subsection (2), if such certification is currently valid, for the purpose of determining whether the leasing company is an "employer" under Colorado law.

(IX) The employee leasing company retains the right to provide for the welfare and benefit of the employees through such programs as professional guidance including, but not limited to, employment training, safety, and compliance matters;

(X) The employee leasing company, as the employing unit or co-employer, has the responsibility for addressing employee complaints, claims, or requests related to employment, except as otherwise provided

pursuant to an existing collective bargaining agreement; except that some or all of the rights and responsibilities described in this subparagraph (X) may be shared with the work-site employer;

(XI) The employee leasing company, as the employing unit or co-employer, intends to retain the right to maintain the employment relationship between the employee leasing company and its employees on a long-term, and not temporary, basis;

(XII) The employees of the employee leasing company know of and consent to co-employment by the employee leasing company;

(XIII) The employee leasing company maintains employee records relating to employees of the employee leasing company; and

(XIV) Except as otherwise provided in the employee leasing company contract, the work-site employer has the responsibility for those policies and procedures related to the actual conduct of the work that leads to the work-site employer's conduct of its business and the production of its goods or services.

(c) (Deleted by amendment, L. 97, p. 207, § 2, effective April 8, 1997.)

(d) If an employee leasing company does not meet the requirements of this subsection (2), the work-site employer shall be considered the employing unit.

(e) Each employee leasing company shall maintain and have open for inspection by the department a listing of its work-site employers and their collective employees and shall maintain the records and reports as required by the "Colorado Employment Security Act", as described in articles 70 to 82 of this title. Each employee leasing company shall annually certify with an independent opinion of counsel to the department that it is in compliance with the rights and responsibilities set forth in paragraph (b) of this subsection (2) and that it is offering to all clients in its service agreements those items required in paragraph (b) of this subsection (2). The executive director of the department shall prescribe forms and promulgate rules to promote the efficient administration of this paragraph (e). The department may require employee leasing companies to submit documentation to show compliance with the provisions of paragraph (b) of this subsection (2) and may conduct any necessary review to verify that the employee leasing company is an employing unit or coemployer under this section. Each employee leasing company shall file an annual renewal of its certification on or before June 30 of each year.

(f) Each employee leasing company shall maintain and provide upon request to a carrier, as defined in section 10-16-102 (8), C.R.S., with which the employee leasing company requests a contract, the certification required in paragraph (e) of this subsection (2).

(g) (I) Each employee leasing company operating within this state as of August 5, 2008, shall complete its initial certification not later than sixty days after August 5, 2008. The initial certification shall be valid until the end of the state's first fiscal year that is more than one year after August 5, 2008.

(II) An employee leasing company not operating within this state as of August 5, 2008, shall complete its initial certification prior to commencement of operations within this state.

(III) Each employee leasing company shall annually certify and provide evidence to the department that it meets one of the following criteria to provide securitization of unemployment premiums:

(A) Repealed.

(A.5) On and after December 31, 2012, execute and file a surety bond or deposit with the division money or a letter of credit equivalent to fifty percent of the average annual amount of unemployment premium assessed within the previous calendar year for all covered employees regardless of the election made pursuant to subparagraph (VII) of paragraph (b) of this subsection (2). For a new employee leasing company, the initial bond amount is the unrated premium rate, as determined pursuant to section 8-76-102.5, multiplied by fifty percent of the estimated projected chargeable payroll for

the current calendar year as estimated by the employee leasing company.

(B) Provide the most recent independently audited financial statement prepared by a certified public accountant pursuant to generally accepted accounting principles, which statement may not be older than thirteen months. The audit shall also include items that demonstrate an accounting working capital of not less than one hundred thousand dollars. For the purposes of this sub-subparagraph (B), "working capital" of an employee leasing company means the employee leasing company's current assets minus the employee leasing company's current liabilities as determined by generally accepted accounting principles.

(C) Provide sufficient evidence on an annual basis that it has been accredited by a bonded, independent, and qualified assurance organization approved by the director of the division that provides satisfactory assurance of compliance acceptable to the department.

(IV) The department may, at its discretion, reduce or waive the bonding, money, or letter of credit requirements in sub-subparagraph (A) of subparagraph (III) of this paragraph (g). This waiver or reduction may be reviewed at any time, and in the department's discretion, it may require the employee leasing company to resume compliance with sub-subparagraph (A) of subparagraph (III) of this paragraph (g) or provide evidence of compliance with sub-subparagraph (B) or (C) of subparagraph (III) of this paragraph (g) immediately.

(V) An employee leasing company shall, within fifteen days following any deduction from a money deposit or sale of deposited securities under the provisions of sub-subparagraph (A) of subparagraph (III) of this paragraph (g), deposit sufficient additional moneys or securities to make whole the employee leasing company's deposit at the prior level. Any cash remaining from the department's sale of such securities shall be a part of the employee leasing company's escrow account. The department may, at any time, review the adequacy of the deposit made by any employee leasing company. If, as a result of such review, the department determines that an adjustment is necessary, it shall require the employee leasing company to make an additional deposit within thirty days after receipt of written notice of the department's determination or shall return to the employee leasing company such portion of the deposit as the department no longer considers necessary, whichever action is appropriate.

(VI) Upon filing an annual certification under this section, an employee leasing company shall pay a fee, as determined by rule of the department, not to exceed five hundred dollars. Fees collected pursuant to this section shall be transmitted to the state treasurer, who shall credit the same to the employee leasing company certification fund, referred to in this section as the "fund", which is hereby created in the state treasury. Moneys in the fund shall be subject to annual appropriation by the general assembly for implementation of this section. The moneys in the fund and interest earned on the moneys in the fund shall not revert to the general fund or be transferred to any other fund and shall be exempt from section 24-75-402, C.R.S. No fee charged pursuant to this section shall exceed the amount reasonably necessary for the administration of this section.

(VII) The department shall maintain a list of employee leasing companies that submit certifications required under paragraph (e) of this subsection (2) that is readily available to the public by electronic or other means.

(VIII) All records, reports, and other information obtained from an employee leasing company under this section, except to the extent necessary for the proper administration of this section by the department, shall be held confidential and shall not be published or open to public inspection other than to public employees in the performance of their public duties, pursuant to provisions governing records and reports in this title.

(3) (a) The status of an employee leasing company as the employing unit or a co-employer of a work-site employer's employees shall be revoked by the division if such employee leasing company fails to file the required reports or pay the premiums due under the provisions of articles 70 to 82 of this title. The effective date of a revocation shall be the first day of the quarter for which the reports and premiums are due. In the event of a revocation, the work-site

employer shall become liable for the reports and premiums due.

(b) The provisions of paragraph (a) of this subsection (3) shall apply if any portion of an employing unit's business activity can be characterized as an employee leasing company, as defined in subsection (2) of this section.

(c) The provisions of paragraph (a) of this subsection (3) shall not apply if an employee leasing company acts as an agent for a work-site employer pursuant to the provisions of subsection (1) of this section, files the required reports, and pays the premiums due under an account established for the work-site employer.

(d) The provisions of paragraph (a) of this subsection (3) shall not apply to any temporary help contracting firm, as defined in section 8-73-105.5. However, if any portion of such firm's business activity can be characterized as an employee leasing company, as defined in subsection (2) of this section, that portion of the firm's business shall be subject to the provisions of this subsection (3).

(4) An employee leasing company shall not report wages for any work-site employer that would not otherwise be subject to articles 70 to 82 of this title.

(5) An employee leasing company or business management company shall not report remuneration paid:

(a) For services performed by individuals who are clients and who are sole proprietors or partners in a partnership; or

(b) For any other services which would not otherwise constitute employment pursuant to articles 70 to 82 of this title.

(6) (a) Nothing in this section shall exempt a work-site employer or any employee from any other licensing requirements imposed by local, state, or federal law. An employee who is licensed, registered, or certified by a unit of local, state, or federal government shall, for the purposes of such license, registration, or certification, be considered an employee of the work-site employer. An employee leasing company shall not be deemed to engage in any occupation, trade, profession, or other activity that is subject to licensing, registration, or certification requirements, or is otherwise regulated by a governmental entity, solely by entering into and maintaining an employee leasing company contract with a work-site employer or work-site employees who are subject to such requirements or regulation.

(b) **Collective bargaining agreements.** Nothing contained in this subsection (6) or in any employee leasing company contract shall affect, modify, or amend any collective bargaining agreement, or the rights or obligations of any work-site employer, employee leasing company, or work-site employee under the federal "National Labor Relations Act", 29 U.S.C. sec. 151 et seq., or the federal "Railway Labor Act", 45 U.S.C. sec. 151 et seq.

(c) **Tax or premium credits and other incentives.** For purposes of determination of employment-based tax or premium credits, such as economic development, enterprise zone, development zone, and other such economic incentives provided by the state or any other governmental entity, work-site employees shall be deemed employees solely of the work-site employer. A work-site employer shall be entitled to the benefit of any tax or premium credit, economic incentive, or other benefit arising as the result of the employment of work-site employees of the work-site employer. If the grant or amount of any credit, benefit, or other incentive is based on number of employees, then each work-site employer shall be treated as employing only those work-site employees coemployed by the work-site employer. Work-site employees working for other work-site employers of the employee leasing company shall not be counted. Upon request by a work-site employer or an agency or department of this state, each employee leasing company shall provide employment information reasonably required by any agency or department of this state responsible for administration of any tax or premium credit or economic incentive and necessary to support any request, claim, application, or other action by a work-site employer seeking the tax or premium credit or economic incentive.

(d) **Disadvantaged business.** With respect to a bid, contract, purchase order, or agreement entered into with the state or a political subdivision of the state, a work-site employer's status or certification as a small, minority-owned, disadvantaged, or women-owned business enterprise or as a historically underutilized business is not affected because the work-site employer has entered into an employee leasing company contract or uses the services of an employee leasing company.

(e) **Taxes, premiums, fees, other assessments.** (I) A tax, premium, fee, surcharge, penalty, or any other assessment on a work-site employer or employee leasing company on the basis of the number of employees shall be assessed:

(A) Against the work-site employer for the work-site employees under the employee leasing company contract with the employee leasing company; and

(B) Against the employee leasing company for the employees of the employee leasing company who are not work-site employees for any work-site employers in the state.

(II) For a tax or premium imposed or calculated upon the basis of total payroll, an employee leasing company may apply any small business allowance or exemption available to the work-site employer for the work-site employees for purposes of computing the tax or premium.

(III) The provisions of this paragraph (e) shall not apply to the reporting, withholding, and paying of taxes or premiums pursuant to subparagraphs (VI) and (VII) of paragraph (b) of subsection (2) of this section.

(7) **Employment arrangements.** Nothing in this section or in any employee leasing company contract shall:

(a) Diminish, abolish, or remove rights of covered employees of a work-site employer or obligations of such work-site employer to a covered employee existing prior to the effective date of the employee leasing company contract;

(b) Affect, modify, or amend any contractual relationship or restrictive covenant between a covered employee and any work-site employer in effect at the time an employee leasing company contract becomes effective. Nor shall it prohibit or amend any contractual relationship or restrictive covenant that is entered into subsequently between a work-site employer and a covered employee. An employee leasing company shall have no responsibility or liability in connection with, or arising out of, any such existing or new contractual relationship or restrictive covenant unless the employee leasing company has specifically agreed otherwise in writing.

(c) Create any new or additional enforceable right of a covered employee against an employee leasing company that is not specifically provided by the employee leasing company contract or this section.

(8) **Prohibited acts and enforcement.** (a) A person shall not offer or provide employee leasing company services or use the names employee leasing company, professional employer organization, PEO, staff leasing, employee leasing, administrative employer, or other title representing employee leasing services without first obtaining certification from the department under this section.

(b) A person shall not knowingly provide false or fraudulent information to the department in conjunction with any certifications or in any report required under this section.

(c) The executive director of the department may take disciplinary action against an employee leasing company for a violation of paragraph (a) or (b) of this subsection (8), for the conviction in a court of law for a crime arising from the operation of an employee leasing company relating to fraud or deceit or the ability of the employee leasing company to operate as such, for knowingly making a material misrepresentation to the department or other governmental agency, or for a willful violation of this section or any order or rule issued by the department under this section.

(d) Upon finding, after notice and opportunity for hearing, that an employee leasing company has violated one or more provisions of this section, the director of the division may:

(I) Place the certified employee leasing company on probation for a period and subject to conditions that the director of the division specifies;

(II) Impose an administrative penalty in an amount not to exceed one thousand dollars for each material violation; and

(III) Refuse to accept the certification and rescind the employee leasing company's ability to make unemployment insurance contributions for work-site employees under its unemployment insurance account.

8-70-115. Employment - "Federal Unemployment Tax Act". (1) (a) "Employment", subject to other provisions of this subsection (1), includes any service performed prior to January 1, 1972, which was employment as defined in this subsection (1) prior to such date and service performed after December 31, 1971, by an employee as defined in section 3306 (i) of the "Federal Unemployment Tax Act" and any service performed after December 31, 1977, by an employee, as defined in subsection (o) of section 3306 of the "Federal Unemployment Tax Act", including service in interstate commerce.

(b) Notwithstanding any other provision of this subsection (1) and notwithstanding the provisions of section 8-80-101, service performed by an individual for another shall be deemed to be employment, irrespective of whether the common-law relationship of master and servant exists, unless and until it is shown to the satisfaction of the division that such individual is free from control and direction in the performance of the service, both under his contract for the performance of service and in fact; and such individual is customarily engaged in an independent trade, occupation, profession, or business related to the service performed. For purposes of this section, the degree of control exercised by the person for whom the service is performed over the performance of the service or over the individual performing the service, if exercised pursuant to the requirements of any state or federal statute or regulation, shall not be considered.

(c) To evidence that such individual is engaged in an independent trade, occupation, profession, or business and is free from control and direction in the performance of the service, the individual and the person for whom services are performed may either show by a preponderance of the evidence that the conditions set forth in paragraph (b) of this subsection (1) have been satisfied, or they may demonstrate in a written document, signed by both parties, that the person for whom services are performed does not:

(I) Require the individual to work exclusively for the person for whom services are performed; except that the individual may choose to work exclusively for the said person for a finite period of time specified in the document;

(II) Establish a quality standard for the individual; except that such person can provide plans and specifications regarding the work but cannot oversee the actual work or instruct the individual as to how the work will be performed;

(III) Pay a salary or hourly rate but rather a fixed or contract rate;

(IV) Terminate the work during the contract period unless the individual violates the terms of the contract or fails to produce a result that meets the specifications of the contract;

(V) Provide more than minimal training for the individual;

(VI) Provide tools or benefits to the individual; except that materials and equipment may be supplied;

(VII) Dictate the time of performance; except that a completion schedule and a range of mutually agreeable work hours may be established;

(VIII) Pay the individual personally but rather makes checks payable to the trade or business name of the individual; and

(IX) Combine his business operations in any way with the individual's business, but instead maintains such operations as separate and distinct.

(d) A document may satisfy the requirements of paragraph (c) of this subsection (1) if such document demonstrates, by a preponderance of

the evidence, the existence of such factors listed in subparagraphs (I) to (IX) of paragraph (c) of this subsection (1) as are appropriate to the parties' situation.

(2) Where the parties use a written document pursuant to paragraph (c) of subsection (1) of this section, such document may be the contract for performance of service or a separate document. Such document shall create a rebuttable presumption of an independent contractor relationship between the parties, where such document contains a disclosure, in type which is larger than the other provisions in the document or in bold-faced or underlined type, that the independent contractor is not entitled to unemployment insurance benefits unless unemployment compensation coverage is provided by the independent contractor or some other entity, and that the independent contractor is obligated to pay federal and state income tax on any moneys paid pursuant to the contract relationship.

(3) Where the parties use a written document pursuant to paragraph (c) of subsection (1) of this section, and one of the parties is a professional whose license to practice a particular occupation under the laws of the state of Colorado requires such professional to exercise a supervisory function with regard to an entire project, such supervisory role shall not affect such professional's status as part of the independent contractor relationship.

8-70-116. Employment - location of services. (1) "Employment" means an individual's service, wherever performed within the United States, the Virgin Islands, or Canada, if:

(a) The service is not covered under the unemployment compensation law of any other state, the Virgin Islands, or Canada; and

(b) The place from which the service is directed or controlled is in Colorado.

8-70-117. Employment - base of operations. "Employment" means that the entire service of an individual is performed within this state or both within and without this state if the service is localized in this state; or that the service is not localized in any state but some of the service is performed in this state and that the base of operations or, if there is no base of operations, the place from which the service is directed or controlled is in this state; or that the base of operations or place from which the service is directed or controlled is not in any state in which some part of the service is performed but that the individual's residence is in this state. For purposes of this section, service shall be deemed to be localized within a state if the service is performed entirely within the state or if the service is performed both within and without the state but the service performed without the state is incidental to the individual's service within the state or, for example, is temporary or transitory in nature or consists of isolated transactions.

8-70-118. Employment - nonprofit organizations. "Employment" means services performed after December 31, 1971, by an individual in the employ of a religious, charitable, educational, or other organization which is excluded from the term "employment", as defined in the "Federal Unemployment Tax Act" solely by reason of section 3306 (c) (8) of that act, and which has had four or more individuals in employment for some portion of a day in each of twenty different weeks, whether or not such weeks were consecutive, within either the current or the preceding calendar year, regardless of whether they were employed at the same moment of time.

8-70-119. Employment - hospitals - institutions of higher education. "Employment" means services performed after December 31, 1971, by an individual in the employ of this state or any of its instrumentalities (or in the employ of this state and one or more other states or their instrumentalities) for a hospital or institution of higher education located in this state, if the service is excluded from the term "employment" as defined in the "Federal Unemployment Tax Act" solely by reason of section 3306 (c) (7) of that act, and means services performed after December 31, 1977, in the employ of this state or any of its instrumentalities or any political subdivision thereof or any of its instrumentalities or any instrumentality of more than one of the foregoing or any instrumentality of any of the foregoing, and one or more other states or political subdivisions, if such service is excluded from the term "employment" as defined in the "Federal Unemployment Tax Act"

by reason of section 3306 (c) (7) and is not excluded from employment under section 8-70-140.

8-70-120. Employment - agricultural labor. (1) "Employment" means services performed after December 31, 1977, by an individual in agricultural labor as defined in section 8-70-109 when:

(a) Such service is performed for a person who, during any calendar quarter in either the current or the preceding calendar year, paid remuneration in cash of twenty thousand dollars or more to individuals employed in agricultural labor, including agricultural labor performed by an alien referred to in paragraph (b) of this subsection (1), or for some portion of a day in each of twenty different calendar weeks, whether or not such weeks were consecutive, in either the current or the preceding calendar year, employed in agricultural labor, including agricultural labor performed by an alien referred to in paragraph (b) of this subsection (1), ten or more individuals, regardless of whether they were employed at the same moment of time; and

(b) Such service is not agricultural labor if performed by an individual who is an alien admitted to the United States to perform service in agricultural labor pursuant to sections 214 (c) and 101 (a) (15) (H) of the federal "Immigration and Nationality Act".

(2) For the purposes of sections 8-70-115 to 8-70-125, any individual who is a member of a crew furnished by a crew leader to perform service in agricultural labor for any other person shall be treated as an employee of such crew leader:

(a) If such crew leader holds a valid certificate of registration under the federal "Migrant and Seasonal Agricultural Worker Protection Act" or substantially all the members of such crew operate or maintain tractors, mechanized harvesting or cropdusting equipment, or any other mechanized equipment, which is provided by such crew leader; and

(b) If such individual is not an employee of such other person within the meaning of section 8-70-115.

(3) For the purposes of this section, in the case of any individual who is furnished by a crew leader to perform service in agricultural labor for any other person and who is not treated as an employee of such crew leader under subsection (2) of this section:

(a) Such other person and not the crew leader shall be treated as the employer of such individual; and

(b) Such other person shall be treated as having paid cash remuneration to such individual in an amount equal to the amount of cash remuneration paid to such individual by the crew leader (either on his own behalf or on behalf of such other person) for the service in agricultural labor performed for such other person.

(4) For the purposes of this section, a crew leader is an individual who:

(a) Furnishes individuals to perform service in agricultural labor for any other person;

(b) Pays (either on his own behalf or on behalf of such other person) the individuals so furnished by him for the service in agricultural labor performed by them; and

(c) Has not entered into a written agreement with such other person under which such individual is designated as an employee of such other person.

8-70-121. Employment - domestic services. "Employment" means domestic services performed after December 31, 1977, in a private home, local college club, or local chapter of a college fraternity or sorority for a person who paid cash remuneration of one thousand dollars or more after December 31, 1977, in the current calendar year or the preceding calendar year to individuals employed in such domestic service in any calendar quarter.

8-70-122. Employment - American employer. (1) "Employment" means services of an individual who is a citizen of the United States performed outside the United States (except in Canada) after December 31, 1971, in the employ of an American employer (other than service which is deemed employment under the

provisions of section 8-70-117 or the parallel provisions of another state's law) if:

(a) The employer's principal place of business in the United States is located in this state; or

(b) The employer has no place of business in the United States but the employer is an individual who is a resident of this state; or the employer is a corporation which is organized under the laws of this state; or the employer is a partnership or a trust and the number of the partners or trustees who are residents of this state is greater than the number who are residents of any one other state; or

(c) None of the criteria of paragraphs (a) and (b) of this subsection (1) is met but the employer has elected coverage in this state or, the employer having failed to elect coverage in any state, the individual has filed a claim for benefits based on the service, under the law of this state.
(2) For purposes of this section:

(a) An "American employer" means an individual person who is a resident of the United States; or a partnership if two-thirds or more of the partners are residents of the United States; or a trust if all of the trustees are residents of the United States; or a corporation organized under the laws of the United States or of any state.

(b) "United States" includes the District of Columbia, the commonwealth of Puerto Rico, and the Virgin Islands.

8-70-123. Employment - vessels - aircraft. Notwithstanding section 8-70-117, "employment" means services performed after December 31, 1971, by an officer or member of the crew of an American vessel or an American aircraft on or in connection with such vessel or aircraft, if the office from which the operations of such vessel or aircraft operating within or within and without the United States are ordinarily and regularly supervised, managed, directed, and controlled is within this state.

8-70-124. Employment - credit - state unemployment fund. Notwithstanding any other provisions of sections 8-70-115 to 8-70-125, "employment" means services with respect to which a tax is required to be paid under any federal law imposing a tax against which credit may be taken for premiums required to be paid into a state unemployment fund or which, as a condition for full credit against the tax imposed by the "Federal Unemployment Tax Act", is required to be covered under articles 70 to 82 of this title.

8-70-125. Employment - educational institutions. With respect to weeks of unemployment which begin after December 31, 1977, "employment" means services performed in the employ of an educational institution, including an institution of higher education as defined in section 8-70-103 (15), and the payment or denial of benefits based on such employment shall be subject to the conditions set forth in section 8-73-107 (3).

8-70-125.5. Employment - Indian tribes. (1) "Employment" means service performed in the employ of an Indian tribe, as defined in section 3306 (u) of the "Federal Unemployment Tax Act", 26 U.S.C. sec. 3301 et seq. ("FUTA"), if such service is excluded from "employment", as defined in FUTA solely by reason of section 3306 (c) (7) of FUTA, and is not otherwise excluded from "employment" under the provisions of articles 70 to 82 of this title.

(2) Benefits based on service in employment defined in this section shall be payable in the same amount, on the same terms, and subject to the same conditions as benefits payable on the basis of other service subject to the provisions of articles 70 to 82 of this title.

8-70-125.7. Employment - property tax work-off program participants. "Employment" includes services performed by participants in a property tax work-off program established pursuant to article 3.7 of title 39, C.R.S.

8-70-126. Employment does not include - agricultural labor. "Employment" does not include services performed by an individual in agricultural labor, as defined in section 8-70-109, except as provided in section 8-70-120.

8-70-127. Employment does not include - domestic service. Except as provided in section 8-70-121, "employment" does not include domestic service in a private home, local college

club, or local chapter of a college fraternity or sorority.

8-70-128. Employment does not include - employer's trade or business. (1) "Employment" does not include casual labor not in the course of the employer's trade or business performed in any calendar quarter by an employee, unless the cash remuneration paid for the service is fifty dollars or more and unless the service is performed by an individual who is regularly employed by the employer to perform such service. For purposes of this section, an individual is deemed to be regularly employed during a calendar quarter only if:

(a) On at least twenty-four days during such calendar quarter, the individual performs services for the employer which are not in the course of the employer's trade or business; or

(b) On at least twenty-four days during the previous calendar quarter, the individual performed services for the employer which were not in the course of the employer's trade or business.

8-70-129. Employment does not include - spouse - minor. "Employment" does not include services performed by an individual in the employ of his spouse and service performed by a child under the age of twenty-one in the employ of his father or mother.

8-70-130. Employment does not include - instrumentalities of United States. "Employment" does not include services performed in the employ of the United States government, a national bank or state bank that is a member of the federal reserve system, or a federal savings and loan association or a state building and loan association that is a member of the federal home loan bank system, which institutions were, prior to January 1, 1972, exempt from articles 70 to 82 of this title, or any other instrumentality of the United States exempt under the constitution of the United States from the premiums imposed by articles 70 to 82 of this title; except that, to the extent that the congress of the United States permits states to require any instrumentalities of the United States to make payments into an unemployment fund under a state unemployment compensation law, all of the provisions of articles 70 to 82 of this title shall be applicable to such instrumentalities and to services performed for such instrumentalities in the same manner, to the same extent, and on the same terms as to all other employers, employing units, individuals, and services. If this state is not certified for any year by the United States secretary of labor under section 3304 of the federal "Internal Revenue Code of 1986", as amended, the payments required of such instrumentalities with respect to such year shall be refunded by the division from the fund in the same manner and within the same period as is provided in section 8-79-108 with respect to premiums erroneously collected.

8-70-131. Employment does not include - school - college - university. (1) "Employment" does not include services performed in the employ of a school, college, or university, if such service is performed:

(a) By a student who is enrolled and is regularly attending classes at such school, college, or university; or

(b) By the spouse of such a student, if such spouse is advised, at the time such spouse commences to perform such service, that the employment of such spouse to perform such service is provided under a program to provide financial assistance to such student by such school, college, or university, and such employment will not be covered by any program of unemployment insurance.

8-70-132. Employment does not include - educational institution. "Employment" does not include services performed by an individual who is enrolled at a nonprofit or public educational institution, which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on, as a student in a full-time program taken for credit at such institution, which combines academic instruction with work experience, if such service is an integral part of such program and such institution has so certified to the employer; except that this section shall not apply to service performed in a program established for or on behalf of an employer or group of mployers.

8-70-133. Employment does not include - hospital. "Employment" does not include services performed in the employ of a hospital, as defined in section 8-70-103 (14), if such service is performed by a patient of the hospital.

8-70-134. Employment does not include - unemployment compensation system. "Employment" does not include services with respect to which unemployment compensation is payable under an unemployment compensation system established by an act of congress. The division is authorized to enter into agreements with the proper agencies under such act of congress, which agreements shall become effective ten days after publication thereof in the manner provided in section 8-72-102 for general rules, to provide reciprocal treatment to individuals who have, after acquiring potential rights to benefits under articles 70 to 82 of this title, acquired rights to unemployment compensation under such act of congress or who have, after acquiring potential rights to unemployment compensation under such act of congress, acquired rights to benefits under articles 70 to 82 of this title.

8-70-135. Employment does not include - paper routes. "Employment" does not include services performed by an individual under the age of eighteen years in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution, or services performed by an individual in the delivery or distribution of newspapers whose remuneration primarily consists of the difference between the amount he pays or is obligated to pay for the said newspapers and the amount he receives or is entitled to receive on distribution or resale thereof.

8-70-136. Employment does not include - brokers. (1) "Employment" does not include services performed by an individual as a licensed real estate broker or as a direct seller engaged in the trade or business of selling, or soliciting the sale of, a consumer product in a home or in an establishment other than a permanent retail establishment or as an individual engaged in the trade or business of the delivering or distribution of newspapers or shopping news, including any services directly related to such trade or business if:

(a) All the remuneration, whether or not paid in cash, for the performance of such services is directly related to sales or other output, including the performance of services, instead of the number of hours worked; and

(b) The services are performed pursuant to a written contract between such person and the person for whom the services are performed and if such contract provides that the person shall not be treated as an employee with respect to such services for federal tax purposes.

8-70-137. Employment does not include - organization exempt from income tax. "Employment" does not include services performed in any calendar quarter in the employ of any organization exempt from income tax under section 501 (a) of the "Internal Revenue Code", other than an organization described in section 401 (a), or under section 521 of said code, if the remuneration for such service is less than fifty dollars.

8-70-138. Employment does not include - in-home services. (Repealed)

8-70-139. Employment does not include - insurance agents. "Employment" does not include services performed by an individual for a person as an insurance agent or an insurance solicitor, if all such services performed by such individual for such person are performed for remuneration solely by way of commission.

8-70-140. Employment does not include - nonprofit organizations - governmental entities - Indian tribes. (1) For the purposes of sections 8-70-118, 8-70-119, and 8-70-125.5, "employment" does not include services performed:

(a) In the employ of a church or a convention or association of churches or in the employ of an organization that is operated primarily for religious purposes and that is operated, supervised, controlled, or principally supported by a church or convention or association of churches or in the employ of an elementary or secondary school that is operated primarily for religious purposes; or

(b) By a duly ordained, commissioned, or licensed minister of a church in the exercise of

his ministry or by a member of a religious order in the exercise of duties required by such order; or

(c) In the employ of a governmental entity referred to in section 8-70-119 or an Indian tribe referred to in section 8-70-125.5 if such service is performed by an individual in the exercise of such individual's duties:

(I) As an elected official;

(II) As a member of a legislative body or a member of the judiciary of a state or political subdivision thereof, or of an Indian tribe;

(III) As a member of the state National Guard or Air National Guard;

(IV) As an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood, or similar emergency;

(V) In a position that, pursuant to the laws of this state or Indian tribal law, is designated as a major, nontenured policymaking or advisory position, or a policymaking or advisory position the performance of the duties of which ordinarily does not require more than eight hours per week;

(VI) As an election official or election worker if the amount of remuneration received by the individual during the calendar year for services as an election official or election worker is less than one thousand dollars; or

(d) By an individual receiving rehabilitation or remunerative work in a facility conducted for the purpose of carrying out a program of rehabilitation for individuals whose earning capacity is impaired by age, physical or mental deficiency, or injury or of providing remunerative work for individuals who, because of their impaired physical or mental capacity, cannot be readily absorbed in the competitive labor market; or

(e) By an individual receiving work relief or work training as part of an unemployment work relief or work training program assisted or financed in whole or in part by public funds or by an Indian tribe; or

(f) Prior to January 1, 1978, for a hospital in a state prison or other state correctional institution by an inmate of the prison or correctional institution and, after December 31, 1977, by an inmate of a custodial or penal institution.

8-70-140.1. Employment does not include - foreign government service. "Employment" does not include service performed in the employ of a foreign government, including service as a consular or other officer or employee or a nondiplomatic representative.

8-70-140.2. Employment does not include - nonresident alien service. "Employment" does not include services performed by a nonresident alien individual for the period such individual is temporarily present in the United States as a nonimmigrant under subparagraph (F), (J), (M), or (Q) of section 101 of the federal "Immigration and Nationality Act", 8 U.S.C. sec. 1101 (a) (15), as amended, to carry out any purpose specified in subparagraph (F), (J), (M), or (Q) of section 101 of such federal act.

8-70-140.5. Employment does not include - drivers of taxis or limousines. (1) "Employment" does not include services performed by an individual who is working as a driver under a lease or contract with a taxi or limousine motor common carrier that holds a certificate pursuant to article 10.1 of title 40, C.R.S. Any such lease or contract may contain the following provisions:

(a) That the driver may either lease or contract for a motor vehicle owned by such carrier or may own the motor vehicle driven and lease it to the carrier, which may then re-lease such motor vehicle to the driver;

(b) That the driver shall be instructed in the method of the carrier's operation, that the driver is familiar with federal, state, and municipal statutes, ordinances, and regulations, and that the carrier shall enforce compliance by the driver with such federal, state, and municipal statutes, ordinances, and regulations;

(c) That certain enumerated transportation services shall be accomplished personally by the driver;

(d) That certain characteristics on the body of the vehicle being used, including color and requirements for any written displays, are required for the sake of uniformity;

(e) That certain periodic driver safety training is required;

(f) That the common carrier has certain control over any assistant working with the driver for purposes of enforcement of and compliance with federal, state, and municipal statutes, ordinances, and regulations;

(g) That a specific number of hours is allotted in the form of shifts in which the driver shall complete a particular shipment of goods for the purpose of meeting the transportation equipment needs of drivers and the transportation needs of the public;

(h) That certain procedures for radio telecommunication between drivers and the carrier are mandated;

(i) That the driver shall work only for the carrier with whom such driver has contracted while such driver is operating the motor vehicle;

(j) That the driver is prohibited from advertising any services offered while driving for the carrier;

(k) That the carrier shall pay the driver's fees when the carrier accepts charge vouchers from the driver for services rendered to customers by such driver;

(l) That such lease or contract may be terminated by any party to such lease or contract; except that the driver may be required to complete an accepted trip; and

(m) That no length be specified for the term of such lease or contract.

(2) Leases or contracts containing the provisions specified in paragraphs (a), (b), (e), (f), (g), (h), and (i) of subsection (1) of this section shall be prima facie evidence that an independent contractor relationship exists between the parties to such lease or contract. This presumption may be overcome by clear and convincing evidence of an employment relationship between the parties to such lease or contract considering only factors not in the lease. Leases or contracts containing other optional provisions specified in subsection (1) of this section shall not change the characterization of the relationship between the driver and the carrier pursuant to such lease or contract.

8-70-140.7. Employment does not include - land professionals. (1) "Employment" does not include services performed for a private for profit person or entity by a land professional, if:

(a) Substantially all remuneration paid in cash or otherwise for the performance of the services is directly related to the completion by the land professional of the specific tasks contracted for rather than to the number of hours worked by the individual; and

(b) The services performed by the land professional are performed under a contract between the land professional and the person or entity for whom the services are performed that provides that the land professional is to be treated as an independent contractor and not as an employee with respect to the services provided under the contract.

(2) For the purposes of this section, "land professional" means an individual who has been engaged primarily in:

(a) Negotiating for the acquisition or divestiture of mineral rights;

(b) Negotiating business agreements that provide for the exploration for or development of minerals;

(c) Determining ownership of minerals through the research of public and private records; and

(d) Reviewing the status of title, acting to cure title defects, and otherwise acting to reduce title risk associated with ownership of minerals, managing rights or obligations derived from ownership of interests in minerals, or unitizing or pooling of interest in minerals.

8-70-140.8. Employment does not include - owners. "Employment" does not include services performed by members of a limited liability company, sole proprietors, or partners in a partnership.

8-70-141. Wages - definition. (1) "Wages" means:

(a) All remuneration for personal services, including the cash value of all remuneration paid in any medium other than cash, other than remuneration paid in other than cash to an agricultural worker or a domestic worker. When an employing unit during a calendar year acquires the experience of an employer as provided in section 8-76-104 and if, immediately after such acquisition, the successor employer continues to employ an individual who immediately prior to the acquisition was an employee of the predecessor, any remuneration previously paid to the individual by the predecessor shall be considered as having been paid by the successor.

(b) (I) Any employer contribution under a qualified cash or deferred arrangement, as defined in 26 U.S.C. sec. 401 (k), to the extent not included in gross income by reason of 26 U.S.C. sec. 402 (e) (3); and

(II) Any amount treated as an employer contribution under 26 U.S.C. sec. 414 (h) (2); and

(III) Any employer contribution under a nonqualified deferred compensation plan. For the purposes of this subparagraph (III), "nonqualified deferred compensation plan" means any plan or other arrangement for deferral of compensation other than a plan described in section 8-70-142 (1) (c). Any amount deferred under a nonqualified deferred compensation plan shall be taken into account for the purposes of this paragraph (b) as of the date that the services are performed or the date that there is no substantial risk of forfeiture of the rights to such amount, whichever date is later, and shall not thereafter be treated as "wages" for the purposes of this section.

(IV) Any payment included in the definition of wages in the "Federal Unemployment Tax Act".

(c) Tips which are received while performing services that constitute employment and which are made known to the employer through a written statement furnished to him by the employee; and

(d) (I) With respect to weeks of unemployment beginning on or after January 1, 1978, wages for insured work paid for previously uncovered services. For the purposes of this paragraph (d), "previously uncovered services" means services which were not employment as defined in sections 8-70-126 to 8-70-140.8 and were not services covered pursuant to section 8-76-107 at any time during the one-year period ending December 31, 1975, and:

(A) Which are agricultural labor as defined in section 8-70-103 or domestic service as defined in section 8-70-121; or

(B) Which are services performed by an employee of this state or a political subdivision thereof, as provided for in section 8-70-119, or by an employee of a nonprofit educational institution which is not an institution of higher education, as provided for in section 8-70-103 (15).

(II) "Previously uncovered services" shall not apply to services to the extent that assistance under Title II of the "Emergency Jobs and Unemployment Assistance Act of 1974" was paid on the basis of such services.

8-70-142. Wages - remuneration not included as wages. (1) "Wages" does not include:

(a) The amount of any payment (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment) made to, or on behalf of, an employee or any of his dependents by an employer under a plan or system established by an employer which makes provision for his employees generally, or for his employees generally and their dependents, or for any class or classes of his employees and their dependents, on account of:

(I) Sickness or accident disability, but, in the case of payments made to an employee or any of his dependents, this paragraph (a) shall exclude from the term "wages" only payments which are received under the workers' compensation law; or

(II) Medical or hospitalization expenses in connection with sickness or accident disability; or

(III) Death;

(b) Any payment on account of sickness or accident disability, or medical or hospitalization expenses in connection with sickness or accident disability, made by an employer to or on behalf of an employee after the expiration of six calendar months following the last calendar month in which the employee worked for such employer;

(c) Any payment made to or on behalf of an employee or his beneficiary:

(I) From or to a trust described in 26 U.S.C. section 401 (a) which is exempt from tax under 26 U.S.C. section 501 (a) at the time of such payment unless such payment is made to an employee of the trust as remuneration for services rendered as such employee and not as a beneficiary of the trust; or

(II) Under or to a bond purchase plan which, at the time of such payment, is a qualified bond purchase plan described in 26 U.S.C. section 405 (a); or

(III) Under a simplified employee pension if, at the time of payment, it is reasonable to believe that the employee will be entitled to a deduction for such payment under 26 U.S.C. section 219 (b) (2); or

(IV) Under or to an annuity contract described in 26 U.S.C. section 403 (b), other than a payment for the purchase of such contract which is made by reason of a salary reduction agreement (whether evidenced by a written instrument or otherwise); or

(V) Under or to an exempt governmental deferred compensation plan, as defined in 26 U.S.C. section 3121 (v) (3); or

(VI) To supplement pension benefits under a plan or trust described in any of the provisions of this subsection (1) which are designed to take into account all or some portion of the increase in the cost of living, as determined by the United States secretary of labor, since retirement but only if such supplemental payments are under a plan which is treated as a welfare plan under section 3 (2) (B) (ii) of the federal "Employee Retirement Income Security Act of 1974", as amended; or

(VII) Under or to an annuity plan which, at the time of such payment, is a plan described in 26 U.S.C. section 403 (a); or

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

(d) The payment by an employer, without deduction from the remuneration of the employee, of the tax imposed upon an employee under 26 U.S.C. section 3101 or any payment required from any employee under articles 70 to 82 of this title if the remuneration is paid to the employee for domestic service in a private home or for agricultural labor;

(e) Remuneration paid to or on behalf of an employee if and to the extent that, at the time of the payment of such remuneration, it is reasonable to believe that a corresponding deduction is allowable under 26 U.S.C. section 217;

(f) Any payment or series of payments, except for any payment or series of payments which would have been paid if the employee's employment relationship had not been terminated, by an employer to an employee or any of his dependents which is paid:

(I) Upon or after the termination of an employee's employment relationship because of death or retirement for disability; and

(II) Under a plan established by the employer which makes provision for his employees generally or any class or classes of employees and their dependents;

(g) Remuneration for agricultural labor paid in any medium other than cash;

(h) Any contribution, payment, or service provided by an employer which may be excluded from the gross income of an employee, his spouse, or his dependents under the provisions of 26 U.S.C. section 120 (relating to amounts received under qualified group legal services plans);

(i) Any payment made or benefit furnished to or for the benefit of an employee if, at the time of such payment or such furnishing, it is reasonable to believe that the employee will be able to exclude such payment or benefit from income under 26 U.S.C. section 127 or 129;

(j) The value of any meals or lodging furnished by or on behalf of the employer if, at the time of such furnishing, it is reasonable to believe that the employee will be able to exclude such items from income under 26 U.S.C. section 119;

(k) Remuneration for service not in the course of the employer's trade or business paid to an employee in any medium other than cash;

(l) Any payment made by an employer to the survivors or the estate of a former employee after the calendar year in which such employee died;

(m) (I) Remuneration for duty in a branch of the United States military reserve or in the National Guard if such duty is served during a period of time that does not exceed seventy-two hours in duration from start of service to end of service during any one-month period;

(II) Remuneration for required annual training as part of duty pursuant to subparagraph (I) of this paragraph (m), for a period of time of approximately two weeks;

(n) Any payment made to or on behalf of an employee or such employee's beneficiary under an arrangement to which section 26 U.S.C. sec. 408 (p) applies, other than any elective contributions under section 26 U.S.C. sec. 408 (p)(2)(A)(I);

(o) Any payment made to or for the benefit of an employee if, at the time of such payment, it is reasonable to believe that the employee will be able to exclude such payment from income pursuant to section 26 U.S.C. sec. 106 (b);

(p) The amount of any payment, including any amount paid by an employer into a fund to provide for any such payment, made to or on behalf of an employee under a plan or system established by an employer that makes provision for his or her employees generally, or for classes of his or her employees, for the purpose of supplementing unemployment benefits; except that this paragraph (p) shall not apply if the employee has the option to receive a lump-sum payment instead of periodically distributed, supplemental unemployment benefits.

8-70-143. Applicability of legislation. Legislation which amends, repeals, or adds to the provisions of articles 70 to 82 of this title shall become applicable to unemployment compensation claims on the first day (Sunday) of the first calendar week subsequent to the effective date of such legislation unless a different applicability date is specifically provided for by the general assembly.

ARTICLE 71

UNEMPLOYMENT INSURANCE

PART 1 - DIVISION OF EMPLOYMENT AND TRAINING

8-71-101. Division of unemployment insurance created - director. There is hereby created a division of unemployment insurance within the department of labor and employment, the head of which is the director of the division.

8-71-102. Powers, duties, and functions - acceptance of moneys. (1) The functions of the division comprise all administrative functions of the state in relation to the administration of articles 70 to 82 of this title. The director of the division shall exercise the powers, duties, and functions prescribed under articles 70 to 82 of this title under the direction and supervision of the executive director of the department of labor and employment, as prescribed by section 24-1-105 (4), C.R.S. Any vacancy in the office of director of the division shall be filled in the manner provided by law.

(2) The division may accept and expend moneys from gifts, grants, donations, and other nongovernmental contributions for the purposes for which the division is authorized.

8-71-103. Organization of division - authority to issue bonds.

(1) (Deleted by amendment, L. 2012.)

(2) (a) The division constitutes an enterprise for purposes of section 20 of article X of the state constitution, as long as the division retains authority to issue revenue bonds and the division receives less than ten percent of its total annual revenues in grants, as defined in section 24-77-102 (7), C.R.S., from all Colorado state and local governments combined. For as long as it constitutes an enterprise pursuant to this section, the division is not subject to section 20 of article X of the state constitution.

(b) (I) Except as provided in subparagraph (II) of this paragraph (b), the enterprise established pursuant to this subsection (2) has all the powers and duties authorized by articles 70 to 82 of this title pertaining to unemployment insurance and unemployment compensation. The unemployment compensation fund, created in section 8-77-101, constitutes part of the enterprise established pursuant to this subsection (2).

(II) The employment support fund established in section 8-77-109 (1) shall not be included in or administered by the enterprise established pursuant to this subsection (2).

(c) Nothing in this subsection (2) limits or restricts the authority of the division to expend its revenues consistent with the provisions of articles 70 to 82 of this title.

(d) (I) Upon receiving the certifications specified in subparagraphs (III) and (IV) of this paragraph (d), the division may issue revenue bonds for the same purposes and on the same terms, and levy and apply the proceeds of bond assessments for the same purposes and in the same manner, as the Colorado housing and finance authority may issue bonds and levy and apply the proceeds of bond assessments under section 29-4-710.7, C.R.S., substituting references to the division for references to the authority under that section. Bond assessments levied by the division may be used to pay revenue bonds issued by the division under this paragraph (d) or revenue bonds issued by the Colorado housing and finance authority under section 29-4-710.7, C.R.S.

(II) Any bonds issued pursuant to this paragraph (d) must be executed and delivered by the director of the division and may be in the form, may be sold and may have the same terms as provided in section 43-4-807 (1) (b) and (1) (c), C.R.S., may contain the provisions permitted by section 43-4-807 (1) (d), C.R.S., shall be legal investments for the entities described in, subject to the terms set forth in, section 43-4-807 (3), C.R.S., and shall be exempt from taxation and assessments in the state as provided in section 43-4-807 (4), C.R.S. The division may invest or deposit any proceeds and interest from the sale of such bonds as provided in section 43-4-807 (2), C.R.S. The division shall have the power to enter into all other contracts or agreements, which contracts and agreements are not subject to the "Procurement Code", articles 101 to 112 of title 24, C.R.S., that are necessary or incidental to the exercise of its powers and duties under this paragraph (d), including the power to engage the services of consultants, financial advisors, underwriters, bond insurers, letter of credit banks, rating agencies, and agents and other persons whose services may be required or deemed advantageous by the division, and the power to enter into interest rate exchange agreements for bonds that have been issued in accordance with this paragraph (d). The amount of outstanding liability for bonds issued pursuant to this paragraph (d) or section 29-4-710.7, C.R.S., is not taken into account for purposes of rate setting under article 76 of this title.

(III) The division may not issue its bonds pursuant to this paragraph (d) until the monthly balance in the unemployment compensation fund is equal to or less than nine-tenths of one percent of the total wages reported by ratable employers for the calendar year, or for the most recent available four consecutive quarters prior to the last computation date, and the governor, the state treasurer, and the executive director of the department of labor and employment have each certified in writing to the division:

(A) That other funding alternatives to the issuance of bonds by the division under this paragraph (d) have been considered and that the issuance of such bonds is the most cost-effective

means for the division to maintain adequate balances in the unemployment compensation fund or to repay moneys advanced to the state pursuant to 42 U.S.C. sec. 1321;

(B) The amount of money required to maintain adequate balances in the unemployment compensation fund or to repay moneys advanced to the state pursuant to 42 U.S.C. sec. 1321, or both; and

(C) The amount of bonds to be issued.

(IV) In addition to the written certifications specified in subparagraph (III) of this paragraph (d), the executive director of the department of labor and employment shall certify in writing that the issuance of bonds as authorized by law would not result in decertification of Colorado's unemployment insurance program, impact any cap application, affect the receipt of emergency unemployment compensation funds, create an ineligibility for receipt of federal funds, or result in other penalties or sanctions under the federal "Social Security Act", as amended, or the "Federal Unemployment Tax Act", as amended, 26 U.S.C. sec. 3301 et seq.

8-71-104. Head of division. (Repealed)

8-71-105. Unemployment compensation commission. (Repealed)

8-71-106. State employment service. (Repealed)

PART 2 - WORK FORCE INVESTMENT ACT

8-71-201 to 8-71-224. (Repealed)

ARTICLE 72

ADMINISTRATION OF DIVISION

8-72-101. Duties and powers of division. (1) It is the duty of the division to administer articles 70 to 82 of this title; and it has the power to employ such persons, make such expenditures, require such reports, make such investigations, set such reasonably necessary standards, create and require the use of such forms, adopt such administrative methods and procedures, and take such other action as it deems necessary or suitable to that end. The division shall determine its own organization and methods of procedure in accordance with the provisions of articles 70 to 82 of this title.

(2) Repealed.

(3) (a) Whenever any event occurs that may have a material effect on the adequacy of the fund, whether to increase costs or decrease revenues or otherwise, the division shall promptly analyze the potential effect and provide the analysis to the governor and the general assembly. For purposes of this subsection (3), "event" includes proposed federal or state legislation and administrative or judicial adjudications.

(b) The department of labor and employment shall update the general assembly annually on the status of the fund during the hearing conducted pursuant to section 2-7-203, C.R.S. By August 31, 2012, and by each August 31 thereafter, the division shall report to the joint budget committee, the economic and business development committee of the house of representatives, and the business, labor, and technology committee of the senate, or their successor committees, regarding the status of the fund. The report shall include at least the following from the prior calendar year:

(I) Total fund revenues and expenditures;

(II) The highest and lowest trust fund balance from the prior calendar year and a comparison of those balances to the following three solvency measures: The reserve ratio, the high-cost multiple, and the average high-cost multiple;

(III) An analysis of the responsiveness of the funding mechanism to changes in economic conditions, both positive and negative;

(IV) An analysis of any material concerns identified by the division in fund solvency, revenue, and expenditures;

(V) An analysis of the impact of total premiums assessed to employers by employer size and employer experience;

(VI) The total amount of overpayments paid to claimants and the total amount of overpayments recovered; and

(VII) An analysis of measures taken by the division to reduce the total number and amount of overpayments and fraudulent payments.

8-72-102. Rules. (1) The director of the division has the power to adopt, amend, or rescind, in accordance with section 24-4-103, C.R.S., reasonable and necessary rules relating to the administration of the "Colorado Employment Security Act" and governing hearings and proceedings under such act.

(2) The director shall adopt rules establishing a procedure for an individual or employer filing a petition for review pursuant to section 8-74-106 (1) (a) or (1) (b) or an appeal pursuant to section 8-73-107 (1) (c) (I) (A), 8-74-103 (1), 8-74-104 (1), 8-76-113 (1) or (2), or 8-81-101 (4) (c), or an interested party presenting additional information pursuant to section 8-74-102 (1), to contest a determination by the director that the individual, employer, or interested party failed to comply with a deadline set forth in the applicable section by providing proof that the petition for review, appeal, or additional information was timely mailed.

8-72-103. Publications. The director of the division shall determine what information should be made public in order to carry out the provisions of articles 70 to 82 of this title. Materials of the division circulated in quantity outside the executive branch shall be issued in accordance with the provisions of section 24-1-136, C.R.S.

8-72-104. Personnel. Subject to other provisions of articles 70 to 82 of this title and the state personnel system regulations, the division is authorized to appoint, fix the compensation, and prescribe the duties and powers of such officers, accountants, attorneys, experts, and other persons as may be necessary in the performance of its duties. The division may delegate to any such person so appointed such power as it deems reasonable and proper for the effective administration of articles 70 to 82 of this title. In its discretion, the division may bond any person handling moneys or signing checks under articles 70 to 82 of this title.

8-72-105. Advisory council - sunset review. (Repealed)

8-72-106. Employment stabilization. The division, with the advice and aid of such advisory councils as it may appoint and through its appropriate sections, shall take all appropriate steps to reduce and prevent unemployment; to encourage and assist in the adoption of practical methods of vocational training, retraining, and vocational guidance; to investigate, recommend, advise, and assist in the establishment and operation, by municipalities, counties, school districts, and the state, of reserves for public works to be used in times of business depression and unemployment; to promote the reemployment of unemployed workers throughout the state in every way that may be feasible; and, to these ends, to carry on investigations and research studies, the results of which, if circulated in quantity outside the division, shall be issued in accordance with the provisions of section 24-1-136, C.R.S.

8-72-107. Records and reports - fee - violation - penalty. (1) Each employing unit shall keep true and accurate work records, containing such information as the division may prescribe. Such records shall be retained for a period of not less than five years and shall be open to inspection and be subject to being copied by the division or its authorized representatives at any reasonable time and as often as may be necessary. The division or any referee may require from any employing unit any sworn or unsworn reports, with respect to persons employed by it, which it or the referee deems necessary for the effective administration of articles 70 to 82 of this title. Information thus obtained, or obtained from any individual pursuant to the administration of articles 70 to 82 of this title, except to the extent necessary for the proper presentation of a claim, or withholding tax or unemployment insurance account numbers if such numbers are obtained from the department of revenue pursuant to section 39-21-113, C.R.S., shall be held confidential and shall not be published or be open to public inspection (other than to public employees in the performance of their public duties, to an agent of a state or local child support enforcement agency pursuant to section 8-72-109 (9), or to an agent of the division designated as such in writing for the purpose of

accomplishing certain of the division's functions) in any manner revealing the individual's or employing unit's identity. Any interested party or such party's authorized representative, in preparation for and prior to any hearing on a claim governed by articles 70 to 82 of this title, shall be entitled to examine and, upon the payment of a reasonable fee to the division, obtain a copy of any materials contained in such records to the extent necessary for proper presentation of the party's position at the hearing. Notwithstanding said provisions of this subsection (1), any applicant for work shall be entitled to examine and copy, or obtain a copy from the division upon payment of the costs of duplication, any letters of reference or other similar documents pertaining to the applicant that are in possession of the division. Any employee or member of the division or any referee who violates any provision of this article is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than twenty dollars nor more than two hundred dollars, or by imprisonment in the county jail for not more than ninety days, or by both such fine and imprisonment.

(2) The division may request the comptroller of the currency of the United States to cause an examination of the correctness of any return or report of any national banking association rendered pursuant to the provisions of articles 70 to 82 of this title. In connection with such request, the division may transmit any such report or return to the comptroller of the currency of the United States as provided in section 1606 (c) of the federal internal revenue code.

(3) Repealed.

8-72-108. Oaths - witnesses - subpoenas. (1) In the discharge of the duties imposed by articles 70 to 82 of this title, the division or its duly authorized representative shall have power to administer oaths and affirmations, take depositions, certify to official acts, and issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda, and other records deemed necessary as evidence in connection with a disputed claim or the administration of articles 70 to 82 of this title.

(2) In case of contempt or refusal to obey a subpoena issued to any person, any court of this state within the jurisdiction of which the inquiry is carried on or within the jurisdiction of which said person guilty of contempt or refusal to obey is found or resides or transacts business, upon application by the division or its duly authorized representative, shall have jurisdiction to issue to such person an order requiring him to appear before the division or its duly authorized representative to produce evidence if so ordered or give testimony touching the matter under investigation or in question. Any failure to obey such order of the court may be punished by said court as a contempt thereof. Any person who, without just cause, fails or refuses to attend and testify or to answer any lawful inquiry, or to produce books, papers, correspondence, memoranda, and other records, if it is in his power so to do in obedience to a subpoena of the division or its duly authorized representative, is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than two hundred dollars, or by imprisonment in the county jail for not more than sixty days, or by both such fine and imprisonment. Each day such violation continues shall be deemed a separate offense.

(3) No person may be excused from attending and testifying or from producing books, papers, correspondence, memoranda, and other records before the division or its duly authorized representative or in obedience to the subpoena of the division or its duly authorized representative in any cause or proceeding before the division or its duly authorized representative on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, documentary or otherwise; except that such individual so testifying is not exempt from prosecution and punishment for perjury in the first degree committed in so testifying.

8-72-109. State-federal cooperation. (1) (a) In the administration of articles 70 to 82 of this title, the division shall cooperate with the

United States department of labor to the fullest extent consistent with the provisions of articles 70 to 82 of this title, and shall take such action through the adoption of appropriate rules, regulations, administrative methods, and standards as may be necessary to secure to the state and its citizens all the advantages available under the provisions of the federal "Social Security Act", as amended, section 3302 of the "Federal Unemployment Tax Act", the "Wagner-Peyser Act", as amended, and the "Federal-State Extended Unemployment Compensation Act of 1970".

(b) In the administration of the provisions of article 75 of this title, which are enacted to conform with the requirements of the "Federal-State Extended Unemployment Compensation Act of 1970", the division shall take such action as may be necessary:

(I) To ensure that the provisions are so interpreted and applied as to meet the requirements of such federal act as interpreted by the United States department of labor; and

(II) To secure to this state the full reimbursement of the federal share of extended benefits paid under articles 70 to 82 of this title that are reimbursable under the federal act.

(2) The division shall comply with the regulations of the secretary of labor or his successor relating to the receipt or expenditure by this state of money granted under any of said acts and shall make such reports, in such form and containing such information as the secretary of labor may from time to time require, and shall comply with such provisions as the secretary of labor, from time to time, may find necessary to assure the correctness and verification of such reports. The division shall afford reasonable cooperation with every agency of the United States charged with the administration of any employment security law.

(3) The division is authorized to make such investigations, obtain and transmit such information, make available such services and facilities, and exercise such of the other powers provided in articles 70 to 82 of this title with respect to the administration of articles 70 to 82 of this title as it deems necessary or appropriate to facilitate the administration of any state or federal unemployment insurance or public employment service law and in like manner to accept and utilize information, services, and facilities made available to the state by the agency charged with the administration of any such other unemployment insurance or public employment service law.

(4) Upon request therefor the division shall furnish to any agency of the United States charged with the administration of public works or assistance through public employment the name, address, ordinary occupation, and employment status of each recipient of benefits and such recipient's right to further benefits under articles 70 to 82 of this title.

(5) The division may make the state's records relating to the administration of articles 70 to 82 of this title available to the railroad retirement board and may furnish the railroad retirement board, at the expense of such board, such copies thereof as the railroad retirement board deems necessary for its purposes.

(6) (a) The division may afford reasonable cooperation with every agency of the United States charged with the administration of any law providing for payment of benefits arising out of unemployment. In so doing, the division may use its personnel and equipment and accept and use federal funds and make payments therefrom, but in so doing it is not required to neglect or to carry on with less efficiency its own program, and the state of Colorado and its employees shall be free from liability except in case of gross negligence or attempt to defraud the United States.

(b) The director of the division is authorized to enter into agreements with every agency of the United States charged with administration of income or wage verification for the purpose of exchanging information among agencies as a method of controlling the overpayment of unemployment benefits.

(7) The director of the division is authorized to enter into agreements with other departments and divisions of the state for the purpose of obtaining such information as he deems necessary for the proper administration of articles 70 to 82 of this title and providing for payment of the costs thereof.

(8) The director of the division is authorized to enter into agreements with other departments and divisions of the state for the purpose of establishing an income and eligibility system for the exchange of information among agencies administrating federally assisted human service programs. Such system shall conform to all requirements and restrictions of section 1137 of the federal "Social Security Act", as amended.

(9) (a) Information obtained by a state or local child support enforcement agency pursuant to subsection (8) of this section may be used only for the purposes authorized by said subsection (8) and may not be disclosed by such agency to any person or entity for the purposes of establishing, modifying, or collecting child support obligations or locating individuals owing such obligations unless safeguards for the confidentiality of such information, consistent with section 303 (e) (1) (B) of the federal "Social Security Act", as amended, are established by agreement. Neither the division nor its employees shall be liable in civil action for providing information in accordance with subsection (8) of this section.

(b) The limitations on disclosure of information obtained pursuant to subsection (8) of this section set forth in paragraph (a) of this subsection (9) shall apply to any agent of a state or local child support enforcement agency specified in section 8-72-107 (1).

(10) On a quarterly basis, the director of the division shall provide wage and claim information contained in division records to the secretary of the federal department of health and human services for purposes of the national directory of new hires pursuant to all requirements and restrictions set forth in section 453 of the federal "Social Security Act", as amended.

8-72-110. Reciprocal interstate agreements. (1) The division is authorized to enter into reciprocal arrangements with appropriate and duly authorized agencies of other states, or of the federal government, or both, whereby potential rights to benefits under articles 70 to 82 of this title may constitute the basis for payment of benefits by another state or by the federal government, and potential rights to benefits accumulated under the law of another state or of the federal government may constitute the basis for the payment of benefits by this state. Such benefits shall be paid under such provisions of articles 70 to 82 of this title, or under the provisions of the law of such state or of the federal government, or under such combination of the provisions of both laws as may be agreed upon as being fair and reasonable to all affected interests. No such arrangement shall be entered into unless it contains provisions for reimbursement to the fund for such benefits as are paid on the basis of wages and service, subject to the law of another state or of the federal government, and provisions for reimbursement from the fund for such benefits paid by another state or by the federal government on the basis of wages and service, subject to articles 70 to 82 of this title. Reimbursements paid from the fund pursuant to this section shall be deemed to be benefits for the purposes of articles 70 to 82 of this title.

(2) (a) Repealed.

(b) (I) The division may enter into reciprocal arrangements with appropriate and duly authorized agencies of other states or of the federal government, or both, whereby wages for insured work paid in another state or by the federal government are deemed to be wages for insured work under articles 70 to 82 of this title; and wages for insured work paid under articles 70 to 82 of this title are deemed to be wages on the basis of which unemployment insurance is payable under a corresponding law of another state or of the federal government. No such arrangement may be entered into unless it contains provision for reimbursement to the fund for the benefits paid under articles 70 to 82 of this title on the basis of the wages and provision for reimbursement from the fund for the benefits paid under such other law on the basis of wages for insured work as the division finds will be fair and reasonable to all affected interests. Reimbursements paid from the fund pursuant to this section are deemed to be benefits for the purposes of articles 70 to 82 of this title; except that no charge may be made to a premium-paying employer's account under sections 8-76-101 to 8-76-104. With the exception of benefit overpayments, the noncharging shall not apply to reimbursing employer accounts that will be charged in accordance with section 8-76-102.5 in the same amount and to the same extent as if

the reimbursement to another state had been benefits based solely on wages paid by an employer covered by articles 70 to 82 of this title.

(II) This paragraph (b) is effective December 31, 2012.

(3) The division is authorized to enter into arrangements with the appropriate agencies of other states or the federal government whereby individuals performing services in this and other states for employing units under circumstances not specifically provided for in sections 8-70-126 to 8-70-140.7 or under similar provisions in the unemployment compensation laws of such other states shall be deemed to be engaged in employment performed entirely within this state or within one of such other states and whereby potential rights and benefits accumulated under the unemployment compensation laws of several states or under such a law of the federal government, or both, may constitute the basis for the payment of benefits through a single appropriate agency under terms that the department finds will be fair and reasonable as to all affected interests and will not result in any substantial loss to the fund. An individual applying for unemployment insurance benefits through an interstate agreement authorized by this section who is not a Colorado resident and is unable to produce a Colorado driver's license or Colorado identification card shall produce one of the other documents required by section 24-76.5-103 (4) (a), C.R.S., or a valid driver's license or state identification card issued in another state, or, in the case of individuals residing in Canada, a valid Canadian identification card or valid Canadian driver's license, and execute an affidavit as described in section 24-76.5-103 (4) (b), C.R.S., stating that he or she is a United States citizen, a legal permanent resident, or otherwise lawfully present in the United States pursuant to federal law.

(4) The division is further authorized to enter into arrangements with the appropriate agencies of other states or of the federal government for the determination, adjustment, collection, and assessment of premiums by employers with respect to employment within and without this state.

(5) For the purposes of establishing and maintaining free public employment offices, the division is authorized to enter into agreements with the railroad retirement board or any other agency of the United States charged with the administration of an employment security law, with any political subdivision of this state, or with any private, nonprofit organization. As a part of any such agreement, the division may accept moneys, services, or quarters as a contribution to the employment security administration fund.

8-72-111. Release of location information concerning individuals with outstanding felony arrest warrants. (1) Notwithstanding any provision of state law to the contrary and to the extent allowable under federal law, at the request of the Colorado bureau of investigation, the division shall provide the bureau with information concerning the location of any person whose name appears in the division's records who is the subject of an outstanding felony arrest warrant. Upon receipt of such information, it shall be the responsibility of the bureau to provide appropriate law enforcement agencies with location information obtained from the division. Location information provided pursuant to this section shall be used solely for law enforcement purposes. The division and the bureau shall determine and employ the most cost-effective method for obtaining and providing location information pursuant to this section. Neither the division nor its employees or agents shall be liable in civil action for providing information in accordance with the provisions of this subsection (1).

(2) As used in subsection (1) of this section, "law enforcement agency" means any agency of the state or its political subdivisions that is responsible for enforcing the laws of this state. "Law enforcement agency" includes but is not limited to any police department, sheriff's department, district attorney's office, the office of the state attorney general, and the Colorado bureau of investigation.

8-72-112. Division - reporting - veterans programs. The division, by September 30, 2002, and on or before September 30 each year thereafter, shall provide sufficient information to enable the Colorado board of veterans affairs to complete the report required by section 28-5-703 (3), C.R.S.

8-72-113. Annual report - federal stimulus moneys to expand unemployment benefits - repeal. (1) (a) By December 31, 2009, and by each December 31 thereafter until federal stimulus moneys have been exhausted, the division, in connection with its reporting requirements set forth in section 8-73-114 (6), shall report on the total accumulated federal stimulus moneys expended as of December 1 of the year in which the report is submitted in connection with the expansion of unemployment insurance benefits enacted by Senate Bill 09-247 in 2009. The report shall delineate the portions of the federal stimulus moneys expended in connection with each area of expansion of unemployment insurance benefits enacted pursuant to Senate Bill 09-247.

(b) As used in this section, "federal stimulus moneys" means unemployment compensation modernization incentive payments made to the state's unemployment trust fund in accordance with the federal "American Recovery and Reinvestment Act of 2009", Pub.L. 111-5, for enacting unemployment compensation modernization as required by the federal act.

(2) (a) This section is repealed, effective when the state has exhausted all of the federal stimulus moneys provided to the state to fund the expansion of unemployment insurance benefits enacted by Senate Bill 09-247 in 2009.

(b) The director of the division shall notify the revisor of statutes, in writing, when the condition specified in paragraph (a) of this subsection (2) has been satisfied.

8-72-114. Employee misclassification - investigations - enforcement - advisory opinions - rules - employee misclassification advisory opinion fund - statewide study - report - definitions - legislative declaration. (1) The general assembly hereby finds and declares that:

(a) Misclassification of employees as independent contractors in violation of the "Colorado Employment Security Act" and, in particular, the provisions of article 70 of this title defining the employment relationship, may pose a significant problem in this state and leads to underpayment of employment taxes and premiums that employers are obligated to pay the state for covered employment;

(b) Businesses that misclassify employees gain an unfair competitive advantage over businesses that properly classify employees and pay appropriate taxes and premiums to the state;

(c) When employees are misclassified, the protections available to properly classified employees against economic insecurity are unavailable to those misclassified employees, and the stream of revenue that should be paid to the state to provide protections to misclassified employees is not available.

(2) As used in this section:

(a) "Act" means the "Colorado Employment Security Act".

(b) "Complainant" means the person who files a complaint with the division pursuant to this section.

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

(d) Repealed.

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

(f) "Misclassification of employees" means erroneously classifying a person as an independent contractor, free from control and direction of the employer in the performance of service for the employer, when the employer cannot show an exception, pursuant to section 8-70-103 (11), to the general rule that service being performed for the employer is presumed to be employment for purposes of the act.

(g) "Respondent" means the person against whom a complaint is filed pursuant to this section.

(3) (a) The division shall be responsible for accepting and investigating complaints regarding misclassification of employees and enforcing the requirements of the act regarding classification of employees and payment of premiums.

(b) Any person may file a written complaint with the division alleging that a person engaged in employment is being misclassified by an employer as an independent contractor. The complainant shall specify in the complaint the facts showing that the person classified as an independent contractor is engaged in employment, as defined in article 70 of this title.

(c) The director may investigate a complaint filed pursuant to this subsection (3) and shall focus on the investigation of the most egregious complaints or those complaints alleging intentional acts of misclassification of employees undertaken in order to gain a competitive advantage or to avoid the payment of premiums.

(d) No later than thirty days after receipt of a complaint, the director shall determine whether or not an investigation is warranted. If the director determines that an investigation is warranted, the director shall notify the complainant and respondent that an investigation will be conducted and shall conduct the investigation in accordance with the act and the rules adopted pursuant to the act. The complainant and respondent shall cooperate and provide information as necessary to facilitate the investigation.

(e) (I) Upon conclusion of an investigation, the director shall issue a written order either dismissing the complaint or finding that the employer has engaged in the misclassification of employees and has failed to pay appropriate premiums for covered employment as defined in article 70 of this title.

(II) If the director finds that an employer has engaged in the misclassification of employees, the director shall order the employer to pay back premiums owed and interest.

(III) Upon a finding that the employer, with willful disregard of the law, misclassified employees, the director may:

(A) Impose a fine of up to five thousand dollars per misclassified employee for the first misclassification with willful disregard, and for a second or subsequent misclassification with willful disregard, a fine of up to twenty-five thousand dollars per misclassified employee; and

(B) Upon a second or subsequent misclassification with willful disregard, issue an order prohibiting the employer from contracting with, or receiving any funds for the performance of contracts from, the state for up to two years after the date of the director's order. Upon the issuance of such order, the director shall notify state departments and agencies as necessary to ensure enforcement of the order.

(f) The director shall provide a copy of the written order to the respondent. Those portions of the written order that are not confidential under the act shall be a public record.

(g) An employer shall have the right to appeal the director's order in accordance with section 8-76-113.

(4) (a) An employer may request a written advisory opinion from the director concerning whether the employer should classify the individual as an employee for purposes of complying with the act. The employer shall provide the director with information necessary for the director to issue an advisory opinion.

(b) Upon receipt of a request and pertinent information from an employer, the director shall issue an advisory opinion to the employer, indicating whether the employer should classify the individual as an employee in order to comply with the act. An opinion issued pursuant to this subsection (4) is only advisory, based on the information provided by the employer and the director's understanding of the circumstances at the time issued, and is not binding on the division, the employer, or any other state or local governmental entity.

(c) The director shall promulgate rules in accordance with article 4 of title 24, C.R.S., establishing the process for issuing an advisory opinion and the fees to be charged the requesting employer to cover the director's and division's costs in providing the advisory opinion. Any

fees charged pursuant to this subsection (4) for the costs associated with issuing an advisory opinion shall be deposited in the employee misclassification advisory opinion fund, which fund is hereby created. Moneys in the employee misclassification advisory opinion fund shall be subject to annual appropriation by the general assembly for the purposes of this subsection (4). Interest derived from the deposit and investment of moneys in the fund shall be credited to the fund. At the end of any fiscal year, all unexpended and unencumbered moneys in the fund shall remain in the fund and shall not be credited or transferred to the general fund or any other fund.

(5) The director, by all means reasonable and within budgetary constraints, shall publicize the complaint process established in this section and its availability to those who have discovered misclassification of employees. The director shall develop and make available free of charge to employers a notice explaining the rights of employees to be properly classified and the availability of a complaint process pursuant to this section. Employers shall post the notice conspicuously in the workplace or otherwise where it can be seen as employees come or go to their places of work.

(6) to (8) Repealed.

ARTICLE 73

BENEFITS - ELIGIBILITY - DISQUALIFICATION

8-73-101. Payment of benefits. (1) All benefits provided in this article shall be payable from the fund. All benefits shall be paid through employment offices or such other agencies as the director of the division, by general rule, may designate. Notwithstanding any other provision of the law to the contrary, any amount of unemployment compensation payable to any individual for any week, if not an even dollar amount, shall be rounded to the next lower full dollar amount.

(2) An individual's eligibility and benefit amounts shall be determined weekly. Unemployment insurance benefit checks shall be issued once every two weeks; except that the division, when it determines it to be necessary for proper administration of articles 70 to 82 of this title, including the effecting of administrative economies, may issue benefit checks on a weekly basis. Under no circumstance shall benefit checks be issued less frequently than once every two weeks.

8-73-102. Weekly benefit amount for total unemployment. (1) (a) Except as otherwise provided in section 8-73-104 or subsection (2) of this section, each eligible individual who is totally unemployed in any week shall be paid, with respect to such week, benefits at the rate of sixty percent of one-twenty-sixth of the wages paid for insured work during the two consecutive quarters of the individual's base period in which such total wages were highest, computed to the next lower multiple of one dollar but not more than one-half of the average weekly earnings in all covered industries in Colorado according to the records of the division, as computed by the division in June for the ensuing twelve months beginning July 1, on the basis of the most recent available figures, and not less than twenty-five dollars.

(b) (I) If an individual does not have sufficient qualifying weeks or wages in the base period to qualify for unemployment insurance benefits, the individual shall have the option of designating that the base period shall be the alternative base period.

(II) If information regarding weeks and wages for the calendar quarter immediately preceding the first day of the benefit year is not available from the regular quarterly reports of wage information, and the division is not able to obtain the information using other means pursuant to state or federal law, the division may base the determination of eligibility for unemployment insurance benefits on the affidavit of the unemployed individual with respect to weeks and wages for that calendar quarter. The individual shall furnish payroll documentation, if available, in support of the affidavit. The division shall verify the employee's wage information. A determination of unemployment insurance benefits based on an alternative base period shall be adjusted when the quarterly report of wage information from the employer is received, if that information causes a change in the determination.

(2) An individual who is entitled to the maximum weekly benefit amount as computed in subsection (1) of this section shall receive a weekly benefit amount of fifty percent of one fifty-second of his total wages paid for insured work during his base period, computed to the next lower multiple of one dollar, but not to exceed fifty-five percent of the average weekly earnings in all covered industries in Colorado; except that the maximum weekly benefit amount in effect on July 1, 1985, as computed pursuant to this subsection (2), shall remain in effect until such maximum weekly benefit amount is equal to or less than fifty-five percent of the average weekly earnings in all covered industries in Colorado. In no case shall an individual receive a weekly benefit amount computed in accordance with this subsection (2) unless it is greater than the weekly benefit amount yielded by computation in accordance with subsection (1) of this section.

(3) Benefit amounts determined under the provisions of this section shall apply only to those individuals whose benefit years begin subsequent to the effective date of each newly computed maximum benefit amount. No redetermination of benefit amounts already established shall be required by the computation of new maximum benefit amounts.

(4) There shall be deducted from the weekly benefit amount that part of wages payable to such individual with respect to such week that is in excess of twenty-five percent of the weekly benefit amount, and the weekly benefit amount resulting shall be computed to the next lower multiple of one dollar.

(5) (a) There shall be deducted from the weekly benefit amount child support intercept payments calculated under paragraphs (b) to (h) of this subsection (5).

(b) An individual filing a new claim for unemployment compensation shall, at the time of filing such claim, disclose whether or not the individual owes child support obligations. If any such individual discloses that he owes child support obligations and is determined to be eligible for unemployment compensation, the division shall notify the state or local child support enforcement agency enforcing such obligation that the individual has been determined to be eligible for unemployment compensation.

(c) The division shall deduct and withhold from any unemployment compensation payable to an individual that owes child support obligations:

(I) The amount specified by the individual to the division to be deducted and withheld under this subsection (5), if neither subparagraph (II) of this paragraph (c) nor subparagraph (III) of this paragraph (c) is applicable; or

(II) The amount, if any, determined pursuant to an agreement submitted to the division under section 454(20)(B)(i) of the "Social Security Act", as amended, by the state or local child support enforcement agency, unless subparagraph (III) of this paragraph (c) is applicable; or

(III) Any amount otherwise required to be so deducted and withheld from such unemployment compensation pursuant to legal process, as that term is defined in section 462(e) of the "Social Security Act", as amended, transmitted to the division.

(d) Any amount deducted and withheld under paragraph (c) of this subsection (5) shall be paid by the division to the appropriate state or local child support enforcement agency.

(e) Any amount deducted and withheld under paragraph (c) of this subsection (5) shall be treated as if it were paid to the individual as unemployment compensation and as if it were paid by such individual to the state or local child support enforcement agency in satisfaction of the individual's child support obligations.

(f) For the purposes of this subsection (5), "unemployment compensation" means any compensation payable under articles 70 to 82 of this title, including amounts payable by the division pursuant to an agreement under any federal law providing for compensation, assistance, or allowances with respect to unemployment.

(g) This subsection (5) applies only if appropriate arrangements have been made for reimbursement by the state or local child support enforcement agency for the administrative costs

incurred by the division under this section which are attributable to child support obligations being enforced by the state or local child support enforcement agency.

(h) As used in this subsection (5), "child support obligations" includes only those obligations which are being enforced pursuant to a plan described in section 454 of the "Social Security Act", as amended, which has been approved by the secretary of health and human services under part D of Title IV of the "Social Security Act".

(i) As used in this subsection (5), "state or local child support enforcement agency" means any agency of a state or a political subdivision operating pursuant to a plan described in paragraph (h) of this subsection (5).

(6) (a) There shall be deducted from the weekly benefit amount any uncollected overissuance of food stamp coupons calculated under paragraphs (b) to (f) of this subsection (6).

(b) The division shall deduct and withhold from any unemployment compensation payable to an individual that owes an uncollected overissuance of food stamp coupons:

(I) The amount specified by the individual to the division to be deducted and withheld under this subsection (6);

(II) The amount, if any, determined pursuant to an agreement submitted to the division under section 13(c)(3)(A) of the federal "Food Stamp Act", as amended, by the state food stamp agency; or

(III) Any amount otherwise required to be deducted and withheld from such unemployment compensation pursuant to section 13(c)(3)(B) of the federal "Food Stamp Act", as amended.

(c) Any amount deducted and withheld under paragraph (b) of this subsection (6) shall be paid by the division to the appropriate state food stamp agency.

(d) Any amount deducted and withheld under paragraph (b) of this subsection (6) shall for all purposes be treated as if it were paid to the individual as unemployment compensation and then paid by such individual to the state food stamp agency to which the uncollected overissuance of food stamp coupons is owed as repayment for the overissuance.

(e) This subsection (6) applies only if appropriate arrangements have been made for reimbursement by the state food stamp agency for the administrative costs incurred by the division under this section that are attributable to repayment of uncollected overissuances of food stamp coupons owed to the state food stamp agency.

(f) For the purposes of this subsection (6):

(I) "State food stamp agency" means any agency described in section 3(n)(1) of the federal "Food Stamp Act", as amended, that administers the food stamp program established under such federal act within this state.

(II) "Uncollected overissuance" has the meaning provided for the term in section 13(c)(1) of the federal "Food Stamp Act", as amended.

(III) "Unemployment compensation" has the meaning provided for the term in paragraph (f) of subsection (5) of this section.

(7) (a) An individual filing a new claim for unemployment compensation shall, at the time of filing such claim, be advised that:

(I) Unemployment compensation is subject to federal and state income tax;

(II) Requirements exist pertaining to estimated tax payments;

(III) The individual may elect to have federal income tax deducted and withheld from the individual's payment of unemployment compensation at the rate specified in the federal internal revenue code;

(IV) The individual may elect to have Colorado state income tax deducted and withheld from the individual's payment of unemployment compensation at the rate of four percent; and

(V) The individual shall be permitted to change a previously elected withholding status no more

than one time during each "benefit year" as that term is defined by section 8-70-111 (1).

(b) Amounts deducted and withheld from unemployment compensation for income tax purposes shall remain in the unemployment compensation fund, created pursuant to section 8-77-101, until transferred to the federal or state taxing authority as a payment of income tax.

(c) The director of the division shall follow all procedures specified by the United States department of labor and the federal internal revenue service pertaining to the deducting and withholding of income tax.

(d) Amounts shall be deducted and withheld under the provisions of this subsection (7) for income tax purposes only after amounts are deducted and withheld for any overpayments, child support obligations, food stamp overissuances, or any other amounts required to be deducted and withheld under articles 70 to 82 of this title.

8-73-103. Benefits for partial unemployment. (1) Each eligible individual who is partially unemployed shall be paid a partial benefit. Partial benefits shall be in an amount equal to the eligible individual's weekly benefit amount for total unemployment, minus that part of wages payable to such individual with respect to such week which is in excess of twenty-five percent of his weekly benefit amount as computed in accordance with section 8-73-102, and the benefit payment resulting shall be computed to the next lower multiple of one dollar.

(2) The director of the division is authorized to prescribe regulations governing benefits for partial unemployment for other pay periods which will result in benefit amounts for such periods proportionate to the amounts prescribed in this article for weekly pay periods.

8-73-104. Duration of benefits. (1) The division shall compute wage credits for each individual by crediting him with the wages for insured work paid during each quarter of such individual's base period or twenty-six times the current maximum benefit amount, whichever is the lesser. Any otherwise eligible individual shall be entitled during any benefit year to a total amount of benefits equal to twenty-six times his weekly benefit amount or one-third of his wage credits for insured work paid during his base period, whichever is the lesser; except that benefits based on seasonal wages may be paid only for unemployment during the normal seasonal period of the seasonal industry in which such wage credits were earned and only to seasonal workers who are available for work in such seasonal industry, and the total thereof shall not exceed one-third of such individual's wages paid for insured seasonal work during the corresponding normal seasonal period of his base period. For the purposes of this section, wages shall be counted as "wages for insured work" for benefit purposes with respect to any benefit year only if such benefit year begins subsequent to the date on which the employing unit by whom the wages were paid has satisfied the conditions of section 8-70-113, 8-76-104, or 8-76-107, with respect to becoming an employer.

(2) (a) Repealed.

(b) (I) Notwithstanding any other provision of this section or of section 8-76-102.5 (11) (a), benefits based upon regular part-time employment may not be charged to the experience rating account of the regular part-time employer until the claimant has become separated from the regular part-time employment, and then only for those weeks of unemployment that occur after the separation.

(II) This paragraph (b) is effective December 31, 2012.

8-73-105. Part-time workers. (1) As used in this section, "part-time worker" means an individual whose normal work is in an occupation in which his services are not required for the customary scheduled full-time hours prevailing in the establishment in which he is employed or who, owing to personal circumstances, does not customarily work the customary scheduled full-time hours prevailing in the establishment in which he is employed.

(2) The director of the division shall prescribe fair and reasonable general rules applicable to part-time workers for determining their full-time weekly wage and the total wages for employment by employers required to qualify

such workers for benefits. The rules, with respect to such part-time workers, shall supersede any inconsistent provisions of articles 70 to 82 of this title but, so far as practicable, shall secure results reasonably similar to those provided in the analogous provisions of articles 70 to 82 of this title.

8-73-105.3. Temporary employees. (1) As used in this section, "temporary employee" means an individual who is employed by an employer on an irregular schedule and who has agreed to work for the employer on an as-needed or on-call basis.

(2) At the time of hire as a temporary employee, an employer must give the employee notice that the employee is required to contact or notify the employer upon completion of an assignment and to be available to work, as agreed upon at the time of hire, during a specified period of time, on specified dates, or upon call by the employer on an as-needed basis.

(3) If a temporary employee receives the notice pursuant to subsection (2) of this section and does not contact or notify the employer upon completion of an assignment in compliance with the notice and is not available to work at the agreed-upon times, the employee is deemed to have voluntarily terminated employment for the purpose of determining benefits pursuant to section 8-73-108 (5) (e).

(4) If a temporary employee who agrees to work on an as-needed basis receives the notice pursuant to subsection (2) of this section and refuses all work within three separate pay periods when contacted by the employer, the temporary employee is deemed to have voluntarily terminated employment for reasons that may or may not allow an award of benefits pursuant to section 8-73-108.

(5) Repealed.

8-73-105.5. Employment by temporary help contracting firm. (1) (a) For the purposes of this section, "temporary help contracting firm" means any person who is in the business of employing individuals and, for compensation from a third party, providing those individuals to perform work for the third party, under the supervision of the third party.

(b) Repealed.

(2) Employment with a temporary help contracting firm is characterized by a series of limited-term assignments of an employee to a third party, based on an agreement between the temporary help contracting firm and the third party. A separate employment agreement exists between the temporary help contracting firm and each individual it hires as an employee. Completion of an assignment for a third party by an employee employed by a temporary help contracting firm does not, in itself, terminate the employment agreement between the temporary help contracting firm and the employee.

(3) (Deleted by amendment, L. 94, p. 637, § 3, effective July 1, 1994.)

(4) At the time of hire a temporary help contracting firm shall provide written notice to each employee which clearly states that the employee is required to contact the firm upon completion of an assignment.

(5) If an employee of a temporary help contracting firm receives the written notice pursuant to subsection (4) of this section and does not contact the firm upon completion of an assignment in compliance with such written notice, such employee shall be held to have voluntarily terminated employment for purposes of determining benefits pursuant to section 8-73-108 (5) (e) (XXII).

(6) If an employee of a temporary help contracting firm contacts the firm upon completion of an assignment in compliance with subsection (4) of this section and does not continue employment in a new assignment, such employee shall be considered separated under the provisions of section 8-73-108 (4) (a).

8-73-106. Seasonal industry - definitions. (1) (a) As used in articles 70 to 82 of this title, "seasonal industry" means an industry or functionally distinct occupation within an industry which, because of climatic conditions or the seasonal nature of the employment, customarily employs workers only during a regularly recurring period or periods of less than twenty-six weeks in a calendar year. "Nonseasonal period or periods" means the time within a calendar year other than the seasonal

period or periods. "Seasonal worker" means an individual who has been paid seasonal wages by a seasonal employer for seasonal work only during the designated seasonal period.

(b) During the nonseasonal period or periods, the seasonal employer may employ not more than twenty-five percent of the total number of workers in each functionally distinct occupation that were employed in the previous seasonal period or periods without losing the seasonal designation for that functionally distinct occupation, so long as the seasonal employer does not employ any workers in the designated seasonal occupations during a consecutive forty-five-day period at any time following the seasonal period or periods. A worker who performs services for the same seasonal employer outside the employer's designated seasonal period or periods shall not be considered a seasonal worker for any period, and all wages paid by the seasonal employer to such worker shall be considered nonseasonal wages. If a seasonal worker performs services for the same seasonal employer outside the employer's designated seasonal period or periods thereby resulting in the loss of the worker's seasonal status and if such worker is not thereafter employed by such employer between any two following designated seasonal periods, the worker may thereafter be reemployed by such seasonal employer and regain his status as a seasonal worker.

(2) The director of the division shall prescribe rules and regulations applicable to seasonal industries for determining their normal seasonal period or periods and seasonal workers, as such terms are defined in subsection (1) of this section.

(3) Upon written application filed with the division by an employer, the director of the division shall determine and may thereafter redetermine, from time to time in accordance with the rules and regulations of the division, the normal seasonal period during which workers are ordinarily employed for the purpose of carrying on seasonal operations in the seasonal industry in which such employer is engaged. Such determination shall be made by said director within ninety days after the filing of such application by an employer with the division. Until such determination by the director of the division, no occupation or industry shall be deemed seasonal. Any employing unit affected by such seasonal determination may appeal the determination in accordance with section 8-76-113. For the purpose of determining whether an individual is a seasonal worker and the duration of such individual's benefits, the determination by said director of the normal seasonal period of a seasonal industry shall be applicable to the filing of the quarterly report of wages in the calendar quarter commencing after the date of such determination.

(4) Repealed.

8-73-107. Eligibility conditions - penalty. (1) Any unemployed individual shall be eligible to receive benefits with respect to any week only if the division finds that:

(a) (I) He or she has registered for work at and thereafter has continued to report at an employment office in accordance with such regulations as the director of the division may prescribe; except that the director of the division, by regulation, may waive or alter either or both of the requirements of this subparagraph (I) as to individuals attached to regular jobs and as to such other types of cases or situations with respect to which the director of the division finds that compliance with such requirements would be oppressive, or would be inconsistent with the purposes of articles 70 to 82 of this title, but that no such regulation shall conflict with section 8-73-101.

(II) Without in any way limiting the authority of the director of the division to waive or alter the requirements of subparagraph (I) of this paragraph (a), during the period of the national economic recession that began in 2008, in order to assist unemployed individuals in being available for appropriate jobs and to assist employers in having available trained employees, the director of the division shall waive or alter such requirements so that individuals attached to regular jobs do not have to comply with the requirements of subparagraph (I) of this paragraph (a) for a period of twenty-six weeks.

(b) He has made a claim for benefits in accordance with the provisions of section 8-74-101;

(c) (I) The individual is able to work and is available for all work deemed suitable pursuant to the provisions of section 8-73-108, and, with respect thereto:

(A) Decisions of the division regarding the ability of the claimant to work, the availability of the claimant for work, and the claimant's active search for work may be appealed by the claimant or by any employer whose account may be charged with any benefits paid pursuant to such decision, if the appeal is received within twenty calendar days, as defined in section 8-70-103 (5), after the date on the notice of any such decision;

(B) A potentially chargeable employer may protest on the basis of inability to work, nonavailability for work, or failure to search for work within fifteen calendar days after the date on which he discovers such a condition to exist, within thirty days after the date on which payment was made for the week during which the claimant is alleged to have been unable to work or unavailable for work, or within sixty calendar days after the mailing date of the report of quarterly benefit charges, whichever comes first;

(C) No individual shall be considered available for work during any week in which he has no reasonable expectation of securing employment in his usual occupation or in an occupation for which he is reasonably qualified as a result of his movement to an area;

(D) No individual shall be denied benefits because of nonavailability or failure to make an active search for work solely due to his compliance with a summons to report for jury duty. Remuneration received in connection with such duty shall not be considered wages, as defined in section 8-70-141 (1) (a), and the individual's weekly benefit amount shall not be reduced as prescribed in section 8-73-102 (4).

(E) If an individual left employment because of health-related reasons, the division may require a written medical statement issued by a licensed practicing physician addressing any matters related to health.

(II) Nothing in this paragraph (c) shall prevent the division from reviewing and redetermining any decision at any time if the redetermination is based upon facts not known to the division at the time of its original decision.

(d) The individual has been either totally or partially unemployed for a waiting period of one week. No benefits are payable for the waiting period. No week shall be counted as a week of unemployment for the purposes of this paragraph (d):

(I) Unless it occurs within the benefit year which includes the week with respect to which he claims payment of benefits;

(II) If benefits have been paid with respect thereto;

(III) Unless the individual was eligible for benefits with respect thereto under provisions of sections 8-73-107 to 8-73-112;

(IV) Unless total wages earned for the week are less than the weekly benefit amount;

(e) The individual has during his or her base period been paid wages for insured work equal to not less than forty times such individual's weekly benefit amount or two thousand five hundred dollars, whichever is greater. For the purposes of this paragraph (e), wages shall be counted as "wages for insured work" for benefit purposes with respect to any benefit year only if such benefit year comes subsequent to the date on which the employing unit by whom such wages were paid has satisfied the conditions of sections 8-70-113, 8-76-104, and 8-76-107 with respect to becoming an employer.

(f) His total wages earned for the week are less than his weekly benefit amount;

(g) (I) He or she is actively seeking work. In determining whether the claimant is actively seeking work, the division, taking notice of the customary methods of obtaining work in the claimant's usual occupation, or any occupation for which he or she is reasonably qualified, and the current condition of the labor market, shall

consider, but shall not be limited to a consideration of, whether, during said week, the claimant followed a course of action that was reasonably designed to result in his or her prompt reemployment in suitable work.

(II) This paragraph (g) shall not apply to a person determined eligible to receive benefits pursuant to section 8-73-108 (4) (r) (I) for the first fifteen business days after a claim for benefits is filed if compliance with this paragraph (g) would:

(A) Make it more difficult for the person to escape domestic abuse; or

(B) Unfairly penalize a person who is or has been a victim of domestic abuse or is at further risk of domestic abuse.

(h) The individual has furnished the division with separation and other reports containing the information deemed necessary by the division to determine the individual's eligibility for benefits, but this provision shall not apply if the individual proves to the satisfaction of the division that he or she had good cause for failing to furnish such reports. The eligibility of any individual shall not be affected by the refusal or failure of an employer to furnish reports concerning separation and employment as required by articles 70 to 82 of this title and the rules pursuant thereto, and the division shall determine the eligibility of such individual upon the basis of such information it may obtain; and any employer who fails or refuses to furnish reports concerning separation and employment shall cease to be an interested party to the separation issue directly related to determinations made in accordance with section 8-73-108 (4) and (5) (e). For each instance of failure to furnish the division with such reports, the employer, unless good cause to the contrary is shown to the satisfaction of the division, may be assessed a penalty of twenty-five dollars, which shall be collected in the same manner as premiums due under articles 70 to 82 of this title.

(i) It is not, in whole or in part, within a period during which the worker is not working due to a disciplinary suspension as provided in the contract of employment;

(j) Such individual is not absent from work due to an authorized and approved voluntary leave of absence.

(2) An individual who has received compensation during the individual's benefit year is required to have worked for an employer as defined in section 8-70-113 since the beginning of such year and to have earned at least two thousand dollars as remuneration for such employment in order to qualify for compensation in the next benefit year.

(3) For the purpose of this subsection (3), "educational institution" includes the Colorado school for the deaf and the blind; except that such term does not include a headstart program that is not a part of a school administered by a board of education because such headstart employees are not subject to the same employment conditions as other employees of the school. Compensation is payable on the basis of services to which sections 8-70-119, 8-70-125, and 8-70-125.5 apply in the same amount, on the same terms, and subject to the same conditions as compensation payable on the basis of other services subject to articles 70 to 82 of this title; except that:

(a) With respect to services in an instructional, research, or principal administrative capacity for an educational institution, compensation shall not be payable based on such services for any week commencing during the period between two successive academic years or terms (or when an agreement provides instead for a similar period between two regular but not successive terms, during such period) to any individual if such individual performs such services in the first of such academic years or terms and if there is a contract or reasonable assurance that such individual will perform services in any such capacity for any educational institution in the second of such academic years or terms;

(b) With respect to services in any other capacity, for an educational institution compensation payable on the basis of such services shall be denied to any individual for any week which commences during a period between two successive academic years or terms or periods described in paragraph (c) of this subsection (3) if such individual performs such

services in the first of such academic years, terms, or periods and there is a reasonable assurance that such individual will perform such services in the second of such academic years, terms, or periods; except that, if compensation is denied to any individual for any week under this paragraph (b) and such individual was not offered, an opportunity to perform such services for the educational institution for the second of such academic years, terms, or periods, such individual shall be entitled to a retroactive payment of the compensation for each week for which the individual filed a timely claim for compensation and for which compensation was denied solely by reason of this paragraph (b);

(c) With respect to any services described in paragraphs (a) or (b) of this subsection (3), compensation payable on the basis of such services shall be denied to any individual for any week which commences during an established and customary vacation period or holiday recess if such individual performs such services in the period immediately before such vacation period or holiday recess and if there is a reasonable assurance that such individual will perform such services in the period immediately following such vacation period or holiday recess;

(d) With respect to any services described in paragraph (a) or (b) of this subsection (3), compensation payable on the basis of services in any such capacity shall be denied as specified in paragraph (a), (b), or (c) of this subsection (3) to any individual who performed such services in an educational institution while in the employ of an educational service agency. For the purpose of this paragraph (d), the term "educational service agency" means a governmental agency or governmental entity, such as that created by the "Boards of Cooperative Services Act of 1965", article 5 of title 22, C.R.S., which is established and operated exclusively for the purpose of providing such services to one or more educational institutions.

(e) With respect to any services described in paragraph (a) of this subsection (3), compensation payable on the basis of such services shall be denied to any individual for any week during a period of paid or unpaid sabbatical or other voluntary leave provided for in the individual's contract if such individual performs such services in the academic year or term immediately preceding the beginning of sabbatical or other voluntary leave and if there is a contract or reasonable assurance that such individual will perform such services in the academic year or term following the end of the sabbatical or other voluntary leave;

(f) With respect to services to which section 8-70-140 applies, if such services are provided to or on behalf of an educational institution, benefits shall not be payable under the same circumstances and subject to the same terms and conditions as described in paragraphs (a) to (d) of this subsection (3).

(4) (a) Notwithstanding any other provision in this section, no otherwise eligible individual shall be denied benefits for any week because he is in training with the approval of the division, nor shall such individual be denied benefits by reason of the application of provisions in paragraph (c) of subsection (1) of this section relating to availability for work, the provisions of paragraph (g) of subsection (1) of this section relating to active search for work, or the provisions of section 8-73-108 relating to failure to apply for, or a refusal to accept, suitable work with respect to any week in which he is in training with the approval of the division.

(b) (Deleted by amendment, L. 98, p. 89, § 3, effective March 23, 1998.)

(5) Repealed.

(6) Benefits shall not be paid to any individual on the basis of any services, substantially all of which consist of participating in sports or athletic events or training or preparing to so participate, for any week which commences during the period between two successive sport seasons (or similar periods) if such individual performed such services in the first of such seasons (or similar periods) and there is a reasonable assurance that such individual will perform such services in the latter of such seasons (or similar periods).

(7) (a) Benefits shall not be payable on the basis of services performed by an alien unless such alien is an individual who was lawfully admitted for permanent residence at the time such services were performed, or was lawfully present for purposes of performing such

services, or was permanently residing in the United States under color of law at the time such services were performed. For purposes of the "Colorado Employment Security Act":

(I) An alien shall be considered to be "lawfully admitted for permanent residence" only if the alien has been granted status under section 101 of the "Immigration and Nationality Act", 8 U.S.C. 1101 (a) (20);

(II) An alien shall be considered to be "lawfully present for purposes of performing services" only if the alien is an alien who possesses work authorization or has been lawfully admitted to temporary residence under section 245 (a) or section 210 of the "Immigration and Nationality Act", 8 U.S.C. 1255(a) and 8 U.S.C. 1160, respectively;

(III) An alien shall be considered to be "permanently residing in the United States under color of law" only if the alien is:

(A) An alien admitted as a refugee under section 207 of the "Immigration and Nationality Act", 8 U.S.C. § 1157, in effect after March 31, 1980;

(B) An alien granted asylum by the attorney general of the United States under section 208 of the "Immigration and Nationality Act", 8 U.S.C. § 1158;

(C) An alien granted a parole into the United States for an indefinite period under section 212 (d) (5) (B) of the "Immigration and Nationality Act", 8 U.S.C. § 1182 (d) (5) (B);

(D) An alien granted the status as a conditional entrant refugee under section 203 (a) (7) of the "Immigration and Nationality Act", 8 U.S.C. § 1153 (a) (7), in *effect prior to March 31, 1980; or*

*(E) An alien who has been formally gr*anted deferred action status by the immigration and naturalization service, or any successor agency.

(b) Any data or information required of individuals applying for benefits to determine whether benefits are not payable to them because of their alien status shall be uniformly required from all applicants for benefits.

(c) In the case of an individual whose application for benefits would otherwise be approved, no determination that benefits to such individual are not payable because of his alien status shall be made except upon a preponderance of the evidence.

8-73-108. Benefit awards - repeal. (1) (a) In the granting of benefit awards, it is the intent of the general assembly that the division at all times be guided by the principle that unemployment insurance is for the benefit of persons unemployed through no fault of their own; and that each eligible individual who is unemployed through no fault of his own shall be entitled to receive a full award of benefits; and that every person has the right to leave any job for any reason, but that the circumstances of his separation shall be considered in determining the amount of benefits he may receive, and that certain acts of individuals are the direct and proximate cause of their unemployment, and such acts may result in such individuals receiving a disqualification.

(b) A full award of benefits shall be the total amount of benefits computed under sections 8-73-102 and 8-73-104. Benefits payable under the provisions of this section shall be awarded, subject to other applicable provisions of articles 70 to 82 of this title.

(2) Repealed.

(3) (a) (I) The most recent separation and all separations from base period employers, excluding those defined in subparagraph (II) of paragraph (e) of this subsection (3), shall be considered. In the event a claimant has more than one separation from the same adjudicable employer, the most recent separation shall be controlling as to the determination of eligibility for benefits attributable to that employer.

(II) Benefits remaining from a previous full award shall be reduced if a disqualification is granted on the most recent separation from that employer.

(III) Benefits previously reduced due to a disqualification shall become available if a full award is granted on the most recent separation. If a disqualification was previously imposed, then the employee must work ten consecutive

work days for the same employer before a full award may be granted on the most recent separation.

(b) An additional claim filed during an existing benefit year because of a recurrence of unemployment shall require the claimant to report all job separations subsequent to the effective date of the initial claim which may be considered by the division. Those job separations that are considered shall result in a full award or a disqualification. If a disqualification is imposed on the most recent separation, a ten-week deferral of benefits shall be imposed.

(c) The gross misconduct of an individual causing his discharge from employment shall result in a disqualification of twenty-six weeks. "Gross misconduct" means conduct evincing such willful or wanton disregard of an employer's interests or negligence or harm of such a degree or recurrence as to manifest culpability or wrongful intent, or assault or threatened assault upon supervisors, coworkers, or others at the work site.

(d) Benefits shall not be denied to any individual by reason of cancellation of wage credits or total reduction of his benefit rights for any cause other than discharge for gross misconduct connected with his work, fraud in connection with a claim for benefits, or receipt of disqualifying income.

(e) (I) Benefit payments will be charged against the experience rating accounts of the base period employers in inverse chronological order.

(II) When the total amount of base period wages, as defined in section 8-70-141 (1) (a), paid by a base period employer is less than one thousand dollars:

(A) Such wages shall be included in the computation of wage credits under the provisions of section 8-73-104; and

(B) Benefits paid with respect to such wages shall not be charged against the experience rating account of an employer but will be charged against the fund; and

(C) Separations from such employers, other than the last employer, shall not be adjudicated.

(III) Repealed.

(f) Benefit payments shall not be charged against the experience rating account of an employer and shall be charged against the fund when:

(I) The benefits are paid for unemployment directly caused by a major natural disaster;

(II) The president has declared the event a disaster pursuant to section 102 (2) of the federal "Robert T. Stafford Disaster Relief and Emergency Assistance Act", as amended, 42 U.S.C. sec. 5122(2); and

(III) The benefits are paid to an individual who would have otherwise been eligible for disaster unemployment assistance with respect to that unemployment but for the individual's receipt of unemployment compensation benefits.

(4) **Full award.** An individual separated from a job shall be given a full award of benefits if any of the following reasons and pertinent conditions related thereto are determined by the division to have existed. The determination of whether or not the separation from employment shall result in a full award of benefits shall be the responsibility of the division. The following reasons shall be considered, along with any other factors that may be pertinent to such determination:

(a) Laid off for lack of work;

(b) (I) The health of the worker is such that the worker is separated from his or her employment and must refrain from working for a period of time that exceeds the greater of the employer's medical leave of absence policy or the provisions of the federal "Family and Medical Leave Act of 1993", if applicable, or the worker's health is such that the worker must seek a new occupation, or the health of the worker or the worker's spouse, partner in a civil union, or dependent child is such that the worker must leave the vicinity of the worker's employment; except that, if the health of the worker or the worker's spouse, partner in a civil union, or dependent child has caused the separation from

work, the worker, in order to be entitled to a full award, must have complied with the following requirements: Informed the worker's employer in writing, if the employer has posted or given actual advance notice of this writing requirement, of the condition of the worker's health or the health of the worker's spouse, partner in a civil union, or dependent child prior to separation from employment and allowed the employer the opportunity to make reasonable accommodations for the worker's condition; substantiated the cause by a competent written medical statement issued by a licensed practicing physician prior to the date of separation from employment when so requested by the employer prior to the date of separation from employment or within a reasonable period thereafter; submitted himself or herself or the worker's spouse, partner in a civil union, or dependent child to an examination by a licensed practicing physician selected and paid by the interested employer when so requested by the employer prior to the date of separation from employment or within a reasonable period thereafter; or provided the division, when so requested, with a written medical statement issued by a licensed practicing physician. For purposes of providing the medical statement or submitting to an examination for an employer, "a reasonable period thereafter" shall include the time before adjudication by either a deputy or referee of the division. An 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).

(II) In the event of an injury or sudden illness of the worker which would preclude verbal or written notification of the employer prior to such occurrence, the failure of the worker to notify the employer prior to such occurrence will not in itself constitute a reason for the denial of benefits if the worker has notified the employer at the earliest practicable time after such occurrence. Such notice shall be given no later than two working days following such occurrence unless the worker's physician provides a written statement to the employer within one week of the employer's request that the worker's condition made giving such notice impracticable and substantiating the illness or injury.

(III) Any physician who makes or is present at any examination required under these provisions shall testify as to the results of his examination; except that no such physician shall be required to disclose any confidential communication imparted to him for the purpose of treatment which is not necessary to a proper understanding of the case.

(IV) The off-the-job or on-the-job use of not medically prescribed intoxicating beverages or controlled substances, as defined in section 18-18-102 (5), C.R.S., may be reason for a determination for a full award pursuant to this paragraph (b), but only if:

(A) The worker has declared to the division that he or she is addicted to intoxicating beverages or controlled substances;

(B) The worker has substantiated the addiction by a competent written medical statement issued by a physician licensed to practice medicine pursuant to article 36 of title 12, C.R.S., or has substantiated the successful completion of, or ongoing participation in, a treatment program as described in sub-subparagraph (C) of this subparagraph (IV) within four weeks of the claimant's admission. Such substantiation shall be in writing to the division and signed by an authorized representative of the approved treatment program.

(C) A worker who is not affiliated with an approved treatment program must present to the division within four weeks after the date of the medical statement referred to in sub-subparagraph (B) of this subparagraph (IV), substantiation of registration in a program of corrective action that will commence within four weeks after the date of the medical statement and that is provided by an approved private treatment facility or an approved public treatment facility as defined in section 27-81-102 (2) or (3), C.R.S., or by an alcoholics anonymous program. The substantiation shall be in writing to the division and signed by an authorized representative of the approved treatment program.

(D) (Deleted by amendment, L. 2006, p. 653, § 1, effective April 24, 2006.)

(IV.5) Any benefits awarded to the claimant under the provisions of subparagraph (IV) of this paragraph (b) and normally chargeable to the employer will be charged to the fund.

(V) A potentially chargeable employer may notify the division concerning the failure of the worker to participate in or complete an approved program of corrective action to deal with the addiction within fifteen calendar days after the date on which he discovers such a condition to exist. The worker shall be given an opportunity to respond to the employer's allegations. The division, upon review of additional information, may modify a prior decision pursuant to subparagraph (XXIV) of paragraph (e) of subsection (5) of this section.

(c) Unsatisfactory or hazardous working conditions when so determined by the division. In determining whether or not working conditions are unsatisfactory for an individual, the degree of risk involved to his health, safety, and morals, his physical fitness and prior training, his experience and prior earnings, the distance of the work from his residence, and the working conditions of workers engaged in the same or similar work for the same and other employers in the locality shall be considered. For the purpose of this paragraph (c), "hazardous working conditions" means such conditions, as are determined by the division to exist, that could result in a danger to the physical or mental well-being of the worker. In any such determination the division shall consider, but shall not be limited to a consideration of, the following: The safety measures used or the lack thereof and the condition of equipment or lack of proper equipment. No work shall be considered hazardous if the working conditions surrounding a worker's employment are the same or substantially the same as the working conditions generally prevailing among workers performing the same or similar work for other employers engaged in the same or similar type of activity.

(d) A substantial change in the worker's working conditions, said change in working conditions being substantially less favorable to the worker; but requiring a worker to work a different shift shall not be considered a substantial change in working conditions unless such requirement would be a violation of seniority rights which entitle the worker to shift preferential, but in any such case the burden of proving such seniority rights shall rest upon the worker. No change in working conditions shall be considered substantial if it is determined by the division that the conditions prevailing after the change are those generally prevailing for other workers performing the same or similar work.

(e) Unreasonable reduction in the worker's rate of pay as determined by the division. In determining whether or not there has been an unreasonable reduction in the worker's rate of pay, the division shall consider, but shall not be limited to a consideration of, whether or not the reduction in pay was applied by the employer to all workers in the same or similar class or merely to this individual, the general economic conditions prevailing in the state, the financial condition of the employer involved, and whether or not the reduction in wage was agreed to by other workers employed in the same or similar work. The worker's loss of a shift differential or overtime pay shall not be considered an unreasonable reduction in the worker's rate of pay under this paragraph (e), unless such shift differential or overtime pay was guaranteed by the employer.

(f) (I) Due to the particular nature of the building and construction industry, construction workers who quit a construction job to accept a different construction job in any of the following circumstances:

(A) Quitting within thirty days immediately prior to the established termination date of the job quit; and at the time of quitting, the construction worker had been offered and had accepted another construction job and the specific starting date of the new job was within thirty days from the date of quitting the prior job; and the new job offered employment for a longer period of time than remained available on the job quit unless the new job was terminated by a contract cancellation; or

(B) Unsatisfactory working conditions with respect to the distance of his work from his residence when so determined by the division; or

(C) Quitting a construction job that is outside the state of Colorado in order to accept a construction job within the state of Colorado, if such construction worker has maintained a residence in this state; or

(D) Leaving a job to comply with a condition of an apprenticeship assignment of an employer, which condition was imposed to meet the conditions of a joint apprenticeship or other apprenticeship program which is in accordance with requirements for programs registered with the federal government; or

(E) Quitting a job outside the worker's regular apprenticeable trade to return to work in his or her regular apprenticeable trade. For purposes of this paragraph (f), a "regular apprenticeable trade" is a skilled trade or occupation in the construction industry in which, by longstanding and recognized practice of a significant segment of the industry, a worker generally must complete a period of apprenticeship or training pursuant to a joint apprenticeship or other apprenticeship program which is in accordance with requirements for programs registered with the federal government. A worker may have more than one regular apprenticeable trade.

(II) If the provisions of either sub-subparagraph (A), (B), (C), (D), or (E) of subparagraph (I) of this paragraph (f) are met, any benefits normally chargeable to the employer for whom the employee worked immediately prior to accepting the new job will be charged to the fund. Benefits shall not be awarded pursuant to this paragraph (f) unless the worker has subsequently separated from the new job under conditions which would result in a full award under this subsection (4).

(g) After being given the choice by his employer between being terminated, furloughed, or laid off and replacing another worker, the worker has elected to accept a termination, furlough, or layoff;

(h) Quitting employment because of a violation of the written employment contract by the employer; except that before such quitting the worker must have exhausted all remedies provided in such written contract for the settlement of disputes before quitting his job;

(i) Being discharged from employment without the employer informing either the worker or the division, after a request from the division as to the reason for the discharge;

(j) Being physically or mentally unable to perform the work or unqualified to perform the work as a result of insufficient educational attainment or inadequate occupational or professional skills. In cases where an individual quits because of physical or mental inability to perform the work because of domestic abuse, any award of benefits will be made in accordance with paragraph (r) of this subsection (4).

(k) Refusing with good cause to work overtime without reasonable advance notice. Good cause as used in this paragraph (k) shall be restricted to reasonable, compelling personal reasons as determined by the division affecting either the worker or the worker's immediate family.

(l) Being instructed or requested to perform a service or commit an act which is in violation of an ordinance or statute;

(m) Involuntary retirement in accordance with company policy or at the volition of the employer;

(n) Quitting employment under conditions which would not have resulted in a denial of benefits under the provisions of paragraph (b) of subsection (5) of this section;

(o) Quitting employment because of personal harassment by the employer not related to the performance of the job;

(p) (I) Business closure because the employer is, or was, a member of the military reserves or National Guard and was called to active military duty.

(II) Any benefits awarded to the claimant under the provisions of subparagraph (I) of this paragraph (p) and normally chargeable to the employer will be charged to the fund.

(q) Repealed.

(r) (I) Separating from a job because of domestic violence may be reason for a determination for a full award if:

(A) The worker reasonably believes that his or her continued employment would jeopardize the safety of the worker or any member of the worker's immediate family and provides the division with substantiating documentation as described in sub-subparagraph (B) or (C) of this subparagraph (I); or

(B) The worker provides the division with an active or recently issued protective order or other order documenting the domestic violence or a police record documenting recent domestic violence; or

(C) The worker provides the division with a statement substantiating recent domestic violence from a qualified professional from whom the worker has sought assistance for the domestic violence, such as a counselor, shelter worker, member of the clergy, attorney, or health worker.

(II) If the worker does not meet the provisions of subparagraph (I) of this paragraph (r), the worker shall be held to have voluntarily terminated employment for the purposes of determining benefits pursuant to subparagraph (XXII) of paragraph (e) of subsection (5) of this section.

(III) Any benefits awarded to the claimant under the provisions of this paragraph (r) normally chargeable to the employer shall be charged to the fund.

(IV) The director of the division shall adopt rules as necessary to implement and administer this paragraph (r).

(V) As used in this paragraph (r), "immediate family" means the worker's spouse, partner in a civil union, parent, or minor child under eighteen years of age.

(s) (I) Quitting a job to relocate as a result of the transfer of the individual's spouse or partner in a civil union to a new place of residence, either within or outside Colorado, from which it is impractical to commute to the place of employment, and upon arrival at the new place of residence, the individual is in all respects available for suitable work. The spouse or partner in a civil union shall be a member of the United States armed forces who is on active duty as defined in 10 U.S.C. sec. 101 (d) (1), active guard and reserve duty as defined in 10 U.S.C. sec. 101 (d) (6), or active duty pursuant to title 10 or 32 of the United States Code.

(II) Any benefits awarded to the claimant under this paragraph (s) normally chargeable to the employer shall be charged to the fund, and any such benefits shall not affect an employer's premium.

(III) The division shall maintain records regarding the number of individuals claiming and awarded benefits, and the amount of benefits awarded to individuals, pursuant to this paragraph (s). By January 31, 2009, and by each January 31 thereafter, the division shall submit a report to the business affairs and labor committee of the house of representatives and the business, labor, and technology committee of the senate, or their successor committees, detailing the number of claimants and amounts awarded pursuant to this paragraph (s).

(IV) This paragraph (s) is repealed, effective July 1, 2018.

(t) (I) Quitting a job to relocate to a new place of residence, either within or outside Colorado, from which it is impractical to commute to the place of employment because the individual's spouse or partner in a civil union, who was stationed in Colorado, is killed in combat. Upon arrival at the new place of residence, the individual shall be available, in all respects, for suitable work. The individual's spouse or partner in a civil union shall have been a member of the United States armed forces who was on active duty as defined in 10 U.S.C. sec. 101 (d) (1), active guard and reserve duty as defined in 10 U.S.C. sec. 101 (d) (6), or active duty pursuant to title 10 or 32 of the United States Code.

(II) The director shall promulgate rules allowing for the waiver of the requirement to actively seek work, pursuant to section 8-73-107 (1) (g), for an individual who is eligible for benefits pursuant to this paragraph (t).

(III) Any benefits awarded to the claimant under this paragraph (t) normally chargeable to the employer shall be charged to the fund, and any such benefits shall not affect an employer's premium.

(IV) The division shall maintain records regarding the number of individuals claiming and awarded benefits, and the amount of benefits awarded to individuals, pursuant to this paragraph (t). By January 31, 2010, and by each January 31 thereafter, the division shall submit a report to the business affairs and labor committee of the house of representatives and the business, labor, and technology committee of the senate, or their successor committees, detailing the number of claimants and amounts awarded pursuant to this paragraph (t).

(V) This paragraph (t) is repealed, effective July 1, 2019.

(u) (I) Separating from a job due to a change in location of the employment of the worker's spouse or partner in a civil union that necessitates a new place of residence for the worker, either within or outside Colorado, from which it is impractical to commute to the worker's place of employment, and upon arrival at the new place of residence, the individual is in all respects available for suitable work. The director of the division shall adopt rules as necessary to implement and administer this paragraph (u).

(II) Any benefits awarded to the claimant under this paragraph (u) normally chargeable to the employer shall be charged to the fund.

(v) (I) Separating from a job because a member of the worker's immediate family is suffering from an illness that requires the worker to care for the immediate family member for a period that exceeds the greater of the employer's medical leave of absence policy or the provisions of the federal "Family and Medical Leave Act of 1993" if the worker meets the following requirements:

(A) The worker informed his or her employer, if the employer has posted or given actual advance notice of the requirement to so inform the employer, of the condition of the worker's immediate family member; and

(B) The worker provides the division, when requested, a competent statement verifying the condition of the worker's immediate family member.

(II) Separating from a job because a member of the worker's immediate family is suffering from a disability that requires the worker to care for the immediate family member for a period that exceeds the greater of the employer's medical leave of absence policy or the provisions of the federal "Family and Medical Leave Act of 1993" if the worker meets the following requirements:

(A) The worker informed his or her employer, if the employer has posted or given actual advance notice of the requirement to so inform the employer, of the condition of the worker's immediate family member; and

(B) The worker provides the division, when requested, a competent statement verifying the condition of the worker's immediate family member.

(III) The director of the division shall adopt rules as necessary to implement and administer this paragraph (v).

(IV) Any benefits awarded to the claimant under this paragraph (v) normally chargeable to the employer shall be charged to the fund, and any such benefits shall not affect an employer's premium.

(V) As used in this paragraph (v):

(A) "Disability" means all types of verified disability, including, without limitation, mental and physical disabilities; permanent and temporary disabilities; and partial and total disabilities.

(B) "Illness" means verified poor health or sickness.

(C) "Immediate family member" means the worker's spouse, partner in a civil union, parent, or minor child under eighteen years of age.

(5) **Disqualification.** (a) An individual who refuses to accept suitable work or refuses a referral to suitable work shall be disqualified from receiving benefits for a period of twenty

weeks beginning with the week in which the refusal occurred, and his total benefits shall be reduced by an amount equal to the number of weeks of disqualification multiplied by his weekly benefit amount. The determination of whether or not an individual has refused to accept suitable work or refused to accept a referral to suitable work shall be the responsibility of the division.

(b) The refusal of suitable work or refusal of referral to suitable work at any time after the last separation from employment that occurred prior to the time of filing the initial claim shall be considered in determining the direct and proximate cause of the separation. In determining whether or not any work is suitable for an individual, the degree of risk involved to his health, safety, and morals, his physical fitness and prior training, his experience and prior earnings, his length of unemployment and prospects for securing work in his customary occupation, and the distance of the available local work from his residence shall be considered. Notwithstanding any other provisions of articles 70 to 82 of this title, no work shall be deemed suitable and benefits shall not be denied under articles 70 to 82 of this title to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

(I) If the position offered is vacant due directly to a strike, lockout, or other labor dispute;

(II) If the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality;

(III) If as a condition of being employed the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization.

(c) An award shall not be denied to an individual more than once for failure to apply for or to accept the same or a similar position with the same employer.

(d) Repealed.

(e) Subject to the maximum reduction consistent with federal law, and insofar as consistent with interstate agreements, if a separation from employment occurs for any of the following reasons, the employer from whom such separation occurred shall not be charged for benefits which are attributable to such employment and, because any payment of benefits which are attributable to such employment out of the fund as defined in section 8-70-103 (13) shall be deemed to have an adverse effect on such employer's account in such fund, no payment of such benefits shall be made from such fund:

(I) Quitting employment because of dissatisfaction with prevailing rates of pay in that industry, standard hours of work, standard working conditions, or working conditions which generally prevail for other workers performing the same or similar work, regularly assigned duties, or opportunities for advancement;

(II) Quitting employment because of dissatisfaction with a supervisor with no evidence to indicate that the supervision is other than that reasonably to be expected in the proper performance of work;

(III) Quitting to marry, irrespective of whether or not such marriage occurs subsequent to the separation from employment;

(IV) Quitting to move to another area as a matter of personal preference, unless such move was pursuant to other provisions of subsection (4) of this section;

(V) Quitting to seek other work; or quitting to accept other employment if such employment does not meet the requirements of paragraph (f) of subsection (4) of this section;

(VI) Insubordination such as: Deliberate disobedience of a reasonable instruction of an employer or an employer's duly authorized representative, refusal or failure to obtain, maintain, or renew licenses, certifications, credentials, conditions, or other professional designations which are necessary to permit the claimant to perform a job, failure to keep in good standing with the union because of nonpayment of dues, or repeated acts of agitation against employer working conditions, pay scale, policies, or procedures; except that

orderly action on the part of an employee or through union negotiation shall not be so considered if such action does not interfere with work performance;

(VII) Violation of a statute or of a company rule which resulted or could have resulted in serious damage to the employer's property or interests or could have endangered the life of the worker or other persons, such as: Mistreatment of patients in a hospital or nursing home; serving liquor to minors; selling prescription items without prescriptions from licensed doctors; immoral conduct which has an effect on worker's job status; divulging of confidential information which resulted or could have resulted in damage to the employer's interests; failure to observe conspicuously posted safety rules; intentional falsification of expense accounts, inventories, or other records or reports whether or not substantial harm or injury was incurred; or removal or attempted removal of employer's property from the premises of the employer without proper authority;

(VIII) Off-the-job use of not medically prescribed intoxicating beverages or controlled substances, as defined in section 18-18-102 (5), C.R.S., to a degree resulting in interference with job performance;

(IX) On-the-job use of or distribution of not medically prescribed intoxicating beverages or controlled substances, as defined in section 18-18-102 (5), C.R.S.;

(IX.5) The presence in an individual's system, during working hours, of not medically prescribed controlled substances, as defined in section 18-18-102 (5), C.R.S., or of a blood alcohol level at or above 0.04 percent, or at or above an applicable lower level as set forth by federal statute or regulation, as evidenced by a drug or alcohol test administered pursuant to a statutory or regulatory requirement or a previously established, written drug or alcohol policy of the employer and conducted by a medical facility or laboratory licensed or certified to conduct such tests;

(X) Incarceration after conviction of a violation of any law, or loss of license, certification, credential, condition, or other professional designation that is essential to job performance;

(XI) Theft;

(XII) Assaulting or threatening to assault under circumstances such as to cause a reasonably emotionally stable person to become concerned as to his physical safety;

(XIII) Willful neglect or damage to an employer's property or interests;

(XIV) Rudeness, insolence, or offensive behavior of the worker not reasonably to be countenanced by a customer, supervisor, or fellow worker;

(XV) Careless or shoddy work. In determining whether or not work has been performed in a careless or shoddy manner, the division shall consider the length of time the worker has been performing the work satisfactorily and industry standards for such work. No work shall be considered careless or shoddy that comes within the area of reasonable mistakes and errors normally made by workers engaging in the same or similar work.

(XVI) Failure to properly safeguard, maintain, or account for the employer's property when this obligation is an essential part of the job;

(XVII) Taking unauthorized vacations or failing to return to work as scheduled after an authorized vacation or other leave of absence unless such failure to return to work was caused by circumstances which would result in a full award under the provisions of this section;

(XVIII) Refusal without good cause to work a different shift when no violation of seniority rights, as provided in paragraph (d) of subsection (4) of this section, is involved;

(XIX) Refusal without good cause to accept transfer to another department which does not involve a substantial change in working conditions or a substantial loss in wages;

(XX) For other reasons including, but not limited to, excessive tardiness or absenteeism, sleeping or loafing on the job, or failure to meet established job performance or other defined standards, unless such failure is attributable to factors listed in paragraph (b) of subsection (4) of this section;

(XXI) Lack of transportation. Transportation shall be the responsibility of the worker; if, however, in the opinion of the division, it would have been unreasonable to require the worker to continue in employment with his same employer at a new jobsite substantially less accessible or substantially more distant from the worker's residence than the site at which he had worked, benefits shall not be denied because of his refusal to continue in employment at the new site.

(XXII) Quitting under conditions involving personal reasons, unless the personal reasons were compelling pursuant to other provisions of subsection (4) of this section;

(XXIII) Voluntary retirement;

(XXIV) Failure to participate in or failure to complete an approved program of corrective action to deal with an addiction pursuant to subparagraph (IV) of paragraph (b) of subsection (4) of this section. The determination of whether or not an individual has failed to participate in or complete an approved program of corrective action to deal with an addiction shall be the responsibility of the division. In making such a decision, the division may consider extenuating circumstances for the individual's failure to participate in or complete the approved program of corrective action which would justify a decision not to disqualify the individual from receiving benefits, but only if the individual presents a program of corrective action in accordance with sub-subparagraph (C) of subparagraph (IV) of paragraph (b) of subsection (4) of this section. The only extenuating circumstances which may be considered by the division shall be whether the individual suffered an illness not related to the addiction or received incapacitating injuries in an accident or whether the death of an immediate family member of the individual occurred which contributed to the failure of the individual to participate in or complete the program of corrective action. The burden of proof that an extenuating circumstance existed lies with the claimant.

(f) Repealed.

(g) If a separation from employment subject to adjudication under this subsection (5) occurs for any of the reasons enumerated in paragraph (e) of this subsection (5) and such separation is the most recent separation from employment, any benefits to which the claimant is entitled shall be deferred for ten weeks. In the event that the last separation does not include wages in the base period and the job separation results in a disqualification, the receipt of any benefits from qualifying employment in the base period shall be deferred for a period of ten weeks from the effective date of the claim. A subsequent initial claim in which such wages are within the base period shall result in the maximum reduction of benefits attributable to such employment consistent with federal law and interstate agreements. Such deferral shall begin with the effective date of the valid initial or additional claim. As used in this paragraph (g), "most recent separation from employment" means the claimant's last employment prior to filing a valid initial or additional claim.

(h) Repealed.

(6) to (9) Repealed.

8-73-109. Strikes or other labor disputes - definitions. (1) (a) For purposes of this section:

(I) "Coordinated bargaining" means two or more employers bargaining with a union where there is communication and accommodation among the employers but where each is free to make independent decisions on some or all of the issues being negotiated with the union, either written notification of the intent to engage in coordinated bargaining has been provided to the union or the union has rejected an offer to engage in multiemployer bargaining, and one or more representatives of each employer participating in the coordinated bargaining is present at one or more bargaining sessions.

(II) "Defensive lockout" means a lockout:

(A) Reasonably imposed by an employer to protect materials, property, or operations; or

(B) Where a union or two or more employees that are represented by the union take economic action against an employer and that action causes the employer to lock out; or

(C) By any member of a multiemployer bargaining unit or an employer engaged in coordinated bargaining with one or more other employers if such lockout is initiated because of a strike or labor dispute involving any member of such multiemployer bargaining unit or coordinated bargaining group.

(III) "Lockout" means a refusal by an employer engaged in a dispute with a union to permit its employees to perform employment services.

(IV) "Multiemployer bargaining unit" means any group of two or more employers bargaining with a union as a single unit with the consent of each employer and the union.

(V) "Offensive lockout" means any lockout by an employer that does not satisfy the definition of a defensive lockout.

(VI) "Strike or labor dispute" means the withholding of employment services or other economic action by two or more employees that are represented by the union directed at an employer's business.

(b) An individual is ineligible for unemployment compensation benefits for any week with respect to which the division finds that his or her total or partial unemployment is due to a strike or labor dispute in the factory, establishment, or other premises in which he or she was employed and thereafter for such reasonable period of time, if any, as may be necessary for such factory, establishment, or other premises to resume normal operations.

(c) For the purposes of this section, a lockout by any member of a multiemployer bargaining unit or an employer engaged in coordinated bargaining with another employer shall constitute a labor dispute if such lockout was a defensive lockout. In accordance with paragraph (b) of this subsection (1), the employees laid off in such a defensive lockout are ineligible for unemployment compensation benefits.

(d) However, notwithstanding paragraph (b) of this subsection (1), if his or her unemployment is due to an offensive lockout initiated by the employer, the individual will be determined eligible for unemployment compensation benefits.

(2) This section shall not apply if he is not participating in or financing or directly interested in the strike as an individual or as a member of the grade or class of workers conducting the strike. Participating in a strike shall include refusal to cross the picket line.

(3) If in any case separate branches of work which are commonly conducted as separate businesses in separate premises are conducted in separate departments of the same premises, each such department, for the purposes of this section, shall be deemed to be a separate factory, establishment, or other premises.

8-73-110. Other remuneration - definitions. (1) (a) An individual who is separated from employment and, because of the separation, receives additional remuneration not otherwise referred to in this section and the remuneration is not wages shall have his or her benefits postponed for a number of calendar weeks after separation from employment that is equal to the total amount of the additional remuneration, divided by the individual's usual weekly wage. The postponement required by this subsection (1) shall begin with the calendar week in which the payment was received. If the number of weeks does not equal a whole number, the remainder shall be disregarded. Notwithstanding section 8-73-107 (1) (f), any wages earned by an individual in a calendar week during postponement shall be disregarded.

(b) For purposes of this subsection (1), "individual's weekly wage" means an individual's usual or average wage earned in a representative number of calendar weeks.

(1.2) (Deleted by amendment, L. 2009, (HB 09-1076), ch. 408, p. 2248, § 1, effective June 2, 2009.)

(1.5) Repealed.

(1.6) (Deleted by amendment, L. 2009, (HB 09-1076), ch. 408, p. 2248, § 1, effective June 2, 2009.)

(2) An individual who has an award for any week and for which week he, at a subsequent date, received a pay award by reason of a decision of the national labor relations board or other source, as a result of the action taken by

the national labor relations board or other source, shall immediately repay to the division such amounts as will reimburse the division for all benefit payments made for the period during which he drew benefits and for which the national labor relations board or other source has caused a payment to be made in the form of back pay award to the claimant; and the employer's account charged for such benefits shall be credited accordingly.

(3) (a) (I) Except as provided in subparagraph (II) of this paragraph (a), an individual's weekly benefit amount shall be reduced (but not below zero) by:

(A) (Deleted by amendment, L. 2009, (HB 09-1076), ch. 408, p. 2248, § 1, effective June 2, 2009.)

(B) The prorated weekly amount of a pension, retirement or retired pay, or annuity that has been contributed to by a base period employer; or

(C) The prorated weekly amount of any other similar periodic or lump-sum retirement payment from a plan, fund, or trust which has been contributed to by a base period employer.

(II) An individual's weekly benefit amount shall not be reduced when an individual receives a lump-sum retirement payment from a plan, fund, or trust that has been contributed to by a base period employer when all of the following conditions are met:

(A) The individual's separation from the employer awarding the payment is not due to a retirement pursuant to section 8-73-108 (4) (m) or (5) (e) (XXIII);

(B) The individual presents proof to the division within fourteen calendar days from date of claim or sixty calendar days of receipt of such lump-sum payment, whichever is later, that this total payment has been reinvested into an individual retirement account or KEOGH plan, as defined in 26 U.S.C. 408 or 26 U.S.C. 401, and such proof establishes that the investment is for a duration of at least one year; except that such lump-sum retirement payment shall not be considered to be received by the individual until the entire balance has been so received. Should a portion of the payment be ineligible for reinvestment and the claimant presents proof that the total eligible portion has been reinvested, only the remaining uninvested portion will be prorated in accordance with subparagraph (III) of this paragraph (a).

(III) When an individual receives a lump-sum retirement payment from a plan, fund, or trust that has been contributed to by a base period employer and the payment does not meet all of the criteria established in subparagraph (II) of this paragraph (a), then the division shall postpone the individual's benefits for a number of calendar weeks equal to the gross amount of the lump-sum payment divided by the individual's full-time weekly wage. However, when an individual receives a lump-sum retirement payment from a plan, fund, or trust as described in this subparagraph (III), but only reinvests a portion of that payment as required in subparagraph (II) of this paragraph (a), or when an individual otherwise withdraws an amount from a plan, fund, or trust that is less than the total lump sum of the account, then the division shall consider only the portion that is received but not reinvested pursuant to subparagraph (II) of this paragraph (a) in determining the number of calendar weeks that the individual's benefits are postponed.

(IV) An individual's weekly benefit amount shall not be reduced by any amount of a primary insurance benefit under Title II of the federal "Social Security Act" that has been contributed to by a base period employer if the employee has made contributions to federal social security.

(b) (I) An individual who has applied for a retirement payment shall be entitled to receive, if otherwise eligible, the weekly benefit amount reduced by the prorated weekly amount of the estimated or reported amount of such retirement payment. When notice of the actual or confirmed amount of the retirement payment is received by the individual, he shall advise the division and the deduction will be adjusted accordingly.

(II) If the estimated amount of the retirement payment exceeds the amount of unemployment compensation to which the individual is entitled, he shall receive one payment equal to the minimum weekly benefit amount, as prescribed

by section 8-73-102 (1), other provisions of articles 70 to 82 of this title notwithstanding.

(c) For purposes of this subsection (3), "lump-sum retirement payment" means the entire balance due the individual from the plan, fund, or trust that has been contributed to by a base period employer.

(4) An individual's weekly benefit amount shall not be reduced because of the receipt of military service-connected disability compensation payable under 38 U.S.C., chapter 11, by the federal veterans administration. An individual's weekly benefit amount shall be reduced because of the receipt of a military disability retirement pension based on previous work performed by the individual, the relationship to the level of prior remuneration, or the length of service.

(5) Individuals who receive compensation for temporary disability under the workers' compensation law of any state or under a similar law of the United States shall be entitled to receive benefits for a corresponding week, if otherwise eligible, reduced by the amount of the temporary disability compensation unless the temporary disability amount has already been reduced by the unemployment insurance benefit amount.

(6) Individuals who receive sick pay benefits or other similar periodic cash payments paid to the worker by a base period employer or from any trust or fund contributed to by a base period employer shall be entitled to receive benefits for a corresponding week, if otherwise eligible, reduced by the amount of such sick pay benefits or other similar periodic cash payments.

(7) Repealed.

(8) (Deleted by amendment, L. 2009, (HB 09-1076), ch. 408, p. 2248, § 1, effective June 2, 2009.)

8-73-111. Compensation from other state. An individual shall not receive an award for any week with respect to which or a part of which he has received or is seeking unemployment benefits under an unemployment compensation law of another state, the federal government, or a foreign country. If the appropriate agency of such other state, the federal government, or a foreign country finally determines that he is not entitled to such unemployment benefits, this lack of award shall not apply. For the purposes of this section, a law of the federal government providing payments of any type and for any amount for periods of unemployment due to lack of work shall be considered an unemployment compensation law of the federal government.

8-73-112. Benefits payable after receiving workers' compensation benefits. Any provision of the law to the contrary notwithstanding, a person who is separated from employment due to an accident or injury resulting in a temporary total disability for which he has been compensated under section 8-42-105, if otherwise eligible, shall be entitled to receive, after the termination of the continuous period of disability, benefits under this article which were available and in effect at the time of separation from employment. Payment of benefits for a week under this section shall be made only if a claim therefor is filed within the four weeks immediately following the termination of the continuous period of total disability and the week for which benefits are claimed occurs within three years after the date of separation from employment. Only one benefit year may be established under the provisions of this section.

8-73-113. Benefits payable during approved training. (1) Notwithstanding any other provisions of articles 70 to 82 of this title, the division shall not deny benefits for any week to an otherwise eligible individual because:

(a) The individual is in training approved under section 236 (a) (1) of the federal "Trade Act of 1974", Pub.L. 93-618, codified at 19 U.S.C. sec. 2296 (a) (1), as amended;

(b) The individual left work to enroll in the training, as long as the work left is not suitable employment;

(c) Of the application of provisions of articles 70 to 82 of this title relating to availability for work, active search for work, or refusal to accept work to any week in which the individual is enrolled in the training;

(d) The individual left work that he or she engaged in on a temporary basis during a break in the training or a delay in the commencement of the training; or

(e) The individual left on-the-job training not later than thirty days after commencing the training because the training did not meet the requirements of 19 U.S.C. sec. 2296 (c) (1) (B) of the federal "Trade Act of 1974", as amended.

(2) As used in this section, "suitable employment" means, with respect to an individual, work of a substantially equal or higher skill level than the individual's past adversely affected employment, as defined for purposes of the federal "Trade Act of 1974", as amended, and wages for such work at not less than eighty percent of the individual's average weekly wage, as determined for the purposes of the federal "Trade Act of 1974", as amended.

8-73-114. Enhanced unemployment insurance compensation benefits - eligibility - approved training programs - amount of benefits - outreach - repeal. (Repealed)

ARTICLE 74

CLAIMS FOR BENEFITS

8-74-101. Claims for benefits. (1) Claims for benefits shall be made, processed, and reviewed pursuant to articles 70 to 82 of this title and such regulations as the director of the division may prescribe.

(2) Every employer shall post and maintain notices to inform his employees that he is subject to the "Colorado Employment Security Act" and has been so registered by the division. Such notices shall be conspicuously posted at or near work locations after an employer's account number has been assigned by the division and shall be supplied by the division in reasonable numbers and without cost.

(3) Copies of articles 70 to 82 of this title and rules and regulations shall be supplied without cost by the division to any person who requests a copy.

8-74-102. Deputy's decision. (1) Upon receipt of a claim, the division shall notify any other interested parties of the claim by mail or electronic means in accordance with such rules as the director of the division may promulgate. Such interested parties shall be afforded twelve calendar days after the date of such notice of the claim to present any information pertinent to the claim by mail, telephone, or electronic means in accordance with such rules as the director of the division may promulgate. Such information shall be received by the division within twelve calendar days after said date. If the twelfth calendar day falls on a weekend or a state holiday, such date shall be moved to the first working day immediately following such weekend or holiday. The interested party may present information out of time only if good cause is shown. A deputy to be designated by the director of the division shall promptly examine all materials submitted. Whenever information submitted is not clearly adequate to substantiate a decision, the deputy shall promptly seek the necessary information. If it is necessary to obtain information by mail from any source, the information shall be received by the division no later than seven calendar days after the date of the request for information. On the basis of the deputy's review, the deputy shall determine the validity of the claim and, if valid, when payment shall commence, the amount payable, and the duration of payment. The deputy shall issue a decision in all cases, even if the claimant has insufficient qualifying wages, unless the interested employer did not receive notice of the claim, except when the separation from employment is due to a lack of work and no alleged disqualifying circumstances are indicated, or unless the claimant did not file a continued claim. The deputy's decision shall set forth findings of fact, conclusions of law, and an order. The division shall promptly provide all interested parties with copies of the deputy's decision.

(2) Notwithstanding articles 70 to 82 of this title, an initial determination of arithmetic computations, wage amounts, and dates of wage payments shall not be subject to immediate appeal. Interested parties who disagree with monetary determinations of the division may request reconsideration of determinations as the director of the division, by regulation, may prescribe. A reconsidered determination of the division is subject to the provisions of section 8-74-105.

8-74-103. Hearing officer review. (1) Any interested party who is dissatisfied with a deputy's decision may appeal that decision and obtain a hearing covering any issue relevant to the disputed claim. The issue of a claimant's availability will be relevant to the extent set forth in section 8-73-107 (1) (c) (I) (A). The initial appeal shall be to a hearing officer designated by the director of the division and must be received by the division within twenty calendar days after the date of notification of the decision of the deputy in accordance with such rules as the director of the division may promulgate. "Deputy", as used in this article, means a person who adjudicates claims for the division when Colorado is the paying state. Wages paid in Colorado and transferred to another state in which the claimant has filed shall not be subject to adjudication by a deputy of the division or to an appeal directed to this state.

(2) The hearing officer shall have the power and authority to call, preside at, and conduct hearings pursuant to the provisions of section 8-72-108 and such regulations as the director of the division may prescribe.

(3) The hearing officer, after affording all interested parties a reasonable opportunity for a fair hearing in conformity with the provisions of this article and the regulations of the division, shall make a decision on each relevant issue raised, including findings of fact, conclusions of law, and an order. The division shall promptly provide all interested parties with copies of the hearing officer's decision.

(4) The hearing officer may conduct all appeal hearings at designated locations which are most convenient to the claimant and employer. If the claimant and employer request that such hearing be bifurcated, the division may honor this request.

8-74-104. Industrial claim appeals office review. (1) Any interested party who is dissatisfied by a hearing officer's decision may appeal that decision and obtain administrative review by the industrial claim appeals office. Any such appeal must be received by the industrial claim appeals office within twenty calendar days after the date of notification of the decision of the hearing officer. The director of the division may prescribe rules for the conduct of such appeals, including apportionment of transcript costs (not to exceed the actual costs of such materials), filing methods, briefing schedules, and similar matters.

(2) Upon petition to review by an interested party, the industrial claim appeals panel may affirm, modify, reverse, or set aside any decision of a hearing officer on the basis of the evidence in the record previously submitted in the case.

(3) The industrial claim appeals office shall promptly provide all interested parties with copies of the industrial claim appeals panel's written decision and order in each case.

(4) The panel shall have the power to issue such procedural orders as may be necessary to carry out its appellate review under subsection (2) of this section, including, but not limited to, orders concerning the acceptance of appeals before the panel and orders granting or denying requests for extension of time.

8-74-105. Reconsiderations. The deputy, hearing officer, or industrial claim appeals panel may, on his or its own motion, reconsider a decision within a twelve-month period subsequent to the date of decision when it appears that an apparent procedural or substantive error has occurred in connection therewith. Notification of a decision on reconsideration and the reasons therefor shall be promptly given to all interested parties. In the event that an appeal involving an original decision is pending as of the date on which a decision as a result of reconsideration is issued by the division, such appeal shall be considered void. Any interested party who is dissatisfied by a decision that is issued as a result of reconsideration may appeal that decision in the manner set forth in section 8-74-106.

8-74-106. Appeals - time limits - procedures. (1) The following procedures and limitations shall apply to all appeals taken pursuant to this article:

(a) Any party may petition for review of a deputy's decision by filing a petition therefor with the division within twenty calendar days after the date of notification of such decision. Notification of the decision shall be by personal

delivery of the decision to an interested party or by mailing a copy of the decision to the last-known address shown in the division records of an interested party and to the interested party's attorney or representative of record, if any, or by electronic means. The date of notification shall be the date of personal delivery, the date of transmission as recorded by the division, if notification is made by electronic means, or the date of mailing of a decision.

(b) Unless, within twenty calendar days after the date of notification of a deputy's decision, an interested party petitions for review of such decision, the decision shall be final. Petitions for review may be accepted out of time only for good cause shown and in accordance with rules adopted by the director of the division.

(c) The division shall give written notice to all interested parties when a petition for review is filed. Such notice shall be pursuant to regulations adopted by the director of the division.

(d) Pursuant to section 8-72-107, each interested party shall be given such reasonable access to division records concerning the claim as is necessary for proper presentation of his position concerning the claim.

(e) Any interested party to an appeal from a deputy's decision shall be entitled to a hearing before a hearing officer. All interested parties shall have the right to be present or to be represented by an attorney or other representative at the hearing, to present such testimony and evidence as may be pertinent to the claim, and to cross-examine witnesses. The division, pursuant to regulations adopted by the director of the division, shall notify all interested parties of the hearing. Such notification shall be made not less than ten calendar days prior to the hearing.

(f) (I) The manner in which disputed claims shall be presented, the reports required from interested parties, and the conduct of hearings shall be in accordance with the provisions of this article and the regulations prescribed by the director of the division, whether or not such regulations conform to common law or statutory or regulatory rules of evidence or other technical rules of procedure.

(II) Evidence and requirements of proof shall conform, to the extent practicable, with those in civil nonjury cases in the district courts of this state. However, when necessary to do so in order to ascertain facts affecting the substantial rights of the parties to the proceeding, the person conducting the hearing may receive and consider evidence not admissible under such rules, if such evidence possesses probative value commonly accepted by reasonable and prudent men in the conduct of their affairs. Objections to evidentiary offers may be made and shall be noted in the record. The person conducting a hearing shall give effect to the rules of privilege recognized by law. He may exclude incompetent and unduly repetitious evidence. Documentary evidence may be received in the form of a copy or excerpt if the original is not readily available; but, upon request, the party shall be given an opportunity to compare the copy with the original. The division may utilize its experience, technical competence, and specialized knowledge in the evaluation of the evidence presented. The provisions of the "State Administrative Procedure Act", article 4 of title 24, C.R.S., and particularly sections 24-4-105 and 24-4-106, C.R.S., shall not apply to hearings and court review under this article. However, the rule-making provisions of section 24-4-103, C.R.S., shall apply to this article.

(III) When the same or substantially similar evidence is relevant and material to the matters at issue in claims by more than one individual or in claims by a single individual with respect to two or more weeks of unemployment, the same time and place for considering each such claim may be fixed, hearings thereon may be jointly conducted, a single record of the proceedings may be made, and evidence introduced with respect to one proceeding may be considered as introduced in the others, if, in the judgment of the tribunal having jurisdiction over the proceeding, such consolidation would not be prejudicial to any interested party.

(IV) No person shall participate on behalf of the division in any case in which he has a direct or indirect interest.

(V) A full and complete record shall be kept of all proceedings in connection with a disputed claim. All testimony at any hearing upon a disputed claim shall be recorded but need not be

transcribed unless the disputed claim is presented for further review. If necessary, the industrial claim appeals panel may listen to the recorded testimony of a hearing on a disputed claim prior to rendering a decision. If review is sought pursuant to section 8-74-107, the division shall transcribe the testimony pursuant to such regulations as the director of the division may prescribe.

(g) Repealed.

8-74-107. Court review. (1) No action, proceeding, or suit to set aside an industrial claim appeals panel's decision or to enjoin the enforcement thereof shall be brought unless the petitioning party has first complied with the review provisions of sections 8-74-104 and 8-74-106.

(2) Actions, proceedings, or suits to set aside, vacate, or amend any final decision of the industrial claim appeals panel or to enjoin the enforcement thereof may be commenced in the court of appeals by any interested party, including the division. Such actions, proceedings, or suits shall be commenced by filing a notice of appeal in the court of appeals within twenty-one days of the mailing of the industrial claim appeals panel's decision, together with a certificate of service showing service of a copy of said notice of appeal on the division, the industrial claim appeals office, and all other parties who appeared in the administrative proceedings. The industrial claim appeals office, within twenty-one days after the service of the notice, shall make return to said court of all documents and papers on file in the matter, of all testimony taken therein, and of certified copies of all findings, orders, and awards, which return shall be deemed its answer to said petition. Such return of the industrial claim appeals office shall constitute the judgment roll in any such action, proceeding, or suit, and it shall not be necessary to settle a bill of exceptions in order to make such return part of the record of such court in such action, proceeding, or suit.

(3) The industrial claim appeals panel may certify to the court of appeals questions of law involved in any of its decisions.

(4) In judicial proceedings under this article, administrative findings as to the facts, if supported by substantial evidence and in the absence of fraud, shall be conclusive.

(5) Actions, proceedings, and suits to review any final decision of the industrial claim appeals panel or questions certified to the court of appeals by such panel shall be heard in an expedited manner and shall be given precedence over all other civil cases, except cases arising under the "Workers' Compensation Act of Colorado", articles 40 to 47 of this title.

(6) The industrial claim appeals panel's decision may be set aside only upon the following grounds:

(a) That the industrial claim appeals panel acted without or in excess of its powers;

(b) That the decision was procured by fraud;

(c) That the findings of fact do not support the decision;

(d) That the decision is erroneous as a matter of law.

8-74-108. Conclusiveness of determinations and decisions. Any right, fact, or matter in issue directly passed upon or necessarily involved in a decision of a deputy, a hearing officer, the industrial claim appeals office, or the court of appeals which has become a final decision under this article, after appeal procedures, if initiated, have been completed or otherwise terminated, shall be conclusive for all the purposes of articles 70 to 82 of this title as between all interested parties. No finding of fact or law, judgment, conclusion, or final order made with respect to a determination made under articles 70 to 82 of this title may be conclusive or binding or used as evidence in any separate or subsequent action or proceeding in another forum, except proceedings under articles 70 to 82 of this title, regardless of whether the prior action was between the same or related parties or involved the same facts. No findings of fact or law, judgment, conclusion, or final order made by any other agency, administrative body, or forum that are not made pursuant to articles 70 to 82 of this title shall be binding on

the division for the purposes of articles 70 to 82 of this title.

8-74-109. Payment of benefits. (1) Notwithstanding any other provisions of this article, if a decision grants benefits to a claimant, such benefits shall be promptly paid in accordance with and upon issuance of the decision. If further benefits are granted by a subsequent decision, all accrued and unpaid benefits shall be promptly paid. If a subsequent decision denies or reduces benefits, subsequent benefits shall be denied or reduced pursuant to and upon issuance of the decision. If the final decision denies benefits, no employer's rating account shall be charged with benefits paid.

(2) If by reason of fraud, mistake, or clerical error a claimant receives moneys in excess of benefits to which he is entitled or if a claimant receives benefits to which he is subsequently determined to be not entitled as a result of a final decision in the appeals process, the division shall recoup such moneys in accordance with section 8-79-102 and such regulations as may be prescribed by the director of the division.

8-74-110. Decisions of industrial claim appeals panel. (Repealed)

ARTICLE 75

EXTENDED BENEFITS PROGRAM

PART 1 - EXTENDED BENEFITS

8-75-101. Definitions. As used in this part 1, unless the context otherwise requires:

(1) "Eligibility period" of an individual means the period consisting of the weeks in his benefit year which begin in an extended benefit period and, if his benefit year ends within such extended benefit period, any weeks thereafter which begin in such period.

(2) (a) "Exhaustee" means an individual who, with respect to any week of unemployment in his or her eligibility period:

(I) Has received, prior to such week, all of the regular benefits that were payable to him under articles 70 to 82 of this title or any other state law (including dependents' allowances and regular benefits payable to federal civilian employees and ex-servicemen under 5 U.S.C., chapter 85) for his benefit year that includes such week;

(II) Has received, prior to such week, all of the regular benefits that were available to him under articles 70 to 82 of this title or any other state law (including dependents' allowances and regular benefits available to federal civilian employees and ex-servicemen under 5 U.S.C., chapter 85) in his benefit year that includes such week, after the cancellation of some or all of his wage credits or the total or partial reduction of his right to regular benefits. For the purposes of this subparagraph (II) and subparagraph (I) of this paragraph (a), an individual shall be deemed to have received in his applicable benefit year all of the regular benefits that were payable to him or available to him, as the case may be, even though:

(A) As a result of a pending appeal with respect to wages or employment, or both, that was not included in the original monetary determination with respect to such benefit year, he may subsequently be determined to be entitled to more regular benefits; or

(B) By reason of the seasonal provisions of another state law, he is not entitled to regular benefits with respect to such week of unemployment (although he may be entitled to regular benefits with respect to future weeks of unemployment in the next season or off-season, as the case may be, in such benefit year), and he is otherwise an exhaustee within the meaning of this subsection (2) with respect to his right to regular benefits under such other state law's seasonal provisions during the season or off-season in which that week of unemployment occurs; or

(C) Having established a benefit year, no regular benefits are payable to him during such year because his wage credits were cancelled or his right to regular benefits was totally reduced as a result of the application of a disqualification;

(III) His benefit year having ended prior to such week, has insufficient wages or employment, or both, on the basis of which he could establish in any state a new benefit year that would include

such week or, having established a new benefit year that includes such week, he is precluded from receiving regular benefits by reason of the provisions of section 8-73-107 (2) which meet the requirements of section 3304 (a) (7) of the "Federal Unemployment Tax Act" or a similar provision in any other state law;

(IV) Has no right for such week to unemployment benefits or allowances, as the case may be, under the "Railroad Unemployment Insurance Act", the "Trade Expansion Act of 1962", and such other federal laws as are specified in regulations issued by the United States secretary of labor;

(V) Has not received and is not seeking for such week unemployment benefits under an unemployment compensation law of Canada, unless the appropriate agency finally determines that he is not entitled to unemployment benefits under such law for such week; or

(VI) Has received all of the unemployment compensation benefits pursuant to part 2 of this article and regular unemployment compensation benefits available in a benefit year.

(b) "Applicable benefit year", as used in this subsection (2), means, with respect to an individual, his current benefit year if at the time he files a claim for extended benefits he has an unexpired benefit year only in the state in which he files such claim or, in any other case, his most recent benefit year. For the purpose of this paragraph (b), his "most recent benefit year", if he has unexpired benefit years in more than one state when he files a claim for extended benefits, is the benefit year with the latest ending date or, if such benefit years have the same ending date, the benefit year in which his latest continued claim for regular benefits was filed.

(3) (a) "Extended benefit period" means a period which:

(I) Begins with the third week after a week for which there is an "on" indicator; and

(II) Ends with either of the following weeks, whichever occurs later:

(A) The third week after the first week for which there is an "off" indicator; or

(B) The thirteenth consecutive week of such period.

(b) But no extended benefit period may begin by reason of an "on" indicator before the fourteenth week following the end of a prior extended benefit period which was in effect with respect to this state.

(4) "Extended benefits" means benefits as defined in section 8-70-110 (1) (b).

(4.5) "High unemployment period" means a period in which the seasonally adjusted total unemployment rate, as determined by the United States secretary of labor, for the most recent three months for which data for all states is published, equals or exceeds eight percent.

(5) and (6) Repealed.

(7) "Rate of insured unemployment", for the purposes of subsection (11) of this section, means the percentage derived by dividing: The average weekly number of individuals filing claims for regular compensation in this state for weeks of unemployment with respect to the most recent consecutive thirteen-week period as determined by the division on the basis of its reports to the United States secretary of labor, by the average monthly employment covered under articles 70 to 82 of this title for the first four of the six most recently completed calendar quarters ending before the end of such thirteen-week period.

(8) "Regular benefits" means benefits as defined in section 8-70-110 (1) (a).

(9) "State law" means the unemployment insurance law of any state, approved by the United States secretary of labor under section 3304 of the federal "Internal Revenue Code of 1986", as amended.

(9.5) "Total unemployment rate" or "TUR" means the percentage derived by dividing the number of all unemployed persons in the civilian labor force by the number of individuals comprising the total labor force, including both employed and unemployed individuals, and then multiplying that number by one hundred.

(10) There is an "off" indicator for a week if, for the period consisting of such week and the immediately preceding twelve weeks, either:

(a) Sub-subparagraph (A) or (C) of subparagraph (I) of paragraph (a) of subsection (11) of this section was not satisfied, and subparagraph (II) of paragraph (a) of subsection (11) of this section was not satisfied; or

(b) Sub-subparagraph (B) or (C) of subparagraph (I) of paragraph (a) of subsection (11) of this section was not satisfied, and subparagraph (II) of paragraph (a) of subsection (11) of this section was not satisfied.

(11) (a) There is an "on" indicator for a week if the rate of insured unemployment under articles 70 to 82 of this title for the period consisting of such week and the immediately preceding twelve weeks:

(I) (A) Equaled or exceeded one hundred twenty percent of the average of such rates for the corresponding thirteen-week period ending in each of the preceding two calendar years; or

(B) Equaled or exceeded one hundred twenty percent of the average of such rates for the corresponding thirteen-week period ending in each of the preceding three calendar years with respect to weeks beginning on or after December 17, 2010, and ending December 31, 2011, or while Pub.L. 111-312 and any amendments thereto are in effect; and

(C) Equaled or exceeded five percent; or

(II) Equaled or exceeded six percent.

(b) Repealed.

8-75-102. Effect of state law provisions relating to regular benefits on claims for, and payment of, extended benefits. Except when the result would be inconsistent with the other provisions of this section as provided in the regulations of the division, the provisions of articles 70 to 82 of this title which apply to claims for, or the payment of, regular benefits shall apply to claims for, and the payment of, extended benefits.

8-75-103. Eligibility requirements for extended benefits. (1) An individual shall be eligible to receive extended benefits with respect to any week of unemployment in his eligibility period only if the division finds that with respect to such week:

(a) He is an exhaustee;

(b) He has satisfied the requirements of articles 70 to 82 of this title for the receipt of regular benefits that are applicable to individuals claiming extended benefits, including not being subject to a disqualification for the receipt of benefits; and

(c) He files his interstate claim from a state in which there is an extended benefits state "on" indicator. If he files his interstate claim from a state in which there is an extended benefits state "off" indicator, he shall be paid for not more than the first two weeks in which extended benefits are payable in an interstate claim.

8-75-103.5. Additional extended benefit requirements. (1) An individual shall be ineligible for payment of extended benefits for any week of unemployment in his eligibility period if the division finds that during such period:

(a) He failed to accept any offer of suitable work as defined under subsection (3) of this section or failed to apply for any suitable work to which he was referred by the division; or

(b) He failed to actively engage in seeking work which is prescribed as suitable work under subsection (5) of this section.

(2) Any individual who has been found ineligible for extended benefits by reason of the provisions of subsection (1) of this section shall also be denied benefits beginning with the first day of the week following the week in which such failure occurred and until he has been employed in each of four subsequent weeks, whether or not consecutive, and has earned remuneration equal to not less than four times the extended weekly benefit amount.

(3) For the purposes of this section, "suitable work" means, with respect to any individual, any work which is within such individual's

capabilities. The gross average weekly remuneration payable for such work shall:

(a) Exceed the sum of the individual's extended weekly benefit amount as determined under sections 8-73-102 and 8-75-104 plus the amount, if any, of supplemental unemployment benefits, as defined in section 501 (c) (17) (D) of the federal "Internal Revenue Code of 1986", as amended, payable to such individual for such week;

(b) Not be less than the higher of the minimum wage provided by section 206 (a) (1) of the "Fair Labor Standards Act of 1938", as amended, without regard to any exemption, or the applicable state or local minimum wage.

(4) No individual shall be denied extended benefits for failure to accept an offer of or apply for any job which meets the definition of suitability, provided in subsection (3) of this section, if:

(a) The position was not offered to such individual in writing or was not listed with the state employment service;

(b) Such failure could not result in a denial of benefits under the definition of suitable work for regular benefit claimants in section 8-73-108 (5) (b) to the extent that the criteria of suitability in that section are not consistent with the provisions of subsection (3) of this section;

(c) The individual furnishes satisfactory evidence to the division that his prospects for obtaining work in his customary occupation within a reasonably short period are good. If such evidence is deemed satisfactory for this purpose, the determination of whether any work is suitable with respect to such individual shall be made in accordance with the definition of suitable work for regular benefit claimants in section 8-73-108 without regard to the definition specified by subsection (3) of this section.

(5) Notwithstanding the provisions of paragraph (b) of subsection (3) of this section to the contrary, no work shall be deemed suitable work for an individual which does not accord with the labor standards provisions required by section 3304 (a) (5) of the federal "Internal Revenue Code of 1986", as amended, and set forth under section 8-73-108 (5) (b).

(6) For the purposes of paragraph (b) of subsection (1) of this section, an individual shall be treated as actively engaged in seeking work during any week if:

(a) The individual has engaged in a systematic and sustained effort to obtain work during such week;

(b) The individual furnishes tangible evidence that he has engaged in such effort during such week.

(7) The state employment service shall refer any claimant entitled to extended benefits under the "Colorado Employment Security Act", articles 70 to 82 of this title, to any suitable work which meets the criteria prescribed in subsection (3) of this section.

(8) An individual shall not be eligible to receive extended benefits with respect to any week of unemployment in his eligibility period if such individual has been disqualified for regular benefits under the "Colorado Employment Security Act", articles 70 to 82 of this title, because he voluntarily left work, was discharged for misconduct, or failed to accept an offer of or apply for suitable work unless the disqualification imposed for such reasons has been terminated in accordance with specific conditions established under said act, requiring the individual to perform service for remuneration subsequent to the date of such disqualification.

(9) Repealed.

8-75-104. Weekly extended benefit amount. The weekly extended benefit amount payable to an individual for a week of total unemployment in his eligibility period shall be an amount equal to the weekly benefit amount payable to him during his applicable benefit year; except that, for any week during a period in which federal payments to states under section 204 of the "Federal-State Extended Unemployment Compensation Act of 1970" and amendments thereto are reduced under section 252 of the "Balanced Budget and Emergency Deficit Control Act of 1985" and amendments thereto,

the weekly extended benefit amount payable to an individual for a week of total unemployment in his eligibility period shall be reduced by a percentage equivalent to the percentage of the reduction in the federal payment. Such reduced weekly extended benefit amount, if not an even dollar amount, shall be rounded to the next lower full dollar amount.

8-75-105. Total extended benefit amount. (1) The total extended benefit amount payable to any eligible individual with respect to his applicable benefit year shall be the least of the following amounts:

(a) Fifty percent of the total amount of regular benefits which were payable to him under articles 70 to 82 of this title in his applicable benefit year; or

(b) Thirteen times his weekly benefit amount which was payable to him under articles 70 to 82 of this title for a week of total unemployment in the applicable benefit year.

(2) Notwithstanding any other provisions of this part 1, if the benefit year of any individual ends within an extended benefit period, the remaining balance of extended benefits that such individual would, but for this subsection (2), be entitled to receive in that extended benefit period, with respect to weeks of unemployment beginning after the end of the benefit year, shall be reduced (but not below zero) by an amount equal to the product of the number of weeks for which the individual received any amounts as trade readjustment allowances within that benefit year multiplied by the individual's weekly benefit amount for extended benefits.

(3) Notwithstanding any other provision of this part 1, during any fiscal year in which federal payments to states under section 204 of the "Federal-State Extended Unemployment Compensation Act of 1970" and amendments thereto are reduced under section 252 of the "Balanced Budget and Emergency Deficit Control Act of 1985" and amendments thereto, the total extended benefit amount payable to an individual with respect to his or her applicable benefit year shall be reduced by an amount equal to the aggregate of the reductions in the weekly amounts paid to the individual under section 8-75-104.

8-75-106. Beginning and termination of extended benefit period. (1) Whenever an extended benefit period is to become effective in this state as a result of an "on" indicator, or an extended benefit period is to be terminated in this state as a result of an "off" indicator, the division shall make an appropriate public announcement.

(2) Computations required by the provisions of section 8-75-101 (10) shall be made by the division, in accordance with regulations prescribed by the United States secretary of labor.

8-75-107. Amended determination of "on" or "off" indicator. (Repealed)

8-75-108. Total unemployment rate extended benefits. (1) With respect to weeks of unemployment beginning on or after March 22, 2009, and ending four weeks before the last week for which federal sharing is authorized by section 2005 (a) of Pub.L. 111-5 and any amendments thereto, whichever is later:

(a) There is an "on" indicator for a week of TUR extended benefits, in the amount determined pursuant to sections 8-75-104 and 8-75-105, if subparagraphs (I) and (II) of this paragraph (a) apply or if subparagraphs (I) and (III) of this paragraph (a) apply:

(I) The seasonally adjusted TUR, as determined by the United States secretary of labor, for the most recent three months for which data for all states is published, equals or exceeds six and one-half percent;

(II) The average TUR in the state equals or exceeds one hundred ten percent of the TUR for either or both of the corresponding three-month periods in the two preceding calendar years;

(III) With respect to weeks beginning on or after December 17, 2010, and ending December 31, 2011, or while Pub.L. 111-312 and any amendments thereto are in effect, the average TUR in the state equals or exceeds one hundred ten percent of the TUR for all or any of the corresponding three-month periods in the three preceding calendar years;

(b) There is an "off" indicator for weeks of TUR extended benefits if any of the following applies:

(I) The TUR falls below six and one-half percent; or

(II) The requirements described in subparagraph (II) or (III) of paragraph (a) of this subsection (1) are not satisfied.

(2) The total amount of TUR extended benefits payable in a high unemployment period to an eligible individual with respect to his or her applicable benefit year shall be the least of the following amounts:

(a) Eighty percent of the total amount of regular benefits that were payable to the eligible individual under articles 70 to 82 of this title in the applicable benefit year; or

(b) Twenty times the weekly benefit amount that was payable to the eligible individual under articles 70 to 82 of this title for a week of total unemployment in the applicable benefit year.

PART 2

WORK SHARE PROGRAM

8-75-201. Short title. This part 2 shall be known and may be cited as the "Colorado Work Share Program".

8-75-202. Definitions. As used in this part 2, unless the context otherwise requires:

(1) "Affected unit" means a specified plant, department, shift, or other definable unit to which a work share plan applies.

(2) "Director" means the director of the division or his or her designee.

(3) "Normal weekly work hours" means the number of hours in a week that an employee ordinarily works for a participating employer or forty hours, whichever is less.

(4) "Work share plan" means a plan for reducing unemployment under which employees who are members of an affected unit share the work remaining after a reduction in their normal weekly work hours.

8-75-203. Work share program - work share plan - eligibility of employer - approval - denial.

(1) (a) Repealed.

(b) (I) The director shall establish a voluntary work share program for the purpose of allowing the payment of unemployment compensation benefits to employees whose wages and hours have been reduced. In order to participate in the work share program, an employer shall submit a work share plan in writing to the director for approval. If the employer is subject to a collective bargaining agreement, the collective bargaining unit must agree in writing to the work share plan prior to implementation. An employer that is a negative excess employer pursuant to section 8-76-102.5 (3) is not eligible to participate in the work share program.

(II) This paragraph (b) is effective December 31, 2012.

(2) An employer must submit a work share plan to the division on forms and following procedures required by the director. The director may approve a work share plan if:

(a) The plan applies to and identifies a specific affected unit;

(b) The plan identifies the employees in the affected unit by name and social security number;

(c) The plan reduces the normal work for an employee in the affected unit by at least ten percent and not more than forty percent;

(d) The plan applies to at least two of the employees in the affected unit;

(e) Repealed.

(f) The plan includes a description of how the plan complies with the "Federal Unemployment Tax Act", 26 U.S.C. sec. 3301 et seq.;

(g) The plan includes an explanation of how employees will be notified of the plan in advance, if notification is feasible, or an explanation of why it is not feasible to notify the employees in advance;

(h) The plan includes an estimate of the number of employees who would be laid off if the employer did not participate in the work share program; and

(i) The plan includes certification by the employer that the terms of the written plan and implementation of the plan are consistent with employer obligations pursuant to federal and state law.

(3) The director shall not approve a work share plan unless the employer:

(a) Agrees that for the duration of the employer's participation in the work share program, the employer shall not eliminate or diminish health insurance, retirement benefits received under a pension plan, paid vacation and holidays, sick leave, or any other similar employee benefit provided by the employer immediately prior to submitting the work share plan to the division, if the employer provides benefits to his or her employees;

(b) Certifies that the collective bargaining agent for the employees, if applicable, has agreed to the work share plan;

(c) Certifies that the implementation of a shared work plan and the resulting reduction in work hours is in lieu of layoffs that would affect at least two of the employees in the affected unit and that would result in an equivalent reduction in work hours;

(d) Certifies that the employer will not employ additional employees in the affected unit while participating in the work share program;

(e) Agrees that no employee participating in the work share program shall receive, in the aggregate, more than twenty-six weeks of benefits; and

(f) Agrees to submit reports concerning the operation of the work share plan to the division upon request of the director.

(4) The director shall approve or deny the work share plan in writing no later than thirty days after the date the division receives the plan. If the director denies the work share plan, he or she shall inform the employer in writing of the reasons for the denial.

8-75-204. Employee eligibility for unemployment benefits under the work share plan - employee eligibility for job training. (1) Notwithstanding any other provision of this title, an employee may be eligible for unemployment compensation benefits for a particular week pursuant to this part 2 if:

(a) The employee is employed as a member of an affected unit that is subject to an approved work share plan that is in effect for that week;

(b) The employee's normal weekly work hours have been reduced by at least ten percent but not more than forty percent and the employee has received a corresponding reduction in wages for that week; and

(c) The employee is able and available to work additional or full-time hours with his or her employer.

(2) The eligibility requirements for the receipt of unemployment compensation benefits related to the availability for work, actively seeking work, and refusing to apply for or to accept work with an employer other than the employee's current employer, pursuant to sections 8-73-107 and 8-73-108 (5), shall not apply to an employee subject to this part 2.

(3) An eligible employee may participate in training, including employer-sponsored training and training funded through the federal "Workforce Investment Act of 1998", 29 U.S.C. sec. 2801 et seq., to enhance job skills if the training program has been approved by the department of labor and employment.

8-75-205. Benefits formula - limitation of benefits. (1) Formula. The division shall pay an employee who is eligible for unemployment compensation benefits under a work share plan a weekly benefit that is the product of the employee's regular weekly benefit amount pursuant to article 73 of this title, multiplied by the nearest full percentage of the reduction of

the employee's work hours, rounded down to the next full dollar.

(2) **Limitations.** (a) An individual is not entitled to receive unemployment compensation benefits pursuant to this part 2 and regular unemployment compensation benefits that exceed the maximum allowable total benefits payable to an individual in a benefit year pursuant to articles 70 to 82 of this title.

(b) The division shall not pay unemployment compensation benefits to an employee for a week in which the employee is compensated for work for his or her employer that exceeds the reduced hours established under the work share plan.

(c) An employee receiving weekly unemployment compensation benefits under a work share plan is not entitled to receive benefits for partial employment pursuant to section 8-73-103 for the same week.

(d) The waiting period of one week in section 8-73-107 (1) (d) that applies to the payment of benefits for total or partial unemployment shall apply to the payment of benefits pursuant to this part 2.

8-75-206. Work share plan - effective date - expiration - termination. (1) A work share plan and the payment of unemployment compensation benefits pursuant to the plan shall begin the first week following approval of the plan by the director or the first week specified by the employer, whichever is later.

(2) A work share plan shall expire twelve months after the effective date of the plan.

(3) The director may terminate a work share plan for good cause if the plan is not executed according to the terms and intent of the program. "Good cause" may include failure to comply with section 8-75-203, unreasonable revision of productivity standards for the affected unit, or other conduct by the employer that may compromise the purpose, intent, and effectiveness of a work share plan.

8-75-207. Work share plan modifications. (1) An employer may modify a work share plan to meet changed conditions if the modification conforms to the basic provisions of the plan as originally approved by the director.

(2) Before a proposed change to a work share plan may be implemented:

(a) The collective bargaining agent shall approve the modification to the plan if an employee is covered by a collective bargaining unit;

(b) The employer shall report the change in writing to the division; and

(c) The director shall approve the modified plan.

(3) The director shall approve or deny a modified work share plan using the same standards and requirements that are used for the original work share plan in accordance with section 8-75-203.

(4) Approval of a modified work share plan shall not affect the original expiration date of the work share plan.

8-75-208. Benefits payments charged to employer. If reimbursement to the state for unemployment compensation is not available pursuant to the federal "Layoff Prevention Act of 2012", Subtitle D of Title II of Pub.L. 112-96, unemployment compensation benefits paid to an employee pursuant to this part 2 shall be charged to the account of the employer participating in the work share plan in the same manner as regular benefits pursuant to section 8-73-108 (3) (e) (I).

8-75-209. Repeal of article. (Repealed)

ARTICLE 76

PREMIUMS - COVERAGE

8-76-101. Payment. (1) Premiums shall accrue and become payable by each employer for each calendar year in which the employer is subject to articles 70 to 82 of this title with respect to wages for employment. The premiums shall become due and be paid by each employer to the division for the fund in accordance with rules prescribed by the director of the division and shall not be deducted, in whole or in part,

from the wages of individuals in the employer's employ.

(2) In the payment of any premiums, a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to one cent.

(3) When the quarterly amount of premiums due is less than five dollars, payment of the premiums shall not be required.

8-76-102. Rate of premiums - surcharge - repeal. (Repealed)

8-76-102.5. Rates effective upon fund solvency - repeal of prior rates - solvency surcharge - definitions. (1) On each August 31, the executive director shall file a written report with the general assembly, the governor, and the legislative audit committee indicating the balance in the unemployment compensation fund. When the written report indicates that the fund balance on any June 30 is equal to or greater than zero dollars and all advances in accordance with the conditions specified in Title XII of the federal "Social Security Act", as amended, have been repaid, the executive director shall also report these facts in writing to the revisor of statues. Upon receipt by the revisor of statutes of the written report, the following provisions are repealed, effective December 31 of the calendar year of the written report to the revisor of statutes, and thereafter this section governs the payment of premiums:

(a) Section 8-76-102; and

(b) Section 8-76-103.

(2) Effective January 1 of the calendar year after the calendar year of the repeal of the provisions under subsection (1) of this section, each employer shall pay premiums in the manner prescribed by this section.

(3) (a) (I) Each employer's rate for the twelve months commencing January 1 of any calendar year is determined on the basis of the employer's record prior to the computation date for the year. The computation date for any calendar year is July 1 of the year preceding the calendar year for which the rate is computed.

(II) The total of all of an employer's premiums paid on his or her own behalf on or before thirty-one days immediately after the computation date and the total benefits that were chargeable to the employer's account and were paid before the computation date, with respect to weeks, or any established payroll period of unemployment, beginning before the computation date, is used to compute his or her premium rate for the ensuing calendar year; except that the maximum rate for negative excess employers that is credited to the unemployment compensation fund must be at least 0.0613 assessed as part of each employer's premium under this paragraph (a), and for these employers the maximum combined premium rate must be at least 0.0628 but not greater than 0.1039. "Percent of excess" means the percentage resulting from dividing the excess of premiums paid over benefits charged by the average chargeable payroll, computed to the nearest one percent. The word "to" in the column headings, which make reference to fund balances (resources available for benefits), means "not including". "Reserve ratio" means the fund balance on any June 30 as a proportion of total wages reported by experience-rated employers.

Standard Premium Rate Schedule

Eligible Employers Percent of Excess	Reserve Ratio 0.014 or Greater	Reserve Ratio 0.011 to 0.014	Reserve Ratio 0.008 to 0.011	Reserve Ratio 0.006 to 0.008	Reserve Ratio 0.004 to 0.006	Reserve Ratio 0.000 to 0.004	Reserve Ratio 0.000 to Deficit
+20 or more	0.0051	0.0056	0.0058	0.0062	0.0066	0.0071	0.0075
+18 to +19	0.0057	0.0062	0.0064	0.0069	0.0073	0.0078	0.0082
+16 to +17	0.0058	0.0063	0.0065	0.0070	0.0074	0.0079	0.0084
+14 to +15	0.0061	0.0067	0.0069	0.0075	0.0080	0.0086	0.0091
+12 to +13	0.0066	0.0072	0.0075	0.0082	0.0088	0.0095	0.0101
+10 to +11	0.0075	0.0083	0.0087	0.0094	0.0102	0.0110	0.0118
+8 to +9	0.0095	0.0105	0.0110	0.0120	0.0130	0.0140	0.0150
+6 to +7	0.0116	0.0129	0.0135	0.0148	0.0160	0.0173	0.0186
+4 to +5	0.0138	0.0154	0.0161	0.0177	0.0192	0.0207	0.0223
+2 to +3	0.0193	0.0214	0.0225	0.0247	0.0269	0.0291	0.0313
+0 to +1	0.0271	0.0302	0.0317	0.0348	0.0379	0.0410	0.0441
Unrated	0.0170	0.0170	0.0170	0.0170	0.0170	0.0170	0.0170
-0 to -1	0.0346	0.0386	0.0406	0.0447	0.0487	0.0527	0.0568
-2 to -3	0.0368	0.0412	0.0433	0.0476	0.0519	0.0562	0.0606
-4 to -5	0.0391	0.0437	0.0460	0.0506	0.0552	0.0598	0.0644
-6 to -7	0.0414	0.0462	0.0487	0.0535	0.0584	0.0633	0.0682
-8 to -9	0.0436	0.0488	0.0514	0.0565	0.0617	0.0668	0.0720
-10 to -11	0.0459	0.0513	0.0540	0.0595	0.0649	0.0703	0.0758
-12 to -13	0.0481	0.0539	0.0567	0.0624	0.0681	0.0738	0.0796
-14 to -15	0.0504	0.0564	0.0594	0.0654	0.0714	0.0774	0.0834
-16 to -17	0.0527	0.0589	0.0621	0.0683	0.0746	0.0809	0.0872
-18 to -19	0.0549	0.0615	0.0648	0.0713	0.0779	0.0844	0.0910
-20 to -21	0.0572	0.0640	0.0674	0.0743	0.0811	0.0879	0.0948
-22 to -23	0.0594	0.0666	0.0701	0.0772	0.0843	0.0914	0.0986
-24 to -25	0.0617	0.0690	0.0727	0.0801	0.0875	0.0949	0.1023
More than -25	0.0628	0.0703	0.0740	0.0815	0.0890	0.0964	0.1039

(b) Only those wages paid for covered employment that occurred before the computation date and were reported to the division on or before thirty-one days immediately following the computation date will be used to determine the experience rate effective for the next calendar year.

(c) Whenever an employer subject to articles 70 to 82 of this title acquires, before the computation date and pursuant to section 8-76-104, all or a segregable portion of the organization, trade, and business or substantially all of the assets of an employer who was subject to articles 70 to 82 of this title at the time of the acquisition, and the successor submitted in writing that the successor met the conditions set forth in section 8-76-104, a total or partial transfer of the experience rating record of the predecessor employer shall be made as provided in section 8-76-104. No merger of the accounts for experience rating purposes will be made for the rate effective the next calendar year unless the information is submitted to the division on or before sixty days following the computation date.

(d) Notwithstanding any provision to the contrary, an employer, at any time before March 15 of any year, may pay voluntary premiums in addition to the premiums and surcharges provided under articles 70 to 82 of this title. Voluntary premiums shall allow for a reduction of the employer's experience rate and shall be credited to the employer's account and be used in determining the employer's rate for the current calendar year and subsequent calendar years; except that, if an employer is delinquent in the payment of any premiums or surcharges due, the voluntary premium payments shall be reduced by the total amount of delinquent premiums and surcharges before such computation is made. No voluntary premiums paid pursuant to this paragraph (d) shall be refunded or applied to future premium liability.

(e) As used in sections 8-76-101 to 8-76-104, for the purpose of computing the premium rate of any employer, the term "annual payroll" means the total amount of wages for employment paid by an employer during the twelve-month period ending on June 30. The term "average chargeable payroll" means the average of the chargeable payrolls for the last three fiscal years ending on June 30. For any employer who has not reported payrolls to the division for thirty-six consecutive months ending on June 30, the division shall compute the average chargeable payroll by dividing the total chargeable payrolls of the employer during the three fiscal years ending on June 30 by the total months during which such wages were paid and multiplying the amount so determined by twelve.

(f) An employer shall have sixty calendar days after the mailing date or the transmission date as recorded by the division of a quarterly statement of benefits charged to the employer's account in which to file a written application for a review and determination of benefit charges. The application must specify in detail the grounds upon which the employer relies and may be filed in person, by mail, or by electronic means in accordance with such rules as the director of the division may promulgate. The division shall investigate the matters specified and shall give the employer notice of its redetermination by mail or by electronic means. If the employer fails to act within the prescribed time, benefits charged to the account shall be deemed correct and final. Appeal from the redetermination decision may be made pursuant to section 8-76-113 (2).

(g) By December 1 of each year, or as soon as practicable, the division shall notify each employer of the employer's premium rate as determined for the next calendar year pursuant to sections 8-76-101 to 8-76-104. The notification shall include the amount determined as the employer's average annual payroll, the total of all the employer's premiums paid on his or her own behalf and credited to his or her account for all past years, and the total benefits charged to the employer's account for all such years.

(h) No later than January 1, 2013, the division shall develop an on-line computer application that allows employers to review and manage account information. The on-line computer application shall include at least the following:

(I) A method for employers to file premium reports and make premium payments;

(II) A method for employers to review account balances, charging history, premium rates, and account status;

(III) A method for employers to change the physical address of an account, reinstate an account, and close an account; and

(IV) A method for employers to receive and return division forms and correspondence.

(i) Whenever there has been a period of five consecutive calendar years during which there were no chargeable wages paid for services considered employment under articles 70 to 82 of this title, any balance shown in the employer's account will not be transferred nor be used for premium rating purposes if the employer again becomes liable under articles 70 to 82 of this title.

(4) (a) The division shall determine employer premium rates for employers newly subject to articles 70 to 82 of this title each year as of the computation date in accordance with subsection (3) of this section. New employers pay the same premiums as unrated employers as prescribed in subsection (3) of this section or at the computed rate, whichever is higher, unless there have been twelve consecutive calendar months immediately preceding the computation date during which an employer's account has been chargeable with benefit payments.

(b) An employer that elects reimbursement under sections 8-76-108 to 8-76-110 is exempt from this section.

(c) An "employer newly subject", as used in this article, means an employer who has never, at any time, been an employer under any provision of articles 70 to 82 of this title, an employer who has lost his or her prior experience under subsection (3) of this section, or an employer who, under section 8-76-110 (2) (e), terminates his or her election to make payments in lieu of premiums or whose election to make payments in lieu of premiums has been terminated by the division under the authority of section 8-76-110 (4) (e) or (4) (f).

(5) (a) Those employers newly subject to articles 70 to 82 of this title and assigned the three-digit North American industry classification code 236, 237, or 238 for the construction industry must pay the same premiums as unrated employers as prescribed in subsection (3) of this section, at the actual experience rate, at a rate equal to the average actual experience rate, or at a rate equal to the average industry premium rate as determined by the division, whichever is greater, unless there have been thirty-six consecutive calendar months immediately preceding the computation date.

(b) For purposes of this subsection (5), assignment by the division of employment and training of industrial classifications to employers pursuant to this subsection (5) must be in accordance with procedures and guidelines of the bureau of labor statistics of the United States department of labor and be the appropriate three-digit subsector level found in the North American industry classification system manual issued by the office of management and budget.

(c) For purposes of this subsection (5), "average industry premium rate" means the average premium rate of all employers assigned the same three-digit North American industry classification code pursuant to this subsection (5). The rate is computed annually by the division using the latest data as of the computation date.

(6) (a) A political subdivision or its instrumentality that has elected to become a premium-paying employer will have its account charged with the full amount of all regular and extended benefits that are attributable to service in its employ.

(b) (I) The premium rate for political subdivisions or their instrumentalities will be examined annually in conjunction with the employer's benefit experience and may be adjusted on a year-by-year basis as prescribed by subparagraph (I) of paragraph (a) of subsection (3) of this section.

(II) The division must notify all political subdivisions or their instrumentalities, as defined in paragraph (a) of this subsection (6), of the premium rate no later than January 1 of the year for which the rate applies.

(7) (a) A solvency surcharge will be assessed when the fund balance of the unemployment compensation fund on any June 30 is equal to or less than 0.005 multiplied by the total wages reported by experience-rated employers for the previous calendar year, or for the most recent available four consecutive quarters before the last computation date. The solvency surcharge will be assessed on all experience-rated employers beginning with the next calendar year, and the solvency surcharge is added to the employer's premium rate. The solvency surcharge rate added to the employer's premium rate will also be identified separately on the employer's premium rate notice as the solvency surcharge. The solvency surcharge remains in effect until the June 30 fund balance in the unemployment compensation fund is equal to or greater than 0.007 multiplied by the total wages reported by experience-rated employers for the calendar year, or for the most recent available four consecutive quarters:

Eligible Employers Percent of Excess	**Solvency Surcharge**
+20 or more	0.00100
+18 to +19	0.00150
+16 to +17	0.00150
+14 to +15	0.00150
+12 to +13	0.00150
+10 to +11	0.00175
+8 to +9	0.00275
+6 to +7	0.00375
+4 to +5	0.00475
+2 to +3	0.00725
+0 to +1	0.01100
Unrated	0.01350
-0 to -1	0.01425
-2 to -3	0.01525
-4 to -5	0.01625
-6 to -7	0.01725
-8 to -9	0.01825
-10 to -11	0.01925
-12 to -13	0.02025
-14 to -15	0.02125
-16 to -17	0.02225
-18 to -19	0.02325
-20 to -21	0.02425
-22 to -23	0.02525
-24 to -25	0.02625
More than -25	0.02700

(b) The solvency surcharge shall not be assessed against:

(I) The covered employers of state and local governments;

(II) Nonprofit organizations that are reimbursing employers; or

(III) Political subdivisions electing the special rate.

(8) (a) Subject to the conditions stated in paragraph (b) of this subsection (8), an employer is eligible for a premium credit, as determined by the division, of a proportionate amount of the excess of the amount specified in subparagraph (IV) of paragraph (b) of this subsection (8). Each employer that qualifies for the premium credit receives a share of the total available premium credit equal to his or her proportionate share of the total chargeable wages paid by qualifying employers.

(b) An employer does not receive premium credit under this subsection (8) unless all of the following conditions are met:

(I) As of the most recent computation date, the employer has filed all required reports and paid all premiums and surcharges due under articles 70 to 82 of this title;

(II) The employer is not a negative excess employer under the table in subsection (3) of this section;

(III) The employer has not elected to make reimbursement payments in lieu of premiums; and

(IV) As of the computation date immediately preceding the calendar year for which the premium credit is to be taken, the unexpended and unencumbered surplus balance in the unemployment compensation fund created in section 8-77-101 (1) exceeded one and six-tenths percent of total wages reported by experience-rated employers. Amounts in excess of one and six-tenths percent of total covered wages are considered available for disbursement as part of the premium credit.

(9) Any premium credit remaining to an employer after the first year in which the premium credit is applied is available to the employer in subsequent calendar years.

(10) As used in subsections (8) and (9) of this section, "premium credit" means the dollar amount discount available to eligible employers under the conditions set forth in paragraph (b) of subsection (8) of this section to be applied against premiums due in any given calendar year. For purposes of computing an employer's future rate, any premium credit claimed by an employer under subsection (8) of this section is disregarded, and the premium that would otherwise be due is deemed paid.

(11) (a) The division shall maintain a separate account for each employer and shall credit the employer's account with all premiums and surcharges paid on the employer's behalf. Nothing in articles 70 to 82 of this title shall be construed to grant any employer or individuals in the employer's service prior claims or rights to the amounts paid by the employer into the fund, either on the employer's behalf or on behalf of such individuals. Benefits paid to an eligible individual shall be charged, in the amount provided in this section, against the accounts of his or her employers in the base period in the inverse chronological order in which the employment of the individual occurred. Benefits paid to a seasonal worker during the normal seasonal periods shall be charged against the account of his or her most recent seasonal employers in the corresponding normal seasonal period of his or her base period in the inverse chronological order in which the seasonal employment of the individual occurred and prior to the charging of benefits based on nonseasonal employment.

(b) The maximum amount charged against the experience rating account of any employer pursuant to paragraph (a) of this subsection (11) may not exceed one-third of the wages paid to an individual by the employer for insured work during the individual's base period, but not more per completed calendar quarter or portion thereof than one-third of the maximum wage credits as computed in section 8-73-104. Nothing in sections 8-76-101 to 8-76-104 shall be construed to limit benefits payable pursuant to sections 8-73-101 to 8-73-106. Notwithstanding section 8-73-108 or any administrative practice that results in fund charging, a reimbursing employer shall bear the cost of all benefits paid to its former employees, with the exception of benefit overpayments. The director of the division, by general rules, shall prescribe the manner in which benefits shall be charged against the accounts of several employers for whom an individual performed employment at the same time.

(c) If, by reason of fraud, mistake, or clerical error, an individual receives benefits in excess of

those to which he or she is entitled and the employer's account is charged, the employer's account shall be credited an amount equal to the benefits erroneously charged to the account.

8-76-103. Future rates based on benefit experience - definitions - repeal. (Repealed)

8-76-103.5. Transitional provisions - combined premium rate for 2012 - repeal. (Repealed)

8-76-104. Transfer of experience - assignment of rates - definitions. (1) (a) An employing unit, as defined in section 8-70-113 (1) (f), that becomes an employer because it acquires all of the organization, trade, or business or substantially all of the assets of one or more employers subject to articles 70 to 82 of this title shall succeed to the entire experience rating record of the predecessor employer, and the entire separate account, including the actual premiums, benefits, and payroll experience of the predecessor employer, shall pass to the successor for the purpose of determining the premium rate for the successor.

(b) If the successor was not an employer prior to the date of acquisition, the successor's rate shall be the rate applicable to the predecessor employer in the period immediately preceding the date of acquisition if there was only one predecessor or if there were multiple predecessors with identical rates. If there were multiple predecessor employers with rates that were not identical, the successor's rate shall be the highest rate applicable to any of the predecessor employers in the period immediately preceding the date of acquisition.

(c) (I) Repealed.

(II) (A) If, at the time of transfer, a person who is not an employer under this section acquires the trade or business of an employer and the division finds that the successor acquired the trade or business solely or primarily for the purpose of obtaining a lower rate of contributions, the unemployment experience of the predecessor employer shall not be transferred to the successor and the division shall assign the successor the applicable new employer rate determined pursuant to section 8-76-102.5 (4).

(B) This subparagraph (II) is effective December 31, 2012.

(2) (a) Notwithstanding any other provision of sections 8-76-101 to 8-76-104, if the successor employer was an employer subject to articles 70 to 82 of this title prior to the date of acquisition and, at the time of the transfer, there is no substantial common ownership, management, or control of the two employers, the successor's premium rate for the remainder of the calendar year shall be the same as the successor's rate in the period immediately preceding the date of acquisition.

(b) If an employer transfers all or a portion of its trade or business to another employer and, at the time of the transfer, there is substantially common ownership, management, or control of the two employers, the unemployment experience attributable to the predecessor employer shall be transferred to the successor employer. The rates of both employers shall be recalculated and made effective immediately upon the date of the transfer of the trade or business. If, following a transfer experience, the division determines that the purpose of the transfer of the trade or business was solely or primarily to obtain a reduced liability for contributions, the division shall combine the experience rating accounts of the employers into a single account and shall assign a single rate to the account.

(c) If an employer transfers all or a portion of its trade or business to another employer and the division finds that the successor acquired the trade or business solely or primarily for the purpose of obtaining a lower rate of contributions, the experience and reserve account attributable to the predecessor employer shall not be transferred to the successor employer and shall revert to the predecessor employer.

(3) (a) Whenever an employer in any manner transfers a clearly segregable unit of the employer's business for which the predecessor employer has maintained, in such form as to be separable, continuous records of wages, premiums, and benefits paid on account of the segregable unit, the predecessor employer and successor employer may jointly request that the division transfer a proportionate share of

premium, benefit, and payroll experience attributable to the unit based on the ratio of the chargeable payrolls paid during the twelve calendar quarters immediately preceding the computation date of the segregable unit to the total employer account prior to the notice to the division of the transfer. A transfer of experience may not be made under this subsection (3) unless the segregable unit has fourteen consecutive quarters of payroll immediately preceding the computation date. If, at the time of the transfer, there is substantially common ownership, management, or control of the two employers, the unemployment experience attributable to the predecessor employer shall be transferred to the successor employer. The rates of both employers shall be recalculated and made effective immediately upon the date of the transfer of the trade or business.

(b) The division may transfer the experience and perform all other acts required by this subsection (3). The proportionate share of the predecessor employer's reserve account attributable to the transferred unit shall pass to the successor employer.

(c) The experience rate established for the predecessor employer for all units of the business shall continue in effect for the remainder of the calendar year in which the transfer is made, and, for succeeding calendar years, it shall be computed on the experience of those units retained.

(d) If the successor was an employer prior to the effective date of the transfer, the experience rate for the calendar year in which the transfer is made shall be the same as that previously established without reference to the acquired segregable unit, and, for succeeding calendar years, it shall be computed on the combined experience of all units of the successor's business.

(e) If the successor was not an employer prior to the effective date of transfer and two or more segregable units are simultaneously transferred to the successor by a single employer, the successor's premium rate shall be computed from the combined premium, benefit, and payroll experience of the units.

(f) If the successor was not an employer prior to the effective date of transfer and two or more segregable units are simultaneously transferred to the successor by different employers, the successor's premium rate shall be the highest rate applicable to any of the units unless the rates with respect to the transferred units are identical.

(g) The transfer of experience with respect to a segregable unit shall be of no force and effect unless an application for the transfer, signed by both the predecessor employer and the successor employer, is filed with the division in the form and manner prescribed by the director by rule. The application shall be filed within sixty days after the notice of employer liability from the division is mailed or transmitted by electronic means to the successor employer. The notice shall contain information pertaining to segregable unit transfers.

(h) Whenever a predecessor employer and a successor employer jointly request that the division transfer the proportionate share of premium, benefit, and payroll experience attributable to a clearly segregable unit to the successor employer, the predecessor employer shall furnish to the division any information requested by the division for such purpose.

(4) (a) In determining whether the trade or business was acquired solely or primarily for the purpose of obtaining a lower rate of contributions, the division shall use objective factors that may include, without limitation, the cost of acquiring the trade or business, whether and for how long the successor continued the business enterprise of the acquired trade or business, and whether a substantial number of new employees were hired for performance of duties unrelated to the business activity conducted prior to the acquisition.

(b) The division may void a rate determination if it finds that a successor has no business existence separate and apart from the predecessor and should not have been established as a separate employer for unemployment compensation purposes. Under the circumstances described in this paragraph (b), the experience and reserve account attributable to the predecessor employer shall

not be transferred to the successor employer and shall revert to the predecessor employer.

(5) When determining whether one or more employers have common ownership, management, or control, the division may consider factors such as stock ownership, officers, employees, payroll systems, and common business interests.

(6) The division shall establish procedures to identify the transfer or acquisition of a business or trade for purposes of this section.

(7) Notwithstanding any provision of section 8-70-113 to the contrary, any subject employer whose entire reserve account has been transferred to a successor employer, as provided in subsection (1) of this section, shall immediately cease to be a subject employer and shall thereafter become a subject employer only upon any future employment experience.

(8) A transfer of experience shall not occur when a work-site employer's account is made inactive as a result of entering into a contract with an employee leasing company, as defined in section 8-70-114 (2) (a) (V), or when a contract between a work-site employer and an employee leasing company is terminated unless there is substantial common ownership, management, and control of the work-site employer and the employee leasing company. The existence of an employee leasing arrangement, without other evidence of common control, shall not constitute substantial common ownership, management, and control.

(9) When any part of the predecessor employer's trade or business utilizes the services of ninety percent or more of the total number of employees in covered employment on the payroll for each of the four pay periods immediately preceding the transfer to a successor employer, the entire separate account, including the actual premium, benefit, and payroll experience of the predecessor employer, shall pass to the successor employer for the purpose of the rate of computation of the successor.

(10) (a) If a person knowingly violates or attempts to violate any provision of this section in order to obtain a lower contribution rate, the person shall pay all owed premiums with applicable penalties and interest and may be subject to the penalties set forth in paragraph (c) of this subsection (10).

(b) If a person knowingly advises another person in a way that results in a violation of paragraph (a) of this subsection (10), the person may be subject to the penalties set forth in paragraph (c) of this subsection (10).

(c) If the person who violates this section as described in paragraph (a) or (b) of this subsection (10) is an employer, the division may assign the employer the highest contribution rate assignable under this article for the rate year during which the violation or attempted violation occurred and the next three years. If, during the rate year in which a violation occurs, the subject employer was assigned the highest contribution rate, or the amount of the rate increase would be less than two and seven-tenths percent for the rate year, the division may impose a penalty contribution rate of two and seven-tenths percent of chargeable wages for that rate year and the next three years. If the person is not an employer, the person may be subject to a civil fine of not more than five thousand dollars, which shall be deposited in the unemployment revenue fund created in section 8-77-106.

(d) In addition to any penalty imposed pursuant to paragraphs (a), (b), and (c) of this subsection (10), any violation of this section may be prosecuted as a class 1 misdemeanor pursuant to section 18-1.3-501, C.R.S.

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

(a) "Knowingly" or "willfully" means being aware that one's conduct is practically certain to cause the result or having reckless disregard for the prohibition involved.

(b) "Person" means any individual, trust, estate, partnership, association, company, corporation, joint venture, limited liability company, or other legal or commercial entity.

(c) "Trade" or "business" includes an employer's work force.

(d) "Violates or attempts to violate" includes, but is not limited to, intent to evade, misrepresentation, or willful nondisclosure.

8-76-105. Period of employer's coverage. (1) Any employing unit which is or becomes an employer subject to articles 70 to 82 of this title within any calendar year shall be deemed to be an employer during the whole of such calendar year.

(2) No employing unit shall be deemed to be an employer liable under articles 70 to 82 of this title for any period prior to five calendar years immediately preceding the calendar year in which the division determines the employing unit to be an employer as defined in section 8-70-103.

8-76-106. Termination of employer liability. (1) An employing unit shall cease to be an employer subject to articles 70 to 82 of this title only as of the first day of any calendar year, only if, not later than the last day of February of such year, it has filed with the division a written application for termination of coverage as an employer as of the first day of January, and the division finds that during the preceding calendar year:

(a) Such employing unit was not an employer as defined in the introductory portion to section 8-70-113 (1) and section 8-70-113 (1) (g);

(b) Such employing unit was not liable by having elected to become liable during such year; or

(c) Such employing unit did first become liable under and by virtue of section 8-76-104 and was not liable under the introductory portion to section 8-70-113 (1) and section 8-70-113 (1) (g) or section 8-76-107.

(2) Any employer who does not employ any individual whose services are considered in employment at any time in this state for a period of one calendar year shall cease to be an employer subject to articles 70 to 82 of this title as of the thirty-first day of December of such calendar year.

(3) Any employing unit which became liable during any calendar year preceding the calendar year in which its liability by virtue of the introductory portion to section 8-70-113 (1) and section 8-70-113 (1) (g) was determined may terminate coverage effective as of the end of the first year during which such employing unit was not an employer by virtue of the introductory portion to section 8-70-113 (1) and section 8-70-113 (1) (g) if such year was prior to the date the determination was made by the division, by filing a written application to terminate coverage as an employer within thirty days of the date of such determination.

(4) For the purposes of this section, written applications shall be filed in such form and manner as the director of the division may prescribe by rule, including in person, by mail, by telephone, or by electronic means.

8-76-107. Election to become liable. (1) An employing unit, not otherwise subject to articles 70 to 82 of this title, which files with the division its written election to become an employer subject hereto for not less than two calendar years, with the written approval of such election by the division, shall become an employer subject hereto to the same extent as all other employers, as of the date stated in such approval, and shall cease to be subject hereto as of January first of any calendar year subsequent to such two calendar years, only if such employing unit has filed with the division a written application for termination as provided in subsection (2) of this section.

(2) Any employing unit for which services that do not constitute employment are performed may file with the division a written election that all such services performed by individuals in its employ in one or more distinct establishments or places of business shall be deemed to constitute employment for all the purposes of articles 70 to 82 of this title for not less than two calendar years. Upon the written approval of such election by the division, such services shall be deemed to constitute employment subject to articles 70 to 82 of this title from and after the date stated in such approval. Such services shall cease to be deemed employment subject hereto as of January 1 of any calendar year subsequent to such two calendar years, only if such employing unit has filed with the division a written application for termination as provided in this section.

(3) For the purposes of this section, written applications shall be filed in such form and manner as the director of the division may prescribe by rule, including in person, by mail, by telephone, or by electronic means.

8-76-108. Coverage by political subdivisions. (1) (a) Political subdivisions are covered employers if employees employed by such political subdivisions perform services in employment as defined by section 8-70-119. Such political subdivisions may elect to pay premiums in lieu of reimbursements. Any political subdivision that makes reimbursement shall not be liable to make such payments with respect to the benefits paid to any individual whose base period wages include wages for previously uncovered services as defined in section 8-70-141 (1) (d) to the extent that the unemployment compensation fund is reimbursed for such benefits pursuant to section 121 of Public Law 94-566.

(b) Repealed.

(c) The amounts required to be paid in lieu of premiums by any political subdivision under this section shall be billed and payment made as provided in section 8-76-110 (3) with respect to similar payments by nonprofit organizations.

(d) An election by a contributing political subdivision to become a reimbursing employer or an election by a reimbursing political subdivision to become a contributing employer may be made by filing with the division written notice, in such form and manner as the director of the division may prescribe by rule, not later than March 1 of the calendar year in which the election is to be effective. Such election becomes effective as of the first day of the calendar year with respect to services performed after that date. Notwithstanding the effective date of any election, the political subdivision remains liable for all benefits chargeable against its account that it has not paid.

(e) Political subdivisions or their instrumentalities that are liable for payments in lieu of premiums shall pay to the division for the unemployment compensation fund the full amount of all regular and extended benefits paid that are attributable to service in their employ. Political subdivisions or their instrumentalities that have elected to pay premiums as permitted by this section shall have their accounts charged with the full amount of all regular and extended benefits that are attributable to service in their employ.

(f) Any extension of unemployment insurance coverage to political subdivisions mandated by Public Law 94-566 shall again become optional in the event such mandatory coverage is declared unconstitutional or null and void by the supreme court of the United States or is repealed by an act of congress.

8-76-109. Payments in lieu of premiums by state hospitals and state institutions of higher education. State hospitals and state institutions of higher education as defined in section 8-70-103 (14) and (15) may elect to make reimbursements in lieu of premiums as provided for nonprofit organizations in section 8-76-110 (1) to (3) and (5).

8-76-110. Financing benefits paid to employees of nonprofit organizations. (1) Benefits paid to employees of nonprofit organizations shall be financed in accordance with the provisions of this section. For the purpose of this section, a nonprofit organization is an organization or group of organizations described in section 501 (c) (3) of the federal "Internal Revenue Code of 1986", as amended, which are exempt from income tax under section 501 (a) of such code.

(2) **Liability for premiums and election of reimbursement.** (a) Any nonprofit organization that, pursuant to section 8-70-113 (1) (c), is or becomes subject to articles 70 to 82 of this title shall pay premiums under the provisions of section 8-76-101, unless it elects, in accordance with this subsection (2), to pay to the division for the unemployment compensation fund an amount equal to the amount of regular benefits and one-half of the extended benefits paid, that is attributable to service in the employ of such nonprofit organization, to individuals for weeks of unemployment that begin during the effective period of such election.

(b) (Deleted by amendment, L. 2009, (HB 09-1363), ch. 363, p. 1897, § 18, effective July 1, 2009.)

(c) Any nonprofit organization that becomes subject to articles 70 to 82 of this title may elect to become liable for payments in lieu of premiums for a period of not less than the calendar year within which such subjection begins by filing a written notice of its election with the division not later than thirty days immediately following the date of the determination of such subjection. Any nonprofit organization that elects to make payments in lieu of premiums into the unemployment compensation fund as provided in this paragraph (c) shall not be liable to make such payments with respect to the benefits paid to any individual whose base period wages include wages for previously uncovered services as defined in section 8-70-141 (1) (d) to the extent that the unemployment compensation fund is reimbursed for such benefits pursuant to section 121 of Public Law 94-566.

(d) (Deleted by amendment, L. 2009, (HB 09-1363), ch. 363, p.1897, § 18, effective July 1, 2009.)

(e) Any nonprofit organization that makes an election in accordance with paragraph (c) of this subsection (2) will continue to be liable for payments in lieu of premiums until it files with the division a written notice terminating its election not later than thirty days prior to the beginning of the calendar year for which such termination is first effective.

(f) Any nonprofit organization that pays premiums under articles 70 to 82 of this title may change to a reimbursing basis by filing with the division not later than thirty days prior to the beginning of any calendar year a written notice of election to become liable for payments in lieu of premiums. Such election shall not be terminable by the organization for that and the next year. Any organization making such an election remains liable for the payment of all charges to its account and all premiums and surcharges due the division, and past due premiums and surcharges are subject to all interest and penalties as provided in articles 70 to 82 of this title.

(g) The division may for good cause extend the period within which a notice of election, or a notice of termination, must be filed and may permit an election to be retroactive.

(h) The division, in accordance with such rules as it may prescribe, shall notify each nonprofit organization of any determination that it may make of the status of the organization as an employer and of the effective date of any election and of any termination of such election.

(i) Notwithstanding any other provisions of articles 70 to 82 of this title, any nonprofit organization that, prior to January 1, 1969, paid premiums required by articles 70 to 82 of this title and that elects, pursuant to paragraph (d) of this subsection (2) as it existed prior to its repeal in 2009, to make payments in lieu of premiums shall not be required to make any such payment on account of any regular or extended benefits paid and attributable to wages paid for service performed in its employ for weeks of unemployment that begin on or after the effective date of such election until the total amount of such benefits equals the amount by which the premiums paid by such organization with respect to a period before such election exceed benefits paid for the same period and charged to the experience rating account of such organization, as of the effective date of such election.

(3) **Reimbursement payments.** (a) Payments in lieu of premiums shall be made in accordance with the provisions of this subsection (3).

(b) At the end of each calendar quarter, the division shall bill each nonprofit organization, or group of such organizations, that has elected to make payments in lieu of premiums for an amount equal to the full amount of regular benefits plus one-half of the amount of extended benefits paid during such quarter or other prescribed period that is attributable to service in the employ of such organization.

(c) Payment of any bill rendered under paragraph (b) of this subsection (3) shall be made not later than thirty days after such bill was mailed to the last-known address of the nonprofit organization or was otherwise delivered to it, unless there has been an application for review and redetermination in accordance with paragraph (e) of this subsection (3).

(d) Payments made by any nonprofit organization under the provisions of this

subsection (3) shall not be deducted or deductible, in whole or in part, from the remuneration of individuals in the employ of the organization.

(e) The amount due specified in any bill from the division shall be conclusive on the organization unless, not later than fifteen days after the bill was mailed to its last-known address or otherwise delivered to it, the organization files an application for redetermination by the division setting forth the grounds for such application. The division shall promptly review and reconsider the items specified and shall thereafter issue a redetermination in any case in which such application for redetermination has been filed. The amount due on the specified items in such redetermination shall become due and payable not later than thirty days following the date of mailing of the redetermination. All other charges specified on the original bill are due and payable within thirty days as provided by paragraph (c) of this subsection (3).

(f) Past-due payments of amounts in lieu of premiums shall be subject to the same interest and penalties that, pursuant to sections 8-79-101 and 8-79-104, apply to past-due premiums and surcharges.

(4) **Provision of bond or other security.** (a) In the discretion of the division, any nonprofit organization that elects to become liable for payments in lieu of premiums shall be required, within fifteen days after the effective date of its election, to execute and file with the division a surety bond approved by the division, or it may elect instead to deposit with the division money or securities. The amount of such bond or deposit shall be determined in accordance with the provisions of this subsection (4).

(b) The amount of bond or deposit required by this subsection (4) shall be equal to three times the sum of the amount of regular benefits plus one-half the extended benefits paid, if any, that are attributable to service in the employ of the nonprofit organization during the previous calendar year or the sum of said payments during the three previous calendar years, whichever is greater, but shall not exceed three and six-tenths percent nor be less than one-tenth of one percent of the total covered payroll of such organization for the preceding calendar year. If the employer has not been subject to articles 70 to 82 of this title for a sufficient period of time to acquire three calendar years' experience, then the bond shall be an amount computed by multiplying the total covered payroll for the previous calendar year, or the equivalent thereof, by two and seven-tenths percent. Any organization that, under the provisions of paragraph (i) of subsection (2) of this section, is not required to make payments in lieu of premiums will not be required to file a surety bond or make a surety deposit with the division as provided in this paragraph (b) until such time as said organization is required to make payments in lieu of premiums.

(c) Any bond deposited under this subsection (4) shall be in force for a period of not less than two calendar years and shall be renewed with the approval of the division, at such times as the division may prescribe, but not less frequently than at two-year intervals as long as the organization continues to be liable for payments in lieu of premiums. The division shall require such adjustments to be made in a previously filed bond as it deems appropriate. If the bond is to be increased, the adjusted bond shall be filed by the organization within fifteen days after the date notice of the required adjustment was mailed or otherwise delivered to it. Failure by any organization covered by such bond to pay the full amount of payments in lieu of premiums when due, together with any applicable interest and penalties provided for in paragraph (f) of subsection (3) of this section, shall render the surety liable on said bond to the extent of the bond, as though the surety were such organization.

(d) Any deposit of money or securities in accordance with this subsection (4) shall be retained by the division in an escrow account until liability under the election is terminated, at which time it shall be returned to the organization, less any deductions as provided in this subsection (4). The division may deduct from the money deposited under this paragraph (d) by a nonprofit organization or sell the securities a nonprofit organization has so deposited to the extent necessary to satisfy any due and unpaid payments in lieu of premiums and any applicable interest and penalties

provided for in paragraph (f) of subsection (3) of this section. The division shall require the organization, within fifteen days following any deduction from a money deposit or sale of deposited securities under the provisions of this paragraph (d), to deposit sufficient additional money or securities to make whole the organization's deposit at the prior level. Any cash remaining from the sale of such securities shall be a part of the organization's escrow account. The division may, at any time, review the adequacy of the deposit made by any organization. If, as a result of such review, the division determines that an adjustment is necessary, it shall require the organization to make an additional deposit within fifteen days after written notice of its determination or shall return to it such portion of the deposit as it no longer considers necessary, whichever action is appropriate. Disposition of income from securities held in escrow shall be governed by the applicable provisions of state law.

(e) If any nonprofit organization fails to file a bond or make a deposit, or to file a bond in an increased amount or to increase or make whole the amount of a previously made deposit, as provided under this subsection (4), the division may terminate the organization's election to make payments in lieu of premiums, and the termination shall continue for not less than the four-consecutive-calendar-quarter period beginning with the quarter in which the termination becomes effective, but the division may, for good cause, extend the applicable filing, deposit, or adjustment period by not more than fifteen days.

(f) If any nonprofit organization is delinquent in making payments in lieu of premiums as required under subsection (2) of this section, the division may terminate the organization's election to make payments in lieu of premiums as of the beginning of the next calendar year, and the termination shall be effective for that and the next calendar year.

(5) **Allocation of benefit costs.** (a) A political subdivision that is liable for payments in lieu of premiums shall pay to the division for the unemployment compensation fund the full amount of all regular and extended benefits paid that are attributable to service in the employ of such employer. A nonprofit organization liable for payments in lieu of premiums shall pay to the division for the unemployment compensation fund the amount of regular benefits plus the amount of one-half of extended benefits paid that are attributable to service in the employ of such employer. If benefits paid to an individual are based on wages paid by more than one employer and one or more of such employers are liable for payments in lieu of premiums, the amount payable to the fund by each employer that is liable for such payments shall be determined in accordance with the provisions of paragraph (b) or (c) of this subsection (5).

(b) If benefits paid to an individual are based on wages paid by one or more employers that are liable for payments in lieu of premiums and on wages paid by one or more employers that are liable for premiums, the amount of benefits payable by each employer that is liable for payments in lieu of premiums shall be an amount that bears the same ratio to the total benefits paid to the individual as the total base period wages paid to the individual by such employer bear to the total base period wages paid to the individual by all of his or her base period employers.

(c) If benefits paid to an individual are based on wages paid by two or more employers that are liable for payments in lieu of premiums, the amount of benefits payable by each such employer shall be an amount that bears the same ratio to the total benefits paid to the individual as the total base period wages paid to the individual by such employer bear to the total base period wages paid to the individual by all of his or her base period employers.

(6) **Group accounts.** Two or more employers that are liable for payments in lieu of premiums, in accordance with the provisions of subsection (2) of this section and sections 8-76-108 and 8-76-109, may file a joint application with the division for the establishment of a group account for the purpose of sharing the cost of benefits paid that are attributable to service in the employ of such employers. Each application shall identify and authorize a group representative to act as the group's agent for the purposes of this subsection (6). Upon its approval of the application, the division shall establish a group account for the employers effective as of the beginning of the calendar quarter in which it

receives the application and shall notify the group's representative of the effective date of the account. The account shall remain in effect for not less than two years and thereafter until terminated at the discretion of the division or upon application by the group. Upon establishment of the account, each member of the group shall be liable for payments in lieu of premiums with respect to each calendar quarter in the amount that bears the same ratio to the total benefits paid in that quarter that are attributable to service performed in the employ of all members of the group as the total wages paid for service in employment by the member in that quarter bear to the total wages paid during that quarter for service performed in the employ of all members of the group. The division shall prescribe rules as necessary with respect to applications for establishment, maintenance, and termination of group accounts that are authorized by this subsection (6); for addition of new members to, and withdrawal of active members from, such accounts; and for the determination of the amounts that are payable under this subsection (6) by members of the group and the time and manner of such payments.

(7) Repealed.

(8) For the purposes of this section, applications, filings, and notices of election shall be filed in such form and manner as the director of the division may prescribe by rule, including in person, by mail, by telephone, or by electronic means.

8-76-111. Coverage of state employees. (1) (a) The state of Colorado hereby elects, effective January 1, 1976, with respect to all services performed in the employ of this state or any branch or department thereof or any instrumentality thereof which is not otherwise an employer subject to this title, to become a reimbursing employer subject to this title, and all services performed in the employ of this state or any branch or department or instrumentality thereof shall constitute employment. This election does not apply to political subdivisions of this state.

(b) Repealed.

(2) As used in this section, prior to January 1, 1978, "services performed in the employ of this state" means employment in the state personnel system of this state as defined in section 13 of article XII of the state constitution and article 50 of title 24, C.R.S., regular full-time employment in the legislative branch of this state, and employment in the judicial department of this state; but such employment shall not include employees of the legislative branch who serve only for the period that the general assembly is in session or judges and justices within the judicial department.

(3) Repealed.

(4) The amounts required to be paid in lieu of premiums by the state under this section shall be billed and payment made as provided in section 8-76-110 (3) with respect to similar payments by nonprofit organizations.

(5) Repealed.

(6) This state or any branch or department thereof or any instrumentality thereof shall pay to the division for the unemployment compensation fund the amount of regular benefits plus the amount of one-half of extended benefits paid through December 31, 1978, and the full amount of all regular and extended benefits paid beginning January 1, 1979, that are attributable to service in their employ.

8-76-112. Political subdivisions - security for collection of premiums or reimbursable payments. (1) In the event of default in payment of premiums or surcharges due or reimbursements of benefit costs, the state treasurer, upon the request of the division, shall set aside state funds otherwise payable to the political subdivision as security to ensure payment of the funds due from the political subdivision to the unemployment trust fund.

(2) Funds which may be used for this purpose include any funds in the possession of the state treasurer which are allocated to the political subdivision for any purpose, with the exception of funds earmarked for a specific purpose.

(3) The division may not request the state treasurer to set aside funds to cover obligations of the political subdivision until at least six

months have elapsed since the due date for payment of the premium or surcharge or reimbursable obligation.

8-76-113. Protest - appeal - filed by an employer. (1) Any employer who wishes to appeal a determination of liability for premiums or surcharges, a determination of coverage under the provisions of articles 70 to 82 of this title, or a seasonality determination pursuant to section 8-73-106 may file a written notice of appeal with the division in such form and manner as the director of the division may prescribe by rule, including in person, by mail, or by electronic means. Except as otherwise provided by this section, proceedings on appeal shall be governed by the provisions of article 74 of this title. No appeal shall be heard unless the notice of appeal has been received by the division within twenty calendar days after the date the notice of such determination is mailed or transmitted by the division to the employer in accordance with such rules as the director of the division may promulgate.

(2) Any employer who wishes to protest an assessment of premiums or surcharges, a notice of premium rate, a recomputation of premium rate, or any notice of correction of any matter set forth in this subsection (2) shall file a request for redetermination with the division, in accordance with rules promulgated by the director of the division. The division shall thereafter promptly notify the employer of its redetermination decision. Any employer who wishes to appeal from a redetermination decision may file a written notice of appeal with the division. Except as otherwise provided by this section, proceedings on appeal shall be governed by the provisions of article 74 of this title. No appeal shall be heard unless notice of appeal has been received by the division within twenty calendar days after the date the notice of such redetermination is mailed or transmitted by the division to the employer in accordance with such rules as the director of the division may promulgate.

(3) Any determination or redetermination from which appeal may be taken pursuant to subsection (1) or (2) of this section shall be final and binding upon the employer unless a notice of appeal is filed in accordance with the time limits set forth in subsections (1) and (2) of this section or unless the employer establishes to the satisfaction of the division that he had good cause for failure to file a timely notice of appeal. Guidelines for determining what constitutes good cause shall be established by the director of the division.

(3.5) Any administrative appeal pursuant to this section shall be conducted by a referee or hearing officer of the division.

(4) In connection with any appeal proceeding conducted pursuant to this section, the referee may, upon application by any party or upon his own motion:

(a) Convene a prehearing conference to discuss the issues on appeal, the evidence to be presented, and any other relevant matters which may simplify further proceedings;

(b) Permit the parties to engage in prehearing discovery, insofar as practicable, in accordance with the Colorado rules of civil procedure and, in connection therewith, to shorten or extend any applicable response time; and

(c) Permit or require the filing by the parties of briefs, arguments of law, or statements of position.

(5) In matters involving a pending claim for benefits, the referee shall give due regard to the rights of the claimant to a speedy and informal hearing and may impose such limitations upon discovery as he deems reasonable.

(6) Repealed.

8-76-114. Local government advisory council. (Repealed)

8-76-115. Coverage of Indian tribes. (1) Indian tribes or tribal units, including all subdivisions or subsidiaries of, and business enterprises wholly owned by, such Indian tribes, subject to the provisions of articles 70 to 82 of this title shall pay premiums and surcharges under the same terms and conditions under sections 8-76-101 to 8-76-103 as apply to other premium-paying employers unless an election is made, in the same manner provided in section 8-76-108 (1) (d), to make payments in lieu of premiums into the unemployment compensation

fund in amounts equal to the amount of benefits attributable to service in the employ of the Indian tribe.

(2) Indian tribes shall determine if payments in lieu of premiums will be elected by the tribe as a whole, by individual tribal units, or by combinations of individual tribal units. Two or more individual tribal units may apply with the division for the establishment of a group account in the same manner and subject to the same terms as set forth in section 8-76-110 (6).

(3) Indian tribes or tribal units electing to make payments in lieu of premiums shall be billed for the full amount of benefits attributable to service in the employ of said Indian tribes or tribal units, and payment shall be made with respect to said billings in the manner provided in section 8-76-108 (1) (c).

(4) The division may require any Indian tribe or tribal unit that elects to become liable for payments in lieu of premiums to execute and file with the division a surety bond or to deposit money or securities in the manner provided in section 8-76-110 (4).

(5) (a) Failure of the Indian tribe or tribal unit to make required payments pursuant to subsection (3) of this section, to pay premiums pursuant to sections 8-76-101 to 8-76-103, to pay assessments of interest and penalties pursuant to sections 8-79-101 and 8-79-104, or to execute and file a surety bond or deposit money or other security pursuant to section 8-76-110 (4) within ninety days after receipt of a delinquency notice by the division shall cause the Indian tribe to lose the option to make payments in lieu of premiums effective with the beginning of the following calendar year unless a division-approved payment plan is established or payment in full is received within the ninety-day period.

(b) The division shall notify the United States internal revenue service and the United States department of labor of failures by the Indian tribe or tribal unit to comply with this subsection (5).

(6) Any Indian tribe that loses the option to make payments in lieu of premiums due to late payment or nonpayment, as described in subsection (5) of this section, shall have such option reinstated effective with the beginning of the following calendar year if, by March 1 of said year, all contributions have been timely made and no premiums or surcharges, payments in lieu of premiums for benefits paid, penalties, or interest remain outstanding.

(7) (a) Failure of the Indian tribe or any tribal unit thereof to make any payment required by subsection (5) of this section, after all collection activities deemed necessary by the division have been exhausted, shall cause services performed for such tribe to not be treated as "employment" for purposes of section 8-70-125.5.

(b) The division may determine that any Indian tribe that loses coverage under the provisions of this subsection (7) may have services performed for such tribe again included as "employment" for purposes of section 8-70-125.5 if all premiums and surcharges, payments in lieu of premiums, penalties and interest, or surety bond or payment of other money or security have been paid.

(8) Notices of payment and reporting delinquency to Indian tribes or their tribal units shall include information stating that failure to make full payment within the prescribed time period:

(a) Shall cause the Indian tribe to be liable for taxes under the "Federal Unemployment Tax Act", 26 U.S.C. sec. 3301 et seq.;

(b) Shall cause the Indian tribe to lose the option to make payments in lieu of premiums; and

(c) May cause the Indian tribe to be excepted from the definition of "employer" as provided in section 8-70-113 (1) (k) and may cause services in the employ of the Indian tribe, as provided in section 8-70-125.5, to be excepted from "employment".

(9) Extended benefits paid that are attributable to service in the employ of an Indian tribe and not reimbursed by the federal government shall be financed in their entirety by such Indian tribe in the manner provided in section 8-76-108 (1) (e).

ARTICLE 77

UNEMPLOYMENT COMPENSATION AND REVENUE FUNDS

8-77-101. Unemployment compensation fund - state treasurer custodian. (1) (a) There is hereby established the unemployment compensation fund, which is a special fund administered by the division exclusively for the purposes of articles 70 to 82 of this title. The state treasurer is the custodian of the fund and is liable under his or her official bond for the faithful performance of all his or her duties in connection with the fund. The state treasurer shall establish and maintain within the fund the accounts specified in this article and such other accounts as may be necessary to reflect the administration of the fund by the division. Notwithstanding any other law, in lieu of or in addition to the assessment described in section 29-4-710.7, C.R.S., the division may pay amounts necessary and appropriate from the unemployment compensation fund to the Colorado housing and finance authority for the repayment of the principal of bonds issued under section 29-4-710.7, C.R.S., and may apply amounts necessary and appropriate from the unemployment compensation fund to the repayment of principal of bonds issued under section 8-71-103 (2) (d).

(b) The unrestricted year-end balance of the unemployment compensation fund, created pursuant to paragraph (a) of this subsection (1), for the 1991-92 fiscal year shall constitute a reserve, as defined in section 24-77-102 (12), C.R.S., and, for purposes of section 24-77-103, C.R.S.:

(I) Any moneys credited to the unemployment compensation fund in any subsequent fiscal year shall be included in state fiscal year spending, as defined in section 24-77-102 (17), C.R.S., for such fiscal year; and

(II) Any transfers or expenditures from the unemployment compensation fund in any subsequent fiscal year shall not be included in state fiscal year spending, as defined in section 24-77-102 (17), C.R.S., for such fiscal year.

(2) The state treasurer, as treasurer and custodian of the unemployment compensation fund, is hereby authorized and directed to cancel of record and refuse to honor warrants or checks issued against any of the accounts established with the unemployment compensation fund which have not been presented for payment within one calendar year from the date of issue.

8-77-102. Collection and transmittal of receipts - clearing account - refunds - transfers. (1) The division or its agent shall collect or receive all premiums, surcharges, payments in lieu of premiums, fines, and penalties provided for in articles 70 to 82 of this title, all interest on delinquent premiums and surcharges provided for in section 8-79-101, and all other moneys accruing to the fund from the federal government or any other source whatsoever and shall transmit all such moneys to the state treasurer, who shall cause the same to be deposited in a clearing account in his or her name in a state or national bank doing business in this state.

(2) Repealed.

(3) As instructed by the division, the state treasurer shall transfer from the clearing account to the employment security administration fund all amounts received pursuant to the provisions of section 8-72-110 (5). All interest collected by the division pursuant to the provisions of section 8-79-101, all penalties collected by the division pursuant to sections 8-79-104 (1) (a) and (1) (c) and 8-81-101 (4) (a) (II), and all investigative costs collected by the division pursuant to section 8-81-101 (4) (a) (III) shall be paid into the unemployment revenue fund.

(4) All amounts remaining in the clearing account after payment of refunds and the transfers provided for in subsection (3) of this section shall be paid to the secretary of the treasury of the United States for credit to the account of the state of Colorado in the federal unemployment trust fund established and maintained pursuant to section 904 of the federal "Social Security Act", as amended.

8-77-103. Advances from federal unemployment trust fund. (1) The division may apply for advances to the state of Colorado from its account in the federal unemployment trust fund and accept responsibility for repayment of advances in accordance with the

conditions specified in Title XII of the "Social Security Act", as amended, in order to secure to this state the advantages available under the federal act.

(2) (a) Advances from the federal unemployment trust fund which are interest-bearing shall have such interest cost together with all associated administrative costs assessed against each employer subject to experience rating. This interest assessment shall not apply to the covered employers of state and local government nor to those nonprofit organizations that are reimbursable. This interest assessment shall not apply to the political subdivisions electing the special rate.

(a.1) The interest cost assessment provided for in paragraph (a) of this subsection (2) shall not apply to any employer whose benefit-charge account balance is zero or to any employer with a positive excess of plus seven percent or more.

(b) Using the most recently available data to the division, the total covered wages of all employers subject to the interest assessment, as found for the calendar quarter nearest to the quarter in which a trust fund deficit occurred, shall be summed. This sum shall be divided into the amount of interest due on the advance. The percent resulting from this calculation shall contain four significant figures. The percent shall be applied by the employer to the total covered wages reported on the next contribution report received or that contribution report indicated in the notification of the percent sent to the employer by the division. The amount resulting shall be submitted in the same manner as normal contributions, but as a separate payment, to the division. Each interest-bearing advance may be treated separately.

(c) The amounts received as a result of paragraph (b) of this subsection (2) shall be segregated and collected in the federal advance interest repayment fund.

8-77-103.5. Issuance of unemployment revenue bonds and notes - unemployment bond repayment account - creation. (1) The executive director of the department of labor and employment is authorized to request the Colorado housing and finance authority to issue such bonds and notes as are necessary to maintain adequate balances in the unemployment compensation fund or to repay moneys advanced to the state from the federal unemployment trust fund, or both. Such requests shall be made in accordance with the provisions of section 29-4-710.7, C.R.S.

(2) There is hereby created the unemployment bond repayment account, which shall be credited with bond assessments for nonprincipal-related bond costs collected on behalf of the Colorado housing and finance authority under section 29-4-710.7, C.R.S., or by the division under section 8-71-103. After the division's costs have been deducted from the bond repayment account, moneys in the fund shall be paid to the account or accounts maintained by the Colorado housing and finance authority under section 29-4-710.7, C.R.S., or by the division with respect to bonds issued under section 8-71-103.

8-77-104. Benefit account - requisitions - payment of benefits. (1) The benefit account shall consist of moneys requisitioned by the division from the account of the state of Colorado in the federal unemployment trust fund. Expenditures from the benefit account shall be made by the division solely for payment of benefits provided in articles 70 to 82 of this title, in accordance with regulations prescribed by the director of the division. Such expenditures shall not be subject to any provisions of law requiring specific appropriations for payment thereof.

(2) From time to time the division shall requisition from such account such amounts as it deems necessary to provide for payment of benefits for a reasonable future period of time. Upon receipt of such requisitioned amounts, the state treasurer shall cause the same to be deposited in an account in the name of the division in some state or national bank doing business in this state.

(3) The division is authorized to make all lawful benefit payments by checks drawn against said bank account. The state treasurer shall have no responsibility whatsoever with respect to such benefit payments, nor shall he be responsible for any amounts requisitioned as provided in subsection (2) of this section other than to deposit the same in said bank account.

(4) Any unexpended balance remaining in the benefit account after the expiration of the period of time for which amounts were requisitioned may be used by the division for payment of benefits during a subsequent period of time, or deducted from the amount of a subsequent requisition, or, at the discretion of the division, redeposited with the secretary of the treasury of the United States for credit to the account of the state of Colorado in the federal unemployment trust fund.

(5) Benefits shall be deemed to be due and payable under the provisions of articles 70 to 82 of this title, only to the extent provided for in said articles, and only to the extent that moneys are available in the unemployment compensation fund, and neither the state nor the division shall be liable for payments in excess of the amount of such available moneys.

8-77-105. Discontinuance of unemployment trust fund. The provisions of sections 8-77-101 to 8-77-104, to the extent that they relate to the unemployment trust fund, shall be operative only so long as such unemployment trust fund continues to exist and so long as the secretary of the treasury of the United States of America continues to maintain for this state a separate book account of all funds deposited therein by this state for benefit purposes, together with this state's proportionate share of the earnings of such unemployment trust fund, from which no other state is permitted to make withdrawals. If such unemployment trust fund ceases to exist, or such separate book account is no longer maintained, all moneys, properties, or securities therein belonging to the unemployment compensation fund of this state shall be transferred to the treasurer of the unemployment compensation fund, who shall hold, invest, transfer, sell, deposit, and release such moneys, properties, or securities in a manner approved by the director of the division in accordance with provisions of articles 70 to 82 of this title. Such moneys shall be invested in readily marketable classes of securities as now provided by law with respect to public moneys of the state. Such investment, at all times, shall be so made that all the assets of the fund shall always be readily convertible into cash when needed for the payment of benefits. The treasurer shall dispose of securities or other properties belonging to the unemployment compensation fund only under the direction of the director of the division.

8-77-106. Unemployment revenue fund. (1) There is hereby created the unemployment revenue fund, to which shall be credited all interest collected by the division on delinquent premiums or surcharges pursuant to the provisions of section 8-79-101, all penalties collected by the division pursuant to sections 8-79-104 (1) (a) and (1) (c) and 8-81-101 (4) (a) (II), all remaining moneys in the federal advance interest repayment fund after all known interest charges and associated administrative costs pursuant to section 8-77-103 have been paid pursuant to section 8-77-108 (3), and all investigative costs collected by the division pursuant to section 8-81-101 (4) (a) (III).

(2) All moneys accruing to the unemployment revenue fund in any manner whatsoever shall be maintained in a separate account by the state treasurer and shall be annually appropriated by the general assembly to the division for the purpose of enforcing compliance with the "Colorado Employment Security Act". Moneys in the unemployment revenue fund shall first be used to make refunds of interest erroneously collected under the provisions of section 8-79-101.

(3) and (4) Repealed.

(5) Prior to the beginning of any fiscal year in which the department requests an allocation diversion from the unemployment revenue fund, the joint budget committee in conjunction with the state auditor shall certify that the department has met the goals and time lines established in the work plans submitted the previous year. No additional money shall be appropriated until all such prior conditions of the work plan are satisfied.

(6) Of the moneys appropriated to the department for allocation to the division for administrative services, not less than fifty percent shall be used to fund enforcement activities. None of the remaining moneys shall be allocated to services which compete directly with services available in the private sector.

8-77-107. Appropriation of administrative costs. (1) Moneys credited to the account of the state of Colorado in the federal unemployment trust fund pursuant to section 903 of the federal "Social Security Act" may be requisitioned only for payment of the costs incurred by the division for administration of the provisions of articles 70 to 82 of this title, and for benefits. Such administrative costs shall be expended only pursuant to specific appropriations made by the general assembly and only if such costs are incurred and requisitions made therefor after enactment of an appropriation act.

(2) Any appropriation act enacted shall:

(a) Specify the amount of money appropriated and the purpose for which appropriated; and

(b) (Deleted by amendment, L. 2003, p. 2047, § 1, effective May 22, 2003.)

(c) Limit the amount which may be obligated during any twelve-month period beginning on July 1 and ending on the following June 30 to an amount which does not exceed the amount by which the aggregate of the amounts credited to such unemployment trust fund pursuant to section 903 of the federal "Social Security Act" during the same twelve-month period and the thirty-four preceding twelve-month periods exceeds the aggregate of the amounts paid out for benefits and obligated for administrative costs during such thirty-five twelve-month periods.

(3) Amounts credited to the unemployment trust fund pursuant to section 903 of the federal "Social Security Act" which are obligated for payment of administrative costs or paid out for benefits shall be charged against equivalent amounts which were first credited and which are not already so charged; except that no amount obligated for administrative costs during any twelve-month period specified in subsection (2) of this section may be charged against any amount credited during any twelve-month period earlier than the thirty-fourth twelve-month period preceding such period.

(4) Moneys appropriated as provided in subsection (2) of this section for payment of administrative costs shall be requisitioned from time to time by the division as required for payment of such costs as incurred, and upon receipt shall be credited to an appropriately designated account to which all payments shall be charged. Any unexpended portion of moneys appropriated for payment of administrative costs shall be returned for credit to the account of the state of Colorado in the federal unemployment trust fund.

8-77-108. Federal advance interest repayment fund. (1) There is hereby created the federal advance interest repayment fund, to which shall be credited all assessments collected by the division on total wages pursuant to the provisions of section 8-77-103 (2).

(2) All moneys accruing to the fund in any manner whatsoever shall be maintained in a separate account by the state treasurer; except that all funds in the fund are hereby appropriated to the division for use in repayment of interest due and associated administrative costs pursuant to section 8-77-103.

(3) After all known interest charges and associated administrative costs pursuant to section 8-77-103 have been paid, any remaining moneys in the fund may be transferred to the unemployment revenue fund. Interest required to be paid under section 8-77-103 shall not be paid, directly or indirectly, from amounts in the unemployment compensation fund.

8-77-109. Employment support fund - employment and training technology fund - created - uses.

(1) (a) Repealed.

(b) (I) There is hereby established the employment support fund. This fund consists of the first 0.0011 assessed as part of each employer's premium under section 8-76-102.5 (3) (a) or the amount expended from the employment support fund in the year prior to July 1, 2011, adjusted by the same percentage change prescribed in section 8-70-103 (6.5), whichever is less. The division must transfer to the unemployment compensation fund amounts in excess of the amount expended from the employment support fund in the year prior to July 1, 2011, adjusted each year by the same percentage change prescribed in section 8-70-103 (6.5). In addition, revenues to pay

nonprincipal-related bond costs for bonds issued under section 29-4-710.7, C.R.S., or section 8-71-103 (2) (d) may be added to amounts assessed under this section. The division may transfer any moneys in the employment support fund to the unemployment bond repayment account created in section 8-77-103.5 to pay nonprincipal-related bond costs for bonds issued under section 29-4-710.7, C.R.S., or section 8-71-103 (2) (d). The employment support fund is not included in or administered by the enterprise established pursuant to section 8-71-103 (2).

(II) This paragraph (b) is effective December 31, 2012.

(2) (a) The state treasurer shall credit the moneys collected pursuant to this section to the employment support fund created in subsection (1) of this section. The general assembly shall appropriate the moneys in the employment support fund annually to the department of labor and employment:

(I) To be used to offset funding deficits for program administration, including information technology initiatives, under the provisions of articles 70 to 83 of this title and to further support programs to strengthen unemployment fund solvency; and

(II) (A) To fund labor standards, labor relations, and the Colorado works grievance procedure under the provisions of articles 1 to 6, 9, 10, 12, and 13 of this title and section 26-2-716 (3) (b), C.R.S.

(B) (Deleted by amendment, L. 2003, p. 2181, § 1, effective June 3, 2003.)

(a.5) (Deleted by amendment, L. 2003, p. 2181, § 1, effective June 3, 2003.)

(a.7) Notwithstanding any provision of this subsection (2) to the contrary, on March 5, 2003, the state treasurer shall deduct five million four hundred thousand dollars from the employment support fund and transfer such sum to the general fund.

(a.8) Notwithstanding any provision of this subsection (2) to the contrary, on April 20, 2009, the state treasurer shall deduct five million dollars from the employment support fund and transfer such sum to the general fund.

(a.9) (I) Repealed.

(II) (A) Notwithstanding any provision of this subsection (2) to the contrary, on and after July 1, 2011, 0.0004 assessed against each employer's premium under section 8-76-102.5 (3) (a) or ten million dollars of all revenue collected annually under section 8-76-102.5 (3) (a), whichever is less, shall be credited to the employment and training technology fund, also referred to in this paragraph (a.9) as the "fund", which is hereby created in the state treasury. Any amount collected in excess of ten million dollars under this subparagraph (II) shall be credited to the unemployment compensation fund. Moneys in the fund shall be used for employment and training automation initiatives established by the director of the division. Moneys in the fund are subject to annual appropriation by the general assembly for the purposes of this paragraph (a.9) and shall not revert to the general fund or any other fund at the end of any fiscal year. The moneys in the fund are exempt from section 24-75-402, C.R.S. If the balance of the unemployment compensation fund created in section 8-77-101 falls below one hundred million dollars, the moneys in the employment and training technology fund shall be allocated to the unemployment compensation fund. Once cumulative revenue to the employment and training technology fund equals one hundred million dollars, less any moneys transferred to the unemployment compensation fund, no additional moneys shall be credited to the employment and training technology fund but instead shall be allocated to the unemployment compensation fund. At any other time, the moneys in the employment and training technology fund may be allocated to the unemployment compensation fund at the discretion of the executive director of the department of labor and employment.

(B) This subparagraph (II) is effective December 31, 2012.

(b) The unexpended and unobligated moneys in the employment support fund shall not revert to the general fund at the end of any fiscal year, and any unobligated amounts remaining in the

fund at the end of any fiscal year shall be retained in the employment support fund for purposes of this subsection (2).
(c) On and after July 1, 2001, moneys from the statewide indirect cost allocation agreement with the federal government may be used to supplement moneys in the employment support fund, in a manner that is consistent with the provisions of this subsection (2).

(d) (Deleted by amendment, L. 2002, p. 207, § 1, effective August 7, 2002.)

(3) (Deleted by amendment, L. 99, p. 974, § 2, effective May 28, 1999.)

(4) Repealed.

ARTICLE 78

EMPLOYMENT SECURITY ADMINISTRATION FUND

8-78-101. Establishment of administration fund. There is hereby created in the state treasury a special fund to be known as the employment security administration fund. All money deposited or paid into this fund shall be continuously available to the division for expenditure in accordance with the provisions of articles 70 to 82 of this title, and shall not lapse at any time or be transferred to any other fund. The fund shall consist of all money received from the United States of America, or any agency thereof; all money received from any agency of the United States or any other state as compensation for services or facilities supplied to such agency; all amounts received pursuant to any surety bond or insurance policy or from other sources for losses sustained by the employment security administration fund or by reason of damage to property, equipment, or supplies purchased from money in such fund; and all proceeds realized from the sale or disposition of any such property, equipment, or supplies which may no longer be necessary for the proper administration of articles 70 to 82 of this title.

8-78-102. Protection against loss. Such money shall be secured by the depository in which it is held to the same extent and in the same manner as required by the general depository law of this state. The state treasurer shall be liable on his official bond for the faithful performance of his duties in connection with the employment security administration fund provided under this article. The liability imposed under this section shall exist in addition to any liability upon any separate bond existent on March 15, 1951, or which may be given in the future.

8-78-103. Deposit and disbursement. All money in the employment security administration fund shall be deposited, administered, and disbursed in the same manner and under the same conditions and requirements as provided by law for other special funds in the state treasury. All money in this fund shall be expended solely for the purposes and in the amounts found necessary by the secretary of labor for the proper and efficient administration of the employment security program; except that moneys received pursuant to the federal "Social Security Act", as amended, which constitute this state's share of the excess remaining in the federal unemployment account on July 1 of any fiscal year shall be disbursed solely for the purposes and in the amounts found necessary for the proper and efficient administration of articles 70 to 82 of this title, as determined and mutually agreed upon by the director of the division, the controller, and the governor.

8-78-104. Reimbursement of fund. If any money received in the employment security administration fund, which is not a part of this state's share of the excess remaining in the federal unemployment account on July first of any fiscal year, is found by the secretary of labor, because of any action or contingency, to have been lost or to have been expended for purposes other than, or in amounts in excess of, those found necessary by the secretary of labor for the proper administration of the employment security program, it is the policy of this state that such money shall be replaced by money appropriated for such purpose from the general funds of this state to the employment security administration fund for expenditures as provided in section 8-78-103 or by those funds which constitute this state's share of the excess remaining in the federal unemployment account on July first of any fiscal year. Upon receipt of such a finding by the secretary of labor, the division shall promptly report the amount required for such replacement to the governor,

and the governor, at the earliest opportunity, shall submit to the general assembly a request for the appropriation of such amount.

ARTICLE 79

COLLECTION OF CONTRIBUTIONS, PENALTIES, INTEREST

8-79-101. Interest on past-due premiums and surcharges. Premiums or surcharges unpaid on the date on which they are due and payable, as prescribed by the division, shall bear interest at the rate of eighteen percent per annum or one and one-half percent per month or any portion thereof on and after such date until payment plus accrued interest is received by the division. Interest collected pursuant to this section shall be paid into the unemployment revenue fund.

8-79-102. Collection of premiums and surcharges, benefit overpayments, penalties, and interest - rules. (1) The division shall institute such practices and procedures as it deems necessary to collect any money due the division in the form of delinquent premiums, surcharges, or overpaid benefits, including all penalties and interest thereon. In the case of overpaid benefits, the division may, in addition to instituting collection procedures, withhold subsequent benefit payments to which the claimant is or becomes entitled and apply the amount withheld as an offset against the overpayment. However, any amount withheld shall not exceed twenty-five percent of a claimant's benefit payments except in those cases where overpayments have occurred on an established current claim or as a result of false representation or willful failure to disclose a material fact.

(2) The division, in its role as guardian of unemployment insurance trust fund dollars, is exempt from the provisions of section 24-30-202.4, C.R.S. If the division determines an account to be uncollectible, such account may be referred to the controller for collection. Reasonable fees for collection, as determined by the director of the division and the controller, shall be added to the amount of debt. The debtor shall be liable for repayment of the total of the amount outstanding plus the collection fee. All money collected by the controller shall be returned to the division for credit to the fund; except that, all fees collected shall be retained by the controller. If less than the full amount is collected, the controller shall retain only a proportionate share of the collection fee.

(3) If, after due notice, any employer or claimant defaults in any payment of premiums or surcharges, the repayment of overpaid benefits, or the payment of any interest or penalties thereon, the amount due may be collected by civil action, which shall include the right of attachment in the name of the division. Court costs shall not be charged to the division, but any employer or claimant against whom judgment is taken shall be charged with all costs of such action. All costs collected by the division shall be paid into the registry of the court.

(4) The collection efforts of the division shall be in accordance with subsections (1) and (2) of this section; except that, in instances involving willful violation of any provision of articles 70 to 82 of this title, or if deemed appropriate by the director of the division, the division may seek relief under subsection (3) of this section.

(5) (a) Notwithstanding any other provision of this title, the division shall charge an employer's account for an improper payment from the unemployment compensation fund if the division determines that:

(I) The payment was made because the employer, or an agent of the employer, was at fault for failing to respond timely or adequately to the request of the division for information relating to the claim for compensation; and

(II) The employer or agent has established a pattern of failing to respond timely or adequately to such requests.

(b) The division shall promulgate rules to specify what factors and frequency constitute a pattern of failing to respond timely or adequately for purposes of enforcing this subsection (5).

8-79-103. Premiums, surcharges, and assessments a lien on property. (1) The premiums and surcharges imposed by sections 8-76-101 to 8-76-104 and any assessments imposed pursuant to section 29-4-710.7, C.R.S., shall be a first and prior lien upon the real and

personal property of any employer subject to articles 70 to 82 of this title, except as to the lien of general property taxes and except as to valid liens existing at the time of the filing of the notice provided for in section 8-79-105, and shall take precedence over all other liens or claims of whatsoever kind or nature. Any employer that sells, assigns, transfers, conveys, loses by foreclosure of a subsequent lien, or otherwise disposes of its business, or any part thereof, shall file with the division such reports as the director of the division, by rule, may prescribe within ten days after the date of any such transaction. The employer's successor shall be required to withhold from the purchase money an amount of money sufficient to cover the amount of premiums or surcharges and assessments due and unpaid until such time as the former owner produces a receipt from the division showing that the premiums, surcharges, or assessments have been paid or a certificate that no premiums, surcharges, or assessments are due. Any successor that fails to comply with this subsection (1) shall be personally liable for the payment of any premiums, surcharges, or assessments due and unpaid.

(2) When the business or property of any employer is placed in receivership, seized under distraint for property taxes, or assigned for the benefit of creditors, all premiums, surcharges, assessments, penalties, and interest imposed by articles 70 to 82 of this title and section 29-4-710.7, C.R.S., shall be a prior and preferred claim against all of the property of said employer, except as to the lien of general property taxes, and as to valid liens existing at the time of the filing of the notice provided for in section 8-79-105, and as to claims for wages of not more than two hundred fifty dollars to each claimant earned within six months after the commencement of the proceeding. No sheriff, receiver, assignee, or other officer shall sell the property of any employer under process or order of court in such cases without first ascertaining from the division the amount of any premiums, surcharges, or assessments due and payable under articles 70 to 82 of this title and section 29-4-710.7, C.R.S. If any premiums, surcharges, or assessments are due, owing, and unpaid, it is the duty of such sheriff, receiver, assignee, or other officer to first pay the outstanding amount of premiums, surcharges, or assessments out of the proceeds of the sale before making payment of any moneys to any judgment creditor or other claims of whatsoever kind or nature, except the costs of the proceedings. In the event of an employer's being subject to an order for relief, judicially confirmed extension proposal, or composition under the federal bankruptcy code of 1978, title 11 of the United States Code, premiums, surcharges, or assessments then or thereafter due shall be entitled to such priority as is provided in section 507 of that code for taxes due the state of Colorado.

8-79-104. Failure to file true report - penalty.

(1) (a) (I) Repealed.

(II) (A) It is the responsibility of each employer subject to articles 70 to 82 of this title to file true and accurate reports, whether or not premiums or surcharges are due, and to pay all premiums and surcharges when due. Whenever an employer fails to furnish premium reports required by the division by the due date, the division shall assess against the employer a penalty of fifty dollars for each occurrence; except that an "employer newly subject" as defined by section 8-76-102.5 (4) shall be assessed a penalty of ten dollars for each occurrence during the first four quarters of coverage. Each subsequent quarter in which the employer continues the failure to file the reports shall be considered a separate occurrence. Penalties collected by the division pursuant to this sub-subparagraph (A) shall be paid into the unemployment revenue fund.

(B) This subparagraph (II) is effective December 31, 2012.

(b) If any employer fails or neglects to make and file such reports, as required by articles 70 to 82 of this title or by the rules of the division pursuant thereto, or willfully makes a false or fraudulent report, the division may make an assessment of the premiums or surcharges due from its own knowledge and from such information as it can obtain through testimony or otherwise.

(c) An employer who is delinquent in paying premiums or surcharges on the computation date shall have a penalty assessed by the division. The amount of the penalty shall be the amount

of delinquent premiums or surcharges; except that the penalty shall not exceed an amount equal to one percent of the employer's chargeable wages paid that were subject to unemployment insurance in the preceding calendar year. The amount of the penalty for an employer that was not subject to the provisions of articles 70 to 82 of this title in the preceding calendar year shall be the amount of delinquent premiums or surcharges. Such penalty shall be in addition to any payments and interest due under articles 70 to 82 of this title. The penalty shall be payable in four quarterly installments during the current calendar year and shall be remitted to the division with the employer's quarterly report. Penalties collected by the division pursuant to this paragraph (c) shall be paid into the unemployment revenue fund.

(d) Any penalty imposed pursuant to this subsection (1) shall be waived if good cause is shown for failing to pay the premiums or surcharges or to make premium reports, as prescribed by rule of the division. Penalties under this subsection (1) that are unpaid on the date on which they are due shall bear interest at the same rate and in the same manner as unpaid premiums and surcharges under articles 70 to 82 of this title. The provisions of section 13-80-108 (9), C.R.S., shall be used for determining when an offense is committed for the purposes of this subsection (1).

(2) Any assessment so made and certified by the division shall be prima facie good and sufficient for all legal purposes. Notice and demand for premiums or surcharges plus any interest and penalties imposed by articles 70 to 82 of this title shall be made upon forms as prescribed by the division, and the notice and demand shall become final fourteen calendar days after the date of delivery of the notice and demand to the employer in person or after the date of the transmittal by electronic means or by registered mail to the employer's last-known address or place of business. The employer may file a request for review or modification of the assessment with the division within the fourteen days in the manner and form prescribed by the division. The division, on the basis of evidence submitted by the employer disclosing the correct amount of premiums or surcharges, may amend or otherwise modify its previous assessments.

8-79-105. Levy on property - sale. (1) If any premiums, surcharges, penalties, or interest imposed by articles 70 to 82 of this title, as shown by reports filed by the employer or as shown by assessment duly made as provided in section 8-79-104 or 8-79-107, are not paid within five days after they are due and demand is made therefor, the division may issue a notice setting forth the name of the employer, the amount of the premiums, surcharges, penalties, and interest, the date of the accrual thereof, and a statement that the division claims a first and prior lien therefor, except as provided in this article. Such notice shall be on forms prepared by the division and shall be verified by any duly qualified representative of the division and may be filed or recorded in the office of the county clerk and recorder of any county in the state in which the employer owns property. After such notice has been filed or recorded, the division may issue a warrant under its official seal directed to the sheriff of any county of the state or any duly authorized agent of the division commanding him or her to levy upon, seize, and sell such of the real and personal property of the employer found within his or her county necessary for the payment of the amount due, together with interest and penalties, as provided by law.

(2) It is the duty of any county clerk and recorder to whom such notices are sent to file or record the same without cost. Upon the payment of all premiums, surcharges, penalties, and interest, a lien for such premiums, surcharges, penalties, and interest, as shown upon the records of the county clerk and recorder, shall be released by the division in the same manner as judgments are released.

(3) The sheriff, or any duly authorized agent of the division, shall forthwith levy upon the property of the employer, and personal property so levied upon shall be sold in all respects with like effect and in the same manner as prescribed by law with respect to executions of distraint warrants issued by a county treasurer for the collection of taxes levied upon personal property. Real property shall be levied upon and sold in the same manner as prescribed by law with respect to executions against property upon judgment of a court of record. The sheriff shall be entitled to such fees for executing such

warrants as are allowed by law for similar services.

8-79-106. No indemnity bond required. In any action of whatever nature brought under articles 70 to 82 of this title, no bond shall be required of the division, nor shall any sheriff or agent of the division require from said division an indemnifying bond for executing the writs of attachment and warrants provided for in this article. No sheriff or agent of the division shall be liable in damages to any person when acting in accordance with such writs and warrants.

8-79-107. Immediate assessment - when. If the division believes that the collection of any premiums, surcharges, penalties, or interest under the provisions of articles 70 to 82 of this title will be jeopardized by delay, whether or not the time otherwise prescribed by articles 70 to 82 of this title or any rules issued pursuant thereto for making reports and paying such premiums or surcharges has expired, it may immediately assess such premiums and surcharges, together with all penalties and interest, the assessment of which is provided for by articles 70 to 82 of this title. Such premiums, surcharges, penalties, and interest shall thereupon become immediately due and payable, and immediate notice and demand shall be made by the division for the payment thereof.

8-79-108. Refunds. (1) An employing unit may file an application for the refund of money paid erroneously in such form and manner as the director of the division may prescribe by rule, including in person, by mail, by telephone, or by electronic means. If the division determines that such payment, or any portion thereof, was paid erroneously, the division shall either issue to the employing unit a credit memo therefor, or make a refund thereof, in either event without interest thereon. Where no application is received, and the division determines that premiums or surcharges have been paid erroneously, the division may, at its option, correct any erroneous payments. Any such correction, if it involves less than one hundred dollars, may be by credit memo. In no event may an employing unit recover money paid erroneously, or otherwise, that has been paid prior to January 1 of the first year of the five calendar years immediately preceding the date of the filing of the application for refund. If such application for refund is refused, or if no final action is taken thereon within six months, an employing unit may commence an action in the district court for the city and county of Denver for the collection thereof. In the event of court action, no recovery of any money paid prior to January 1 of the first year of the five calendar years immediately preceding the date of the filing of the application shall be allowed. For like cause and for the same period, a recovery, as above indicated, may be allowed on the division's own initiative.

(2) Repealed.

(3) Refunds of interest that was paid into the unemployment compensation fund shall be paid from the unemployment compensation fund, and refunds of interest that was paid into the unemployment revenue fund shall be paid from the unemployment revenue fund. All refunds of premiums and surcharges shall be made from the unemployment compensation fund.

ARTICLE 80

PROTECTION OF RIGHTS AND BENEFITS

8-80-101. Waiver of rights void. Any agreement by an individual to waive, release, or commute his or her rights to benefits or any other rights under articles 70 to 82 of this title shall be void. Any agreement by any individual in the employ of any person or concern to pay all or any portion of an employer's premiums or surcharges required under articles 70 to 82 of this title from the employer shall be void. No employer shall directly or indirectly make, require, or accept any deduction from wages to finance the employer's premiums or surcharges required from him or her or require or accept any waiver of any rights under articles 70 to 82 of this title by any individual in his or her employ. Any employer or officer or agent of any employer who violates this section is guilty of a misdemeanor and, upon conviction thereof, for each offense, shall be punished by a fine of not less than one hundred dollars nor more than one thousand dollars, or by imprisonment in the county jail for not more than six months, or by both such fine and imprisonment.

8-80-102. Limitation of fees. No individual claiming benefits shall be charged fees of any kind in any proceeding under articles 70 to 82 of this title by the division or its representatives or by any court or any officer thereof; except that the controller may charge a reasonable fee as provided in section 8-79-102 (2) for the recoupment of benefit overpayments, and any party appealing the decision of a referee shall be assessed the actual costs of preparing a transcript according to rules promulgated by the director of the division except if the appellant is successful the cost of preparing the transcript will be refunded. Any person who violates this provision is guilty of a misdemeanor. Any individual claiming benefits in any proceeding before the division or a court may be represented by counsel. Unless approved by the division, no lien shall be allowed or suit brought for attorney fees, contingent or otherwise, for services rendered for the collection of any individual's claim for benefits.

8-80-103. Assignment of benefits void - exemptions. Any assignment, pledge, or encumbrance of any right to benefits which are or may become due or payable under articles 70 to 82 of this title shall be void. Except as provided in the "Colorado Child Support Enforcement Procedures Act", article 14 of title 14, C.R.S., such rights to benefits shall be exempt from levy, execution, attachment, or any other remedy provided for the collection of debt. Benefits received by any individual, so long as they are not mingled with other funds of the recipient, shall be exempt from any remedy for the collection of all debts except debts incurred for necessaries furnished to such individual, his spouse, or dependents during the time when such individual was unemployed or child support debt or arrearages as specified in article 14 of title 14, C.R.S. Any waiver of any exemption provided for in this section shall be void.

ARTICLE 81

PENALTIES AND ENFORCEMENT

8-81-101. Penalties. (1) (a) Any person who makes false statement or representation of a material fact knowing it to be false, or knowingly fails to disclose a material fact, with intent to defraud by obtaining or increasing any benefit under articles 70 to 82 of this title or under an employment security law of any other state, of the federal government, or of a foreign government, either for himself or for any other person, is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than twenty-five dollars nor more than one thousand dollars, or by imprisonment in the county jail for not more than six months, or by both such fine and imprisonment.

(b) Any person who, in the opinion of the division, has received a benefit to which he was not entitled by reason of his false representation or failure to disclose a material fact with intent to obtain or increase any benefit for himself or any other person and his trial by court is prevented by the inability of the court to establish its jurisdiction over said person shall be ineligible to receive any benefits under articles 70 to 82 of this title from the date of the discovery of the said act until such time as he makes himself available to the court for trial.

(c) If any employer makes or causes to be made a false statement as to the reason for a claimant's separation from employment or makes or causes to be made a false offer of work to a claimant, which statement or offer shall result in a delay in the payment of benefits to any such claimant, such employer shall be penalized by having his account charged with one and one-half times the amount of benefits due during the period of the delay and with one hundred percent of all other benefit payments paid to the claimant thereafter during his current benefit year, any other provisions of articles 70 to 82 of this title to the contrary notwithstanding, and the claimant shall be compensated by being paid one and one-half times his weekly benefit amount for the period of the delay. "The period of delay" as used in this section shall be determined by the division, and such determination shall be binding upon all parties affected and shall not be subject to review. The penalty imposed by this paragraph (c) shall be in addition to and not in lieu of any other penalty, civil or criminal, provided in articles 70 to 82 of this title.

(2) Any employing unit, or any officer or agent of an employing unit, or any other person who makes a false statement or representation knowing it to be false or who knowingly fails to disclose a material fact either to cause an

individual to receive benefits to which such individual is otherwise not entitled or to defraud an individual by preventing or reducing the payment of benefits to which such individual would otherwise be entitled, or to avoid becoming or remaining a subject employer, or to avoid or reduce any premium, surcharge, or other payment required from an employing unit under articles 70 to 82 of this title or under the employment security law of any other state, the federal government, or a foreign government or any such employing unit, officer or agent, or other person who willfully fails or refuses to pay any such premiums or surcharges or make any other payment, or to furnish any reports required under section 8-72-107, or to produce or permit the inspection or copying of records as required under section 8-72-107 is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than twenty-five dollars nor more than one thousand dollars, or by imprisonment in the county jail for not more than six months, or by both such fine and imprisonment. Each false statement or representation or failure to disclose a material fact and each day such failure or refusal continues shall constitute a separate offense.

(3) Any person who willfully violates any provision of articles 70 to 82 of this title or any rule or regulation thereunder, the violation of which is made unlawful or the observance of which is required under the terms of articles 70 to 82 of this title and for which a penalty is neither prescribed in this article nor provided by any other applicable statute, is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than twenty dollars nor more than two hundred dollars, or by imprisonment in the county jail for not more than sixty days, or by both such fine and imprisonment. Each day such violation continues shall be deemed a separate offense.

(4) (a) (I) Any person who has received any sum as benefits under articles 70 to 82 of this title to which he was not entitled shall be required to repay such amount to the division for the fund. Such sum shall be collected in the manner provided in section 8-79-102; except that the division may waive the repayment of an overpayment if the division determines such repayment to be inequitable.

(II) If any person receives an overpayment because of his or her false representation or willful failure to disclose a material fact, inequitability must not be a consideration in any civil, administrative, or criminal action, and the person shall pay to the division the total amount of the overpayment plus a sixty-five percent monetary penalty. Of the monetary penalty, the division shall pay twenty-three percent into the unemployment compensation fund, created in section 8-77-101, and the remainder into the unemployment revenue fund, created in section 8-77-106. In addition, the person may be denied benefits, when otherwise eligible, for a four-week period for each one-week period in which the person filed claims for or received benefits to which he or she was not entitled. The provisions of section 13-80-108 (9), C.R.S., shall be used for determining when an offense is committed for the purposes of this subparagraph (II).

(III) All investigative costs awarded by the court and collected by the division in connection with the conviction, in any criminal action, of a person who has received any overpayment because of his or her false representation or willful failure to disclose a material fact shall be paid into the unemployment revenue fund.

(IV) The penalties associated with an overpayment pursuant to subparagraph (II) of this paragraph (a) shall be made known to individuals upon filing an unemployment claim as defined in section 8-70-112.

(b) Pursuant to rules and regulations promulgated by the director of the division, the division may write off all or a part of the amount of any overpayment which it finds to be uncollectible or the recovery of which it finds to be administratively impracticable. Amounts which remain uncollected for more than five years, or seven years for overpayments due to false representation or willful failure to disclose a material fact, may be written off as uncollectible.

(c) Any person aggrieved by a determination of the division made under this subsection (4) may appeal that determination and obtain a hearing before a hearing officer with the right to further appeal as provided by article 74 of this title. The initial appeal must be received within twenty

calendar days after the date of notification of such determination by the division; otherwise, the determination shall be final.

(d) Upon final determination pursuant to paragraph (c) of this subsection (4), repayment of an overpayment that is a result of the individual's false representation or willful failure to disclose a material fact pursuant to subparagraph (II) of paragraph (a) of this subsection (4) shall be made within thirty days.

8-81-102. Penalties in prior law continue in force. Any penalty, forfeiture, or liability, either civil or criminal, which has been incurred in former statutes relating to unemployment compensation shall be held as remaining in force for the purpose of sustaining any and all proper actions, suits, proceedings, and prosecutions for the enforcement of such penalty, forfeiture, or liability which are now pending, or which may hereafter be commenced within the time provided by law for the commencement of such actions, suits, proceedings, and prosecutions, as well as for the purpose of sustaining any judgment, decree, or order which has been or which may be entered or made in such actions, suits, proceedings, or prosecutions.

8-81-103. Representation in court. (1) In any civil action to enforce the provisions of articles 70 to 82 of this title, the division and the state shall be represented by the attorney general. Such assistant attorneys general shall be appointed as are necessary for this purpose.

(2) All criminal actions for violation of any provision of articles 70 to 82 of this title, or of any rules or regulations issued pursuant thereto, shall be prosecuted by the attorney general of the state or, at his request and under his direction, by the district attorney of the judicial district in which the employer has a place of business or the violator resides.

ARTICLE 82

ACQUISITION OF LANDS AND BUILDINGS

8-82-101. Nonprofit corporation - authorization and purposes. For the purpose of performing the functions required under the provisions of the "Colorado Employment Security Act", articles 70 to 82 of this title, the division is hereby authorized to create a nonprofit corporation or authority under the laws of this state and, in the name of such nonprofit corporation or authority, to purchase land and cause to be erected thereon a building or buildings suitable for offices, or for housing equipment, or for both such purposes. Any land so purchased or buildings so constructed may be thereafter sold or exchanged when, in the determination of the directors of the corporation or authority, the division no longer has need for such property, and any funds or proceeds obtained from such sale or exchange shall be the sole property of the division and distributed by it as required by the terms of articles 70 to 82 of this title.

8-82-102. Anticipation warrants - issuance and investment. For the purpose of defraying the cost of land and for the construction of the proposed buildings, the nonprofit corporation or authority is authorized, with the approval of the governor, to issue and sell anticipation warrants in an amount not to exceed one million eight hundred fifty thousand dollars at an interest rate of not more than four percent per annum. Any state trust funds, and only such funds as may be available for permanent investment, may be used to purchase said anticipation warrants. Such anticipation warrants shall be redeemed and the interest thereon paid in the manner and from the funds enumerated in section 8-82-103.

8-82-103. Purchase and leasehold by division - terms. The divisions of employment and training and unemployment insurance may enter into rental or leasehold agreements with a nonprofit corporation or authority created pursuant to section 8-82-101. The agreements must provide that the particular division acquire title to the land or buildings, or both, upon the payment of stipulated aggregate annual rentals. The plans, specifications, bids, and contracts for the buildings and the terms of all leasehold or rental agreements are not valid until approved by the governor, the director of the division of employment and training or the director of the division of unemployment insurance, as appropriate, and the director of the office of state planning and budgeting. The rentals must be paid solely out of the employment security administration fund, the unemployment revenue fund, or both, or the funds of any other state

agency if any part of the buildings are made available to other state agencies. The obligation to pay the rentals does not constitute an indebtedness of the state and must not be paid out of any other funds. The division that enters an agreement pursuant to this section shall include the rental in its annual budgets and shall certify, audit, and pay the rentals in the same manner as all other accounts and expenditures payable out of those funds.

8-82-104. Tax exemption - when. Property acquired or occupied pursuant to this article shall be exempt from taxation so long as it is used for the purposes of the division or other public purposes.

8-82-105. Judicial remedies. Purchase or leasehold agreements entered into by the division pursuant to this article shall be enforceable in any court of competent jurisdiction.

ARTICLE 83

WORK FORCE DEVELOPMENT

PART 1 - DIVISION OF EMPLOYMENT AND TRAINING

8-83-101. Definitions. As used in this article, unless the context otherwise requires:

(1) "Department" means the department of labor and employment created in section 24-1-121, C.R.S.

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

(3) "Division" means the division of employment and training in the department.

8-83-102. Division of employment and training created - director. There is hereby created a division of employment and training within the department of labor and employment, the head of which is the director of the division of employment and training.

8-83-103. Powers, duties, and functions - acceptance of moneys. (1) The functions of the division comprise all administrative functions of the state in relation to the administration of this article. The director shall exercise his or her powers, duties, and functions prescribed under this article under the direction and supervision of the executive director of the department, as prescribed by section 24-1-105 (4), C.R.S. Any vacancy in the office of director shall be filled in the manner provided by law.

(2) The division may accept and expend moneys from gifts, grants, donations, and other nongovernmental contributions for the purposes for which the division is authorized.

8-83-104. State employment service. (1) The Colorado state employment service is established as a section in the division. The division, through the section, shall establish and maintain free public employment offices in the number and locations as may be necessary for the proper administration of this article and for the purposes of performing the duties that are within the purview of the act of congress entitled "An Act To provide for the establishment of a national employment system and for cooperation with the States in the promotion of such system, and for other purposes.", approved June 6, 1933 (48 Stat. 113; 29 U.S.C. sec. 49 (c)), as amended, and referred to in this section as the "federal act".

(2) The division shall:

(a) Cooperate with any official or agency of the United States having powers or duties under the provisions of the federal act, as amended, or under such other federal acts as may be created for similar purposes;

(b) Cooperate with or enter into agreements with the railroad retirement board with respect to the establishment, maintenance, and use of free employment service facilities; and

(c) Perform all acts necessary to secure to this state the benefits of the federal act, as amended, in the promotion and maintenance of a system of public employment offices.

(3) The state accepts the provisions of the federal act, as amended, in conformity with section 4 of the federal act, and this state will observe and comply with the requirements of the federal act. The division is designated as the agency of this state for the purposes of the

federal act. The division shall appoint such officers and employees of the Colorado state employment service as necessary for the proper administration of this article.

8-83-105. Personnel. Subject to other provisions of this article and the state personnel system regulations, the division is authorized to appoint, fix the compensation, and prescribe the duties and powers of such officers, accountants, attorneys, experts, and other persons as may be necessary in the performance of its duties. The division may delegate to any person so appointed such power as it deems reasonable and proper for the effective administration of this article. In its discretion, the division may bond any person handling moneys or signing checks under this article.

8-83-106. Division - offer waiver of confidentiality for employment purposes. Notwithstanding the confidentiality requirements in section 8-72-107 (1), the division may offer veterans and other persons seeking employment the opportunity to waive the confidentiality of certain information including the person's name, address, telephone number, and e-mail address so that the division may make available the waived information to bona fide employers seeking employees.

PART 2

WORK FORCE INVESTMENT ACT

8-83-201. Short title. This part 2 shall be known and may be cited as the "Colorado Work Force Investment Act".

8-83-202. Legislative declaration. (1) The general assembly hereby finds and declares that:

(a) Passage of the federal "Workforce Investment Act of 1998", 29 U.S.C. sec. 2801 et seq., gives the state a unique opportunity to develop a work force program and employment system designed to meet the needs of employers, job seekers, and those who want to further their careers;

(b) The federal act requires that training and employment programs be designed and managed at the local government level, where the needs of businesses and individuals are best understood;

(c) The federal act requires the involvement of business, both to provide information and leadership and to play an active role in ensuring that the system prepares people for current and future jobs;

(d) Passage of the federal act provided local governments with the control and flexibility to carry out the federal act's purposes, subject to the final authority and approval of the governor; and

(e) Therefore, it is in the state's best interest to adopt the Colorado work force investment program set forth in this part 2.

(2) The general assembly recommends that:

(a) To the extent possible, counties or multi-county areas integrate their work force investment program sources of funding to maximize the resources available at the local level to provide the services authorized under this part 2; and

(b) As the responsibility for implementing work force programs continues to be devolved to local governments, Title I moneys identified for state administration of programs implemented at the local level be as specified in Title I of the federal "Workforce Investment Act of 1998".

8-83-203. Definitions. As used in this part 2, unless the context otherwise requires:

(1) "Colorado work force investment program" or "work force investment program" means the program of work force development created in this part 2.

(2) "Consortium local elected officials board" means the local elected officials appointed by each local work force investment board in the consortium work force investment area to serve as the local elected official for a consortium work force investment area.

(3) "Consortium work force investment area" or "consortium area" means an area designated by the governor as a federal work force investment area. The consortium work force investment area may contain one or more local work force investment areas.

(4) "Consortium work force investment board" or "consortium board" means the work force board appointed by the consortium local elected officials board. The consortium work force investment board serves, on behalf of the local work force boards in the consortium area, as the local work force investment board for specific functions under the federal act.

(5) "Department" means the department of labor and employment created in section 24-1-121, C.R.S., or any other state agency specified by the governor through executive order or otherwise.

(6) "Designated work force investment area" means a county or group of counties that has banded together through an intergovernmental agreement to provide a work force investment program and that is designated by the governor as a federal work force investment area. A designated work force investment area is not the same as the consortium work force investment area.

(7) "Designated work force investment board" means the local work force investment board for a federally designated work force investment area.

(8) "Federal act" means Title I of the federal "Workforce Investment Act of 1998", 29 U.S.C. sec. 2801 et seq.

(9) "Local elected officials" means the boards of county commissioners of the county or counties operating work force investment programs; except that, in the case of a city and county, "local elected officials" means the mayor.

(10) "Local plan" means a plan, developed and executed by a local work force investment board, that outlines the functions and responsibilities for delivery of services within a work force investment area.

(11) "Local work force investment board" means the work force board of a local work force investment area within a consortium work force investment area.

(12) "National program grant" means a grant under subtitle D of Title I.

(13) "One-stop operator" means the entity selected by a work force board, with concurrence by the local elected officials, to operate the one-stop career center in a local area.

(14) "One-stop partner" means a person or organization described in section 8-83-216.

(15) "State council" means the state work force development council created in section 24-46.3-101, C.R.S.

(16) "State plan" means a plan, developed by the governor with the assistance of the state council and based upon local plans, for the delivery of services statewide under the federal act.

(17) "Title I" means Title I of the federal act.

(18) "Title I moneys" means moneys distributed pursuant to Title I.

(19) "Wagner-Peyser Act" means the federal "Wagner-Peyser Act", 29 U.S.C. sec. 49a et seq.

(20) "Wagner-Peyser funds" means federal moneys received by the department pursuant to the "Wagner-Peyser Act".

(21) "Work force board" means either the designated work force investment board or a local work force investment board.

(22) "Work force investment area" means either the designated work force investment area or a local work force investment area.

8-83-204. Work force investment program - legislative declaration - purposes. (1) The general assembly finds, determines, and declares that this part 2 is adopted pursuant to the requirements of the federal "Workforce Investment Act of 1998", and is intended to comply with the federal act's express requirements for participants in the operation of work force investment programs.

(2) The purposes of this part 2 are to:

(a) Establish a central, coordinated delivery system at the local or regional level through which any citizen may look for a job, explore work preparation and career development

services, and access a range of employment, training, and occupational education programs offering their services through local or regional work force investment programs;

(b) Develop strategies and policies that encourage job training, education and literacy, and vocational programs;

(c) Consolidate and coordinate programs and services to ensure a more streamlined and flexible work force development system at the local or regional level;

(d) Establish single contact points for employers; and

(e) Allow counties increased responsibility for the administration of the work force investment program.

8-83-205. Work force investment program - creation - administration. (1) Under authority of the governor, the department shall cooperate with the state council to help establish and operate a network of work force investment areas as set forth in this part 2.

(2) Work force investment areas may be established at a county level or at a multi-county level through intergovernmental agreements reached by the applicable local elected officials of the work force investment area and subject to approval by the governor.

(3) Local elected officials shall govern the operation of work force investment areas with policy guidance from work force boards appointed by the local elected officials. At the option of the local elected officials and the work force board, work force investment programs may be operated by a county, the department, other governmental agencies, nonprofit or not-for-profit organizations, or private entities; except that Wagner-Peyser funds shall not be used to award contracts to nonprofit or not-for-profit organizations or private entities. An entity that applies to become a work force program operator and is not selected may appeal the decision through any available appeal process of the applicable local governmental entity.

(4) If federal or state financial support for the provision of employment and training services is eliminated or is reduced by an amount that is considered substantial by the local elected officials, the local elected officials are not required to continue funding or operating work force investment programs.

(5) The state council shall ensure that a work force investment area may function as a federally designated work force investment area in applying for available national program grants under the federal act. Each work force board may apply for a grant for its own area in the manner it deems most appropriate. A work force board may apply for a grant for its own area and receive any corresponding moneys awarded exclusively or may apply through other means and with other work force areas. Any grant moneys awarded to a work force investment area shall be a direct pass-through from the federal government to the applicable work force investment area or areas.

(6) A work force investment area created pursuant to this part 2 is authorized to operate with the same authority and functions as if the area were a federally designated work force investment area.

8-83-206. Local elected officials - function - authority. The local elected officials shall maintain a strong role in all phases and levels of implementation of the federal act. The local elected officials of a work force investment area, in agreement with the work force board, are authorized to award contracts for the administration, implementation, or operation of any aspect of the work force investment program to any appropriate public, private, or nonprofit entity in accordance with applicable county regulations and federal law; except that Wagner-Peyser funds shall not be used to award contracts to private or nonprofit entities.

8-83-207. Designated work force investment boards - consortium work force investment boards - local work force investment boards - authority - functions. (1) Designated work force investment boards are subject to this part 2 and the federal act. Designated work force investment boards operate for a federally designated work force investment area.

(2) (a) The consortium work force investment board shall delegate to the local work force investment boards the functions and

requirements specified in this part 2 and in the federal act for work force boards. Subject to the limits specified in this part 2, the consortium board operates as the local work force investment board for the federally designated consortium work force investment area.

(b) The consortium local elected officials board functions only as the local elected official for the consortium work force investment board. The consortium local elected officials board performs only those specified functions authorized in section 8-83-214.

(3) Local work force investment boards operate as the work force boards for the local work force investment areas operating within the consortium work force investment area and as further specified in section 8-83-213. To the extent possible, local work force investment boards are subject to the requirements contained in this part 2 and the federal act. If a local work force investment board finds that compliance with any such requirement is not practicable, the work force board shall include in its local plan a description of the requirement and an explanation of why compliance is impracticable. Requirements that may be so described and explained include work force board membership requirements as specified in section 8-83-210, youth council membership requirements listed in section 8-83-212, and requirements for partners described in section 8-83-216. Although each local work force investment board has such discretion, it is subject to the outcome and performance measures required by the federal act and as negotiated with the consortium work force investment board in approving the local plan. Each local work force investment board shall meet the intent and purposes of this part 2 and the federal act.

8-83-208. Implementation - local plans. (1) (a) The Colorado work force investment program shall be administered according to the state five-year plan prepared in accordance with the local plans created pursuant to this section. Each designated work force investment area shall submit a plan that meets the requirements of subsection (2) of this section to the governor for approval.

(b) The consortium work force investment board shall develop a local plan that consists of a compilation of local plans submitted by each local work force investment board. The consortium work force investment board shall ensure that the local plan for the consortium area, in total, meets the requirements specified in subsection (2) of this section and shall submit such plan to the governor for approval. Local work force investment boards within the consortium work force investment area shall submit local plans to the consortium work force investment board for approval.

(2) **Local plans for work force investment areas.** Subject to the approval of, and in partnership with, the local elected officials, each work force board shall develop a comprehensive five-year local plan. The plan shall include:

(a) A description of:

(I) The work force development needs of businesses, job seekers, and workers in the area;

(II) The current and projected employment opportunities in the area; and

(III) The job skills necessary to obtain such employment opportunities;

(b) A description of the work force investment program to be established in the work force investment area, including:

(I) How the work force board will ensure the continuous improvement of eligible providers of services through the system and ensure that such providers meet the employment needs of local employers and participants;

(II) A copy of each memorandum of understanding between the work force board and each of the federally required one-stop partners concerning the operation of the work force investment program in the local area; and

(III) A description of the local levels of performance negotiated with the governor and local elected officials, for the purpose of measuring the performance of the local area and to be used by the work force board for measuring the performance of the local fiscal agent, if designated, eligible providers, and the work force investment program in the local area;

(c) A description and assessment of the type and availability of adult and dislocated worker employment and training activities in the local area;
(d) A description of how the work force board will coordinate work force investment activities carried out in the area with statewide rapid response activities, as appropriate;

(e) A description and assessment of the type and availability of youth activities in the area, including an identification of successful providers of such activities;

(f) A description of the process used by the work force board to provide an opportunity for public comment, including comment by representatives of businesses and labor organizations, where applicable, and input into the development of the local plan before submission of the plan;

(g) Identification of the entity responsible for the disbursal of Title I moneys described in section 8-83-221 as determined by the local elected officials or the governor pursuant to said section;

(h) A description of the competitive process to be used to award the grants and contracts in the work force investment area for activities implemented pursuant to this part 2; and

(i) Such other information as the governor may require.

(3) **Process.** Prior to the date the work force board submits a local plan under this section, the work force board shall:

(a) Make available copies of the local plan to the public through such means as public hearings and local news media including, where feasible, the internet;

(b) Allow members of the work force board and members of the public, including representatives of business and labor organizations, to submit comments on the proposed plan to the work force board beginning on the date on which the proposed local plan is made available and continuing for a period of thirty days; and

(c) Include with the local plan submitted to the governor under this section any such comments that represent disagreement with the plan.

(4) **Plan submission and approval.** A local plan submitted to the governor under this section is considered approved by the governor at the end of the ninety-day period that begins on the day the governor receives the plan, unless the governor makes a written determination during the ninety-day period that:

(a) Deficiencies in activities carried out under this part 2 have been identified, and the area has not made acceptable progress in implementing corrective measures to address the deficiencies; or

(b) The plan does not comply with requirements under the federal act.

8-83-209. State work force investment plan.
(1) In accordance with the federal act, the governor shall submit to the federal government a state plan that outlines a five-year strategy for the Colorado work force investment program that meets the requirements of the federal act. In addition to the plan requirements specified in subsection (2) of this section, the state plan must be based upon and consistent with the local plans submitted to the governor pursuant to section 8-83-208.

(2) **Content.** The state plan must include:

(a) A description of the state council, including how the state council collaborated in the development of the state plan and a description of how the state council will continue to collaborate in carrying out the functions of the state council specified in section 8-83-224;

(b) A description of state-imposed requirements for the Colorado work force investment program;

(c) A description of the performance accountability standards that apply to work force activities;

(d) Information describing:

(I) The needs of the state with regard to current and projected employment opportunities, by occupation;

(II) The job skills necessary to obtain such employment opportunities;

(III) The skills and economic needs of the state's existing work force; and

(IV) The type and availability of work force activities in the state;

(e) An identification of the work force investment areas in the state, designated work force investment areas, the consortium work force investment area, and the local work force investment areas in the consortium area, including a description of the process used for the designation of such areas;

(f) Identification of the criteria to be used by local elected officials for the appointment of members of work force boards;

(g) The detailed plans required under the "Wagner-Peyser Act";

(h) A description of the procedures that will be taken by the state to assure coordination of and avoid duplication among:

(I) Work force investment activities authorized pursuant to the federal act and this part 2;

(II) Additional federal programs authorized to be included in work force systems;

(i) A description of the common data collection and reporting processes used for the programs and activities described in paragraph (h) of this subsection (2);

(j) A description of the process used by the state, consistent with the process for local plans specified in section 8-83-208 (3), to provide an opportunity for public comment, including comment by representatives of businesses and representatives of labor organizations, and input into development of the plan before submission of the plan;

(k) Information identifying how the state will use Title I moneys the state receives under the federal act to leverage other federal, state, local, and private resources in order to maximize the effectiveness of such resources and to expand the participation of business, employees, and individuals in the Colorado work force investment program;

(l) Assurances that the state will continue to provide, in accordance with federal requirements for fiscal control, accounting procedures that may be necessary to ensure the proper disbursement of, and accounting for, Title I moneys paid by the federal government to the state and allocated to the work force investment areas;

(m) A description of the methods and factors the state will use in distributing Title I moneys to local areas for youth activities and adult employment and training activities, in accordance with section 8-83-223;

(n) A description of how the state consulted with the local elected officials in work force investment areas throughout the state in determining such money distribution, in accordance with section 8-83-223;

(o) A description of the formula for the allocation of Title I moneys to work force investment areas for dislocated worker employment and training activities, in accordance with section 8-83-223;

(p) Information specifying the actions that constitute a conflict of interest prohibited in the state as set forth for members of the state council described in section 24-46.3-101, C.R.S., or members of work force boards;

(q) A description of the strategy of the state for assisting local governments in the development and implementation of a fully operational work force investment program in the state;

(r) A description of the appeals process allowing a county or group of counties that requests but is not granted authority to form a work force investment area to submit an appeal of such decision to the state council;

(s) A description of the competitive process to be used by the state to award grants and contracts in the state for activities carried out by the state under this part 2; and

(t) A description of the employment and training activities and youth activities provided by work force investment areas.

(3) The state plan must also include, to the extent practicable, how the state will pursue coordination and integration with other applicable federal and state programs in work force investment areas.

8-83-210. Work force boards - membership. (1) There shall be established, in each work force investment area of the state, a work force board, which the local elected officials of the work force investment area shall appoint to oversee the one-stop career center or work force investment program in that county or area. Work force boards operate in partnership with and subject to the approval of the local elected officials for the work force investment area. Such boards are authorized to operate only with the approval of the local elected officials. Subject to requirements under the federal act, the local elected officials shall determine the membership and functions of the boards.

(2) Membership of each such board must include, at a minimum:

(a) Representatives of business in the work force investment area who are owners of businesses, who represent businesses with employment opportunities that reflect the employment opportunities of the local area, and who are appointed from among individuals nominated by local business organizations and business trade associations;

(b) Representatives of local educational entities, which may include public schools, boards of cooperative educational services, private occupational schools, and private or charter schools;

(c) Representatives of organized labor for those work force investment areas that have organized labor organizations;

(d) Representatives of community-based organizations, at least one of whom may represent the needs of persons with disabilities;
(e) Representatives of economic development agencies, including private sector economic development entities; and

(f) Representatives of each of the work force partners for the work force investment area.

(3) Members of the work force board who represent organizations, agencies, or other entities must be individuals with optimum policy-making authority within such organizations, agencies, or entities.

(4) A majority of the members of each work force board must be business representatives specified in paragraph (a) of subsection (2) of this section.

(5) Each work force board shall elect a chairperson for the board from among the business representatives specified in paragraph (a) of subsection (2) of this section.

8-83-211. Functions of work force boards. (1) Each work force board shall, in partnership with and subject to the approval of the local elected officials for the work force investment area, conduct the following functions:

(a) Develop the local plan;

(b) Designate, certify, and oversee work force investment programs;

(c) Select one-stop operators to operate the one-stop career center in a local area;

(d) Authorize grants for youth services;

(e) Identify eligible providers of intensive services, if one-stop operators do not provide such services, and training services;

(f) Develop and enter into memorandums of understanding with work force partners specified in section 8-83-216 (1);

(g) Develop a budget for the purpose of carrying out the duties of the work force board;

(h) Negotiate local performance measures;

(i) Oversee and assist in statewide employment statistics systems;

(j) Coordinate and develop employer linkages with work force investment activities carried out

in the local area, including coordination of economic development strategies; and

(k) Promote participation of private employers with the work force investment program while ensuring the effective provision, through the work force system, of connecting, brokering, and coaching activities through intermediaries such as the one-stop operator in the local area or through other organizations to assist such employers in meeting their hiring needs.

(2) The work force board shall not provide training services; except that the governor may waive this prohibition annually if the work force board is a qualified provider of training that is in demand and in short supply for that county or area.

(3) Work force boards are authorized to operate only with the approval of the local elected officials and governor.

8-83-212. Youth council. (1) Each work force board shall establish, as a subgroup within the work force board, a youth council. The work force board shall appoint the youth council with the cooperation and approval of the local elected officials. Members of the youth council who are not members of the work force board are voting members of the youth council but are not voting members of the work force board.

(2) **Membership.** Membership of the youth council must be as required under the federal act and must include:

(a) Members of the work force board with a special interest or expertise in youth policy;

(b) Representatives of youth service agencies, including juvenile justice and local law enforcement agencies, and representatives of local public housing authorities;

(c) Parents of eligible youth seeking assistance under the youth grant provisions of the federal act that may include parents representing issues affecting youth with disabilities;

(d) Individuals, including former participants and representatives or organizations, that have experience relating to youth activities;

(e) Representatives of the federal job corps if represented in the local area; and

(f) Other individuals as the board, in cooperation with and with the approval of the local elected officials, determine to be appropriate.

(3) **Duties.** The youth council shall perform the following duties as specified in the federal act:

(a) Develop the portion of the local plan relating to eligible youth, as determined by the chairperson of the work force board;

(b) Subject to the approval of the work force board and consistent with section 123 of the federal act, recommend eligible providers of youth activities to be awarded grants or contracts on a competitive basis by the board to carry out youth activities;

(c) Conduct performance oversight of eligible providers of youth activities in the local area;

(d) Coordinate youth activities authorized under section 129 of the federal act in the local area; and

(e) Other duties determined to be appropriate by the chairperson of the work force board.

8-83-213. Consortium work force investment board. (1) The consortium local elected officials board in a consortium work force investment area shall establish and appoint a consortium work force investment board. At a minimum, the membership of the consortium board must consist of representatives who are members of local work force investment boards. The consortium board shall meet the membership requirements under the federal act for a work force board for each local work force investment area of the consortium; except that members, as appropriate, may represent more than one entity specified by the federal act for the purpose of meeting local work force investment board membership requirements. The consortium board shall develop its own operational procedures.

(2) **Functions of consortium board - delegation to local boards.** Unless otherwise specified in this section and subject to federal

law, the consortium board shall delegate to the local work force investment boards in the consortium area such local work force investment board authority and functions specified under this part 2 and the federal act. Authority and functions of the consortium board are limited to the following:

(a) Meeting the federal membership requirements for a designated work force investment board for the local work force investment areas;

(b) Negotiating with, and approving local plans submitted by, local work force investment boards;

(c) Compiling and consolidating each approved local plan of the consortium area into one local plan for the consortium area and ensuring that the plan meets the requirements under the federal act for a local plan;

(d) Submitting the local plan to the governor for approval;

(e) Negotiating with the governor for performance standards for the consortium area;

(f) Making recommendations to the governor concerning procedures to temporarily replace or correct a local work force investment area that is out of compliance with its local plan, as appropriate;

(g) Facilitating and coordinating local work force investment area grant applications, as appropriate;

(h) Ensuring that any grant moneys awarded to a local work force investment area or areas are a direct pass-through from the federal government to the eligible local work force investment area or areas;

(i) Establishing, as a subgroup within the consortium board, a youth council appointed by the consortium board in cooperation with the consortium local elected officials board. Establishment of a consortium youth council must meet the federal act requirements for youth council membership. The consortium youth council shall review and comment, as appropriate, upon that portion of the local plan relating to eligible youth and shall submit the plan to the consortium work force investment board. Subject to federal law, the consortium board shall delegate to the local work force investment boards in the consortium area duties and functions specified in the federal act and in section 8-83-212 concerning youth councils.

(j) Subject to federal law, delegating to the local work force investment boards in the consortium area duties and functions specified in the federal act and in sections 8-83-216 and 8-83-217 outlining requirements for one-stop partners and the memorandum of understanding between work force boards and one-stop partners.

(3) **Local work force investment boards.** (a) To the extent possible and as outlined in the applicable local plan, each local work force investment board shall function as set forth in the federal act. In carrying out its duties, the local work force investment board shall operate in partnership with, and subject to the approval of, the local elected officials for the designated work force investment area.

(b) **Membership.** Notwithstanding section 8-83-210 (3), the local elected officials shall appoint members of each local work force investment board. Membership, to the extent possible, must meet the requirements of the federal act.

(c) **Functions.** Notwithstanding section 8-83-211, at a minimum, functions of the local work force investment board must be as set forth in this part 2 and the federal act. In addition, each local work force investment board shall:

(I) Upon the approval of and in partnership with the local elected officials, develop a comprehensive five-year local plan for its local work force investment area and shall submit the local plan for approval to the consortium work force investment board. The plan must include a description of those requirements under the federal act that the local work force investment board determines cannot be reasonably met while still fulfilling the intent and purposes of the federal act.

(II) Apply for federal grants. Each local work force investment board may apply for national program grants on behalf of the area or in

partnership with any other work force investment area. Any national program grant moneys awarded to a local work force investment area are a direct pass-through from the federal government to the applicable work force investment area or areas.

(III) To the extent possible and as outlined in the local plan, with the agreement of the local elected officials and notwithstanding the provisions of sections 8-83-216 and 8-83-217, designate or certify the one-stop partners and develop and negotiate the memorandum of understanding as set forth in sections 8-83-216 and 8-83-217;

(IV) Establish, as a subgroup within the local work force investment board, a youth council to be appointed by the work force board in cooperation with the local elected officials. To the extent possible and as outlined in the local plan, the youth council's membership and functions must be as set forth in the federal act and section 8-83-212.

(V) Oversee the one-stop system in the local work force investment area.

8-83-214. Consortium local elected officials board. (1) In order to satisfy requirements under the federal act for the role of local elected officials in a work force area, there shall be a consortium local elected officials board for the local consortium work force investment board. The consortium local elected officials board consists of one local elected official appointed by each local work force investment area in the consortium. Membership is for a term of two years, which term may be renewable.

(2) Functions of the consortium local elected officials board are to appoint members to the consortium work force investment board and ensure that the consortium work force investment board meets federal requirements for membership and delegate fiscal responsibility and contractual responsibility to the local elected officials of local work force investment areas. The consortium local elected officials board shall develop its own operational procedures.

8-83-215. Designation of work force investment areas. (1) Subject to section 116(a) of chapter 2 of the federal act concerning designation of work force areas, any current or previously recognized service delivery area operating before August 7, 1998, may automatically be designated as a work force investment area.

(2) If an area does not qualify for automatic designation, on an annual basis any county or group of counties may petition the governor to form a new work force investment area.

(3) Subject to the governor's approval, counties may choose, through intergovernmental agreements, to band together to form a work force investment area for an area consisting of more than one county or may choose to operate a work force investment area as a single county. If the proposed work force investment area meets the minimum federal requirements for an area as set forth in the federal act, the governor should not unreasonably withhold approval of the work force investment area.

(4) (a) The governor may authorize and approve as a federally designated work force investment area any area that applies and qualifies as specified in subsection (1) of this section.

(b) Automatic designation as a designated work force investment area shall be granted to any unit of local government with a population of five hundred thousand or more.

(c) Automatic temporary designation as a designated work force investment area shall be granted to any unit or units of local government with a total population of two hundred thousand or more that constituted a service delivery area before August 7, 1998, and that requests such designation. Temporary designation is for a period of not more than two years; except that the period may be extended until the end of the period covered by the five-year plan if the work force investment area has substantially met the local performance measures and sustained the fiscal integrity of its Title I moneys.

(5) (a) The governor shall designate an additional federally designated work force investment area for the state, specified as the "consortium of local work force investment areas", which consists of all approved local work force investment areas. Any current or previously recognized service delivery area

operating after August 7, 1998, may enter into or withdraw from the consortium of local work force investment areas. Such decision shall be allowed on an annual basis, with notice to be given by February 1, for any designation to go into effect for the subsequent program year by July 1 of the same year.

(b) Any approved local work force investment area in the consortium work force investment area shall operate with the same authority as, and function as if it were, a federally designated work force investment area.

8-83-216. Required and optional partners of work force boards. (1) Required partners. Each work force board, with the agreement of the local elected officials, is authorized to designate or certify the following partners for purposes of participating in the delivery of services for the one-stop system or work force investment program in the work force investment area:

(a) Work force investment programs;

(b) Adult education and literacy programs;

(c) Welfare-to-work programs;

(d) Programs under the federal "Carl D. Perkins Vocational and Applied Technology Education Act", 20 U.S.C. sec. 2301 et seq.;

(e) Community service block grants;

(f) Unemployment insurance;

(g) "Wagner-Peyser Act" services;

(h) Vocational rehabilitation programs;

(i) Programs under the federal "Older Americans Act of 1965";

(j) Programs under the federal "Trade Adjustment Assistance Reform and Extension Act of 1986";

(k) Programs under 38 U.S.C. sec. 4100 et seq., concerning local veterans' employment representatives and disabled veterans' outreach programs; and

(l) Employment and training programs administered by the federal department of housing and urban development.

(2) **Optional partners.** Optional partners may include:

(a) Programs authorized under part A of Title IV of the federal "Social Security Act", 42 U.S.C. sec. 601;

(b) Programs authorized under the federal "Food Stamp Act of 1977", 7 U.S.C. sec. 2011 et seq.;

(c) Programs authorized under the federal "National and Community Service Act of 1990", 42 U.S.C. sec. 12501 et seq.;

(d) Programs resulting from the federal "Ticket to Work and Work Incentives Improvement Act of 1999", Pub.L. 106-170; and

(e) Other appropriate federal, state, or local programs, including programs in the private sector.

(3) **Functions of required partners.** All required one-stop partners shall perform the following functions:

(a) Make available to participants through the one-stop system the core services that are required of and applicable to the partner's programs;

(b) Serve as representatives on the work force board;

(c) Use a portion of moneys, personnel, and other available resources to create and maintain a one-stop system; except that, to the extent such use would violate federal law or lead to a loss of federal moneys, this paragraph (c) does not apply; and

(d) Enter into a memorandum of understanding with the work force board relating to the operation of the one-stop career center, including a description of services, how the cost of the identified services and operating costs of the system will be funded, and methods for referrals of individuals.

(4) **Functions of optional partners.** (a) Optional one-stop partners shall perform the following functions:

(I) Make available to participants through the one-stop system the core services that are required of and applicable to the partner's programs;

(II) Participate in the operation of such one-stop system, consistent with the terms of the memorandum of understanding approved by the work force board and with the requirements of the federal act in which the program is authorized, if the work force board and local elected official approve such participation.

(b) If an optional partner is designated or certified pursuant to subsection (1) of this section, its functions and responsibilities are the same as those of a required partner as set forth in subsection (3) of this section.

8-83-217. Memorandum of understanding - one-stop operators. (1) (a) The work force board, with the agreement of the local elected officials, shall develop and enter into a memorandum of understanding between the work force board and the one-stop partners concerning the provision of services in the one-stop system in the local area.

(b) Each memorandum of understanding must contain provisions describing:

(I) The services to be provided through the one-stop system;

(II) How the costs of such services and the operating costs of the system will be funded;

(III) Methods for referral of individuals between the one-stop operator and one-stop partners for the appropriate services and activities;

(IV) The duration of the memorandum of understanding and the procedures for amending the memorandum of understanding during the term of the memorandum of understanding; and

(V) Such other provisions, consistent with the federal act, as the parties to the agreement determine to be appropriate.

(2) **One-stop operators.** (a) Consistent with the requirements of the federal act for one-stop partners, the work force board, with the agreement of the local elected official, is authorized to designate or certify one-stop operators and to terminate for cause the eligibility of such operators.

(b) To be eligible to receive moneys to operate a one-stop career center, an entity, which may be a consortium of entities, must be designated or certified as a one-stop operator by any of the following three methods:

(I) If a one-stop system or work force investment program was established in a local area prior to August 7, 1998, the work force board and local elected official for that area may agree with each other and with the governor, on a case-by-case basis, to designate or certify as a one-stop operator an entity carrying out activities under such preexisting system or program, subject to the requirements of section 8-83-216 and this section and of the memorandum of understanding.

(II) An entity may be selected for designation or certification as a one-stop operator through a competitive process.

(III) An entity may be selected for designation or certification as a one-stop operator in accordance with an agreement reached between the work force board and a consortium of entities that, at a minimum, includes three or more of the required one-stop partners described in section 8-83-216 and may be a public or private entity, or consortium of entities, of demonstrated effectiveness in the local area and may include the following:

(A) A postsecondary educational institution;

(B) An employment service agency established under the federal "Wagner-Peyser Act";

(C) A private, nonprofit organization, which may include a community-based organization;

(D) A private for-profit entity;

(E) A government agency; and

(F) Another interested organization or entity, which may include a local chamber of commerce or other business organization.

(c) Elementary schools and secondary schools are not eligible for designation or certification as one-stop operators; except that nontraditional public secondary schools and area vocational education schools shall be eligible for such designation or certification.

8-83-218. Core services. (1) The work force investment program, as implemented through one-stop career centers, shall provide a core set of services, as defined by the federal act, to individuals who are adults or dislocated workers, including, at a minimum, access for job seekers to a comprehensive array of services and information, which may include:

(a) Registration into the centralized computer system;

(b) Career center operations;

(c) Education and training program information;

(d) A multi-media resource library providing access to internet-based services;

(e) Labor market information;

(f) Skill assessment services that are designed to determine each participant's employability, aptitudes, abilities, and interests, by means of individual interviews whenever possible;

(g) Job referral and placement;

(h) Self-help resume preparation resources;

(i) Referral services for community and social services, including welfare-to-work programs, employment programs for persons with disabilities, employment programs for older workers, community-based organizations, vocational rehabilitation, adult literacy, supportive services, and youth programs and services;

(j) Veterans' benefits and services information, subject to the availability of Wagner-Peyser funds and to the following:

(I) Any one-stop career center receiving Wagner-Peyser funds or housing Wagner-Peyser Act staff shall provide veterans with priority employment and training services in accordance with chapter 41 of title 38, U.S.C.;

(II) In one-stop career centers that have been assigned disabled veteran outreach program and local veteran employment representative positions, such positions must be held by state employees and are in addition to, and do not supplant, Wagner-Peyser staff in providing priority employment and training services; and

(III) All one-stop career centers shall make the full array of core services available to veterans in the following order of priority: Disabled veterans, Vietnam-era veterans, veterans, and other eligible persons.

(2) Work force boards are encouraged to consider and determine, at a minimum, the feasibility of providing access for employers to a comprehensive array of services and information, which may include:

(a) Professional account representatives and management;

(b) Assistance in individual and mass recruiting;

(c) Referrals of skilled applicants;

(d) Labor market information;

(e) Education and training program information;

(f) Access to internet-based services;

(g) Information and referral for community and social services;

(h) Layoff assistance; and

(i) Other employment-related services and information.

(3) At the option of the local elected officials, other services for job seekers and employers may be offered to meet the needs of a work force investment area.

8-83-219. Intensive services - training services - individual training accounts. (1) Access to intensive services, as specified in the federal act, must be available to individuals who are adults or dislocated workers who are unemployed, unable to obtain employment through core services, and have been determined by a one-stop operator to be in need of more intensive services to obtain employment or who are employed but are determined by a one-stop operator to be in need of such services. Such services may include diagnostic testing, individual or group counseling and career planning, case management and follow-up services, and training services specified in subsection (2) of this section.

(2) Participants who have met the eligibility requirements for intensive services, are unable to obtain or retain employment through such services, are determined by the one-stop operator to be in need of such services, and are eligible for such services as specified in the federal act must have access to training services, as specified in the federal act. Such training services include occupational skills training, on-the-job training, and training programs operated by the private sector.

(3) The one-stop system shall provide training services authorized under this section to eligible individuals through the use of individual training accounts, as specified in the federal act. Exceptions to the use of individual training accounts, as set forth in the federal act, include customized training, training services not provided by a training provider within the work force area, or training services that are offered by community-based organizations or other private organizations that serve such special populations that face multiple barriers to employment.

8-83-220. Encouragement of nursing education programs - legislative declaration. (1) The consortium work force investment board shall encourage work force investment programs and work force investment areas to enroll individuals in educational programs related to practical nursing.

(2) The general assembly finds, determines, and declares that educating individuals eligible to receive moneys from welfare-to-work or temporary assistance to needy families will benefit such individuals. In addition, the general assembly finds, determines, and declares that Colorado is facing a shortage of licensed practical nurses and that encouraging individuals to follow such a career path further benefits Colorado and its residents.

8-83-221. Title I appropriation - allocation. As specified in section 191(a) of the federal act, Title I moneys received by the state under the federal act are subject to appropriation by the general assembly, consistent with the terms and conditions required under the federal act. The local elected officials or their designee shall serve as the local grant recipient for the Title I moneys allocated to the work force investment area by the governor for the purposes of a work force investment area's administration and implementation of the work force investment program pursuant to the allocation formula described in section 8-83-223. The department shall contract directly with each local work force investment board. In order to assist in the administration of Title I moneys, the local elected officials may designate an entity to serve as a local grant sub-recipient for such moneys or as a local fiscal agent. Except when the designee is the department, a designation does not relieve the local elected officials of the liability for any misuse of grant moneys.

8-83-222. County block grants formula - use of moneys. Subject to available appropriations by the general assembly, the department shall allocate Title I moneys to each work force investment area for the operation of the work force investment program in that work force investment area.

8-83-223. Allocation process. Subject to federal law and available appropriations, within thirty days after receipt of the federal appropriation from the United States department of labor, the local elected officials from each work force investment area in the state shall develop an allocation formula for each work force investment area. Development of the allocation formula by the local elected officials shall be facilitated through a statewide association of county commissioners, referred to in this section as Colorado counties, incorporated, or CCI. CCI shall ensure that the local elected officials from each work force

investment area have an opportunity to participate in the development and final approval of the recommendations for allocation formulas. The department and the state council shall provide technical assistance to CCI as requested in the development of recommended allocations. The local elected officials shall recommend the allocation formula to be applied and each allocation for adult, youth, and dislocated worker services under Title I. CCI shall forward the local elected officials' recommendations to the state council pursuant to section 8-83-224 (2) (f) for review and comment. The state council shall then submit such recommendations, together with the state council's comments, to the joint budget committee of the general assembly for review and comment before forwarding such recommendations to the governor for final determination. If the local elected officials cannot agree on an allocation, the local elected officials shall prepare alternatives and CCI shall submit the alternatives to the state council for review and comment and submission to the joint budget committee, which shall select one alternative and forward it to the governor for final determination. The local elected officials and CCI shall develop their own operational procedures. Any moneys received by the state under Title I, together with any associated state full-time equivalent personnel positions, are subject to appropriation by the general assembly.

8-83-224. State council - duties. (1) The state council shall function as, and is intended to meet the requirements for, the state work force investment board referred to in the federal act. In addition to performing the functions set forth in subsection (2) of this section, the state council shall serve in an advisory role to the governor for those areas specified by the federal act and shall serve as a conduit for information to local work force investment areas, including facilitation of grant applications and assistance to work force investment areas to enable work force investment areas to successfully implement programs under the federal act.

(2) The state council shall assist the governor in the following:

(a) Development of the comprehensive five-year state plan as specified in section 8-83-209;

(b) Development and continuous improvement of a statewide system of activities that are funded pursuant to the federal act or carried out through a one-stop system as set forth in this part 2 that receives Title I moneys. Such improvement shall include the development of linkages in order to ensure coordination and prevent duplication among the programs and activities authorized in this part 2.

(c) Review of local plans submitted by the designated work force investment boards and consortium work force investment board;

(d) Designation of local work force investment areas;

(e) Commenting at least once annually on the measures taken pursuant to the federal "Carl D. Perkins Vocational and Applied Technology Education Act", 20 U.S.C. sec. 2301 et seq.;

(f) Review and comment on, and submission to the joint budget committee for review and comment on, allocation formulas for the distribution of Title I moneys for adult employment and training activities and youth activities to work force investment areas in accordance with the process established in section 8-83-223;

(g) Preparation of the annual report to the secretary of the United States department of labor;

(h) Development of the statewide employment statistics system described in the "Wagner-Peyser Act";

(i) Development of an application for an incentive grant authorized pursuant to the federal act; and

(j) Any other functions as requested by the governor.

8-83-225. Colorado department of labor and employment - functions. (1) The department shall serve as the administrative entity for Title I moneys received pursuant to the federal act. The department also is responsible for:

(a) Administering the statewide labor market information and fiscal systems to the extent such

systems pertain to activities under the federal act;

(b) Assisting in the establishment and operation of one-stop career centers as requested by a local work force area;

(c) Disseminating lists of eligible training providers;

(d) Contracting and administering Title I moneys appropriated by the general assembly in accordance with the federal act;

(e) With input from the applicable work force investment areas, continuing the centralized computer system that links work force investment programs and includes training and technical support. A description of the state centralized system and procedures for developing, maintaining, and training must be included in the state plan required in section 8-83-209.

(f) Providing staff development and training services and technical assistance to local work force investment areas.

(2) The department shall provide ongoing consultation and technical assistance to each work force investment area for the operation of work force investment programs.

(3) The department shall encourage work force investment areas to inform individuals of the career possibilities in the field of nursing and the availability of practical nursing education programs.

8-83-226. Responsibilities of governor. (1) The governor shall perform the following functions, as specified in the federal act:

(a) Appoint members to the state council in accordance with section 24-46.3-101 (2), C.R.S.;

(b) Establish criteria for local elected officials to use in appointing members of local work force investment boards;

(c) Designate federal work force investment areas in consultation with the local elected officials, including local work force investment areas requesting to be a part of the federal work force investment area comprising a consortium of work force areas;

(d) Designate, modify, and terminate work force investment areas in the state, including temporary designation, and establish an appeal process for review of such decisions;

(e) Certify designated work force investment boards and the consortium work force investment board;

(f) Negotiate with the federal department of labor concerning the contents of the state plan; and

(g) Carry out such other duties and functions as may be required under the federal act.