

**First Regular Session  
Sixty-seventh General Assembly  
STATE OF COLORADO**

**INTRODUCED**

LLS NO. 09-0891.01 Christy Chase

**HOUSE BILL 09-1310**

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**HOUSE SPONSORSHIP**

**Levy, Apuan, Court, McCann, Pace, Ryden**

**SENATE SPONSORSHIP**

**Heath,**

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**House Committees**

Business Affairs and Labor

**Senate Committees**

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**A BILL FOR AN ACT**

101     **CONCERNING THE MISCLASSIFICATION OF EMPLOYEES AS**  
102             **INDEPENDENT CONTRACTORS FOR PURPOSES OF THE**  
103             **"COLORADO EMPLOYMENT SECURITY ACT".**

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**Bill Summary**

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

Creates the office of employee misclassification (office) in the division of employment and training (division) in the department of labor and employment (department) for the purpose of investigating complaints of employers misclassifying employees as independent contractors, thereby avoiding the payment of employment taxes for such employees. Authorizes the director of the division to investigate complaints and issue

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.  
*Capital letters indicate new material to be added to existing statute.*  
*Dashes through the words indicate deletions from existing statute.*

orders upon a finding that an employer has misclassified employees. Authorizes the director to collect back taxes and interest from an employer who misclassified employees and to impose additional fines and penalties when the director finds that the employer, with reckless disregard, misclassified employees.

Requires the executive director of the department to conduct a statewide study to determine the scope of the problem of employee misclassification, including whether the problem is widespread, whether particular industries are more inclined to engage in the practice, estimates of state revenues lost or not collected due to employee misclassifications, and whether a uniform definition of "employment relationship" is needed. Requires the executive director to submit a report to specified committees of the general assembly regarding the statewide study and the operations of the office in investigating complaints.

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

2 **SECTION 1.** Article 72 of title 8, Colorado Revised Statutes, is  
3 amended BY THE ADDITION OF A NEW SECTION to read:

4 **8-72-113. Office of employee misclassification - creation -**  
5 **investigations - enforcement - statewide study - report - definitions -**  
6 **legislative declaration - repeal.** (1) THE GENERAL ASSEMBLY HEREBY  
7 FINDS AND DECLARES THAT:

8 (a) MISCLASSIFICATION OF EMPLOYEES AS INDEPENDENT  
9 CONTRACTORS IN VIOLATION OF THE "COLORADO EMPLOYMENT SECURITY  
10 ACT" AND, IN PARTICULAR, THE PROVISIONS OF ARTICLE 70 OF THIS TITLE  
11 DEFINING THE EMPLOYMENT RELATIONSHIP, MAY POSE A SIGNIFICANT  
12 PROBLEM IN THIS STATE AND LEADS TO UNDERPAYMENT OF EMPLOYMENT  
13 TAXES THAT EMPLOYERS ARE OBLIGATED TO PAY THE STATE FOR COVERED  
14 EMPLOYMENT.

15 (b) BUSINESSES THAT MISCLASSIFY EMPLOYEES, EITHER  
16 INTENTIONALLY OR DUE TO OVERSIGHT, GAIN AN UNFAIR COMPETITIVE  
17 ADVANTAGE OVER BUSINESSES THAT PROPERLY CLASSIFY EMPLOYEES AND

1 PAY APPROPRIATE TAXES TO THE STATE.

2 (c) WHEN EMPLOYEES ARE MISCLASSIFIED, THE PROTECTIONS  
3 AVAILABLE TO PROPERLY CLASSIFIED EMPLOYEES AGAINST ECONOMIC  
4 INSECURITY ARE UNAVAILABLE TO THOSE MISCLASSIFIED EMPLOYEES, AND  
5 THE STREAM OF REVENUE THAT SHOULD BE PAID TO THE STATE TO  
6 PROVIDE PROTECTIONS TO MISCLASSIFIED EMPLOYEES IS NOT AVAILABLE.

7 (2) AS USED IN THIS SECTION:

8 (a) "ACT" MEANS THE "COLORADO EMPLOYMENT SECURITY ACT".

9 (b) "COMPLAINANT" MEANS THE PERSON WHO FILES A COMPLAINT  
10 WITH THE OFFICE PURSUANT TO THIS SECTION.

11 (c) "DIRECTOR" MEANS THE DIRECTOR OF THE DIVISION OF  
12 EMPLOYMENT AND TRAINING IN THE DEPARTMENT OF LABOR AND  
13 EMPLOYMENT.

14 (d) "EXECUTIVE DIRECTOR" MEANS THE EXECUTIVE DIRECTOR OF  
15 THE DEPARTMENT OF LABOR AND EMPLOYMENT.

16 (e) "MISCLASSIFICATION OF EMPLOYEES" MEANS ERRONEOUSLY  
17 CLASSIFYING A PERSON AS AN INDEPENDENT CONTRACTOR, FREE FROM  
18 CONTROL AND DIRECTION OF THE EMPLOYER IN THE PERFORMANCE OF  
19 SERVICE FOR THE EMPLOYER, WHEN THE EMPLOYER CANNOT SHOW AN  
20 EXCEPTION, PURSUANT TO SECTION 8-70-115, TO THE GENERAL RULE THAT  
21 SERVICE BEING PERFORMED FOR THE EMPLOYER IS PRESUMED TO BE  
22 EMPLOYMENT FOR PURPOSES OF THE ACT.

23 (f) "OFFICE" MEANS THE OFFICE OF EMPLOYEE MISCLASSIFICATION  
24 CREATED IN SUBSECTION (3) OF THIS SECTION.

25 (g) "RESPONDENT" MEANS THE PERSON AGAINST WHOM A  
26 COMPLAINT IS FILED PURSUANT TO THIS SECTION.

27 (3) (a) THERE IS HEREBY CREATED, WITHIN THE DIVISION OF

1 EMPLOYMENT AND TRAINING, THE OFFICE OF EMPLOYEE  
2 MISCLASSIFICATION. THE OFFICE, AT THE DIRECTION OF THE DIRECTOR,  
3 SHALL BE RESPONSIBLE FOR ACCEPTING AND INVESTIGATING COMPLAINTS  
4 REGARDING MISCLASSIFICATION OF EMPLOYEES AND ENFORCING THE  
5 REQUIREMENTS OF THE ACT REGARDING CLASSIFICATION OF EMPLOYEES  
6 AND PAYMENT OF TAXES.

7 (b) ANY PERSON MAY FILE A WRITTEN COMPLAINT WITH THE  
8 OFFICE ALLEGING THAT A PERSON ENGAGED IN EMPLOYMENT IS BEING  
9 MISCLASSIFIED BY AN EMPLOYER AS AN INDEPENDENT CONTRACTOR. THE  
10 COMPLAINANT SHALL SPECIFY IN THE COMPLAINT THE FACTS SHOWING  
11 THAT THE PERSON CLASSIFIED AS AN INDEPENDENT CONTRACTOR IS  
12 ENGAGED IN EMPLOYMENT, AS DEFINED IN ARTICLE 70 OF THIS TITLE.

13 (c) THE DIRECTOR, THROUGH THE OFFICE, MAY INVESTIGATE A  
14 COMPLAINT FILED PURSUANT TO THIS SUBSECTION (3) AND SHALL FOCUS  
15 THE RESOURCES OF THE OFFICE ON THE INVESTIGATION OF THE MOST  
16 EGREGIOUS COMPLAINTS OR THOSE COMPLAINTS ALLEGING INTENTIONAL  
17 ACTS OF MISCLASSIFICATION OF EMPLOYEES UNDERTAKEN IN ORDER TO  
18 GAIN A COMPETITIVE ADVANTAGE.

19 (d) NO LATER THAN THIRTY DAYS AFTER RECEIPT OF A COMPLAINT,  
20 THE DIRECTOR SHALL NOTIFY THE COMPLAINANT AND THE RESPONDENT  
21 THAT A COMPLAINT AGAINST THE RESPONDENT HAS BEEN RECEIVED AND  
22 WHETHER THE DIRECTOR WILL INVESTIGATE THE COMPLAINT. IF THE  
23 DIRECTOR DETERMINES THAT AN INVESTIGATION IS WARRANTED, THE  
24 DIRECTOR SHALL CONDUCT THE INVESTIGATION IN ACCORDANCE WITH THE  
25 ACT AND THE RULES ADOPTED PURSUANT TO THE ACT, AND THE  
26 COMPLAINANT AND RESPONDENT SHALL COOPERATE AND PROVIDE  
27 INFORMATION AS NECESSARY TO FACILITATE THE INVESTIGATION.

1 (e) (I) UPON CONCLUSION OF AN INVESTIGATION, THE DIRECTOR  
2 SHALL ISSUE A WRITTEN ORDER EITHER DISMISSING THE COMPLAINT OR  
3 FINDING THAT THE EMPLOYER HAS ENGAGED IN THE MISCLASSIFICATION  
4 OF EMPLOYEES AND HAS FAILED TO PAY APPROPRIATE TAXES FOR  
5 COVERED EMPLOYMENT AS DEFINED IN ARTICLE 70 OF THIS TITLE.

6 (II) IF THE DIRECTOR FINDS THAT AN EMPLOYER HAS ENGAGED IN  
7 THE MISCLASSIFICATION OF EMPLOYEES, THE DIRECTOR SHALL ORDER THE  
8 EMPLOYER TO PAY BACK TAXES OWED AND INTEREST.

9 (III) UPON A FINDING THAT THE EMPLOYER, WITH RECKLESS  
10 DISREGARD, MISCLASSIFIED EMPLOYEES, THE DIRECTOR MAY:

11 (A) IMPOSE A FINE OF UP TO FIVE THOUSAND DOLLARS PER  
12 MISCLASSIFIED EMPLOYEE FOR THE FIRST MISCLASSIFICATION WITH  
13 RECKLESS DISREGARD, AND FOR A SECOND OR SUBSEQUENT  
14 MISCLASSIFICATION WITH RECKLESS DISREGARD, A FINE OF UP TO  
15 TWENTY-FIVE THOUSAND DOLLARS PER MISCLASSIFIED EMPLOYEE; AND

16 (B) ISSUE AN ORDER PROHIBITING THE EMPLOYER FROM  
17 CONTRACTING WITH, OR RECEIVING ANY FUNDS FOR THE PERFORMANCE OF  
18 CONTRACTS FROM, THE STATE FOR UP TO TWO YEARS AFTER THE DATE OF  
19 THE DIRECTOR'S ORDER. UPON THE ISSUANCE OF SUCH ORDER, THE  
20 DIRECTOR SHALL NOTIFY STATE DEPARTMENTS AND AGENCIES AS  
21 NECESSARY TO ENSURE ENFORCEMENT OF THE ORDER.

22 (f) THE DIRECTOR SHALL PROVIDE COPIES OF THE WRITTEN ORDER  
23 TO THE COMPLAINANT AND RESPONDENT, AND THE WRITTEN ORDER SHALL  
24 BE A PUBLIC RECORD.

25 (g) AN EMPLOYER SHALL HAVE THE RIGHT TO APPEAL THE  
26 DIRECTOR'S ORDER IN ACCORDANCE WITH SECTION 8-76-113.

27 (4) THE DIRECTOR, BY ALL MEANS REASONABLE AND WITHIN

1 BUDGETARY CONSTRAINTS, SHALL PUBLICIZE THE COMPLAINT PROCESS  
2 ESTABLISHED IN THIS SECTION AND ITS AVAILABILITY TO THOSE WHO HAVE  
3 DISCOVERED MISCLASSIFICATION OF EMPLOYEES. THE DIRECTOR SHALL  
4 DEVELOP AND MAKE AVAILABLE FREE OF CHARGE TO EMPLOYERS A  
5 NOTICE EXPLAINING THE RIGHTS OF EMPLOYEES TO BE PROPERLY  
6 CLASSIFIED AND THE AVAILABILITY OF A COMPLAINT PROCESS PURSUANT  
7 TO THIS SECTION. EMPLOYERS SHALL POST THE NOTICE CONSPICUOUSLY  
8 IN THE WORKPLACE OR OTHERWISE WHERE IT CAN BE SEEN AS EMPLOYEES  
9 COME OR GO TO THEIR PLACES OF WORK.

10 (5) (a) THE EXECUTIVE DIRECTOR SHALL CONDUCT A STATEWIDE  
11 STUDY OF THE ISSUE OF EMPLOYEE MISCLASSIFICATION, WHICH SHALL  
12 INCLUDE, WITHOUT LIMITATION, THE FOLLOWING INFORMATION:

13 (I) THE STATE DEPARTMENTS, DIVISIONS, AND AGENCIES THAT ARE  
14 AFFECTED BY EMPLOYEE MISCLASSIFICATION;

15 (II) THE AMOUNT OF STATE REVENUE THAT IS LOST OR NOT  
16 COLLECTED DUE TO THE MISCLASSIFICATION OF EMPLOYEES;

17 (III) ESTIMATES OF HOW WIDESPREAD THE PROBLEM OF EMPLOYEE  
18 MISCLASSIFICATION IS AND WHETHER PARTICULAR INDUSTRIES ARE MORE  
19 LIKELY TO ENGAGE IN THE MISCLASSIFICATION OF EMPLOYEES;

20 (IV) CONSIDERATION OF WHETHER STATE LAW SHOULD SPECIFY A  
21 UNIFORM DEFINITION OF THE EMPLOYMENT RELATIONSHIP AND, IF SO, HOW  
22 IT SHOULD BE DEFINED; AND

23 (V) ANY OTHER ISSUES THE EXECUTIVE DIRECTOR DETERMINES  
24 APPROPRIATE.

25 (b) THE EXECUTIVE DIRECTOR SHALL DEVOTE DEPARTMENT  
26 RESOURCES AS NECESSARY TO COMPLETE THE STATEWIDE STUDY.

27 (c) THE EXECUTIVE DIRECTOR SHALL SEEK PUBLIC INPUT AND MAY

1 CONDUCT PUBLIC HEARINGS OR APPOINT STUDY GROUPS AS NECESSARY TO  
2 OBTAIN INFORMATION NECESSARY TO COMPLETE THE STUDY.

3 (6) NO LATER THAN TWO YEARS AFTER THE EFFECTIVE DATE OF  
4 THIS SECTION, THE EXECUTIVE DIRECTOR SHALL SUBMIT A REPORT ON THE  
5 STATEWIDE STUDY CONDUCTED PURSUANT TO SUBSECTION (5) OF THIS  
6 SECTION TO THE BUSINESS, LABOR, AND TECHNOLOGY COMMITTEE OF THE  
7 SENATE AND THE BUSINESS AFFAIRS AND LABOR COMMITTEE OF THE  
8 HOUSE OF REPRESENTATIVES, OR THEIR SUCCESSOR COMMITTEES. THE  
9 REPORT SHALL ALSO INCLUDE INFORMATION ON THE OPERATION OF THE  
10 OFFICE, SPECIFYING AT LEAST THE FOLLOWING:

11 (a) THE NUMBER OF COMPLAINTS SUBMITTED TO THE OFFICE  
12 PURSUANT TO THIS SECTION;

13 (b) THE NUMBER OF COMPLAINTS THAT WERE INVESTIGATED BY  
14 THE DIRECTOR;

15 (c) THE OUTCOME OF THE COMPLAINTS THAT WERE INVESTIGATED,  
16 INCLUDING WHETHER ANY EMPLOYERS WERE FOUND TO HAVE  
17 MISCLASSIFIED EMPLOYEES AND THE AMOUNT OF TAXES, INTEREST, OR  
18 FINES IMPOSED AGAINST SUCH EMPLOYERS;

19 (d) A RECOMMENDATION REGARDING WHETHER THE OFFICE AND  
20 ITS FUNCTIONS SHOULD BE CONTINUED, MODIFIED, OR REPEALED; AND

21 (e) ANY OTHER ISSUES OR INFORMATION THE EXECUTIVE DIRECTOR  
22 DEEMS APPROPRIATE.

23 (7) SUBSECTIONS (5) AND (6) OF THIS SECTION AND THIS  
24 SUBSECTION (7) ARE REPEALED, EFFECTIVE JULY 1, 2012.

25 **SECTION 2. Safety clause.** The general assembly hereby finds,  
26 determines, and declares that this act is necessary for the immediate  
27 preservation of the public peace, health, and safety.