

**First Regular Session
Seventieth General Assembly
STATE OF COLORADO**

ENGROSSED

*This Version Includes All Amendments Adopted
on Second Reading in the House of Introduction*

LLS NO. 15-0902.01 Jery Payne x2157

SENATE BILL 15-269

SENATE SPONSORSHIP

Roberts,

HOUSE SPONSORSHIP

Brown,

Senate Committees
Judiciary

House Committees

A BILL FOR AN ACT

101 **CONCERNING THE DETERMINATION OF WHETHER AN INDIVIDUAL IS AN**
102 **INDEPENDENT CONTRACTOR FOR PURPOSES OF COVERAGE**
103 **UNDER THE STATE UNEMPLOYMENT INSURANCE PROGRAM.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/bills summaries>.)

Currently, the Colorado Employment Security Act (unemployment insurance) lists factors to be considered in determining whether an individual is an employee or an independent contractor. The bill establishes a bright-line test to make this determination, including:

! Repealing the test of whether the individual is customarily

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.

SENATE
Amended 2nd Reading
May 1, 2015

- engaged in an independent trade;
- ! Setting a numerical standard of 6 factors out of 11 to show an independent contractor relationship;
- ! Adding a factor of whether the individual has executed a contract that says the individual is an independent contractor;
- ! Adding a factor of whether the individual is required to perform the services at a place of business;
- ! Clarifying the relationship between the factors and compliance with state or federal law; and
- ! Repealing the rebuttable presumption that an independent contractor relationship exists if the parties have executed a contract with certain disclosures.

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

2 **SECTION 1.** In Colorado Revised Statutes, 8-70-115, **amend** (1)
3 (b), (1) (c), (1) (d), and (3); and **repeal** (2) as follows:

4 **8-70-115. Employment - "Federal Unemployment Tax Act".**

5 (1) (b) Notwithstanding any other provision of this subsection (1) and
6 notwithstanding ~~the provisions of section 8-80-101, service performed by~~
7 ~~an individual for another shall be deemed to be~~ IS employment IF IT MEETS
8 A DEFINITION OF EMPLOYMENT UNDER THIS ARTICLE, irrespective of
9 whether the common-law relationship of master and servant exists, unless
10 ~~and until it is shown to the satisfaction of the division that such individual~~
11 ~~is free from control and direction in the performance of the service both~~
12 ~~under his contract for the performance of service and in fact, and such~~
13 ~~individual is customarily engaged in an independent trade, occupation,~~
14 ~~profession, or business related to the service performed. For purposes of~~
15 ~~this section, the degree of control exercised by the person for whom the~~
16 ~~service is performed over the performance of the service or over the~~
17 ~~individual performing the service, if exercised pursuant to the~~
18 ~~requirements of any state or federal statute or regulation, shall not be~~

1 ~~considered~~ AT LEAST SIX FACTORS LISTED IN PARAGRAPH (c) OF THIS
2 SUBSECTION (1) FAVOR A FINDING THAT THE INDIVIDUAL IS AN
3 INDEPENDENT CONTRACTOR. COMPLIANCE WITH STATE OR FEDERAL
4 STATUTES OR REGULATIONS BY THE INDIVIDUAL OR BY THE PERSON FOR
5 WHOM SERVICES ARE PERFORMED IS NOT EVIDENCE OF CONTROL OR
6 EMPLOYMENT: IF A FACTOR LISTED IN PARAGRAPH (c) OF THIS SUBSECTION
7 (1) WOULD FAVOR A FINDING THAT A PERSON IS AN INDEPENDENT
8 CONTRACTOR EXCEPT FOR COMPLIANCE WITH STATE OR FEDERAL
9 STATUTES OR REGULATIONS, THEN THE FACTOR IS DEEMED TO FAVOR A
10 FINDING THAT THE INDIVIDUAL IS AN INDEPENDENT CONTRACTOR.

11 (c) ~~To evidence that such individual is engaged in an independent~~
12 ~~trade, occupation, profession, or business and is free from control and~~
13 ~~direction in the performance of the service, the individual and the person~~
14 ~~for whom services are performed may either show by a preponderance of~~
15 ~~the evidence that the conditions set forth in paragraph (b) of this~~
16 ~~subsection (1) have been satisfied, or they may demonstrate in a written~~
17 ~~document, signed by both parties, that the person for whom services are~~
18 ~~performed does not:~~ A PERSON MAY DEMONSTRATE A DE FACTO
19 INDEPENDENT CONTRACTOR RELATIONSHIP IF THE PERSON ESTABLISHES BY
20 A PREPONDERANCE OF THE EVIDENCE THAT AT LEAST SIX FACTORS LISTED
21 IN SUBPARAGRAPHS (I) TO (XI) OF THIS PARAGRAPH (c) FAVOR A FINDING
22 THAT AN INDIVIDUAL IS AN INDEPENDENT CONTRACTOR. THE FOLLOWING
23 FACTORS FAVOR A FINDING THAT AN INDIVIDUAL IS AN INDEPENDENT
24 CONTRACTOR:

25 (I) THE PERSON FOR WHOM SERVICES ARE PERFORMED DOES NOT
26 require the individual to work exclusively for the person for whom
27 services are performed; ~~except that the individual may choose to work~~

1 exclusively for the said person for a finite period of time specified in the
2 document;

3 (II) THE PERSON FOR WHOM SERVICES ARE PERFORMED DOES NOT
4 establish a quality standard for the individual; except that ~~such~~ THE
5 person ~~can~~ MAY provide plans and specifications regarding the work but
6 ~~cannot~~ DOES NOT oversee the actual work or instruct the individual as to
7 how the work will be performed;

8 (III) THE PERSON FOR WHOM SERVICES ARE PERFORMED DOES NOT
9 pay a salary or hourly rate; ~~but rather a fixed or contract rate;~~

10 (IV) THE PERSON FOR WHOM SERVICES ARE PERFORMED DOES NOT
11 HAVE THE RIGHT TO terminate the work during the contract period
12 WITHOUT CAUSE; ~~unless the individual violates the terms of the contract~~
13 ~~or fails to produce a result that meets the specifications of the contract;~~

14 (V) THE PERSON FOR WHOM SERVICES ARE PERFORMED DOES NOT
15 provide more than minimal training for the individual;

16 (VI) THE PERSON FOR WHOM SERVICES ARE PERFORMED DOES NOT
17 provide tools or benefits to the individual; except that materials and
18 equipment may be supplied;

19 (VII) THE PERSON FOR WHOM SERVICES ARE PERFORMED DOES NOT
20 dictate the time of performance; except that a completion schedule and a
21 range of mutually agreeable work hours may be established;

22 (VIII) ~~Pay the individual personally but rather makes checks~~
23 ~~payable to the trade or business name of the individual~~ THE PERSON FOR
24 WHOM SERVICES ARE PERFORMED DOES NOT PROHIBIT THE INDIVIDUAL
25 FROM USING ASSISTANTS; and

26 (IX) THE PERSON FOR WHOM SERVICES ARE PERFORMED DOES NOT
27 combine ~~his~~ THE INDIVIDUAL'S business operations in any way with the

1 individual's business ~~but instead maintains such operations as separate~~
2 ~~and distinct~~ OPERATIONS OF THE PERSON FOR WHOM SERVICES ARE
3 PERFORMED;

4 (X) THE INDIVIDUAL AND THE PERSON FOR WHOM SERVICES ARE
5 PERFORMED HAVE EXECUTED A CONTRACT IDENTIFYING THE INDIVIDUAL
6 AS AN INDEPENDENT CONTRACTOR; AND

7 (XI) THE PERSON FOR WHOM SERVICES ARE PERFORMED DOES NOT
8 REQUIRE THE INDIVIDUAL TO PERFORM WORK ON THE PREMISES OF THE
9 PERSON'S PLACE OF BUSINESS.

10 (d) ~~A document may satisfy the requirements of paragraph (c) of~~
11 ~~this subsection (1) if such document demonstrates, by a preponderance of~~
12 ~~the evidence, the existence of such factors listed in subparagraphs (I) to~~
13 ~~(IX) of paragraph (c) of this subsection (1) as are appropriate to the~~
14 ~~parties' situation. IF A PERSON FAILS TO ESTABLISH BY A PREPONDERANCE~~
15 ~~OF THE EVIDENCE THAT AT LEAST SIX OF THE FACTORS LISTED IN~~
16 ~~PARAGRAPH (c) OF THIS SUBSECTION (1) FAVOR A FINDING THAT AN~~
17 ~~INDIVIDUAL IS AN INDEPENDENT CONTRACTOR, THE INDIVIDUAL IS NOT AN~~
18 ~~INDEPENDENT CONTRACTOR.~~

19 (2) ~~Where the parties use a written document pursuant to~~
20 ~~paragraph (c) of subsection (1) of this section, such document may be the~~
21 ~~contract for performance of service or a separate document. Such~~
22 ~~document shall create a rebuttable presumption of an independent~~
23 ~~contractor relationship between the parties, where such document~~
24 ~~contains a disclosure, in type which is larger than the other provisions in~~
25 ~~the document or in bold-faced or underlined type, that the independent~~
26 ~~contractor is not entitled to unemployment insurance benefits unless~~
27 ~~unemployment compensation coverage is provided by the independent~~

1 contractor or some other entity, and that the independent contractor is
2 obligated to pay federal and state income tax on any moneys paid
3 pursuant to the contract relationship.

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

11 **SECTION 2. Act subject to petition - effective date.** This act
12 takes effect at 12:01 a.m. on the day following the expiration of the
13 ninety-day period after final adjournment of the general assembly (August
14 5, 2015, if adjournment sine die is on May 6, 2015); except that, if a
15 referendum petition is filed pursuant to section 1 (3) of article V of the
16 state constitution against this act or an item, section, or part of this act
17 within such period, then the act, item, section, or part will not take effect
18 unless approved by the people at the general election to be held in
19 November 2016 and, in such case, will take effect on the date of the
20 official declaration of the vote thereon by the governor.