

Second Regular Session
Seventieth General Assembly
STATE OF COLORADO

REVISED

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

LLS NO. 16-1218.01 Yelana Love x2295

SENATE BILL 16-179

SENATE SPONSORSHIP

Roberts and Heath,

HOUSE SPONSORSHIP

DelGrosso and Lee, Saine

Senate Committees

Business, Labor, & Technology
Appropriations

House Committees

Business Affairs and Labor
Appropriations

A BILL FOR AN ACT

101 CONCERNING IMPROVEMENTS TO THE PROCESSES USED BY THE
102 DEPARTMENT OF LABOR AND EMPLOYMENT REGARDING THE
103 EMPLOYMENT CLASSIFICATION OF AN INDIVIDUAL FOR
104 PURPOSES OF UNEMPLOYMENT INSURANCE ELIGIBILITY, AND, IN
105 CONNECTION THEREWITH, MAKING AN APPROPRIATION.

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/billsummaries>.)

Under current law, the department of labor and employment (CDLE) determines whether an individual is classified as an employee or

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.

HOUSE
2nd Reading Unamended
May 9, 2016

SENATE
3rd Reading Unamended
April 29, 2016

SENATE
Amended 2nd Reading
April 28, 2016

an independent contractor for purposes of unemployment insurance eligibility. CDLE has the authority to audit businesses to gather information to assist in making the determination. As it relates to the audit process, the bill requires CDLE to:

- ! Develop guidance for employers on the statutory factors specified that determine the classification;
- ! Clarify the process by which an employer or individual may submit further information in response to a determination by the department and prior to an appeal;
- ! Establish an individual to serve as a resource for employers on certain classification and audit matters;
- ! Establish internal methods to improve consistency between auditors; and
- ! Establish an independent review of a portion of audit and appeal results at least twice a year to monitor trends and make improvements to the audit process.

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

2 **SECTION 1. Legislative declaration.** (1) The general assembly
3 hereby finds and declares that:

4 (a) Employee and independent contractor classification in the
5 unemployment insurance program is an important issue for Colorado
6 employers and workers;

7 (b) Establishing a culture of compliance and education with regard
8 to worker classification should be a priority for the Colorado department
9 of labor and employment (CDLE);

10 (c) It is more cost effective for the CDLE and in the best interest
11 of Colorado business for the CDLE to enhance employer education and
12 outreach with regard to worker classification and continue to improve its
13 audit processes with compliance in mind;

14 (d) The CDLE can achieve a more robust culture of compliance
15 by better integrating compliance into its evaluation metrics, including
16 developing, tracking, and improving the percentage of "clean

1 compliance" during random audits, and by making education and
2 compliance assistance a component of auditor development and core job
3 duties; and

4 (e) The CDLE can also achieve greater compliance by enhancing
5 employer knowledge through measures that include augmenting the
6 current online handbook, tailoring the handbook's application to certain
7 popular industries, and working with industry to refine and augment
8 employer outreach and training.

9 **SECTION 2.** In Colorado Revised Statutes, 8-70-115, **add** (4) as
10 follows:

11 **8-70-115. Employment - "Federal Unemployment Tax Act".**

12 (4) TO IMPROVE THE PROCESS OF DETERMINING THE CLASSIFICATION OF
13 AN INDIVIDUAL FOR PURPOSES OF THIS SECTION, INCLUDING ANY AUDITS
14 PERFORMED PURSUANT TO SECTION 8-72-107, THE DEPARTMENT SHALL:

15 (a) DEVELOP GUIDANCE FOR EMPLOYERS ON THE FACTORS
16 SPECIFIED IN PARAGRAPH (c) OF SUBSECTION (1) OF THIS SECTION;

17 (b) CLARIFY THE PROCESS BY WHICH AN EMPLOYER OR INDIVIDUAL
18 MAY SUBMIT FURTHER INFORMATION IN RESPONSE TO A DETERMINATION
19 BY THE DEPARTMENT AND PRIOR TO AN APPEAL;

20 (c) ESTABLISH AN INDIVIDUAL TO SERVE AS A RESOURCE FOR
21 EMPLOYERS BY PROVIDING GUIDANCE ON:

22 (I) THE PROPER CLASSIFICATION OF WORKERS;

23 (II) AUDIT FINDINGS; AND

24 (III) OPTIONS FOR CURING OR APPEALING AN AUDIT;

25 (d) ESTABLISH INTERNAL METHODS TO IMPROVE THE CONSISTENCY
26 AMONG AUDITORS; AND

27 (e) ESTABLISH AN INDEPENDENT REVIEW OF A PORTION OF AUDIT

1 AND APPEAL RESULTS AT LEAST TWICE A YEAR TO MONITOR TRENDS AND
2 MAKE IMPROVEMENTS TO THE AUDIT PROCESS.

3 **SECTION 3. Appropriation.** For the 2016-17 state fiscal year,
4 \$36,750 is appropriated to the department of labor and employment for
5 use by the division of unemployment insurance. This appropriation is
6 from the general fund and is based on an assumption that the division will
7 require an additional 0.5 FTE. To implement this act, the division may
8 use this appropriation for program costs.

9 **SECTION 4. Act subject to petition - effective date.** This act
10 takes effect at 12:01 a.m. on the day following the expiration of the
11 ninety-day period after final adjournment of the general assembly (August
12 10, 2016, if adjournment sine die is on May 11, 2016); except that, if a
13 referendum petition is filed pursuant to section 1 (3) of article V of the
14 state constitution against this act or an item, section, or part of this act
15 within such period, then the act, item, section, or part will not take effect
16 unless approved by the people at the general election to be held in
17 November 2016 and, in such case, will take effect on the date of the
18 official declaration of the vote thereon by the governor.