

**First Regular Session
Seventy-third General Assembly
STATE OF COLORADO**

ENGROSSED

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

LLS NO. 21-0641.01 Kristen Forrestal x4217

HOUSE BILL 21-1207

HOUSE SPONSORSHIP

Daugherty and Benavidez,

SENATE SPONSORSHIP

Lee and Fields,

House Committees
Business Affairs & Labor

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING THE OVERPAYMENT OF WORKERS' COMPENSATION**
102 **BENEFITS.**

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://leg.colorado.gov>.)

The bill limits the definition of "overpayments" of workers' compensation benefits to include only benefits paid as a result of fraud or duplicate benefits that result from offsets that reduce disability or death benefits paid to a claimant. The bill also:

- Clarifies that this limit does not prevent an insurance carrier from receiving a credit against permanent disability

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

HOUSE
Amended 2nd Reading
April 7, 2021

- benefits for temporary disability benefits paid beyond the date of maximum medical improvement; and
- Prohibits the director of the division of workers' compensation or an administrative law judge from reopening an award of benefits paid to a claimant due to an overpayment except in limited, specific circumstances.

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

2 **SECTION 1.** In Colorado Revised Statutes, 8-40-201, **amend** the
3 introductory portion and (15.5) as follows:

4 **8-40-201. Definitions.** As used in articles 40 to 47 of this title
5 TITLE 8, unless the context otherwise requires:

6 (15.5) (a) "Overpayment" means money received by a claimant
7 that: ~~exceeds the amount that should have been paid, or which the~~
8 ~~claimant was not entitled to receive, or which~~

9 (I) IS THE RESULT OF FRAUD;

10 (II) IS THE RESULT OF AN ERROR DUE ONLY TO MISCALCULATION,
11 OMISSION, OR CLERICAL ERROR ASSERTED IN A NEW ADMISSION OF
12 LIABILITY FILED WITHIN THIRTY DAYS OF THE ERRONEOUS ADMISSION OF
13 LIABILITY; OR

14 (III) Results in duplicate benefits because of offsets that reduce
15 disability or death benefits payable under ~~said~~ articles 40 TO 47 OF THIS
16 TITLE 8. DUPLICATE BENEFITS INCLUDE ANY WAGES EARNED BY A
17 CLAIMANT IN THE SAME OR OTHER EMPLOYMENT WHILE A CLAIMANT IS
18 ALSO RECEIVING TEMPORARY DISABILITY BENEFITS.

19 (b) For an overpayment to result, it is not necessary that the
20 overpayment exist at the time the claimant received disability or death
21 benefits under ~~said~~ articles 40 TO 47 OF THIS TITLE 8.

22 (c) NOTHING IN THIS SUBSECTION (15.5):

1 (I) PREVENTS AN INSURANCE CARRIER OR AN EMPLOYER FROM
2 RECEIVING A CREDIT AGAINST PERMANENT DISABILITY BENEFITS FOR
3 TEMPORARY DISABILITY BENEFITS PAID BEYOND THE INITIAL DATE OF
4 MAXIMUM MEDICAL IMPROVEMENT ASSIGNED BY AN AUTHORIZED
5 TREATING PHYSICIAN OR THE FINAL DATE OF MAXIMUM MEDICAL
6 IMPROVEMENT ESTABLISHED BY ANY OTHER MEANS, WHICHEVER IS LATER
7 AND TO THE EXTENT THAT PERMANENT DISABILITY BENEFITS REMAIN
8 UNPAID AT THE TIME OF THE FILING OF A FINAL ADMISSION OF LIABILITY;
9 OR

10 (II) AFFECTS THE POWER OF THE DIRECTOR OR ADMINISTRATIVE
11 LAW JUDGES TO DETERMINE OVERPAYMENTS AND REQUIRE REPAYMENT OF
12 OVERPAYMENTS PURSUANT TO SECTIONS 8-42-113.5 AND 8-43-207 (1)(q).

13 SECTION 2. In Colorado Revised Statutes, 8-43-303, **amend** (1)
14 as follows:

15 **8-43-303. Reopening.** (1) At any time within six years after the
16 date of injury, the director or an administrative law judge may, after
17 notice to all parties, review and reopen any award on the ground of fraud,
18 an overpayment INVOLVING THE CIRCUMSTANCES DESCRIBED IN SECTION
19 8-42-113.5, an error, a mistake, or a change in condition, except for those
20 settlements entered into pursuant to section 8-43-204 in which the
21 claimant waived all ~~right~~ RIGHTS to reopen an award; but a settlement
22 may be reopened at any time on the ground of fraud or mutual mistake of
23 material fact. ~~Upon a prima facie showing that the claimant received~~
24 ~~overpayments, the award shall be reopened solely as to overpayments and~~
25 ~~repayment shall be ordered.~~ In cases involving the circumstances
26 described in section 8-42-113.5, recovery of overpayments shall be
27 ordered in accordance with said section. If an award is reopened on

1 grounds of an error, a mistake, or a change in condition, compensation
2 and medical benefits previously ordered may be ended, diminished,
3 maintained, or increased. ~~No such Reopening shall~~ DOES NOT affect the
4 earlier award as to ~~moneys~~ MONEY already paid except in cases of fraud,
5 ~~or overpayment~~. Any order entered under this subsection (1) ~~shall be~~ IS
6 subject to review in the same manner as other orders.

7 **SECTION 3. Effective date.** This act takes effect January 1,
8 2022.

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