

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

INTRODUCED

LLS NO. 13-0128.01 Jerry Barry x4341

HOUSE BILL 13-1227

HOUSE SPONSORSHIP

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SENATE SPONSORSHIP

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House Committees

Business, Labor, Economic, & Workforce Development

Appropriations

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING ACTIONS RELATED TO WAGES.**

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>.)

The bill creates the crime of wage theft for failing to pay wages or compensation to an employee or falsely denying the amount of wages or compensation due. Each failure to pay or false denial of wages or compensation due to each employee in each calendar month is a separate violation. It is an affirmative defense if a person is unable to pay the wages or compensation. The bill incorporates the definitions of "employee" and "wages or compensation" from other statutes pertaining

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.

to wages.

For purposes of duties, obligations, and liabilities related to the payment of wages, the bill:

- ! Expands the definition of "employer" to include an officer, owner, or agent who actively asserts substantial control over the management or financial affairs of an entity employing persons in Colorado;
- ! Clarifies that all employers are jointly and severally liable for the payment of wages;
- ! Requires an employer to maintain records reflecting information in an employee's pay statement for at least 3 years after payment of the wages and to make the records available to the employee and the division of labor in the department of labor and employment (division); and
- ! Requires an employer to mail a check for wages to the employee's last-known address within 60 days after the check was due if an employer is unable to otherwise deliver the check to the employee.

Under current law, in an action for unpaid wages, an employee is required to make a written demand on his or her employer to recover penalties. The bill removes this requirement for actions brought in small claims court. The bill reduces the penalties for failing to pay wages by 50% if the employer makes legal tender to the employee of the amount that the employer believes in good faith is due the employee.

The bill authorizes the director of the division (director) to establish an administrative procedure to adjudicate wage claims. For wage claims filed with the division for less than \$7,500, the bill establishes procedures for the division to adjudicate the claim and issue citations and notices of assessments for the amounts due. The procedures include the ability to appeal a determination of the division to a hearing officer and ultimately to the Colorado court of appeals.

Current law provides that fines collected by the division are deposited in the general fund. The bill provides that the fines are deposited in a new wage theft enforcement fund.

The bill specifies that, in any action for payment of wages or compensation, a court is to award a successful employee the employee's reasonable attorney fees and court costs.

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

2 **SECTION 1. Short title.** This act shall be known as the "Income
3 Protection Act".

4 **SECTION 2.** In Colorado Revised Statutes, **add** 18-4-420 as

1 follows:

2 **18-4-420. Wage theft - definitions.** (1) AN EMPLOYER COMMITS
3 THE OFFENSE OF WAGE THEFT IF THE EMPLOYER IS UNDER A DUTY TO PAY,
4 OR THE EMPLOYER HAS MANAGEMENT OR OPERATIONAL CONTROL OF AN
5 ENTITY THAT IS UNDER A DUTY TO PAY, WAGES OR COMPENSATION TO AN
6 EMPLOYEE, AND THE EMPLOYER KNOWINGLY:

7 (a) FAILS TO PAY THE WAGES OR COMPENSATION TO AN EMPLOYEE;
8 OR

9 (b) FALSELY DENIES THAT THE FULL AMOUNT OF WAGES OR
10 COMPENSATION IS DUE TO AN EMPLOYEE.

11 (2) WAGE THEFT IS:

12 (a) A CLASS 2 MISDEMEANOR IF THE AMOUNT OF WAGES OR
13 COMPENSATION INVOLVED IS LESS THAN FIVE HUNDRED DOLLARS;

14 (b) A CLASS 1 MISDEMEANOR IF THE AMOUNT OF WAGES OR
15 COMPENSATION INVOLVED IS FIVE HUNDRED DOLLARS OR MORE BUT LESS
16 THAN ONE THOUSAND DOLLARS;

17 (c) A CLASS 4 FELONY IF THE AMOUNT OF WAGES OR
18 COMPENSATION INVOLVED IS ONE THOUSAND DOLLARS OR MORE BUT LESS
19 THAN TWENTY THOUSAND DOLLARS;

20 (d) A CLASS 3 FELONY IF THE AMOUNT OF WAGES OR
21 COMPENSATION INVOLVED IS TWENTY THOUSAND DOLLARS OR MORE.

22 (3) FOR PURPOSES OF THIS SECTION, EACH FAILURE TO PAY OR
23 FALSE DENIAL OF WAGES OR COMPENSATION TO EACH EMPLOYEE DUE
24 DURING EACH CALENDAR MONTH IS A SEPARATE VIOLATION.

25 (4) (a) IT IS AN AFFIRMATIVE DEFENSE TO AN OFFENSE DESCRIBED
26 IN THIS SECTION IF:

27 (I) THE EMPLOYER DOES NOT HAVE THE ABILITY TO PAY THE

1 WAGES OR COMPENSATION; AND

2 (II) AT THE TIME OF REQUESTING THE LABOR OR SERVICE, THE
3 EMPLOYER HAD A GOOD FAITH AND REASONABLE BELIEF THAT HE OR SHE
4 WOULD MAKE PAYMENT IN A TIMELY MANNER WHEN DUE.

5 (b) FOR PURPOSES OF THIS SUBSECTION (4), AN EMPLOYER IS
6 PRESUMED TO HAVE THE ABILITY TO PAY IF, AT THE TIME THE OFFENSE IS
7 COMMITTED, THE EMPLOYER OR ENTITY HAS LEGAL CONTROL OVER A
8 SUFFICIENT AMOUNT OF MONEY TO PAY THE WAGES OR COMPENSATION
9 AND HAS NOT FILED FOR PROTECTION UNDER THE FEDERAL BANKRUPTCY
10 LAWS.

11 (5) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE
12 REQUIRES:

13 (a) "EMPLOYEE" HAS THE SAME MEANING AS SET FORTH IN
14 SECTION 8-4-101 (6), C.R.S.

15 (b) "EMPLOYER" HAS THE SAME MEANING AS SET FORTH IN
16 SECTION 8-4-101 (7), C.R.S.

17 (c) "WAGES OR COMPENSATION" HAS THE SAME MEANING AS
18 "WAGE" OR "COMPENSATION" IN SECTION 8-4-101 (16), C.R.S.

19 **SECTION 3.** In Colorado Revised Statutes, **amend** 8-4-101 as
20 follows:

21 **8-4-101. Definitions.** As used in this article, unless the context
22 otherwise requires:

23 (1) "CITATION" MEANS A WRITTEN DETERMINATION BY THE
24 DIVISION THAT A WAGE PAYMENT REQUIREMENT HAS BEEN VIOLATED.

25 (†) (2) "Credit" means an arrangement or understanding with the
26 bank or other drawee for the payment of an order, check, draft, note,
27 memorandum, or other acknowledgment of indebtedness.

1 ~~(2)~~ (3) "Director" means the director of the division of labor or
2 his or her designee.

3 (4) "DISMISSAL" MEANS THE DIVISION CANNOT MAKE A
4 DETERMINATION THAT A WAGE REQUIREMENT HAS BEEN VIOLATED.

5 ~~(3)~~ (5) "Division" means the division of labor in the department
6 of labor and employment.

7 ~~(4)~~ (6) "Employee" means any person, including a migratory
8 laborer, performing labor or services for the benefit of an employer in
9 which the employer may command when, where, and how much labor or
10 services shall be performed. For the purpose of this article, an individual
11 primarily free from control and direction in the performance of the
12 service, both under his or her contract for the performance of service and
13 in fact, and who is customarily engaged in an independent trade,
14 occupation, profession, or business related to the service performed is not
15 an "employee".

16 ~~(5)~~ (7) (a) "Employer" means every person, firm, partnership,
17 association, corporation, migratory field labor contractor or crew leader,
18 receiver, or other officer of court in Colorado ~~and any agent, or officer~~
19 ~~thereof, of the above mentioned classes,~~ employing any person in
20 Colorado; except that the provisions of this article shall not apply to the
21 state or its agencies or entities, counties, cities and counties, municipal
22 corporations, quasi-municipal corporations, school districts, and
23 irrigation, reservoir, or drainage conservation companies or districts
24 organized and existing under the laws of Colorado.

25 (b) "EMPLOYER" ALSO INCLUDES ANY OFFICER, OWNER, OR AGENT
26 WHO ACTIVELY ASSERTS SUBSTANTIAL CONTROL OVER THE MANAGEMENT
27 OR FINANCIAL AFFAIRS OF AN ENTITY EMPLOYING ANY PERSON IN

1 COLORADO.

2 ~~(6)~~ (8) "Field labor contractor" means anyone who contracts with
3 an employer to recruit, solicit, hire, or furnish migratory labor for
4 agricultural purposes to do any one or more of the following activities in
5 this state: Hoeing, thinning, topping, sacking, hauling, harvesting,
6 cleaning, cutting, sorting, and other direct manual labor affecting beets,
7 onions, lettuce, potatoes, tomatoes, and other products, fruits, or crops in
8 which labor is seasonal in this state. Such term shall not include a farmer
9 or grower, packinghouse operator, ginner, or warehouseman or any
10 full-time regular and year-round employee of the farmer or grower,
11 packinghouse operator, ginner, or warehouseman who engages in such
12 activities, nor shall it include any migratory laborer who engages in such
13 activities with regard to such migratory laborer's own children, spouse,
14 parents, siblings, or grandparents.

15 (9) "FINE" MEANS ANY MONETARY AMOUNT ASSESSED AGAINST AN
16 EMPLOYER AND PAYABLE TO THE DIVISION.

17 ~~(7)~~ (10) "Migratory laborer" means any person from within or
18 without the limits of the state of Colorado who offers his or her services
19 to a field labor contractor, whether from within or from without the limits
20 of the state of Colorado, so that said field labor contractor may enter into
21 a contract with any employer to furnish the services of said migratory
22 laborers in seasonal employment.

23 (11) "NOTICE OF ASSESSMENT" MEANS A WRITTEN NOTICE BY THE
24 DIVISION, BASED ON A CITATION, THAT THE EMPLOYER MUST PAY THE
25 AMOUNT OF WAGES, PENALTIES, OR FINES ASSESSED.

26 (12) "NOTICE OF COMPLAINT" MEANS THE LETTER SENT BY THE
27 DIVISION AS DESCRIBED IN SECTION 8-4-111 (2) (a).

1 (13) "PENALTY" MEANS ANY MONETARY AMOUNT ASSESSED
2 AGAINST AN EMPLOYER AND PAYABLE TO AN EMPLOYEE.

3 (14) "REPEAT WILLFUL VIOLATOR" MEANS AN EMPLOYER THAT,
4 WITHIN THREE YEARS OF THE DATE OF THE MOST RECENT CITATION AND
5 NOTICE OF ASSESSMENT, WAS THE SUBJECT OF A FINAL AND BINDING
6 CITATION AND NOTICE OF ASSESSMENT FOR A VIOLATION OF A WAGE
7 PAYMENT REQUIREMENT.

8 (15) "WAGE COMPLAINT" MEANS A COMPLAINT FILED WITH THE
9 DIVISION FROM AN EMPLOYEE FOR UNPAID WAGES ALLEGING THAT AN
10 EMPLOYER HAS VIOLATED SECTION 15 OF ARTICLE XVIII OF THE
11 COLORADO CONSTITUTION, THIS ARTICLE, OR ANY RULE ADOPTED BY THE
12 DIRECTOR PURSUANT TO THIS ARTICLE.

13 ~~(8)~~ (16) (a) "Wages" or "compensation" means:

14 (I) All amounts for labor or service performed by employees,
15 whether the amount is fixed or ascertained by the standard of time, task,
16 piece, commission basis, or other method of calculating the same or
17 whether the labor or service is performed under contract, subcontract,
18 partnership, subpartnership, station plan, or other agreement for the
19 performance of labor or service if the labor or service to be paid for is
20 performed personally by the person demanding payment. No amount is
21 considered to be wages or compensation until such amount is earned,
22 vested, and determinable, at which time such amount shall be payable to
23 the employee pursuant to this article.

24 (II) Bonuses or commissions earned for labor or services
25 performed in accordance with the terms of any agreement between an
26 employer and employee;

27 (III) Vacation pay earned in accordance with the terms of any

1 agreement. If an employer provides paid vacation for an employee, the
2 employer shall pay upon separation from employment all vacation pay
3 earned and determinable in accordance with the terms of any agreement
4 between the employer and the employee.

5 (b) "Wages" or "compensation" does not include severance pay.

6 (17) "WILLFUL" MEANS A KNOWING AND INTENTIONAL ACTION
7 THAT IS NEITHER ACCIDENTAL NOR THE RESULT OF A BONA FIDE DISPUTE.

8 **SECTION 4.** In Colorado Revised Statutes, **add** 8-4-101.5 as
9 follows:

10 **8-4-101.5. Joint and several liability.** ALL EMPLOYERS ARE
11 SUBJECT TO JOINT AND SEVERAL LIABILITY FOR VIOLATIONS OF THIS
12 ARTICLE.

13 **SECTION 5.** In Colorado Revised Statutes, 8-4-103, **add** (4.5)
14 as follows:

15 **8-4-103. Payment of wages - insufficient funds - pay statement**
16 **- record retention - tip notification.** (4.5) AN EMPLOYER SHALL RETAIN
17 RECORDS REFLECTING THE INFORMATION CONTAINED IN AN EMPLOYEE'S
18 ITEMIZED PAY STATEMENT AS DESCRIBED IN SUBSECTION (4) OF THIS
19 SECTION FOR A PERIOD OF AT LEAST THREE YEARS AFTER THE PAYMENT OF
20 THE WAGES. THE RECORDS SHALL BE AVAILABLE FOR INSPECTION BY THE
21 DIVISION, AND THE EMPLOYER SHALL PROVIDE COPIES OF THE RECORDS
22 UPON REQUEST BY THE DIVISION OR THE EMPLOYEE.

23 **SECTION 6.** In Colorado Revised Statutes, 8-4-105, **amend** (1)
24 (c) as follows:

25 **8-4-105. Payroll deductions permitted.** (1) No employer shall
26 make a deduction from the wages or compensation of an employee except
27 as follows:

1 (c) Any deduction necessary to cover the replacement cost of a
2 shortage due to theft by an employee if a report has been filed with the
3 proper law enforcement agency in connection with such theft pending a
4 final adjudication by a court of competent jurisdiction; except that, if the
5 accused employee is found not guilty in a court action or if criminal
6 charges related to such theft are not filed against the accused employee
7 within ninety days after the filing of the report with the proper law
8 enforcement agency, or such charges are dismissed, the accused employee
9 shall be entitled to recover any amount wrongfully withheld plus interest.
10 In the event an employer acts without good faith, in addition to the
11 amount wrongfully withheld and legally proven to be due, the accused
12 employee may be awarded an amount not to exceed treble the amount
13 wrongfully withheld. ~~In any such action the prevailing party shall be~~
14 ~~entitled to reasonable costs related to the recovery of such amount~~
15 ~~including attorney fees and court costs.~~

16 **SECTION 7.** In Colorado Revised Statutes, 8-4-109, **amend** (3);
17 and **add** (1) (c) as follows:

18 **8-4-109. Termination of employment - payments required -**
19 **civil penalties - payments to surviving spouse or heir.** (1) (c) IF AN
20 EMPLOYER IS UNABLE TO DELIVER A CHECK FOR WAGES DUE PURSUANT TO
21 PARAGRAPH (a) OR (b) OF THIS SUBSECTION (1) WITHIN SIXTY DAYS AFTER
22 THE CHECK WAS DUE, THE EMPLOYER SHALL MAIL THE EMPLOYEE'S CHECK
23 FOR WAGES DUE TO THE EMPLOYEE'S LAST-KNOWN MAILING ADDRESS.

24 (3) (a) If an employer ~~refuses~~ FAILS to pay wages or compensation
25 in accordance with subsection (1) of this section, ~~the employee or his or~~
26 ~~her designated agent shall make a written demand for the payment within~~
27 ~~sixty days after the date of separation and shall state in the demand where~~

1 such payment can be received.

2 ~~(a.5) If the employer disputes the amount of wages or~~
3 ~~compensation claimed by an employee under this article and if, within~~
4 ~~fourteen days after the employee's demand, the employer makes a legal~~
5 ~~tender of the amount that the employer in good faith believes is due, the~~
6 ~~employer shall not be liable for any penalty unless, in a legal action, the~~
7 ~~employee recovers a greater sum than the amount so tendered.~~

8 (b) If an employee's earned, vested, and determinable wages or
9 compensation are not mailed to the place of receipt specified in a demand
10 for payment and postmarked within fourteen days after the receipt of such
11 demand, the employer shall be liable to the employee for the wages or
12 compensation, and a penalty of the sum of the following amounts of
13 wages or compensation due or, if greater, the employee's average daily
14 earnings for each day, not to exceed ten days, until such payment or other
15 settlement satisfactory to the employee is made:

16 (I) One hundred twenty-five percent of that amount of such wages
17 or compensation up to and including seven thousand five hundred dollars;
18 and

19 (II) Fifty percent of that amount of such wages or compensation
20 that exceed seven thousand five hundred dollars.

21 ~~(c)~~ (b) If the employee can show that the employer's failure to pay
22 is willful, the penalty required under ~~paragraph (b)~~ PARAGRAPH (a) of this
23 subsection (3) shall increase by fifty percent. Evidence that a judgment
24 has, within the previous five years, been entered against the employer for
25 failure to pay wages or compensation shall be admissible as evidence of
26 willful conduct. FAILURE TO RESPOND TO A DEMAND LETTER SENT
27 PURSUANT TO PARAGRAPH (c) OF THIS SUBSECTION (3) CREATES A

1 REBUTTABLE PRESUMPTION THAT THE EMPLOYER'S FAILURE TO PAY WAS
2 WILLFUL.

3 ~~(d) (c) The daily earnings penalty shall not begin to accrue until~~
4 ~~the employer receives the written demand set forth in paragraph (a) of this~~
5 ~~subsection (3). The employee or his or her designated agent may~~
6 ~~commence a civil action to recover the penalty set forth in this subsection~~
7 ~~(3). Any employee or his or her designated agent who has not made a~~
8 ~~written demand for the payment within sixty days after the date of~~
9 ~~separation or who has otherwise not been available to receive payment~~
10 ~~shall not be entitled to any such penalty under this subsection (3). EXCEPT~~
11 ~~FOR AN ACTION FILED IN A SMALL CLAIMS COURT ESTABLISHED PURSUANT~~
12 ~~TO PART 4 OF ARTICLE 6 OF TITLE 13, C.R.S., THE PENALTIES ESTABLISHED~~
13 ~~IN PARAGRAPH (a) OF THIS SUBSECTION (3) ONLY APPLY IF THE EMPLOYEE~~
14 ~~MADE A WRITTEN DEMAND TO THE EMPLOYER AT LEAST FOURTEEN DAYS~~
15 ~~PRIOR TO FILING AN ACTION. IN THE DEMAND, THE EMPLOYEE SHALL STATE~~
16 ~~WHERE THE PAYMENT CAN BE RECEIVED. A payment under this subsection~~
17 ~~(3) shall be made in the form of a check draft or voucher in the name of~~
18 ~~the employee.~~

19 (d) AN EMPLOYER WHO, WITHIN FOURTEEN DAYS AFTER RECEIPT
20 OF A WRITTEN DEMAND PURSUANT TO PARAGRAPH (c) OF THIS SUBSECTION
21 (3), MAKES A LEGAL TENDER OF THE AMOUNT THAT THE EMPLOYER IN
22 GOOD FAITH BELIEVES IS DUE THE EMPLOYEE IS LIABLE FOR ONLY FIFTY
23 PERCENT OF THE PENALTY CALCULATED PURSUANT TO PARAGRAPH (a) OF
24 THIS SUBSECTION (3).

25 **SECTION 8.** In Colorado Revised Statutes, 8-4-110, **amend** (1)
26 as follows:

27 **8-4-110. Disputes - fees.** (1) ~~If, in any action, the employee fails~~

1 to recover a greater sum than the amount tendered by the employer, the
2 court may award the employer reasonable costs and attorney fees incurred
3 in such action when, in any pleading or other court filing, the employee
4 claims wages or compensation that exceed the greater of seven thousand
5 five hundred dollars in wages or compensation or the jurisdictional limit
6 for the small claims court, whether or not the case was filed in small
7 claims court or whether or not the total amount sought in the action was
8 within small claims court jurisdictional limits. If, in any such action in
9 which the employee seeks to recover any amount of wages or
10 compensation, the employee recovers a sum greater than the amount
11 tendered by the employer, the court may award the employee reasonable
12 costs and attorney fees incurred in such action. If an employer fails or
13 refuses to make a tender within fourteen days after the demand
14 DESCRIBED IN SECTION 8-4-109 (3) (c), then such failure or refusal shall
15 be treated as a tender of no money for any purpose under this article. IN
16 ANY ACTION UNDER THIS ARTICLE OR UNDER ANY RULE PROMULGATED
17 UNDER ARTICLES 1, 4, 6, OR 12 OF THIS TITLE, OR SECTION 15 OF ARTICLE
18 XVIII OF THE STATE CONSTITUTION, INCLUDING BUT NOT LIMITED TO ANY
19 COLORADO MINIMUM WAGE ORDER, IN ADDITION TO ANY JUDGMENT
20 AWARDED TO THE PLAINTIFF OR PLAINTIFFS, A COURT SHALL AWARD TO
21 THE PLAINTIFF OR PLAINTIFFS THE COSTS OF THE ACTION TOGETHER WITH
22 REASONABLE ATTORNEY FEES, TO BE PAID BY THE DEFENDANT.

23 **SECTION 9.** In Colorado Revised Statutes, **amend** 8-4-111 as
24 follows:

25 **8-4-111. Enforcement - duty of director - duties of district**
26 **attorneys or city attorneys.** (1) It is the duty of the director to inquire
27 diligently for any violation of this article, and to institute the actions for

1 penalties provided for in this article in such cases as he or she may deem
2 proper, and to enforce generally the provisions of this article. THE
3 DIRECTOR MAY ESTABLISH AN ADMINISTRATIVE PROCEDURE TO RECEIVE
4 COMPLAINTS AND ADJUDICATE CLAIMS FOR NONPAYMENT OF WAGES.

5 (2) (a) (I) IF ONE OR MORE EMPLOYEES FILES A WAGE COMPLAINT
6 WITH THE DIVISION CLAIMING UNPAID WAGES OF SEVEN THOUSAND FIVE
7 HUNDRED DOLLARS OR LESS PER EMPLOYEE, EXCLUSIVE OF PENALTIES AND
8 FINES, THE DIVISION SHALL INVESTIGATE THE WAGE COMPLAINT. THE
9 DIVISION SHALL INITIATE THE ADMINISTRATIVE PROCEDURE BY MAILING
10 A NOTICE OF COMPLAINT TO THE EMPLOYER WHEN THE COMPLAINT STATES
11 A CLAIM FOR RELIEF. THE NOTICE OF THE COMPLAINT MUST INCLUDE:

- 12 (A) THE NAME OF THE COMPLAINANT;
- 13 (B) THE NATURE OF THE COMPLAINT; AND
- 14 (C) THE AMOUNT OF ANY POTENTIAL FINE OR PENALTY FOR
15 FAILING TO RESPOND IN A TIMELY MANNER.

16 (II) AN EMPLOYER MUST RESPOND WITHIN FOURTEEN DAYS AFTER
17 THE RECEIPT OF THE COMPLAINT.

18 (III) UNLESS OTHERWISE RESOLVED, THE DIVISION SHALL ISSUE A
19 DETERMINATION WITHIN NINETY DAYS AFTER THE EMPLOYER'S RECEIPT OF
20 THE COMPLAINT UNLESS THE DIVISION EXTENDS THE TIME PERIOD BY
21 PROVIDING ADVANCE WRITTEN NOTICE TO THE EMPLOYEE AND EMPLOYER
22 STATING GOOD CAUSE FOR THE EXTENSION OF TIME.

23 (b) IF THE DIVISION DOES NOT FIND A VIOLATION BASED ON THE
24 WAGE COMPLAINT AND ANY RESPONSE, INCLUDING THE FAILURE BY THE
25 EMPLOYEE TO PURSUE THE WAGE COMPLAINT, THE DIVISION SHALL ISSUE
26 A NOTICE OF DISMISSAL.

27 (c) IF THE DIVISION DETERMINES THAT AN EMPLOYER HAS

1 VIOLATED THIS ARTICLE FOR NONPAYMENT OF WAGES, THE DIVISION
2 SHALL ISSUE A CITATION AND NOTICE OF ASSESSMENT FOR THE AMOUNT
3 DETERMINED THAT IS OWED, WHICH AMOUNT MUST INCLUDE ALL WAGES,
4 PENALTIES PURSUANT TO SECTION 8-4-109, AND ANY FINES PURSUANT TO
5 SECTION 8-4-113.

6 (d) TO ENCOURAGE COMPLIANCE BY THE EMPLOYER, IF THE
7 EMPLOYER PAYS THE EMPLOYEE ALL WAGES OWED WITHIN FOURTEEN
8 DAYS AFTER THE EMPLOYER'S RECEIPT OF THE CITATION AND NOTICE OF
9 ASSESSMENT, THE DIVISION MAY WAIVE ANY FINES IMPOSED PURSUANT TO
10 SECTION 8-4-113 (1) OR REDUCE BY UP TO FIFTY PERCENT PENALTIES
11 IMPOSED PURSUANT TO SECTION 8-4-109; EXCEPT THAT THE DIVISION MAY
12 NOT WAIVE ANY FINES OR REDUCE ANY PENALTIES OWED BY A REPEAT
13 WILLFUL VIOLATOR.

14 (e) UPON PAYMENT BY AN EMPLOYER, AND ACCEPTANCE BY AN
15 EMPLOYEE, OF ALL WAGES AND PENALTIES ASSESSED BY THE DIVISION IN
16 A CITATION AND NOTICE OF ASSESSMENT ISSUED TO THE EMPLOYER, THE
17 PAYMENT SHALL CONSTITUTE A FULL AND COMPLETE SATISFACTION BY
18 THE EMPLOYER AND BAR THE EMPLOYEE FROM INITIATING OR PURSUING
19 ANY CIVIL ACTION OR OTHER ADMINISTRATIVE PROCEEDING BASED ON THE
20 WAGE COMPLAINT ADDRESSED BY THE CITATION AND NOTICE OF
21 ASSESSMENT.

22 (3) AN EMPLOYEE WHO HAS FILED A WAGE COMPLAINT WITH THE
23 DIVISION PURSUANT TO SUBSECTION (2) OF THIS SECTION MAY ELECT TO
24 TERMINATE THE DIVISION'S ADMINISTRATIVE PROCEDURE WITHIN
25 THIRTY-FIVE DAYS AFTER THE ISSUANCE OF THE DETERMINATION OF
26 COMPLIANCE OR CITATION AND NOTICE OF ASSESSMENT BY PROVIDING A
27 NOTICE TO THE DIVISION. AN EMPLOYEE WHO TERMINATES THE DIVISION'S

1 ADMINISTRATIVE PROCEDURE PRESERVES ANY PRIVATE RIGHT OF ACTION
2 THE EMPLOYEE MAY HAVE. UPON RECEIPT OF THE NOTICE, THE DIVISION
3 SHALL IMMEDIATELY DISCONTINUE ITS ACTION AGAINST THE EMPLOYER
4 AND REVOKE ANY CITATION AND NOTICE OF ASSESSMENT SENT.

5 (4) A WAGE COMPLAINT FILED PURSUANT TO SUBSECTION (2) OF
6 THIS SECTION DOES NOT REQUIRE A WRITTEN DEMAND AS DESCRIBED IN
7 SECTION 8-4-109 (3) (c).

8 (5) EXCEPT FOR AN APPEAL PURSUANT TO SECTION 8-4-111.5 (6),
9 ANY DETERMINATIONS MADE BY THE DIVISION PURSUANT TO THIS SECTION
10 OR ANY PAYMENT OR OFFER OF PAYMENT BY THE EMPLOYER OF THE
11 WAGES IS NOT ADMISSIBLE IN ANY COURT ACTION.

12 (6) NOTHING IN THIS SECTION SHALL BE CONSTRUED TO LIMIT THE
13 RIGHT OF THE DIVISION TO PURSUE ANY ACTION AVAILABLE WITH RESPECT
14 TO AN EMPLOYEE THAT IS IDENTIFIED AS A RESULT OF A WAGE COMPLAINT
15 OR WITH RESPECT TO AN EMPLOYER IN THE ABSENCE OF A WAGE
16 COMPLAINT.

17 (7) NOTHING IN THIS SECTION SHALL BE CONSTRUED TO LIMIT THE
18 RIGHT OF THE EMPLOYEE TO PURSUE ANY CIVIL ACTION OR
19 ADMINISTRATIVE PROCEEDING FOR ANY CLAIMS OTHER THAN THOSE
20 CONSIDERED BY THE DIVISION IN THE EMPLOYEE'S WAGE COMPLAINT. THE
21 CLAIMS CONSIDERED BY THE DIVISION IN THE EMPLOYEE'S WAGE
22 COMPLAINT ARE SUBJECT TO THE LIMITATIONS SET FORTH IN PARAGRAPH
23 (e) OF SUBSECTION (2) OF THIS SECTION AND SUBSECTION (3) OF THIS
24 SECTION.

25 ~~(2)~~ (8) Nothing in this article shall be construed to limit the
26 authority of the district attorney of any county or city and county or the
27 city attorney of any city to prosecute actions for such violations of this

1 article as may come to his or her knowledge, or to enforce the provisions
2 of this article independently and without specific direction of the director,
3 or to limit the right of any wage claimant to sue directly or through an
4 assignee for any wages or penalty due him or her under the provisions of
5 this article.

6 **SECTION 10.** In Colorado Revised Statutes, **add** 8-4-111.5 as
7 follows:

8 **8-4-111.5. Hearing officer review and appeals of**
9 **administrative actions.** (1) PURSUANT TO POLICIES ESTABLISHED BY THE
10 DIRECTOR BY RULE, ANY INTERESTED PARTY WHO IS DISSATISFIED WITH
11 THE DIVISION'S DECISION ON A WAGE COMPLAINT FILED PURSUANT TO
12 SECTION 8-4-111 (2) MAY FILE A REQUEST FOR A HEARING WITHIN THIRTY
13 DAYS AFTER RECEIPT OF THE DIVISION'S DECISION. IF NO REQUEST IS FILED
14 WITHIN THE THIRTY-DAY PERIOD, THE DIVISION'S DECISION IS FINAL.

15 (2) (a) IF A REQUEST IS FILED PURSUANT TO SUBSECTION (1) OF
16 THIS SECTION, THE DIRECTOR SHALL DESIGNATE A HEARING OFFICER. THE
17 HEARING OFFICER SHALL HAVE THE POWER AND AUTHORITY TO CALL,
18 PRESIDE AT, AND CONDUCT HEARINGS. IN THE DISCHARGE OF THE DUTIES
19 IMPOSED BY THIS ARTICLE, THE HEARING OFFICER HAS THE POWER TO
20 ADMINISTER OATHS AND AFFIRMATIONS, TAKE DEPOSITIONS, CERTIFY TO
21 OFFICIAL ACTS, AND ISSUE SUBPOENAS TO COMPEL THE ATTENDANCE OF
22 WITNESSES AND THE PRODUCTION OF BOOKS, PAPERS, CORRESPONDENCE,
23 MEMORANDA, AND OTHER RECORDS DEEMED NECESSARY AS EVIDENCE IN
24 CONNECTION WITH A DISPUTED CLAIM PURSUANT TO THIS ARTICLE.

25 (b) (I) IN CASE OF A FAILURE TO OBEY A SUBPOENA ISSUED TO ANY
26 PERSON BY THE HEARING OFFICER, UPON APPLICATION BY THE DIVISION OR
27 ITS DULY AUTHORIZED REPRESENTATIVE, ANY COURT OF THIS STATE HAS

1 JURISDICTION TO ISSUE TO THE PERSON AN ORDER REQUIRING HIM OR HER
2 TO APPEAR BEFORE THE HEARING OFFICER TO PRODUCE EVIDENCE OR GIVE
3 TESTIMONY TOUCHING THE MATTER UNDER INVESTIGATION OR IN
4 QUESTION. THE COURT MAY ISSUE AN ORDER OF CONTEMPT TO A PERSON
5 WHO FAILS TO OBEY THE ORDER.

6 (II) ANY PERSON WHO, WITHOUT JUST CAUSE, FAILS OR REFUSES TO
7 ATTEND AND TESTIFY OR TO ANSWER ANY LAWFUL INQUIRY, OR TO
8 PRODUCE BOOKS, PAPERS, CORRESPONDENCE, MEMORANDA, AND OTHER
9 RECORDS IN OBEDIENCE TO A SUBPOENA OF THE HEARING OFFICER IS
10 GUILTY OF A MISDEMEANOR AND, UPON CONVICTION THEREOF, SHALL BE
11 PUNISHED BY A FINE OF NOT MORE THAN TWO HUNDRED DOLLARS, OR BY
12 IMPRISONMENT IN THE COUNTY JAIL FOR NOT MORE THAN SIXTY DAYS, OR
13 BY BOTH SUCH FINE AND IMPRISONMENT. EACH DAY THE FAILURE OR
14 REFUSAL CONTINUES IS A SEPARATE OFFENSE.

15 (c) A PERSON MAY NOT BE EXCUSED FROM ATTENDING AND
16 TESTIFYING OR FROM PRODUCING BOOKS, PAPERS, CORRESPONDENCE,
17 MEMORANDA, AND OTHER RECORDS BEFORE A HEARING OFFICER OR IN
18 OBEDIENCE TO THE SUBPOENA OF THE HEARING OFFICER ON THE GROUND
19 THAT THE TESTIMONY OR EVIDENCE, DOCUMENTARY OR OTHERWISE,
20 REQUIRED OF HIM OR HER MAY TEND TO INCRIMINATE THE PERSON OR
21 SUBJECT THE PERSON TO A PENALTY OR FORFEITURE. BUT A PERSON SHALL
22 NOT BE PROSECUTED OR SUBJECTED TO ANY PENALTY OR FORFEITURE FOR
23 OR ON ACCOUNT OF ANY TRANSACTION, MATTER, OR THING CONCERNING
24 WHICH HE OR SHE IS COMPELLED, AFTER HAVING CLAIMED HIS OR HER
25 PRIVILEGE AGAINST SELF-INCRIMINATION, TO TESTIFY OR PRODUCE
26 EVIDENCE, DOCUMENTARY OR OTHERWISE; EXCEPT THAT THE INDIVIDUAL
27 TESTIFYING IS NOT EXEMPT FROM PROSECUTION AND PUNISHMENT FOR

1 PERJURY IN THE FIRST DEGREE COMMITTED IN SO TESTIFYING.

2 (3) (a) THE HEARING OFFICER, AFTER AFFORDING ALL INTERESTED
3 PARTIES A REASONABLE OPPORTUNITY FOR A FAIR HEARING PURSUANT TO
4 THE PROVISIONS OF THIS ARTICLE AND THE ADMINISTRATIVE PROCEDURES
5 OF THE DIVISION, SHALL MAKE A DECISION ON EACH RELEVANT ISSUE
6 RAISED, INCLUDING FINDINGS OF FACT, CONCLUSIONS OF LAW, AND AN
7 ORDER.

8 (b) EVIDENCE AND REQUIREMENTS OF PROOF IN A HEARING
9 CONDUCTED PURSUANT TO THIS SECTION MUST CONFORM, TO THE EXTENT
10 PRACTICABLE, WITH THOSE IN CIVIL NONJURY CASES IN THE DISTRICT
11 COURTS OF THIS STATE. HOWEVER, WHEN NECESSARY TO DO SO IN ORDER
12 TO ASCERTAIN FACTS AFFECTING THE SUBSTANTIAL RIGHTS OF THE
13 PARTIES TO THE PROCEEDING, THE PERSON CONDUCTING THE HEARING
14 MAY RECEIVE AND CONSIDER EVIDENCE NOT ADMISSIBLE UNDER SUCH
15 RULES IF THE EVIDENCE POSSESSES PROBATIVE VALUE COMMONLY
16 ACCEPTED BY REASONABLE AND PRUDENT PERSONS IN THE CONDUCT OF
17 THEIR AFFAIRS. OBJECTIONS TO EVIDENTIARY OFFERS MAY BE MADE AND
18 MUST BE NOTED IN THE RECORD. THE HEARING OFFICER SHALL GIVE
19 EFFECT TO THE RULES OF PRIVILEGE RECOGNIZED BY LAW. HE OR SHE MAY
20 EXCLUDE INCOMPETENT AND UNDULY REPETITIOUS EVIDENCE.
21 DOCUMENTARY EVIDENCE MAY BE RECEIVED IN THE FORM OF A COPY OR
22 EXCERPT IF THE ORIGINAL IS NOT READILY AVAILABLE; EXCEPT THAT,
23 UPON REQUEST, THE PARTY SHALL BE GIVEN AN OPPORTUNITY TO
24 COMPARE THE COPY WITH THE ORIGINAL. THE DIVISION MAY UTILIZE ITS
25 EXPERIENCE, TECHNICAL COMPETENCE, AND SPECIALIZED KNOWLEDGE IN
26 THE EVALUATION OF THE EVIDENCE PRESENTED. THE PROVISIONS OF THE
27 "STATE ADMINISTRATIVE PROCEDURE ACT", ARTICLE 4 OF TITLE 24,

1 C.R.S., AND PARTICULARLY SECTIONS 24-4-105 AND 24-4-106, C.R.S., DO
2 NOT APPLY TO HEARINGS AND COURT REVIEW UNDER THIS ARTICLE.
3 HOWEVER, THE RULE-MAKING PROVISIONS OF SECTION 24-4-103, C.R.S.,
4 SHALL APPLY TO THIS ARTICLE.

5 (c) WHEN THE SAME OR SUBSTANTIALLY SIMILAR EVIDENCE IS
6 RELEVANT AND MATERIAL TO THE MATTERS AT ISSUE IN CLAIMS BY MORE
7 THAN ONE INDIVIDUAL OR IN CLAIMS BY A SINGLE INDIVIDUAL WITH
8 RESPECT TO TWO OR MORE WEEKS OF UNEMPLOYMENT, IF, IN THE
9 JUDGMENT OF THE HEARING OFFICER, CONSOLIDATION OF ONE OR MORE
10 PROCEEDINGS WOULD NOT PREJUDICE ANY INTERESTED PARTY, THE
11 HEARING OFFICER MAY:

- 12 (I) CONDUCT HEARINGS AT THE SAME TIME AND PLACE;
- 13 (II) CONDUCT JOINT HEARINGS;
- 14 (III) MAKE A SINGLE RECORD OF THE PROCEEDINGS; AND
- 15 (IV) CONSIDER EVIDENCE INTRODUCED WITH RESPECT TO ONE
16 PROCEEDING AS IF INTRODUCED IN THE OTHERS.

17 (d) A FULL AND COMPLETE RECORD SHALL BE KEPT OF ALL
18 PROCEEDINGS IN CONNECTION WITH THE WAGE COMPLAINT. ALL
19 TESTIMONY AT ANY HEARING UPON A WAGE COMPLAINT SHALL BE
20 RECORDED BUT NEED NOT BE TRANSCRIBED UNLESS THE WAGE COMPLAINT
21 IS PRESENTED FOR FURTHER REVIEW. THE DIVISION SHALL PROMPTLY
22 PROVIDE ALL INTERESTED PARTIES WITH COPIES OF THE HEARING OFFICER'S
23 DECISION.

24 (4) FOR THE CONVENIENCE AND NECESSITY OF THE EMPLOYEE OR
25 THE EMPLOYER, THE DIVISION MAY CONDUCT HEARINGS BY TELEPHONE,
26 INCLUDING IN SITUATIONS IN WHICH THE PARTIES WOULD OTHERWISE BE
27 REQUIRED TO TRAVEL TO LOCATIONS OF THE DIVISION FROM OUTSIDE THE

1 GENERAL VICINITY OF SUCH LOCATIONS.

2 (5) AN INTERESTED PARTY WHO IS DISSATISFIED WITH THE
3 HEARING OFFICER'S DECISION MAY APPEAL THAT DECISION TO THE
4 INDUSTRIAL CLAIMS APPEALS OFFICE FOR REVIEW PURSUANT TO SECTION
5 8-74-104. THE DIRECTOR MAY PRESCRIBE AN ADMINISTRATIVE
6 PROCEDURE FOR THE CONDUCT OF SUCH APPEALS, INCLUDING PROCEDURES
7 FOR THE TRANSCRIPTION OF TESTIMONY.

8 (6) AN INTERESTED PARTY DISSATISFIED WITH A FINAL DECISION
9 PURSUANT TO THIS ARTICLE MAY FILE AN APPEAL IN COURT PURSUANT TO
10 THE PROCEDURES DESCRIBED IN SECTION 8-74-107, AFTER THE
11 PETITIONING PARTY HAS FIRST COMPLIED WITH THE PROCEDURE OF THIS
12 SECTION.

13 **SECTION 11.** In Colorado Revised Statutes, **amend** 8-4-113 as
14 follows:

15 **8-4-113. Fines pursuant to enforcement - wage theft**
16 **enforcement fund - created.** (1) (a) If a case against an employer is
17 enforced pursuant to section 8-4-111, any employer who without good
18 faith legal justification fails to pay the wages of each of his or her
19 employees shall forfeit to the people of the state of Colorado ~~an~~ A FINE IN
20 AN amount determined by the director OR HEARING OFFICER but no more
21 than the sum of fifty dollars per day for each such failure to pay each
22 employee, commencing from the date that such wages first became due
23 and payable. ~~to be recovered by order of the director in a hearing held~~
24 ~~pursuant to section 24-4-105, C.R.S. For the convenience and necessity~~
25 ~~of the parties or their representatives, the division is authorized to conduct~~
26 ~~such hearing by telephone if the employer would otherwise be required~~
27 ~~to travel to locations of the division of labor from outside the general~~

1 ~~vicinity of such locations.~~ THE DIVISION MAY COLLECT THE FINE THROUGH
2 ITS CITATION AND NOTICE OF ASSESSMENT ISSUED PURSUANT TO SECTION
3 8-4-111 (2) OR AFTER A HEARING CONDUCTED PURSUANT TO SECTION
4 8-4-111.5.

5 (b) THE DIRECTOR OR HEARING OFFICER SHALL IMPOSE A FINE OF
6 TWO HUNDRED FIFTY DOLLARS ON AN EMPLOYER WHO FAILS TO RESPOND
7 TO A NOTICE OF COMPLAINT. THE DIRECTOR OR HEARING OFFICER MAY
8 WAIVE OR REDUCE THE FINE ONLY IF HE OR SHE FINDS GOOD CAUSE FOR AN
9 EXTENSION OF THE TIME FOR THE EMPLOYER TO FILE THE RESPONSE.

10 (2) A certified copy of any ~~final order of the director, imposing a~~
11 ~~fine or penalty~~ CITATION, NOTICE OF ASSESSMENT, OR ORDER IMPOSING
12 WAGES DUE, FINES, OR PENALTIES pursuant to this article, may be filed
13 with the clerk of the district court having jurisdiction over the parties at
14 any time after the entry of the order. The certified copy shall be recorded
15 by the clerk of the district court in the judgment book of said court and
16 entry thereof made in the judgment docket, and it shall thenceforth have
17 all the effect of a judgment of the district court, and execution may issue
18 thereon out of said court as in other cases. ~~All fines and penalties~~
19 ~~collected shall be paid to the division and transmitted to the state treasurer~~
20 ~~for credit to the general fund.~~

21 (3) (a) THE DIVISION SHALL TRANSMIT ALL FINES COLLECTED
22 PURSUANT TO THIS SECTION TO THE STATE TREASURER, WHO SHALL
23 CREDIT THE SAME TO THE WAGE THEFT ENFORCEMENT FUND, WHICH FUND
24 IS CREATED AND REFERRED TO IN THIS SECTION AS THE "FUND". THE
25 MONEYS IN THE FUND ARE SUBJECT TO ANNUAL APPROPRIATION BY THE
26 GENERAL ASSEMBLY TO THE DIVISION FOR THE DIRECT AND INDIRECT
27 COSTS ASSOCIATED WITH IMPLEMENTING THIS ARTICLE.

1 (b) THE STATE TREASURER MAY INVEST ANY MONEYS IN THE FUND
2 NOT EXPENDED FOR THE PURPOSE OF THIS ARTICLE AS PROVIDED BY LAW.
3 THE STATE TREASURER SHALL CREDIT ALL INTEREST AND INCOME DERIVED
4 FROM THE INVESTMENT AND DEPOSIT OF MONEYS IN THE FUND TO THE
5 FUND. ANY UNEXPENDED AND UNENCUMBERED MONEYS REMAINING IN
6 THE FUND AT THE END OF A FISCAL YEAR REMAIN IN THE FUND AND SHALL
7 NOT BE CREDITED OR TRANSFERRED TO THE GENERAL FUND OR ANOTHER
8 FUND.

9 **SECTION 12.** In Colorado Revised Statutes, **amend** 8-6-116 as
10 follows:

11 **8-6-116. Violation - penalty.** (1) The minimum wages fixed by
12 the director, as provided in this article, shall be the minimum wages paid
13 to the employees, and the payment to such employees of a wage less than
14 the minimum so fixed is unlawful, and every employer or other person
15 who, individually or as an officer, agent, or employee of a corporation or
16 other person, pays or causes to be paid to any such employee a wage less
17 than the minimum is guilty of a misdemeanor and, upon conviction
18 thereof, shall be punished by a fine of not less than one hundred dollars
19 nor more than five hundred dollars, or by imprisonment in the county jail
20 for not less than thirty days nor more than one year, or by both such fine
21 and imprisonment. ALL EMPLOYERS ARE SUBJECT TO JOINT AND SEVERAL
22 LIABILITY FOR VIOLATIONS OF THIS SECTION.

23 (2) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE
24 REQUIRES, "EMPLOYER" HAS THE SAME MEANING AS DEFINED IN SECTION
25 8-4-101 (7).

26 **SECTION 13.** In Colorado Revised Statutes, **amend** 8-6-118 as
27 follows:

1 **8-6-118. Recovery of balance of minimum wage.** An employee
2 receiving less than the legal minimum wage applicable to such employee
3 is entitled to recover in a civil action the unpaid balance of the full
4 amount of such minimum wage, together with ~~costs of suit~~ REASONABLE
5 ATTORNEY FEES AND COURT COSTS, notwithstanding any agreement to
6 work for a lesser wage.

7 **SECTION 14. Potential appropriation.** Pursuant to section
8 2-2-703, Colorado Revised Statutes, any bill that results in a net increase
9 in periods of imprisonment in the state correctional facilities must include
10 an appropriation of moneys that is sufficient to cover any increased
11 capital construction and operational costs for the first five fiscal years in
12 which there is a fiscal impact. Because this act may increase periods of
13 imprisonment, this act may require a five-year appropriation.

14 **SECTION 15. Act subject to petition - effective date -**
15 **applicability.** (1) Sections 3 through 13 of this act take effect January 1,
16 2014, and the remaining portions of this act take effect September 1,
17 2013; except that, if a referendum petition is filed pursuant to section 1
18 (3) of article V of the state constitution against this act or an item, section,
19 or part of this act within the ninety-day period after final adjournment of
20 the general assembly, then the act, item, section, or part will not take
21 effect unless approved by the people at the general election to be held in
22 November 2014 and, in such case, will take effect on the date of the
23 official declaration of the vote thereon by the governor.

24 (2) This act applies to offenses committed on or after the
25 applicable effective date of section 2 of this act.