

Second Regular Session
Sixty-eighth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 12-0811.01 Jerry Barry x4341

HOUSE BILL 12-1296

HOUSE SPONSORSHIP

Singer,

SENATE SPONSORSHIP

(None),

House Committees
Judiciary

Senate Committees

A BILL FOR AN ACT

101 CONCERNING THE "INCOME PROTECTION ACT".

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.

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

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

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

6 **18-4-420. Wage theft.** (1) A PERSON COMMITS THE OFFENSE OF
7 WAGE THEFT IF THE PERSON IS UNDER A DUTY TO PAY, OR THE PERSON HAS
8 FINANCIAL CONTROL OF AN ENTITY THAT IS UNDER A DUTY TO PAY, WAGES
9 OR COMPENSATION TO AN EMPLOYEE, AND THE PERSON KNOWINGLY:

10 (a) FAILS TO PAY THE WAGES OR COMPENSATION TO AN EMPLOYEE;
11 OR

12 (b) FALSELY DENIES THAT THE AMOUNT OF WAGES OR
13 COMPENSATION IS DUE TO AN EMPLOYEE.

14 (2) WAGE THEFT IS:

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

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

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

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

25 (3) FOR PURPOSES OF THIS SECTION, EACH FAILURE TO PAY OR

1 FALSE DENIAL OF WAGES OR COMPENSATION TO EACH EMPLOYEE DUE
2 DURING EACH CALENDAR MONTH IS A SEPARATE VIOLATION.

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

5 (I) THE PERSON DOES NOT HAVE THE ABILITY TO PAY THE WAGES
6 OR COMPENSATION; AND

7 (II) AT THE TIME OF REQUESTING THE LABOR OR SERVICE, THE
8 PERSON HAS A GOOD FAITH AND REASONABLE BELIEF THAT PAYMENT WILL
9 BE MADE IN A TIMELY MANNER WHEN DUE.

10 (b) FOR PURPOSES OF THIS SUBSECTION (4), A PERSON IS PRESUMED
11 TO HAVE THE ABILITY TO PAY IF, AT THE TIME THE OFFENSE IS COMMITTED,
12 THE PERSON OR ENTITY HAS LEGAL CONTROL OVER A SUFFICIENT AMOUNT
13 OF MONEY TO PAY THE WAGES OR COMPENSATION AND HAS NOT FILED FOR
14 PROTECTION UNDER THE FEDERAL BANKRUPTCY LAWS.

15 (5) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE
16 REQUIRES:

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

19 (b) "WAGES OR COMPENSATION" HAS THE SAME MEANING AS
20 "WAGE" OR "COMPENSATION" IN SECTION 8-4-101 (8), C.R.S.

21 **SECTION 3. Potential appropriation.** Pursuant to section
22 2-2-703, Colorado Revised Statutes, any bill that results in a net increase
23 in periods of imprisonment in the state correctional facilities must include
24 an appropriation of moneys that is sufficient to cover any increased
25 capital construction and operational costs for the first five fiscal years in
26 which there is a fiscal impact. Because this act may increase periods of
27 imprisonment, this act may require a five-year appropriation.

1 **SECTION 4. Act subject to petition - effective date -**

2 **applicability.** (1) This act takes effect September 1, 2012, except that,
3 if a referendum petition is filed pursuant to section 1 (3) of article V of
4 the state constitution against this act or an item, section, or part of this act
5 within the ninety-day period after final adjournment of the general
6 assembly, then the act, item, section, or part will not take effect unless
7 approved by the people at the general election to be held in November
8 2012 and, in such case, will take effect on the date of the official
9 declaration of the vote thereon by the governor.

10 (2) The provisions of this act apply to offenses committed on or
11 after the applicable effective date of this act.