A BILL FOR AN ACT

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
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.

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

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

SECTION 2. In Colorado Revised Statutes, add 18-4-420 as
18-4-420. Wage theft - definitions. (1) An employer commits the offense of wage theft if the employer is under a duty to pay, or the employer has management or operational control of an entity that is under a duty to pay, wages or compensation to an employee, and the employer knowingly:

(a) fails to pay the wages or compensation to an employee;

or

(b) falsely denies that the full amount of wages or compensation is due to an employee.

(2) Wage theft is:

(a) a class 2 misdemeanor if the amount of wages or compensation involved is less than five hundred dollars;

(b) a class 1 misdemeanor if the amount of wages or compensation involved is five hundred dollars or more but less than one thousand dollars;

(c) a class 4 felony if the amount of wages or compensation involved is one thousand dollars or more but less than twenty thousand dollars;

(d) a class 3 felony if the amount of wages or compensation involved is twenty thousand dollars or more.

(3) For purposes of this section, each failure to pay or false denial of wages or compensation to each employee due during each calendar month is a separate violation.

(4)(a) It is an affirmative defense to an offense described in this section if:

(I) the employer does not have the ability to pay the
WAGES OR COMPENSATION; AND

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

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

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

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

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

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

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

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

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

(2) "Credit" means an arrangement or understanding with the
bank or other drawee for the payment of an order, check, draft, note,
memorandum, or other acknowledgment of indebtedness.
(2) (3) "Director" means the director of the division of labor or
his or her designee.

(4) "DISMISSAL" MEANS THE DIVISION CANNOT MAKE A
determination that a wage requirement has been violated.

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

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

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

(b) "EMPLOYER" ALSO INCLUDES ANY OFFICER, OWNER, OR AGENT
who actively asserts substantial control over the management
or financial affairs of an entity employing any person in
(6) (8) "Field labor contractor" means anyone who contracts with an employer to recruit, solicit, hire, or furnish migratory labor for agricultural purposes to do any one or more of the following activities in this state: Hoeing, thinning, topping, sacking, hauling, harvesting, cleaning, cutting, sorting, and other direct manual labor affecting beets, onions, lettuce, potatoes, tomatoes, and other products, fruits, or crops in which labor is seasonal in this state. Such term shall not include a farmer or grower, packinghouse operator, ginner, or warehouseman or any full-time regular and year-round employee of the farmer or grower, packinghouse operator, ginner, or warehouseman who engages in such activities, nor shall it include any migratory laborer who engages in such activities with regard to such migratory laborer's own children, spouse, parents, siblings, or grandparents.

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

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

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

(12) "NOTICE OF COMPLAINT" MEANS THE LETTER SENT BY THE DIVISION AS DESCRIBED IN SECTION 8-4-111 (2) (a).
(13) "Penalty" means any monetary amount assessed against an employer and payable to an employee.

(14) "Repeat willful violator" means an employer that, within three years of the date of the most recent citation and notice of assessment, was the subject of a final and binding citation and notice of assessment for a violation of a wage payment requirement.

(15) "Wage complaint" means a complaint filed with the division from an employee for unpaid wages alleging that an employer has violated section 15 of article XVIII of the Colorado constitution, this article, or any rule adopted by the director pursuant to this article.

(16) (a) "Wages" or "compensation" means:

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

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

(III) Vacation pay earned in accordance with the terms of any
agreement. If an employer provides paid vacation for an employee, the employer shall pay upon separation from employment all vacation pay earned and determinable in accordance with the terms of any agreement between the employer and the employee.

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

(17) "Willful" means a knowing and intentional action that is neither accidental nor the result of a bona fide dispute.

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

8-4-101.5. Joint and several liability. All employers are subject to joint and several liability for violations of this article.

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

8-4-103. Payment of wages - insufficient funds - pay statement - record retention - tip notification. (4.5) An employer shall retain records reflecting the information contained in an employee's itemized pay statement as described in subsection (4) of this section for a period of at least three years after the payment of the wages. The records shall be available for inspection by the division, and the employer shall provide copies of the records upon request by the division or the employee.

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

8-4-105. Payroll deductions permitted. (1) No employer shall make a deduction from the wages or compensation of an employee except as follows:
(c) Any deduction necessary to cover the replacement cost of a
shortage due to theft by an employee if a report has been filed with the
proper law enforcement agency in connection with such theft pending a
final adjudication by a court of competent jurisdiction; except that, if the
accused employee is found not guilty in a court action or if criminal
charges related to such theft are not filed against the accused employee
within ninety days after the filing of the report with the proper law
enforcement agency, or such charges are dismissed, the accused employee
shall be entitled to recover any amount wrongfully withheld plus interest.
In the event an employer acts without good faith, in addition to the
amount wrongfully withheld and legally proven to be due, the accused
employee may be awarded an amount not to exceed treble the amount
wrongfully withheld. In any such action the prevailing party shall be
entitled to reasonable costs related to the recovery of such amount
including attorney fees and court costs.

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

8-4-109. Termination of employment - payments required -
civil penalties - payments to surviving spouse or heir. (1) (c) If an
employer is unable to deliver a check for wages due pursuant to
paragraph (a) or (b) of this subsection (1) within sixty days after
the check was due, the employer shall mail the employee's check
for wages due to the employee's last-known mailing address.

(3) (a) If an employer refuses to pay wages or compensation
in accordance with subsection (1) of this section, the employee or his or
her designated agent shall make a written demand for the payment within
sixty days after the date of separation and shall state in the demand where
such payment can be received.

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

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

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

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

(c) (b) If the employee can show that the employer's failure to pay is willful, the penalty required under paragraph (b) of this subsection (3) shall increase by fifty percent. Evidence that a judgment has, within the previous five years, been entered against the employer for failure to pay wages or compensation shall be admissible as evidence of willful conduct. FAILURE TO RESPOND TO A DEMAND LETTER SENT PURSUANT TO PARAGRAPH (c) OF THIS SUBSECTION (3) CREATES A
REBUTTABLE PRESUMPTION THAT THE EMPLOYER'S FAILURE TO PAY WAS WILLFUL.

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

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

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

8-4-110. Disputes - fees. (1) If, in any action, the employee fails
to recover a greater sum than the amount tendered by the employer, the
court may award the employer reasonable costs and attorney fees incurred
in such action when, in any pleading or other court filing, the employee
claims wages or compensation that exceed the greater of seven thousand
five hundred dollars in wages or compensation or the jurisdictional limit
for the small claims court, whether or not the case was filed in small
claims court or whether or not the total amount sought in the action was
within small claims court jurisdictional limits. If, in any such action in
which the employee seeks to recover any amount of wages or
compensation, the employee recovers a sum greater than the amount
tendered by the employer, the court may award the employee reasonable
costs and attorney fees incurred in such action. If an employer fails or
refuses to make a tender within fourteen days after the demand
DESCRIBED IN SECTION 8-4-109 (3) (c), then such failure or refusal shall
be treated as a tender of no money for any purpose under this article. IN
ANY ACTION UNDER THIS ARTICLE OR UNDER ANY RULE PROMULGATED
UNDER ARTICLES 1, 4, 6, OR 12 OF THIS TITLE, OR SECTION 15 OF ARTICLE
XVIII OF THE STATE CONSTITUTION, INCLUDING BUT NOT LIMITED TO ANY
COLORADO MINIMUM WAGE ORDER, IN ADDITION TO ANY JUDGMENT
AWARDED TO THE PLAINTIFF OR PLAINTIFFS, A COURT SHALL AWARD TO
THE PLAINTIFF OR PLAINTIFFS THE COSTS OF THE ACTION TOGETHER WITH
REASONABLE ATTORNEY FEES, TO BE PAID BY THE DEFENDANT.

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

8-4-111. Enforcement - duty of director - duties of district
attorneys or city attorneys. (1) It is the duty of the director to inquire
diligently for any violation of this article, and to institute the actions for
penalties provided for in this article in such cases as he or she may deem
proper, and to enforce generally the provisions of this article. The
DIRECTOR MAY ESTABLISH AN ADMINISTRATIVE PROCEDURE TO RECEIVE
COMPLAINTS AND ADJUDICATE CLAIMS FOR NONPAYMENT OF WAGES.

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

(A) THE NAME OF THE COMPLAINANT;

(B) THE NATURE OF THE COMPLAINT; AND

(C) THE AMOUNT OF ANY POTENTIAL FINE OR PENALTY FOR
FAILING TO RESPOND IN A TIMELY MANNER.

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

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

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

(c) IF THE DIVISION DETERMINES THAT AN EMPLOYER HAS
VIOLATED THIS ARTICLE FOR NONPAYMENT OF WAGES, THE DIVISION
SHALL ISSUE A CITATION AND NOTICE OF ASSESSMENT FOR THE AMOUNT
DETERMINED THAT IS OWED, WHICH AMOUNT MUST INCLUDE ALL WAGES,
PENALTIES PURSUANT TO SECTION 8-4-109, AND ANY FINES PURSUANT TO
SECTION 8-4-113.

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

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

(3) AN EMPLOYEE WHO HAS FILED A WAGE COMPLAINT WITH THE
DIVISION PURSUANT TO SUBSECTION (2) OF THIS SECTION MAY ELECT TO
TERMINATE THE DIVISION'S ADMINISTRATIVE PROCEDURE WITHIN
THIRTY-FIVE DAYS AFTER THE ISSUANCE OF THE DETERMINATION OF
COMPLIANCE OR CITATION AND NOTICE OF ASSESSMENT BY PROVIDING A
NOTICE TO THE DIVISION. AN EMPLOYEE WHO TERMINATES THE DIVISION'S
ADMINISTRATIVE PROCEDURE PRESERVES ANY PRIVATE RIGHT OF ACTION THE EMPLOYEE MAY HAVE. UPON RECEIPT OF THE NOTICE, THE DIVISION SHALL IMMEDIATELY DISCONTINUE ITS ACTION AGAINST THE EMPLOYER AND REVOKE ANY CITATION AND NOTICE OF ASSESSMENT SENT.

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

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

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

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

(8) Nothing in this article shall be construed to limit the authority of the district attorney of any county or city and county or the city attorney of any city to prosecute actions for such violations of this
article as may come to his or her knowledge, or to enforce the provisions of this article independently and without specific direction of the director, or to limit the right of any wage claimant to sue directly or through an assignee for any wages or penalty due him or her under the provisions of this article.

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

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

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

(b) (I) IN CASE OF A FAILURE TO OBEY A SUBPOENA ISSUED TO ANY PERSON BY THE HEARING OFFICER, UPON APPLICATION BY THE DIVISION OR ITS DULY AUTHORIZED REPRESENTATIVE, ANY COURT OF THIS STATE HAS
JURISDICTION TO ISSUE TO THE PERSON AN ORDER REQUIRING HIM OR HER TO APPEAR BEFORE THE HEARING OFFICER TO PRODUCE EVIDENCE OR GIVE TESTIMONY TOUCHING THE MATTER UNDER INVESTIGATION OR IN QUESTION. THE COURT MAY ISSUE AN ORDER OF CONTEMPT TO A PERSON WHO FAILS TO OBEY THE ORDER.

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

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

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

(b) EVIDENCE AND REQUIREMENTS OF PROOF IN A HEARING CONDUCTED PURSUANT TO THIS SECTION MUST CONFORM, TO THE EXTENT PRACTICABLE, WITH THOSE IN CIVIL NONJURY CASES IN THE DISTRICT COURTS OF THIS STATE. HOWEVER, WHEN NECESSARY TO DO SO IN ORDER TO ASCERTAIN FACTS AFFECTING THE SUBSTANTIAL RIGHTS OF THE PARTIES TO THE PROCEEDING, THE PERSON CONDUCTING THE HEARING MAY RECEIVE AND CONSIDER EVIDENCE NOT ADMISSIBLE UNDER SUCH RULES IF THE EVIDENCE POSSESSES PROBATIVE VALUE COMMONLY ACCEPTED BY REASONABLE AND PRUDENT PERSONS IN THE CONDUCT OF THEIR AFFAIRS. OBJECTIONS TO EVIDENTIARY OFFERS MAY BE MADE AND MUST BE NOTED IN THE RECORD. THE HEARING OFFICER SHALL GIVE EFFECT TO THE RULES OF PRIVILEGE RECOGNIZED BY LAW. HE OR SHE MAY EXCLUDE INCOMPETENT AND UNDULY REPETITIOUS EVIDENCE. DOCUMENTARY EVIDENCE MAY BE RECEIVED IN THE FORM OF A COPY OR EXCERPT IF THE ORIGINAL IS NOT READILY AVAILABLE; EXCEPT THAT, UPON REQUEST, THE PARTY SHALL BE GIVEN AN OPPORTUNITY TO COMPARE THE COPY WITH THE ORIGINAL. THE DIVISION MAY UTILIZE ITS EXPERIENCE, TECHNICAL COMPETENCE, AND SPECIALIZED KNOWLEDGE IN THE EVALUATION OF THE EVIDENCE PRESENTED. THE PROVISIONS OF THE "STATE ADMINISTRATIVE PROCEDURE ACT", ARTICLE 4 OF TITLE 24,
C.R.S., and particularly sections 24-4-105 and 24-4-106, C.R.S., do not apply to hearings and court review under this article. However, the rule-making provisions of section 24-4-103, C.R.S., shall apply to this article.

(c) When the same or substantially similar evidence is relevant and material to the matters at issue in claims by more than one individual or in claims by a single individual with respect to two or more weeks of unemployment, if, in the judgment of the hearing officer, consolidation of one or more proceedings would not prejudice any interested party, the hearing officer may:

(I) conduct hearings at the same time and place;

(II) conduct joint hearings;

(III) make a single record of the proceedings; and

(IV) consider evidence introduced with respect to one proceeding as if introduced in the others.

(d) A full and complete record shall be kept of all proceedings in connection with the wage complaint. All testimony at any hearing upon a wage complaint shall be recorded but need not be transcribed unless the wage complaint is presented for further review. The division shall promptly provide all interested parties with copies of the hearing officer’s decision.

(4) For the convenience and necessity of the employee or the employer, the division may conduct hearings by telephone, including in situations in which the parties would otherwise be required to travel to locations of the division from outside the
GENERAL VICINITY OF SUCH LOCATIONS.

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

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

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

8-4-113. Fines pursuant to enforcement - wage theft enforcement fund - created. (1) (a) If a case against an employer is enforced pursuant to section 8-4-111, any employer who without good faith legal justification fails to pay the wages of each of his or her employees shall forfeit to the people of the state of Colorado an AMOUNT DETERMINED BY THE DIRECTOR OR HEARING OFFICER but no more than the sum of fifty dollars per day for each such failure to pay each employee, commencing from the date that such wages first became due and payable. to be recovered by order of the director in a hearing held pursuant to section 24-4-105, C.R.S. For the convenience and necessity of the parties or their representatives, the division is authorized to conduct such hearing by telephone if the employer would otherwise be required to travel to locations of the division of labor from outside the general
vicinity of such locations. The Division may collect the fine through its citation and notice of assessment issued pursuant to Section 8-4-111 (2) or after a hearing conducted pursuant to Section 8-4-111.5.

(b) The Director or hearing officer shall impose a fine of two hundred fifty dollars on an employer who fails to respond to a notice of complaint. The Director or hearing officer may waive or reduce the fine only if he or she finds good cause for an extension of the time for the employer to file the response.

(2) A certified copy of any final order of the director, imposing a fine or penalty citation, notice of assessment, or order imposing wages due, fines, or penalties pursuant to this article, may be filed with the clerk of the district court having jurisdiction over the parties at any time after the entry of the order. The certified copy shall be recorded by the clerk of the district court in the judgment book of said court and entry thereof made in the judgment docket, and it shall thenceforth have all the effect of a judgment of the district court, and execution may issue thereon out of said court as in other cases. All fines and penalties collected shall be paid to the division and transmitted to the state treasurer for credit to the general fund.

(3) (a) The division shall transmit all fines collected pursuant to this section to the state treasurer, who shall credit the same to the wage theft enforcement fund, which fund is created and referred to in this section as the "fund". The moneys in the fund are subject to annual appropriation by the general assembly to the division for the direct and indirect costs associated with implementing this article.
(b) The state treasurer may invest any moneys in the fund not expended for the purpose of this article as provided by law. The state treasurer shall credit all interest and income derived from the investment and deposit of moneys in the fund to the fund. Any unexpended and unencumbered moneys remaining in the fund at the end of a fiscal year remain in the fund and shall not be credited or transferred to the general fund or another fund.

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

8-6-116. Violation - penalty. (1) The minimum wages fixed by the director, as provided in this article, shall be the minimum wages paid to the employees, and the payment to such employees of a wage less than the minimum so fixed is unlawful, and every employer or other person who, individually or as an officer, agent, or employee of a corporation or other person, pays or causes to be paid to any such employee a wage less than the minimum is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, or by imprisonment in the county jail for not less than thirty days nor more than one year, or by both such fine and imprisonment. All employers are subject to joint and several liability for violations of this section.

(2) As used in this section, unless the context otherwise requires, "employer" has the same meaning as defined in section 8-4-101 (7).

SECTION 13. In Colorado Revised Statutes, amend 8-6-118 as follows:
8-6-118. Recovery of balance of minimum wage. An employee receiving less than the legal minimum wage applicable to such employee is entitled to recover in a civil action the unpaid balance of the full amount of such minimum wage, together with costs of suit, REASONABLE ATTORNEY FEES AND COURT COSTS, notwithstanding any agreement to work for a lesser wage.

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

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

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