

Second Regular Session  
Sixty-ninth General Assembly  
STATE OF COLORADO

INTRODUCED

LLS NO. 14-0175.01 Jerry Barry x4341

SENATE BILL 14-005

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SENATE SPONSORSHIP

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HOUSE SPONSORSHIP

Singer and Duran,

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Senate Committees  
Judiciary

House Committees

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A BILL FOR AN ACT

101 CONCERNING ALTERNATIVE ADMINISTRATIVE REMEDIES FOR THE  
102 PROCESSING OF CERTAIN WAGE CLAIMS, AND, IN CONNECTION  
103 THEREWITH, AMENDING THE PROVISIONS FOR WRITTEN NOTICES  
104 OF A WAGE CLAIM.

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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>.)*

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

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.*

- ! Expands wage claims to include violations involving the state minimum wage;
- ! 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). The bill authorizes the executive director of the division to impose a fine on an employer who fails to retain or make available the records.
- ! 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, to recover penalties in an action for unpaid wages, an employee is required to make a written demand on his or her employer to recover penalties, and the penalties are increased by 50% if the employer's failure to pay is willful. The bill:

- ! Provides that failure to respond to a written demand creates a rebuttable presumption that the failure to pay was willful;
- ! Provides that service of a small claims court complaint serves as the written demand; and
- ! 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 to establish an administrative procedure to adjudicate wage claims. For wage claims filed with the division for \$7,500 or less, the bill establishes procedures for the division to adjudicate the claim and issue citations and notices of assessments for the amounts due. A person dissatisfied with a decision may commence a de novo civil action in any county or district court of competent jurisdiction.

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 provides that an employee is entitled to reasonable attorney fees in an action to recover the minimum wage.

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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 "Wage  
3 Protection Act of 2014".

1           **SECTION 2.** In Colorado Revised Statutes, **amend** 8-4-101 as  
2 follows:

3           **8-4-101. Definitions.** As used in this article, unless the context  
4 otherwise requires:

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

7           ~~(1)~~ (2) "Credit" means an arrangement or understanding with the  
8 bank or other drawee for the payment of an order, check, draft, note,  
9 memorandum, or other acknowledgment of indebtedness.

10           ~~(2)~~ (3) "Director" means the director of the division of labor or his  
11 or her designee.

12           ~~(3)~~ (4) "Division" means the division of labor in the department  
13 of labor and employment.

14           ~~(4)~~ (5) "Employee" means any person, including a migratory  
15 laborer, performing labor or services for the benefit of an employer in  
16 which the employer may command when, where, and how much labor or  
17 services shall be performed. For the purpose of this article, an individual  
18 primarily free from control and direction in the performance of the  
19 service, both under his or her contract for the performance of service and  
20 in fact, and who is customarily engaged in an independent trade,  
21 occupation, profession, or business related to the service performed is not  
22 an "employee".

23           ~~(5)~~ (6) "Employer" means every person, firm, partnership,  
24 association, corporation, migratory field labor contractor or crew leader,  
25 receiver, or other officer of court in Colorado, and any agent or officer  
26 thereof, of the above mentioned classes, employing any person in  
27 Colorado; except that the provisions of this article shall not apply to the

1 state or its agencies or entities, counties, cities and counties, municipal  
2 corporations, quasi-municipal corporations, school districts, and  
3 irrigation, reservoir, or drainage conservation companies or districts  
4 organized and existing under the laws of Colorado.

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

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

20 ~~(7)~~ (9) "Migratory laborer" means any person from within or  
21 without the limits of the state of Colorado who offers his or her services  
22 to a field labor contractor, whether from within or from without the limits  
23 of the state of Colorado, so that said field labor contractor may enter into  
24 a contract with any employer to furnish the services of said migratory  
25 laborers in seasonal employment.

26 (10) "NOTICE OF ASSESSMENT" MEANS A WRITTEN NOTICE BY THE  
27 DIVISION, BASED ON A CITATION, THAT THE EMPLOYER MUST PAY THE

1 AMOUNT OF WAGES, PENALTIES, OR FINES ASSESSED.

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

4 (12) "PENALTY" MEANS ANY MONETARY AMOUNT ASSESSED  
5 AGAINST AN EMPLOYER AND PAYABLE TO AN EMPLOYEE.

6 (13) "REPEAT WILLFUL VIOLATOR" MEANS AN EMPLOYER THAT,  
7 WITHIN THREE YEARS OF THE DATE OF THE MOST RECENT VIOLATION  
8 RESULTING IN A CITATION AND NOTICE OF ASSESSMENT, WAS THE SUBJECT  
9 OF A FINAL AND BINDING CITATION AND NOTICE OF ASSESSMENT FOR A  
10 SUBSEQUENT VIOLATION OF A WAGE PAYMENT REQUIREMENT.

11 (14) "WAGE COMPLAINT" MEANS A COMPLAINT FILED WITH THE  
12 DIVISION FROM AN EMPLOYEE FOR UNPAID WAGES ALLEGING THAT AN  
13 EMPLOYER HAS VIOLATED SECTION 15 OF ARTICLE XVIII OF THE  
14 COLORADO CONSTITUTION, THIS ARTICLE, ARTICLE 6 OF THIS TITLE, OR  
15 ANY RULE ADOPTED BY THE DIRECTOR PURSUANT TO THIS ARTICLE OR  
16 ARTICLE 6 OF THIS TITLE.

17 ~~(8)~~ (15) (a) "Wages" or "compensation" means:

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

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

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

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

10 (16) "WILLFUL" MEANS A PERSON KNEW OR SHOWED A RECKLESS  
11 DISREGARD FOR WHETHER THE CONDUCT WAS PROHIBITED BY SECTION 15  
12 OF ARTICLE XVIII OF THE COLORADO CONSTITUTION, THIS ARTICLE,  
13 ARTICLE 6 OF THIS TITLE, OR ANY RULE ADOPTED BY THE DIRECTOR  
14 PURSUANT TO THIS ARTICLE OR ARTICLE 6 OF THIS TITLE.

15 (17) "WRITTEN DEMAND" MEANS ANY WRITTEN DEMAND FOR  
16 WAGES OR COMPENSATION FROM OR ON BEHALF OF AN EMPLOYEE,  
17 INCLUDING A NOTICE OF COMPLAINT, MAILED OR DELIVERED TO THE  
18 EMPLOYER'S CORRECT ADDRESS.

19 **SECTION 3.** In Colorado Revised Statutes, 8-4-103, **add** (4.5)  
20 as follows:

21 **8-4-103. Payment of wages - insufficient funds - pay statement**  
22 **- record retention - tip notification.** (4.5) AN EMPLOYER SHALL RETAIN  
23 RECORDS REFLECTING THE INFORMATION CONTAINED IN AN EMPLOYEE'S  
24 ITEMIZED PAY STATEMENT AS DESCRIBED IN SUBSECTION (4) OF THIS  
25 SECTION FOR A PERIOD OF AT LEAST THREE YEARS AFTER THE WAGES OR  
26 COMPENSATION WERE DUE. THE RECORDS SHALL BE AVAILABLE FOR  
27 INSPECTION BY THE DIVISION, AND THE EMPLOYER SHALL PROVIDE COPIES

1 OF THE RECORDS UPON REQUEST BY THE DIVISION OR THE EMPLOYEE. THE  
2 DIRECTOR MAY IMPOSE A FINE OF UP TO TWO HUNDRED FIFTY DOLLARS PER  
3 EMPLOYEE PER MONTH ON AN EMPLOYER WHO VIOLATES THIS SUBSECTION  
4 (4.5).

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

7 **8-4-109. Termination of employment - payments required -**  
8 **civil penalties - payments to surviving spouse or heir.** (1) (c) IF AN  
9 EMPLOYER HAS MADE THE EMPLOYEE'S WAGES OR COMPENSATION  
10 AVAILABLE UNDER PARAGRAPH (a) OF THIS SUBSECTION (1) OR  
11 SUBPARAGRAPH (I) OR (II) OF PARAGRAPH (b) OF THIS SUBSECTION (1),  
12 AND THE EMPLOYEE HAS NOT RECEIVED THE WAGES OR COMPENSATION  
13 WITHIN SIXTY DAYS AFTER THE WAGES OR COMPENSATION WERE DUE, THE  
14 EMPLOYER SHALL MAIL THE EMPLOYEE'S CHECK FOR WAGES OR  
15 COMPENSATION DUE TO THE EMPLOYEE'S LAST-KNOWN MAILING ADDRESS.

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

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

27 ~~(b) If an employee's earned, vested, and determinable wages or~~

1 compensation are not mailed to the place of receipt specified in a demand  
2 for payment and postmarked within fourteen days after the receipt of such  
3 demand, the employer shall be liable to the employee for the wages or  
4 compensation, and a penalty of the sum of the following amounts of  
5 wages or compensation due or, if greater, the employee's average daily  
6 earnings for each day, not to exceed ten days, until such payment or other  
7 settlement satisfactory to the employee is made:

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

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

13 (e) (b) If the employee can show that the employer's failure to pay  
14 is willful, the penalty required under paragraph (b) (a) of this subsection  
15 (3) shall increase by fifty percent. Evidence that a judgment has, within  
16 the previous five years, been entered against the employer for failure to  
17 pay wages or compensation shall be admissible as evidence of willful  
18 conduct. IF A WRITTEN DEMAND FROM OR ON BEHALF OF THE EMPLOYEE  
19 WAS MAILED OR DELIVERED TO THE EMPLOYER'S CORRECT ADDRESS  
20 PURSUANT TO PARAGRAPH (c) OF THIS SUBSECTION (3), THE EMPLOYER'S  
21 FAILURE TO RESPOND TO THE DEMAND WITHIN FOURTEEN DAYS CREATES  
22 A REBUTTABLE PRESUMPTION THAT THE EMPLOYER'S FAILURE TO PAY WAS  
23 WILLFUL. AN EMPLOYER'S GOOD FAITH EFFORTS TO RESPOND TO THE  
24 DEMAND ARE ADMISSIBLE IN EVIDENCE TO REBUT THE PRESUMPTION.

25 (d) (c) (I) ~~The daily earnings penalty shall not begin to accrue~~  
26 ~~until the employer receives the written demand set forth in paragraph (a)~~  
27 ~~of this subsection (3).~~ THE PENALTIES ESTABLISHED IN PARAGRAPH (a) OF



1 THIS SUBSECTION (3) ONLY APPLY IF THE EMPLOYEE MADE A WRITTEN  
2 DEMAND TO THE EMPLOYER AT LEAST FOURTEEN DAYS PRIOR TO FILING AN  
3 ACTION. THE EMPLOYER SHALL MAKE PAYMENT TO THE EMPLOYEE AT THE  
4 ADDRESS CONTAINED IN THE DEMAND OR, IF NO ADDRESS IS STATED IN THE  
5 DEMAND, THE EMPLOYEE'S LAST KNOWN ADDRESS ACCORDING TO THE  
6 RECORDS OF THE EMPLOYER.

7 (II) The employee or his or her designated agent may commence  
8 a civil action to recover the penalty set forth in this subsection (3). ~~Any~~  
9 ~~employee or his or her designated agent who has not made a written~~  
10 ~~demand for the payment within sixty days after the date of separation or~~  
11 ~~who has otherwise not been available to receive payment shall not be~~  
12 ~~entitled to any such penalty under this subsection (3).~~ FOR AN ACTION  
13 FILED IN A SMALL CLAIMS COURT, ESTABLISHED PURSUANT TO PART 4 OF  
14 ARTICLE 6 OF TITLE 13, C.R.S., IF THE EMPLOYER HAS NOT RECEIVED A  
15 WRITTEN DEMAND AT LEAST FOURTEEN DAYS BEFORE THE EMPLOYER IS  
16 SERVED WITH THE COMPLAINT OR OTHER DOCUMENT COMMENCING THE  
17 ACTION, SERVICE OF THE COMPLAINT OR OTHER DOCUMENT SERVES AS THE  
18 WRITTEN DEMAND UNDER THIS SUBSECTION (3). A payment under this  
19 subsection (3) shall be made in the form of a check draft or voucher in the  
20 name of the employee.

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

26 **SECTION 5.** In Colorado Revised Statutes, **amend** 8-4-111 as  
27 follows:

1           **8-4-111. Enforcement - duty of director - duties of district**

2           **attorneys or city attorneys.** (1) (a) It is the duty of the director to  
3 inquire diligently for any violation of this article, and to institute the  
4 actions for penalties OR FINES provided for in this article in such cases as  
5 he or she may deem proper, and to enforce generally the provisions of this  
6 article. THE DIRECTOR MAY ESTABLISH AN ADMINISTRATIVE PROCEDURE  
7 TO RECEIVE COMPLAINTS AND ADJUDICATE CLAIMS FOR NONPAYMENT OF  
8 WAGES OF SEVEN THOUSAND FIVE HUNDRED DOLLARS OR LESS. THE  
9 PROCEDURES MAY INCLUDE CLAIMS OF EMPLOYEES WHERE NO  
10 INTERRUPTION OF THE EMPLOYER-EMPLOYEE RELATIONSHIP HAS  
11 OCCURRED. THE PENALTIES ESTABLISHED BY SECTION 8-4-109 (3) APPLY  
12 TO ACTIONS INSTITUTED BY THE DIRECTOR UNDER THIS ARTICLE WHEN NO  
13 INTERRUPTION OF THE EMPLOYER-EMPLOYEE RELATIONSHIP HAS  
14 OCCURRED.

15           (b) THE DIRECTOR SHALL PROMULGATE RULES PROVIDING FOR  
16 NOTICE TO EMPLOYEES OF AN EMPLOYEE'S RIGHTS UNDER THIS SECTION  
17 AND SECTION 8-4-111.5, OF THE LIMITATIONS ON THE AMOUNT OF WAGES,  
18 COMPENSATION, AND PENALTIES AVAILABLE UNDER THE ADMINISTRATIVE  
19 REMEDY, AND OF THE EMPLOYEE'S OPTION TO BRING A CLAIM FOR WAGES  
20 AND COMPENSATION IN COURT WITHOUT PURSUING THE ADMINISTRATIVE  
21 REMEDY.

22           (2) (a) (I) IF ONE OR MORE EMPLOYEES FILES A WAGE COMPLAINT  
23 WITH THE DIVISION CLAIMING UNPAID WAGES OR COMPENSATION OF SEVEN  
24 THOUSAND FIVE HUNDRED DOLLARS OR LESS PER EMPLOYEE, EXCLUSIVE  
25 OF PENALTIES AND FINES, THE DIVISION SHALL INVESTIGATE THE WAGE  
26 COMPLAINT. THE DIVISION SHALL INITIATE THE ADMINISTRATIVE  
27 PROCEDURE BY SENDING A NOTICE OF COMPLAINT TO THE EMPLOYER BY

1 MAIL OR ELECTRONIC MEANS IN ACCORDANCE WITH RULES AS THE  
2 DIRECTOR MAY PROMULGATE WHEN THE COMPLAINT STATES A CLAIM FOR  
3 RELIEF. THE NOTICE OF THE COMPLAINT MUST INCLUDE:

4 (A) THE NAME OF THE COMPLAINANT;

5 (B) THE NATURE OF THE COMPLAINT; AND

6 (C) THE AMOUNT FOR WHICH THE EMPLOYER MAY BE LIABLE,  
7 INCLUDING ANY POTENTIAL FINES OR PENALTIES.

8 (II) AN EMPLOYER MUST RESPOND WITHIN FOURTEEN DAYS AFTER  
9 THE COMPLAINT IS SENT.

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

15 (b) IF THE DIVISION DOES NOT FIND A VIOLATION BASED ON THE  
16 WAGE COMPLAINT AND ANY RESPONSE, INCLUDING THE FAILURE BY THE  
17 EMPLOYEE TO PURSUE THE WAGE COMPLAINT, THE DIVISION SHALL ISSUE  
18 A NOTICE OF THE DISMISSAL OF THE COMPLAINT AND SEND THE NOTICE TO  
19 ALL INTERESTED PARTIES. THE NOTICE MUST SET FORTH THE EMPLOYEE'S  
20 RIGHT TO ANY OTHER RELIEF AVAILABLE UNDER THIS SECTION OR SECTION  
21 8-4-111.5.

22 (c) IF THE DIVISION DETERMINES THAT AN EMPLOYER HAS  
23 VIOLATED THIS ARTICLE FOR NONPAYMENT OF WAGES OR COMPENSATION,  
24 THE DIVISION SHALL ISSUE A CITATION AND NOTICE OF ASSESSMENT FOR  
25 THE AMOUNT DETERMINED THAT IS OWED, WHICH AMOUNT MUST INCLUDE  
26 ALL WAGES AND COMPENSATION OWED, PENALTIES PURSUANT TO SECTION  
27 8-4-109, AND ANY FINES PURSUANT TO SECTION 8-4-113.

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

9           (e) UPON PAYMENT BY AN EMPLOYER, AND ACCEPTANCE BY AN  
10 EMPLOYEE, OF ALL WAGES, COMPENSATION, AND PENALTIES ASSESSED BY  
11 THE DIVISION IN A CITATION AND NOTICE OF ASSESSMENT ISSUED TO THE  
12 EMPLOYER, THE PAYMENT SHALL CONSTITUTE A FULL AND COMPLETE  
13 SATISFACTION BY THE EMPLOYER AND BAR THE EMPLOYEE FROM  
14 INITIATING OR PURSUING ANY CIVIL ACTION OR OTHER ADMINISTRATIVE  
15 PROCEEDING BASED ON THE WAGE COMPLAINT ADDRESSED BY THE  
16 CITATION AND NOTICE OF ASSESSMENT UNLESS THE EMPLOYEE ELECTS TO  
17 TERMINATE THE DIVISION'S ADMINISTRATIVE PROCEDURE UNDER  
18 SUBSECTION (3) OF THIS SECTION.

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

1 AND REVOKE ANY CITATION AND NOTICE OF ASSESSMENT SENT.

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

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

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

18 ~~(2)~~ (7) Nothing in this article shall be construed to limit the  
19 authority of the district attorney of any county or city and county or the  
20 city attorney of any city to prosecute actions for such violations of this  
21 article as may come to his or her knowledge, or to enforce the provisions  
22 of this article independently and without specific direction of the director,  
23 or to limit the right of any wage claimant to sue directly or through an  
24 assignee for any wages or penalty due him or her under the provisions of  
25 this article.

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

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

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

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

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

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

24           (3) (a) THE HEARING OFFICER, AFTER AFFORDING ALL INTERESTED  
25 PARTIES A REASONABLE OPPORTUNITY FOR A FAIR HEARING PURSUANT TO  
26 THE PROVISIONS OF THIS ARTICLE AND THE ADMINISTRATIVE PROCEDURES  
27 OF THE DIVISION, SHALL MAKE A DECISION ON EACH RELEVANT ISSUE

1 RAISED, INCLUDING FINDINGS OF FACT, CONCLUSIONS OF LAW, AND AN  
2 ORDER.

3 (b) EVIDENCE AND REQUIREMENTS OF PROOF IN A HEARING  
4 CONDUCTED PURSUANT TO THIS SECTION MUST CONFORM, TO THE EXTENT  
5 PRACTICABLE, WITH THOSE IN CIVIL NONJURY CASES IN THE DISTRICT  
6 COURTS OF THIS STATE. HOWEVER, WHEN NECESSARY TO DO SO IN ORDER  
7 TO ASCERTAIN FACTS AFFECTING THE SUBSTANTIAL RIGHTS OF THE  
8 PARTIES TO THE PROCEEDING, THE PERSON CONDUCTING THE HEARING  
9 MAY RECEIVE AND CONSIDER EVIDENCE NOT ADMISSIBLE UNDER SUCH  
10 RULES IF THE EVIDENCE POSSESSES PROBATIVE VALUE COMMONLY  
11 ACCEPTED BY REASONABLE AND PRUDENT PERSONS IN THE CONDUCT OF  
12 THEIR AFFAIRS. OBJECTIONS TO EVIDENTIARY OFFERS MAY BE MADE AND  
13 MUST BE NOTED IN THE RECORD. THE HEARING OFFICER SHALL GIVE  
14 EFFECT TO THE RULES OF PRIVILEGE RECOGNIZED BY LAW. HE OR SHE MAY  
15 EXCLUDE INCOMPETENT AND UNDULY REPETITIOUS EVIDENCE. THE  
16 HEARING OFFICER MAY ACCEPT DOCUMENTARY EVIDENCE IN THE FORM OF  
17 A COPY OR EXCERPT IF THE ORIGINAL IS NOT READILY AVAILABLE; EXCEPT  
18 THAT, UPON REQUEST, THE PARTY SHALL BE GIVEN AN OPPORTUNITY TO  
19 COMPARE THE COPY WITH THE ORIGINAL. THE DIVISION MAY UTILIZE ITS  
20 EXPERIENCE, TECHNICAL COMPETENCE, AND SPECIALIZED KNOWLEDGE IN  
21 THE EVALUATION OF THE EVIDENCE PRESENTED. THE PROVISIONS OF THE  
22 "STATE ADMINISTRATIVE PROCEDURE ACT", ARTICLE 4 OF TITLE 24,  
23 C.R.S., AND PARTICULARLY SECTIONS 24-4-105 AND 24-4-106, C.R.S., DO  
24 NOT APPLY TO HEARINGS AND COURT REVIEW UNDER THIS ARTICLE.  
25 HOWEVER, THE RULE-MAKING PROVISIONS OF SECTION 24-4-103, C.R.S.,  
26 SHALL APPLY TO THIS ARTICLE.

27 (c) WHEN THE SAME OR SUBSTANTIALLY SIMILAR EVIDENCE IS



1 RELEVANT AND MATERIAL TO THE MATTERS AT ISSUE IN CLAIMS BY MORE  
2 THAN ONE INDIVIDUAL OR IN CLAIMS BY A SINGLE INDIVIDUAL WITH  
3 RESPECT TO TWO OR MORE CLAIMED VIOLATIONS, IF, IN THE JUDGMENT OF  
4 THE HEARING OFFICER, CONSOLIDATION OF ONE OR MORE PROCEEDINGS  
5 WOULD NOT PREJUDICE ANY INTERESTED PARTY, THE HEARING OFFICER  
6 MAY:

- 7 (I) CONDUCT HEARINGS AT THE SAME TIME AND PLACE;
- 8 (II) CONDUCT JOINT HEARINGS;
- 9 (III) MAKE A SINGLE RECORD OF THE PROCEEDINGS; AND
- 10 (IV) CONSIDER EVIDENCE INTRODUCED WITH RESPECT TO ONE  
11 PROCEEDING AS IF INTRODUCED IN THE OTHERS.

12 (d) THE DIVISION SHALL KEEP A FULL AND COMPLETE RECORD OF  
13 ALL PROCEEDINGS IN CONNECTION WITH THE WAGE COMPLAINT. ALL  
14 TESTIMONY AT ANY HEARING UPON A WAGE COMPLAINT MUST BE  
15 RECORDED BUT NEED NOT BE TRANSCRIBED UNLESS THE WAGE COMPLAINT  
16 IS PRESENTED FOR FURTHER REVIEW. THE DIVISION SHALL PROMPTLY  
17 PROVIDE ALL INTERESTED PARTIES WITH COPIES OF THE HEARING OFFICER'S  
18 DECISION.

19 (4) FOR THE CONVENIENCE AND NECESSITY OF THE EMPLOYEE OR  
20 THE EMPLOYER, THE DIVISION SHALL PERMIT PARTIES TO PARTICIPATE IN  
21 HEARINGS BY TELEPHONE, INCLUDING IN SITUATIONS IN WHICH THE  
22 PARTIES WOULD OTHERWISE BE REQUIRED TO TRAVEL TO LOCATIONS OF  
23 THE DIVISION FROM OUTSIDE THE GENERAL VICINITY OF SUCH LOCATIONS.

24 (5) AN INTERESTED PARTY WHO IS DISSATISFIED WITH THE  
25 HEARING OFFICER'S DECISION MAY COMMENCE A CIVIL ACTION IN ANY  
26 COUNTY OR DISTRICT COURT OF COMPETENT JURISDICTION. THE DIRECTOR  
27 SHALL PRESCRIBE AN ADMINISTRATIVE PROCEDURE FOR THE

1 TRANSCRIPTION OF TESTIMONY. THE CIVIL ACTION IN A COURT IS DE NOVO.

2 **SECTION 7.** In Colorado Revised Statutes, **amend** 8-4-113 as  
3 follows:

4 **8-4-113. Fines pursuant to enforcement - wage theft**  
5 **enforcement fund - created.** (1) (a) If a case against an employer is  
6 enforced pursuant to section 8-4-111, any employer who without good  
7 faith legal justification fails to pay the wages of each of his or her  
8 employees shall forfeit to the people of the state of Colorado ~~an~~ A FINE IN  
9 AN amount determined by the director OR HEARING OFFICER but no more  
10 than the sum of fifty dollars per day for each such failure to pay each  
11 employee, commencing from the date that such wages first became due  
12 and payable. ~~to be recovered by order of the director in a hearing held~~  
13 ~~pursuant to section 24-4-105, C.R.S. For the convenience and necessity~~  
14 ~~of the parties or their representatives, the division is authorized to conduct~~  
15 ~~such hearing by telephone if the employer would otherwise be required~~  
16 ~~to travel to locations of the division of labor from outside the general~~  
17 ~~vicinity of such locations.~~ THE DIVISION MAY COLLECT THE FINE THROUGH  
18 ITS CITATION AND NOTICE OF ASSESSMENT ISSUED PURSUANT TO SECTION  
19 8-4-111 (2) OR AFTER A HEARING CONDUCTED PURSUANT TO SECTION  
20 8-4-111.5.

21 (b) THE DIRECTOR OR HEARING OFFICER SHALL IMPOSE A FINE OF  
22 TWO HUNDRED FIFTY DOLLARS ON AN EMPLOYER WHO FAILS TO RESPOND  
23 TO A NOTICE OF COMPLAINT OR TO ANY OTHER NOTICE FROM THE DIVISION  
24 TO WHICH A RESPONSE IS REQUIRED. THE DIRECTOR OR HEARING OFFICER  
25 MAY WAIVE OR REDUCE THE FINE ONLY IF HE OR SHE FINDS GOOD CAUSE  
26 FOR AN EXTENSION OF THE TIME FOR THE EMPLOYER TO FILE THE  
27 RESPONSE.

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

12           (3) (a) THE DIVISION SHALL TRANSMIT ALL FINES COLLECTED  
13 PURSUANT TO THIS SECTION TO THE STATE TREASURER, WHO SHALL  
14 CREDIT THE SAME TO THE WAGE THEFT ENFORCEMENT FUND, WHICH FUND  
15 IS CREATED AND REFERRED TO IN THIS SECTION AS THE "FUND". THE  
16 MONEYS IN THE FUND ARE SUBJECT TO ANNUAL APPROPRIATION BY THE  
17 GENERAL ASSEMBLY TO THE DIVISION FOR THE DIRECT AND INDIRECT  
18 COSTS ASSOCIATED WITH IMPLEMENTING THIS ARTICLE.

19           (b) THE STATE TREASURER MAY INVEST ANY MONEYS IN THE FUND  
20 NOT EXPENDED FOR THE PURPOSE OF THIS ARTICLE AS PROVIDED BY LAW.  
21 THE STATE TREASURER SHALL CREDIT ALL INTEREST AND INCOME DERIVED  
22 FROM THE INVESTMENT AND DEPOSIT OF MONEYS IN THE FUND TO THE  
23 FUND. ANY UNEXPENDED AND UNENCUMBERED MONEYS REMAINING IN  
24 THE FUND AT THE END OF A FISCAL YEAR REMAIN IN THE FUND AND MUST  
25 NOT BE CREDITED OR TRANSFERRED TO THE GENERAL FUND OR ANOTHER  
26 FUND.

27           **SECTION 8.** In Colorado Revised Statutes, **amend** 8-6-118 as

1 follows:

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

8           **SECTION 9. Act subject to petition - effective date.** This act  
9 takes effect January 1, 2015; except that, if a referendum petition is filed  
10 pursuant to section 1 (3) of article V of the state constitution against this  
11 act or an item, section, or part of this act within the ninety-day period  
12 after final adjournment of the general assembly, then the act, item,  
13 section, or part will not take effect unless approved by the people at the  
14 general election to be held in November 2014 and, in such case, will take  
15 effect on January 1, 2015, or on the date of the official declaration of the  
16 vote thereon by the governor, whichever is later.