

Second Regular Session
Sixty-ninth General Assembly
STATE OF COLORADO

ENGROSSED

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

LLS NO. 14-0175.01 Jerry Barry x4341

SENATE BILL 14-005

SENATE SPONSORSHIP

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HOUSE SPONSORSHIP

Singer,

Senate Committees

Judiciary
Finance
Appropriations

House Committees

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, AND IN CONNECTION THEREWITH, MAKING**
105 **AND REDUCING APPROPRIATIONS.**

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/bills summaries>.)

For purposes of duties, obligations, and liabilities related to the

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.

SENATE
Amended 2nd Reading
April 16, 2014

payment of wages, the bill:

- ! 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.

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

1 Protection Act of 2014".

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

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

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

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

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

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

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

24 ~~(5)~~ (6) "Employer" means every person, firm, partnership,
25 association, corporation, migratory field labor contractor or crew leader,
26 receiver, or other officer of court in Colorado, and any agent or officer
27 thereof, of the above mentioned classes, employing any person in

1 Colorado; except that the provisions of this article shall not apply to the
2 state or its agencies or entities, counties, cities and counties, municipal
3 corporations, quasi-municipal corporations, school districts, and
4 irrigation, reservoir, or drainage conservation companies or districts
5 organized and existing under the laws of Colorado.

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

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

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

27 (10) "NOTICE OF ASSESSMENT" MEANS A WRITTEN NOTICE BY THE

1 DIVISION, BASED ON A CITATION, THAT THE EMPLOYER MUST PAY THE
2 AMOUNT OF WAGES, PENALTIES, OR FINES ASSESSED.

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

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

7

8 (13) "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, ARTICLE 6 OF THIS TITLE, OR
12 ANY RULE ADOPTED BY THE DIRECTOR PURSUANT TO THIS ARTICLE OR
13 ARTICLE 6 OF THIS TITLE.

14 ~~(8)~~ (14) (a) "Wages" or "compensation" means:

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

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

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

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

7

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

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

14 **8-4-103. Payment of wages - insufficient funds - pay statement**
15 **- record retention - tip notification.** (4.5) AN EMPLOYER SHALL RETAIN
16 RECORDS REFLECTING THE INFORMATION CONTAINED IN AN EMPLOYEE'S
17 ITEMIZED PAY STATEMENT AS DESCRIBED IN SUBSECTION (4) OF THIS
18 SECTION FOR A PERIOD OF AT LEAST THREE YEARS AFTER THE WAGES OR
19 COMPENSATION WERE DUE. THE RECORDS SHALL BE AVAILABLE FOR
20 INSPECTION BY THE DIVISION, AND THE EMPLOYER SHALL PROVIDE COPIES
21 OF THE RECORDS UPON REQUEST BY THE DIVISION OR THE EMPLOYEE. THE
22 DIRECTOR MAY IMPOSE A FINE OF UP TO TWO HUNDRED FIFTY DOLLARS PER
23 EMPLOYEE PER MONTH ON AN EMPLOYER WHO VIOLATES THIS SUBSECTION
24 (4.5) UP TO A MAXIMUM FINE OF SEVEN THOUSAND FIVE HUNDRED
25 DOLLARS.

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

1 **8-4-109. Termination of employment - payments required -**
2 **civil penalties - payments to surviving spouse or heir.** (1) (c) IF AN
3 EMPLOYER HAS MADE THE EMPLOYEE'S WAGES OR COMPENSATION
4 AVAILABLE AT THE WORK SITE OR AT THE EMPLOYER'S LOCAL OFFICE
5 UNDER PARAGRAPH (a) OR (b) OF THIS SUBSECTION (1), AND THE
6 EMPLOYEE HAS NOT RECEIVED THE WAGES OR COMPENSATION WITHIN
7 SIXTY DAYS AFTER THE WAGES OR COMPENSATION WERE DUE, THE
8 EMPLOYER SHALL MAIL THE EMPLOYEE'S CHECK FOR WAGES OR
9 COMPENSATION DUE TO THE EMPLOYEE'S LAST-KNOWN MAILING ADDRESS.

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

15 (a.5) If the employer disputes the amount of wages or
16 compensation claimed by an employee under this article and if, within
17 fourteen days after the employee's WRITTEN demand IS SENT, the
18 employer makes a legal tender of the amount that the employer in good
19 faith believes is due, the employer shall not be liable for any penalty
20 unless, in a legal action PROCEEDING, INCLUDING A CIVIL ACTION OR AN
21 ADMINISTRATIVE PROCEDURE UNDER SECTIONS 8-4-111 AND 8-4-111.5,
22 the employee recovers a greater sum than the amount so tendered.

23 (b) If an employee's earned, vested, and determinable wages or
24 compensation are not mailed to the place of receipt specified in a demand
25 for payment and postmarked within fourteen days after the receipt of such
26 demand IS NOT PAID WITHIN FOURTEEN DAYS AFTER THE WRITTEN
27 DEMAND IS SENT IN THE MANNER SET FORTH IN PARAGRAPH (d) OF THIS

1 SUBSECTION (3), the employer shall be liable to the employee for the
2 wages or _____ compensation, and a penalty of the sum of the following
3 amounts of wages or compensation due or, if greater, the employee's
4 average daily earnings for each day, not to exceed ten days, until such
5 payment or other settlement satisfactory to the employee is made:

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

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

11 (c) If the employee can show that the employer's failure to pay is
12 willful, the penalty required under paragraph (b) of this subsection (3)
13 shall increase by fifty percent. Evidence that a judgment has, within the
14 previous five years, been entered against the employer for failure to pay
15 wages or compensation ~~shall be~~ IS admissible as evidence of willful
16 conduct.

17 (d) (I) The daily earnings penalty shall not begin to accrue until
18 the employer receives the written demand set forth in paragraph (a) of this
19 subsection (3). THE EMPLOYER SHALL SEND OR DELIVER PAYMENT, BY
20 CHECK, DRAFT, OR VOUCHER IN THE EMPLOYEE'S NAME, TO THE EMPLOYEE
21 AT THE ADDRESS CONTAINED IN THE WRITTEN DEMAND; OR MAKE THE
22 PAYMENT BY DIRECT DEPOSIT AUTHORIZED UNDER SECTION 8-4-102 (2) IF
23 THE EMPLOYEE HAS NOT REVOKED THE AUTHORIZATION. THE EMPLOYER
24 MAY, BUT IS NOT REQUIRED TO, MAKE THE PAYMENT BY DIRECT DEPOSIT
25 TO AN ACCOUNT SPECIFIED BY THE EMPLOYEE IN THE DEMAND, EVEN IF
26 THE EMPLOYEE HAS NOT PREVIOUSLY AUTHORIZED DIRECT DEPOSIT OF THE
27 EMPLOYEE'S COMPENSATION, OR MAKE THE PAYMENT BY ANOTHER

1 METHOD REQUESTED BY THE EMPLOYEE IN THE DEMAND, IF APPLICABLE.
2 IF THE EMPLOYEE HAS NOT PREVIOUSLY AUTHORIZED DIRECT DEPOSIT OF
3 COMPENSATION AND THE DEMAND DOES NOT STATE AN ADDRESS TO
4 WHICH THE PAYMENT SHOULD BE MAILED, THE EMPLOYER SHALL MAKE
5 THE PAYMENT AS FOLLOWS:

6 (a) TO THE EMPLOYEE'S LAST-KNOWN ADDRESS ACCORDING TO
7 THE RECORDS OF THE EMPLOYER; OR

8 (b) IF APPLICABLE AND IF THE EMPLOYER SO ELECTS, AS
9 OTHERWISE REQUESTED BY THE EMPLOYEE IN THE DEMAND. ==

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

27 ==

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

3 **8-4-111. Enforcement - duty of director - duties of district**
4 **attorneys or city attorneys.** (1) (a) It is the duty of the director to
5 inquire diligently for any violation of this article, and to institute the
6 actions for penalties OR FINES provided for in this article in such cases as
7 he or she may deem proper, and to enforce generally the provisions of this
8 article. FOR WAGES AND COMPENSATION EARNED ON AND AFTER JANUARY
9 1, 2015, THE DIRECTOR MAY ESTABLISH AN ADMINISTRATIVE PROCEDURE
10 TO RECEIVE COMPLAINTS AND ADJUDICATE CLAIMS FOR NONPAYMENT OF
11 WAGES OR COMPENSATION OF SEVEN THOUSAND FIVE HUNDRED DOLLARS
12 OR LESS. THE PROCEDURES MAY INCLUDE CLAIMS OF EMPLOYEES WHERE
13 NO INTERRUPTION OF THE EMPLOYER-EMPLOYEE RELATIONSHIP HAS
14 OCCURRED. THE PENALTIES ESTABLISHED BY SECTION 8-4-109 (3) APPLY
15 TO ACTIONS INSTITUTED BY THE DIRECTOR UNDER THIS ARTICLE WHEN NO
16 INTERRUPTION OF THE EMPLOYER-EMPLOYEE RELATIONSHIP HAS
17 OCCURRED.

18 (b) THE DIRECTOR SHALL PROMULGATE RULES PROVIDING FOR
19 NOTICE TO EMPLOYEES OF AN EMPLOYEE'S RIGHTS UNDER THIS SECTION
20 AND SECTION 8-4-111.5, OF THE LIMITATIONS ON THE AMOUNT OF WAGES,
21 COMPENSATION, AND PENALTIES AVAILABLE UNDER THE ADMINISTRATIVE
22 REMEDY, AND OF THE EMPLOYEE'S OPTION TO BRING A CLAIM FOR WAGES
23 AND COMPENSATION IN COURT WITHOUT PURSUING THE ADMINISTRATIVE
24 REMEDY UNLESS THE EMPLOYEE HAS ACCEPTED PAYMENT PURSUANT TO
25 PARAGRAPH (e) OF SUBSECTION (2) OF THIS SECTION.

26 (2) (a) (I) IF ONE OR MORE EMPLOYEES FILES A WAGE COMPLAINT
27 WITH THE DIVISION CLAIMING UNPAID WAGES OR COMPENSATION OF SEVEN

1 THOUSAND FIVE HUNDRED DOLLARS OR LESS PER EMPLOYEE, EXCLUSIVE
2 OF PENALTIES AND FINES, THE DIVISION SHALL INVESTIGATE THE WAGE
3 COMPLAINT. THE DIVISION SHALL INITIATE THE ADMINISTRATIVE
4 PROCEDURE BY SENDING A NOTICE OF COMPLAINT TO THE EMPLOYER BY
5 MAIL OR ELECTRONIC MEANS IN ACCORDANCE WITH RULES AS THE
6 DIRECTOR MAY PROMULGATE WHEN THE COMPLAINT STATES A CLAIM FOR
7 RELIEF. THE NOTICE OF THE COMPLAINT MUST INCLUDE:

- 8 (A) THE NAME OF THE COMPLAINANT;
- 9 (B) THE NATURE OF THE COMPLAINT; AND
- 10 (C) THE AMOUNT FOR WHICH THE EMPLOYER MAY BE LIABLE,
11 INCLUDING ANY POTENTIAL FINES OR PENALTIES.

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

14 (III) THE DIVISION SHALL ISSUE A DETERMINATION WITHIN NINETY
15 DAYS AFTER THE NOTICE OF COMPLAINT IS SENT UNLESS THE DIVISION
16 EXTENDS THE TIME PERIOD BY PROVIDING ADVANCE WRITTEN NOTICE TO
17 THE EMPLOYEE AND EMPLOYER STATING GOOD CAUSE FOR THE EXTENSION
18 OF TIME.

19 (b) IF THE DIVISION DOES NOT FIND A VIOLATION BASED ON THE
20 WAGE COMPLAINT AND ANY RESPONSE, INCLUDING THE FAILURE BY THE
21 EMPLOYEE TO PURSUE THE WAGE COMPLAINT, THE DIVISION SHALL ISSUE
22 A NOTICE OF THE DISMISSAL OF THE COMPLAINT AND SEND THE NOTICE TO
23 ALL INTERESTED PARTIES. THE NOTICE MUST SET FORTH THE EMPLOYEE'S
24 RIGHT TO ANY OTHER RELIEF AVAILABLE UNDER THIS SECTION OR SECTION
25 8-4-111.5.

26 (c) IF THE DIVISION DETERMINES THAT AN EMPLOYER HAS
27 VIOLATED THIS ARTICLE FOR NONPAYMENT OF WAGES OR COMPENSATION,

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

5 (d) TO ENCOURAGE COMPLIANCE BY THE EMPLOYER, IF THE
6 EMPLOYER PAYS THE EMPLOYEE ALL WAGES AND COMPENSATION OWED
7 WITHIN FOURTEEN DAYS AFTER THE CITATION AND NOTICE OF ASSESSMENT
8 IS SENT TO THE EMPLOYER, THE DIVISION MAY WAIVE OR REDUCE ANY
9 FINES IMPOSED PURSUANT TO SECTION 8-4-113 (1) AND REDUCE BY UP TO
10 FIFTY PERCENT PENALTIES IMPOSED PURSUANT TO SECTION 8-4-109.

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

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) EXCEPT FOR AN APPEAL PURSUANT TO SECTION 8-4-111.5 (5)
3 OR AS STATED IN A CITATION, NOTICE OF ASSESSMENT, OR ORDER FILED
4 WITH THE COURT PURSUANT TO SECTION 8-4-113 (2), ANY DETERMINATION
5 MADE BY THE DIVISION PURSUANT TO THIS ARTICLE, OR ANY OFFER OF
6 PAYMENT BY THE EMPLOYER OF THE WAGES MADE DURING OR IN
7 CONJUNCTION WITH A PROCEEDING OF THE DIVISION, IS NOT ADMISSIBLE
8 IN ANY COURT ACTION.

9 (5) THE DIVISION'S NOTICE TO THE EMPLOYER OF A COMPLAINT
10 FILED PURSUANT TO SUBSECTION (2) OF THIS SECTION SATISFIES THE
11 REQUIREMENT OF A WRITTEN DEMAND AS DESCRIBED IN SECTION 8-4-109
12 (3) (a).

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

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

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

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

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

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

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

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

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

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

1 PRIVILEGE AGAINST SELF-INCRIMINATION, TO TESTIFY OR PRODUCE
2 EVIDENCE, DOCUMENTARY OR OTHERWISE; EXCEPT THAT THE INDIVIDUAL
3 TESTIFYING IS NOT EXEMPT FROM PROSECUTION AND PUNISHMENT FOR
4 PERJURY IN THE FIRST DEGREE COMMITTED IN SO TESTIFYING.

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

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

1 EXPERIENCE, TECHNICAL COMPETENCE, AND SPECIALIZED KNOWLEDGE IN
2 THE EVALUATION OF THE EVIDENCE PRESENTED. THE PROVISIONS OF THE
3 "STATE ADMINISTRATIVE PROCEDURE ACT", ARTICLE 4 OF TITLE 24,
4 C.R.S., AND PARTICULARLY SECTIONS 24-4-105 AND 24-4-106, C.R.S., DO
5 NOT APPLY TO HEARINGS AND COURT REVIEW UNDER THIS ARTICLE.
6 HOWEVER, THE RULE-MAKING PROVISIONS OF SECTION 24-4-103, C.R.S.,
7 SHALL APPLY TO THIS ARTICLE.

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

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

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

27 (4) FOR THE CONVENIENCE OR NECESSITY OF THE EMPLOYEE OR

1 THE EMPLOYER, THE DIVISION SHALL PERMIT PARTIES TO PARTICIPATE IN
2 HEARINGS BY TELEPHONE, INCLUDING IN SITUATIONS IN WHICH THE
3 PARTIES WOULD OTHERWISE BE REQUIRED TO TRAVEL TO LOCATIONS OF
4 THE DIVISION FROM OUTSIDE THE GENERAL VICINITY OF SUCH LOCATIONS.

5 (5) AN INTERESTED PARTY WHO IS DISSATISFIED WITH THE
6 HEARING OFFICER'S DECISION MAY APPEAL THAT DECISION TO THE
7 DISTRICT COURT OF COMPETENT JURISDICTION WITHIN TWENTY-ONE DAYS
8 AFTER THE DATE OF MAILING OF THE DECISION BY THE DIVISION. THE
9 APPEAL WILL BE CONDUCTED IN ACCORDANCE WITH SECTIONS (a), (b), (c),
10 AND (d) OF RULE 411 OF THE COLORADO RULES OF CIVIL PROCEDURE, OR
11 A SUCCESSOR RULE, WITH REFERENCE IN THAT RULE TO "CIVIL ACTION"
12 AND THE "COUNTY COURT" REPLACED WITH "THE PROCEEDINGS", "THE
13 HEARING OFFICER", OR OTHER APPROPRIATE WORDS. _____

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

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

1 ~~to travel to locations of the division of labor from outside the general~~
2 ~~vicinity of such locations.~~ THE DIVISION MAY COLLECT THE FINE THROUGH
3 ITS CITATION AND NOTICE OF ASSESSMENT ISSUED PURSUANT TO SECTION
4 8-4-111 (2) OR AFTER A HEARING CONDUCTED PURSUANT TO SECTION
5 8-4-111.5.

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

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

24 (3) (a) THE DIVISION SHALL TRANSMIT ALL FINES COLLECTED
25 PURSUANT TO THIS SECTION TO THE STATE TREASURER, WHO SHALL
26 CREDIT THE SAME TO THE WAGE THEFT ENFORCEMENT FUND, WHICH FUND
27 IS CREATED AND REFERRED TO IN THIS SECTION AS THE "FUND". THE

1 MONEYS IN THE FUND ARE SUBJECT TO ANNUAL APPROPRIATION BY THE
2 GENERAL ASSEMBLY TO THE DIVISION FOR THE DIRECT AND INDIRECT
3 COSTS ASSOCIATED WITH IMPLEMENTING THIS ARTICLE.

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

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

14 **8-6-118. Recovery of balance of minimum wage.** An employee
15 receiving less than the legal minimum wage applicable to such employee
16 is entitled to recover in a civil action the unpaid balance of the full
17 amount of such minimum wage, together with ~~costs of suit~~ REASONABLE
18 ATTORNEY FEES AND COURT COSTS, notwithstanding any agreement to
19 work for a lesser wage.

20 **SECTION 9. Appropriation - adjustments to 2014 long bill.**

21 (1) For the implementation of this act, the general fund appropriation
22 made in the annual general appropriation act to the controlled
23 maintenance trust fund created in section 24-75-302.5 (2) (a), Colorado
24 Revised Statutes, for the fiscal year beginning July 1, 2014, is decreased
25 by \$320,903.

26 (2) In addition to any other appropriation, there is hereby
27 appropriated, to the department of labor and employment, for the fiscal

1 year beginning July 1, 2014, the sum of \$333,403, or so much thereof as
2 may be necessary, for allocation to the division of labor for the
3 implementation of this act. Of said sum, \$320,903 is from the general
4 fund, and \$12,500 is from the wage theft enforcement fund created in
5 section 8-4-113 (3) (a), Colorado Revised Statutes.

6 (3) In addition to any other appropriation, there is hereby
7 appropriated to the governor - lieutenant governor - state planning and
8 budgeting, for the fiscal year beginning July 1, 2014, the sum of \$16,480,
9 or so much thereof as may be necessary, for allocation to the office of
10 information technology, for the provision of computer center services for
11 the department of labor and employment related to the implementation of
12 this act. Said sum is from reappropriated funds received from the
13 department of labor and employment out of the appropriation made in
14 subsection (2) of this section.

15 (4) In addition to any other appropriation, there is hereby
16 appropriated to the department of law, for the fiscal year beginning July
17 1, 2014, the sum of \$23,225, or so much thereof as may be necessary, for
18 the provision of legal services for the department of labor and
19 employment related to the implementation of this act. Said sum is from
20 reappropriated funds received from the department of labor and
21 employment out of the appropriation made in subsection (2) of this
22 section.

23 **SECTION 10. Effective date.** (1) Sections 1, 5, 6, 9, 10, and 11
24 of this act take effect upon passage.

25 (2) The remaining sections of this act take effect January 1, 2015.

26 **SECTION 11. Safety clause.** The general assembly hereby finds,

- 1 determines, and declares that this act is necessary for the immediate
- 2 preservation of the public peace, health, and safety.