

Second Regular Session
Sixty-ninth General Assembly
STATE OF COLORADO

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

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

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.**

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.

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.

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

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

17 **8-4-103. Payment of wages - insufficient funds - pay statement**
18 **- record retention - tip notification.** (4.5) AN EMPLOYER SHALL RETAIN
19 RECORDS REFLECTING THE INFORMATION CONTAINED IN AN EMPLOYEE'S
20 ITEMIZED PAY STATEMENT AS DESCRIBED IN SUBSECTION (4) OF THIS
21 SECTION FOR A PERIOD OF AT LEAST THREE YEARS AFTER THE WAGES OR
22 COMPENSATION WERE DUE. THE RECORDS SHALL BE AVAILABLE FOR
23 INSPECTION BY THE DIVISION, AND THE EMPLOYER SHALL PROVIDE COPIES
24 OF THE RECORDS UPON REQUEST BY THE DIVISION OR THE EMPLOYEE. THE
25 DIRECTOR MAY IMPOSE A FINE OF UP TO TWO HUNDRED FIFTY DOLLARS PER
26 EMPLOYEE PER MONTH ON AN EMPLOYER WHO VIOLATES THIS SUBSECTION
27 (4.5) UP TO A MAXIMUM FINE OF SEVEN THOUSAND FIVE HUNDRED

1 DOLLARS.

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

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

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

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

25 (b) If an employee's earned, vested, and determinable wages or
26 compensation are not mailed to the place of receipt specified in a demand
27 for payment and postmarked within fourteen days after the receipt of such

1 demand, the employer shall be liable to the employee for the wages or
2 _____ compensation, and a penalty of the sum of the following amounts of
3 wages or compensation due or, if greater, the employee's average daily
4 earnings for each day, not to exceed ten days, until such payment or other
5 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. IF A WRITTEN DEMAND FROM OR ON BEHALF OF THE EMPLOYEE
17 WAS MAILED OR DELIVERED TO THE EMPLOYER'S CORRECT ADDRESS
18 PURSUANT TO PARAGRAPH (c) OF THIS SUBSECTION (3), THE EMPLOYER'S
19 FAILURE TO RESPOND TO THE DEMAND WITHIN FOURTEEN DAYS CREATES
20 A REBUTTABLE PRESUMPTION THAT THE EMPLOYER'S FAILURE TO PAY WAS
21 WILLFUL. AN EMPLOYER'S GOOD FAITH EFFORTS TO RESPOND TO THE
22 DEMAND ARE ADMISSIBLE IN EVIDENCE TO REBUT THE PRESUMPTION.

23 (d) (I) ~~The daily earnings penalty shall not begin to accrue until~~
24 ~~the employer receives the written demand set forth in paragraph (a) of this~~
25 subsection (3): _____ THE EMPLOYER SHALL MAKE PAYMENT TO THE
26 EMPLOYEE AT THE ADDRESS CONTAINED IN THE DEMAND OR, IF NO
27 ADDRESS IS STATED IN THE DEMAND, THE EMPLOYEE'S LAST KNOWN

1 ADDRESS ACCORDING TO THE RECORDS OF THE EMPLOYER. A PAYMENT
2 UNDER THIS SUBSECTION (3) SHALL BE MADE IN THE FORM OF A CHECK
3 DRAFT OR VOUCHER IN THE NAME OF THE EMPLOYEE OR BY DIRECT
4 DEPOSIT AUTHORIZED UNDER SECTION 8-4-102 (2) IF THE EMPLOYEE HAS
5 NOT REVOKED THE AUTHORIZATION.

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

23

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

26 **8-4-111. Enforcement - duty of director - duties of district**
27 **attorneys or city attorneys.** (1) (a) It is the duty of the director to

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

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

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 OR AFTER
9 TERMINATING THE DIVISION'S ADMINISTRATIVE PROCEDURE PURSUANT TO
10 SUBSECTION (3) OF THIS SECTION.

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

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

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

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

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

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

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

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

27 (b) (I) IN CASE OF A FAILURE TO OBEY A SUBPOENA ISSUED TO ANY

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

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

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

1 EVIDENCE, DOCUMENTARY OR OTHERWISE; EXCEPT THAT THE INDIVIDUAL
2 TESTIFYING IS NOT EXEMPT FROM PROSECUTION AND PUNISHMENT FOR
3 PERJURY IN THE FIRST DEGREE COMMITTED IN SO TESTIFYING.

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

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

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

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

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

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

26 (4) FOR THE CONVENIENCE OR NECESSITY OF THE EMPLOYEE OR
27 THE EMPLOYER, THE DIVISION SHALL PERMIT PARTIES TO PARTICIPATE IN

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

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

13 ==

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. Act subject to petition - effective date.**

21 (1) (a) Except as provided in paragraph (b) of this subsection (1),
22 sections 2 through 4, 7, and 8 of this act take effect January 1, 2015.

23 (b) If a referendum petition is filed pursuant to section 1 (3) of
24 article V of the state constitution against sections 2 through 4, 7, and 8 of
25 this act or an item, section, or part of those sections within the ninety-day
26 period after final adjournment of the general assembly, then the item,
27 section, or part will not take effect unless approved by the people at the

1 general election to be held in November 2014 and, in such case, will take
2 effect on January 1, 2015 or on the date of the official declaration of the
3 vote thereon by the governor, whichever is later.

4 (2) Sections 1, 5, 6, and 9 of this act take effect at 12:01 a.m. on
5 the day following the expiration of the ninety-day period after final
6 adjournment of the general assembly (August 6, 2014, if adjournment
7 sine die is on May 7, 2014); except that, if a referendum petition is filed
8 pursuant to section 1 (3) of article V of the state constitution against this
9 act or an item, section, or part of this act within such period, then the act,
10 item, section, or part will not take effect unless approved by the people
11 at the general election to be held in November 2014 and, in such case,
12 will take effect on the date of the official declaration of the vote thereon
13 by the governor.