

Second Regular Session
Seventieth General Assembly
STATE OF COLORADO

REENGROSSED

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

LLS NO. 16-0096.01 Nicole Myers x4326

HOUSE BILL 16-1001

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A BILL FOR AN ACT

101 **CONCERNING A REQUIREMENT THAT A BUSINESS PERFORMING WORK**
102 **FOR THE STATE PURSUANT TO A STATE CONTRACT COMPLY WITH**
103 **EQUAL PAY STANDARDS.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)

The bill requires a business that bids for a contract with a governmental body to submit with its bid certification that it is in compliance with state and federal equal pay standards and laws; except that this requirement does not apply to businesses that have 50 or fewer employees.

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.

HOUSE
3rd Reading Unamended
March 24, 2016

HOUSE
Amended 2nd Reading
March 22, 2016

The executive director of the department of personnel, or the executive director's designee (executive director), is required to develop a form for a business to use to certify that it is in compliance with equal pay standards and laws and that, if awarded a contract, it will remain in compliance with such standards and laws throughout the term of the contract. The executive director is required to ensure that the form requires a business to certify certain general information regarding its employees and employment and hiring practices in connection with equal pay laws.

A business that is awarded a contract is required to ensure that any subcontractor that it uses to fulfill the terms of the contract is also in compliance with equal pay standards and laws.

All businesses that are awarded contracts by a governmental body or that are subcontractors for a business that was awarded a contract by a governmental body are required to keep and maintain certain information related to their employees, broken down into categories by gender, race, ethnicity, and national origin, for the term of the contract with the governmental body.

If, after awarding a contract to a business, a governmental body determines that the business knowingly submitted false information on the certification form for equal pay compliance required by the bill, the governmental body is required to terminate the contract.

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

2 **SECTION 1.** In Colorado Revised Statutes, **add** 24-103-405 as
3 follows:

4 **24-103-405. Business compliance with equal pay standards.**

5 (1) A GOVERNMENTAL BODY SHALL NOT AWARD A CONTRACT TO A
6 BUSINESS PURSUANT TO THIS CODE UNLESS THE BUSINESS IS IN
7 COMPLIANCE WITH THE EQUAL PAY STANDARDS SPECIFIED IN SUBSECTION
8 (2) OF THIS SECTION; EXCEPT THAT THIS SECTION SHALL NOT APPLY TO
9 BUSINESSES WITH FIFTY OF FEWER EMPLOYEES.

10 (2) A BUSINESS THAT BIDS TO BE AWARDED A STATE CONTRACT
11 PURSUANT TO THIS CODE SHALL COMPLY WITH THE FOLLOWING
12 REQUIREMENTS:

13 (a) THE BUSINESS DOES NOT PAY ANY OF ITS EMPLOYEES AT WAGE

1 RATES LESS THAN THE RATES PAID TO OTHER EMPLOYEES ON THE BASIS OF
2 DISABILITY, RACE, CREED, COLOR, SEX, SEXUAL ORIENTATION,
3 TRANSGENDER STATUS, RELIGION, AGE, NATIONAL ORIGIN, OR ANCESTRY
4 FOR SUBSTANTIALLY SIMILAR WORK, WHEN VIEWED AS A COMPOSITE OF
5 SKILL, EFFORT, AND RESPONSIBILITY AND PERFORMED UNDER SIMILAR
6 WORKING CONDITIONS, EXCEPT WHERE THE WAGE DIFFERENTIAL IS BASED
7 UPON ONE OR MORE OF THE FOLLOWING FACTORS:

8 (I) A SENIORITY SYSTEM;

9 (II) A MERIT SYSTEM;

10 (III) A SYSTEM THAT MEASURES AN EMPLOYEE'S EARNINGS BY THE
11 QUANTITY OR QUALITY OF PRODUCTION BY THE EMPLOYEE; OR

12 (IV) A BONA FIDE FACTOR OTHER THAN DISABILITY, RACE, CREED,
13 COLOR, SEX, SEXUAL ORIENTATION, TRANSGENDER STATUS, RELIGION,
14 AGE, NATIONAL ORIGIN, OR ANCESTRY, SUCH AS EDUCATION, TRAINING, OR
15 EXPERIENCE;

16 (b) EMPLOYEES OF THE BUSINESS CANNOT BE DISCIPLINED FOR
17 SHARING INFORMATION REGARDING EMPLOYEE COMPENSATION WITH
18 OTHER EMPLOYEES OF THE BUSINESS;

19 (c) FOR ANY JOB POSTING, THE BUSINESS INCLUDES INFORMATION
20 REGARDING THE SALARY RANGE FOR THE AVAILABLE POSITION;

21 (d) THE BUSINESS DOES NOT RESTRICT EMPLOYEES OF ONE
22 DISABILITY, RACE, CREED, COLOR, SEX, SEXUAL ORIENTATION,
23 TRANSGENDER STATUS, RELIGION, AGE, NATIONAL ORIGIN, OR ANCESTRY
24 TO CERTAIN JOB CLASSIFICATIONS AND MAKES RETENTION AND
25 PROMOTION DECISIONS WITHOUT REGARD TO DISABILITY, RACE, CREED,
26 COLOR, SEX, SEXUAL ORIENTATION, TRANSGENDER STATUS, RELIGION,
27 AGE, NATIONAL ORIGIN, OR ANCESTRY;

1 (e) WAGE AND BENEFIT DISPARITIES ARE CORRECTED WHEN
2 IDENTIFIED TO ENSURE COMPLIANCE WITH EQUAL PAY STANDARDS AND
3 LAWS; AND

4 (f) WAGES AND BENEFITS ARE PERIODICALLY EVALUATED TO
5 ENSURE COMPLIANCE WITH EQUAL PAY STANDARDS AND LAWS, INCLUDING
6 HOW OFTEN SUCH EVALUATION OCCURS.

7 (3) A BUSINESS THAT IS AWARDED A CONTRACT BY A
8 GOVERNMENTAL BODY SHALL REQUIRE THROUGH PRIVATE CONTRACT
9 THAT ANY SUBCONTRACTOR THAT THE BUSINESS USES TO FULFILL THE
10 TERMS OF THE CONTRACT COMPLIES WITH THE CRITERIA SPECIFIED IN
11 PARAGRAPHS (a) TO (f) OF SUBSECTION (2) OF THIS SECTION.

12 (4) ANY BUSINESS THAT IS AWARDED A CONTRACT BY A
13 GOVERNMENTAL BODY OR THAT IS A SUBCONTRACTOR FOR A BUSINESS
14 THAT WAS AWARDED A CONTRACT BY A GOVERNMENTAL BODY SHALL
15 KEEP AND MAINTAIN THE FOLLOWING INFORMATION FOR THE TERM OF THE
16 CONTRACT WITH THE GOVERNMENTAL BODY:

17 (a) WAGES EARNED BY EMPLOYEES OF THE BUSINESS,
18 CATEGORIZED BY OCCUPATION, AND WITHIN EACH OCCUPATION,
19 CATEGORIZED BY RACE, SEX, AND NATIONAL ORIGIN;

20 (b) THE NUMBER OF EMPLOYEES THAT THE BUSINESS EMPLOYS
21 CATEGORIZED BY OCCUPATION, AND WITHIN EACH OCCUPATION,
22 CATEGORIZED BY RACE, SEX, AND NATIONAL ORIGIN;

23 (c) THE AVERAGE ANNUALIZED SALARIES PAID TO EMPLOYEES, IN
24 THE MANNER MOST CONSISTENT WITH THE EMPLOYER'S COMPENSATION
25 SYSTEM, WITHIN EACH MAJOR JOB CATEGORY, CATEGORIZED BY RACE,
26 SEX, AND NATIONAL ORIGIN; AND

27 (d) THE AVERAGE LENGTH OF EMPLOYMENT BY THE BUSINESS FOR

1 EMPLOYEES IN EACH MAJOR JOB CATEGORY, CATEGORIZED BY RACE, SEX,
2 AND NATIONAL ORIGIN.

3 (5) (a) THE DEPARTMENT OF LABOR AND EMPLOYMENT MAY
4 RECEIVE COMPLAINTS ABOUT A CONTRACTOR OR SUBCONTRACTOR'S
5 POTENTIAL VIOLATIONS OF THE REQUIREMENTS OF THIS SECTION. AFTER
6 RECEIVING A COMPLAINT, THE DEPARTMENT OF LABOR AND EMPLOYMENT
7 MAY INVESTIGATE THE RECORDS THAT A CONTRACTOR AND
8 SUBCONTRACTOR ARE REQUIRED TO KEEP PURSUANT TO SUBSECTION (4)
9 OF THIS SECTION AND IMPOSE FINES PURSUANT TO PARAGRAPH (b) OF THIS
10 SUBSECTION (5) ON A CONTRACTOR OR SUBCONTRACTOR, AS APPLICABLE,
11 FOR THE VIOLATION OF THE REQUIREMENTS OF THIS SECTION.

12 (b) AFTER CONDUCTING AN INVESTIGATION OF A CONTRACTOR OR
13 SUBCONTRACTOR'S RECORDS PURSUANT TO PARAGRAPH (a) OF THIS
14 SUBSECTION (5), IF THE DEPARTMENT OF LABOR AND EMPLOYMENT
15 DETERMINES THAT A CONTRACTOR OR SUBCONTRACTOR HAS KNOWINGLY
16 VIOLATED THE REQUIREMENTS OF THIS SECTION BY FAILING TO COMPLY
17 WITH EQUAL PAY STANDARDS, THE EXECUTIVE DIRECTOR OF THE
18 DEPARTMENT OF LABOR AND EMPLOYMENT MAY IMPOSE A FINE ON THE
19 CONTRACTOR OR SUBCONTRACTOR, AS APPLICABLE, AS FOLLOWS:

20 (I) FOR THE FIRST VIOLATION, FIVE THOUSAND DOLLARS OR AN
21 AMOUNT EQUAL TO ONE PERCENT OF THE COST OF THE CONTRACT OR
22 SUBCONTRACT, AS APPLICABLE, WHICHEVER IS LESS;

23 (II) FOR THE SECOND VIOLATION, TEN THOUSAND DOLLARS OR AN
24 AMOUNT EQUAL TO ONE PERCENT OF THE COST OF THE CONTRACT OR
25 SUBCONTRACT, AS APPLICABLE, WHICHEVER IS LESS; OR

26 (III) FOR THE THIRD VIOLATION AND ANY VIOLATION THEREAFTER,
27 TWENTY-FIVE THOUSAND DOLLARS OR AN AMOUNT EQUAL TO ONE

1 PERCENT OF THE COST OF THE CONTRACT OR SUBCONTRACT, AS
2 APPLICABLE, WHICHEVER IS LESS.

3 (c) THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF LABOR AND
4 EMPLOYMENT MAY DISMISS A COMPLAINT IN HIS OR HER DISCRETION IF,
5 AFTER CONDUCTING AN INVESTIGATION PURSUANT TO THIS SECTION, THE
6 DEPARTMENT DETERMINES THAT THE CIRCUMSTANCES THAT LED TO THE
7 COMPLAINT WERE THE RESULT OF A MINOR PAPERWORK VIOLATION.

8 (d) A CONTRACTOR OR SUBCONTRACTOR WHO IS FOUND TO BE IN
9 VIOLATION OF THE PROVISIONS OF THIS SECTION MAY APPEAL SUCH
10 FINDING TO THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF LABOR AND
11 EMPLOYMENT. THE EXECUTIVE DIRECTOR OR THE EXECUTIVE DIRECTOR'S
12 DESIGNEE SHALL HOLD A HEARING TO REVIEW SUCH NOTICE OR ORDER AND
13 TAKE FINAL ACTION IN ACCORDANCE WITH ARTICLE 4 OF THIS TITLE. FINAL
14 AGENCY ACTION IS SUBJECT TO JUDICIAL REVIEW PURSUANT TO ARTICLE
15 4 OF THIS TITLE.

16 (e) ANY REVENUE COLLECTED FROM THE FINES IMPOSED PURSUANT
17 TO THIS SUBSECTION (5) SHALL BE TRANSMITTED TO THE STATE
18 TREASURER, WHO SHALL CREDIT THE SAME TO THE COLORADO LABOR
19 ENFORCEMENT CASH FUND CREATED IN SECTION 8-17-104, C.R.S.

20 (f) NOTHING IN THIS SUBSECTION (5) SHALL BE CONSTRUED TO
21 LIMIT ANY INDIVIDUAL'S RIGHT TO PURSUE AN ACTION THROUGH THE
22 COLORADO CIVIL RIGHTS DIVISION PURSUANT TO PART 3 OF ARTICLE 34 OF
23 THIS TITLE.

24 (6) IF, AFTER AWARDING A CONTRACT, A GOVERNMENTAL BODY
25 DETERMINES THAT THE CONTRACTOR OR SUBCONTRACTOR PERFORMING
26 WORK ON THE CONTRACT WAS KNOWINGLY NOT IN COMPLIANCE WITH THE
27 PROVISIONS OF THIS SECTION WHILE PERFORMING WORK ON THE

1 CONTRACT, THE GOVERNMENTAL BODY MAY TERMINATE THE CONTRACT.

2 **SECTION 2.** In Colorado Revised Statutes, 8-17-104, **amend** (4)
3 as follows:

4 **8-17-104. Enforcement - violation - penalties - Colorado labor**
5 **enforcement cash fund - creation.** (4) The revenue collected from the
6 fines imposed pursuant to subsection (2) of this section AND PURSUANT
7 TO SECTION 24-103-405 (5), C.R.S., shall be transmitted to the state
8 treasurer, who shall credit the same to the Colorado labor enforcement
9 cash fund, which is hereby created. The general assembly shall make
10 appropriations from the fund as necessary to cover the direct and indirect
11 costs of the department of labor and employment in connection with the
12 requirements of this article AND THE REQUIREMENTS OF SECTION
13 24-103-405 (5), C.R.S. All moneys not expended or encumbered and all
14 interest earned on the investment or deposit of moneys in the fund remain
15 in the fund and do not revert to the general fund or any other fund at the
16 end of any fiscal year.

17 **SECTION 3. Applicability.** This act applies to contracts entered
18 into on and after the effective date of this act.

19 **SECTION 4. Act subject to petition - effective date.** This act
20 takes effect at 12:01 a.m. on the day following the expiration of the
21 ninety-day period after final adjournment of the general assembly (August
22 10, 2016, if adjournment sine die is on May 11, 2016); except that, if a
23 referendum petition is filed pursuant to section 1 (3) of article V of the
24 state constitution against this act or an item, section, or part of this act
25 within such period, then the act, item, section, or part will not take effect
26 unless approved by the people at the general election to be held in

- 1 November 2016 and, in such case, will take effect on the date of the
- 2 official declaration of the vote thereon by the governor.