

**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

Ulibarri,

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/billsummaries>.)

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.*

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

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

18 ~~(8)~~ (15) (a) "Wages" or "compensation" means:

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

1 the employee pursuant to this article.

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

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

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

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

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

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

1 (4.5) UP TO A MAXIMUM FINE OF SEVEN THOUSAND FIVE HUNDRED
2 DOLLARS.

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

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

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

19 (a.5) If the employer disputes the amount of wages or
20 compensation claimed by an employee under this article and if, within
21 fourteen days after the employee's WRITTEN demand IS SENT, the
22 employer makes a legal tender of the amount that the employer in good
23 faith believes is due, the employer shall not be liable for any penalty
24 unless, in a legal action PROCEEDING, INCLUDING A CIVIL ACTION OR AN
25 ADMINISTRATIVE PROCEDURE UNDER SECTIONS 8-4-111 AND 8-4-111.5,
26 the 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 IS NOT PAID WITHIN FOURTEEN DAYS AFTER THE WRITTEN
4 DEMAND IS SENT IN THE MANNER SET FORTH IN PARAGRAPH (d) OF THIS
5 SUBSECTION (3), the employer shall be liable to the employee for the
6 wages or ___ compensation, and a penalty of the sum of the following
7 amounts of wages or compensation due or, if greater, the employee's
8 average daily earnings for each day, not to exceed ten days, until such
9 payment or other settlement satisfactory to the employee is made:

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

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

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

27 (d) (I) ~~The daily earnings penalty shall not begin to accrue until~~

1 the employer receives the written demand set forth in paragraph (a) of this
2 subsection (3). THE EMPLOYER SHALL SEND OR DELIVER PAYMENT, BY
3 CHECK, DRAFT, OR VOUCHER IN THE EMPLOYEE'S NAME, TO THE EMPLOYEE
4 AT THE ADDRESS CONTAINED IN THE WRITTEN DEMAND; OR MAKE THE
5 PAYMENT BY DIRECT DEPOSIT AUTHORIZED UNDER SECTION 8-4-102 (2) IF
6 THE EMPLOYEE HAS NOT REVOKED THE AUTHORIZATION. THE EMPLOYER
7 MAY, BUT IS NOT REQUIRED TO, MAKE THE PAYMENT BY DIRECT DEPOSIT
8 TO AN ACCOUNT SPECIFIED BY THE EMPLOYEE IN THE DEMAND, EVEN IF
9 THE EMPLOYEE HAS NOT PREVIOUSLY AUTHORIZED DIRECT DEPOSIT OF THE
10 EMPLOYEE'S COMPENSATION, OR MAKE THE PAYMENT BY ANOTHER
11 METHOD REQUESTED BY THE EMPLOYEE IN THE DEMAND, IF APPLICABLE.
12 IF THE EMPLOYEE HAS NOT PREVIOUSLY AUTHORIZED DIRECT DEPOSIT OF
13 COMPENSATION AND THE DEMAND DOES NOT STATE AN ADDRESS TO
14 WHICH THE PAYMENT SHOULD BE MAILED, THE EMPLOYER SHALL MAKE
15 THE PAYMENT AS FOLLOWS:

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

18 (b) IF APPLICABLE AND IF THE EMPLOYER SO ELECTS, AS
19 OTHERWISE REQUESTED BY THE EMPLOYEE IN THE DEMAND. ___

20 (II) The employee or his or her designated agent may commence
21 a civil action to recover the penalty set forth in this subsection (3). ~~Any~~
22 ~~employee or his or her designated agent who has not made a written~~
23 ~~demand for the payment within sixty days after the date of separation or~~
24 ~~who has otherwise not been available to receive payment shall not be~~
25 ~~entitled to any such penalty under this subsection (3). A payment under~~
26 ~~this subsection (3) shall be made in the form of a check draft or voucher~~
27 ~~in the name of the employee.~~ FOR AN ACTION FILED IN A SMALL CLAIMS

1 COURT, ESTABLISHED PURSUANT TO PART 4 OF ARTICLE 6 OF TITLE 13,
2 C.R.S., IF THE EMPLOYER HAS NOT RECEIVED A WRITTEN DEMAND AT
3 LEAST FOURTEEN DAYS BEFORE THE EMPLOYER IS SERVED WITH THE
4 COMPLAINT OR OTHER DOCUMENT COMMENCING THE ACTION, SERVICE OF
5 THE COMPLAINT OR OTHER DOCUMENT SERVES AS THE WRITTEN DEMAND
6 UNDER THIS SUBSECTION (3). IF AN EMPLOYER MAKES A LEGAL TENDER OF
7 THE FULL AMOUNT CLAIMED IN THE ACTION WITHIN FOURTEEN DAYS
8 AFTER SERVICE OF THE COMPLAINT OR OTHER DOCUMENT COMMENCING
9 THE ACTION, THE EMPLOYEE SHALL DISMISS THE ACTION.

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

13 **8-4-111. Enforcement - duty of director - duties of district**
14 **attorneys or city attorneys.** (1) (a) It is the duty of the director to
15 inquire diligently for any violation of this article, and to institute the
16 actions for penalties OR FINES provided for in this article in such cases as
17 he or she may deem proper, and to enforce generally the provisions of this
18 article. FOR WAGES AND COMPENSATION EARNED ON AND AFTER JANUARY
19 1, 2015, THE DIRECTOR MAY ESTABLISH AN ADMINISTRATIVE PROCEDURE
20 TO RECEIVE COMPLAINTS AND ADJUDICATE CLAIMS FOR NONPAYMENT OF
21 WAGES OR COMPENSATION OF SEVEN THOUSAND FIVE HUNDRED DOLLARS
22 OR LESS. THE PROCEDURES MAY INCLUDE CLAIMS OF EMPLOYEES WHERE
23 NO INTERRUPTION OF THE EMPLOYER-EMPLOYEE RELATIONSHIP HAS
24 OCCURRED. THE PENALTIES ESTABLISHED BY SECTION 8-4-109 (3) APPLY
25 TO ACTIONS INSTITUTED BY THE DIRECTOR UNDER THIS ARTICLE WHEN NO
26 INTERRUPTION OF THE EMPLOYER-EMPLOYEE RELATIONSHIP HAS
27 OCCURRED.

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

9 (2) (a) (I) IF ONE OR MORE EMPLOYEES FILES A WAGE COMPLAINT
10 WITH THE DIVISION CLAIMING UNPAID WAGES OR COMPENSATION OF SEVEN
11 THOUSAND FIVE HUNDRED DOLLARS OR LESS PER EMPLOYEE, EXCLUSIVE
12 OF PENALTIES AND FINES, THE DIVISION SHALL INVESTIGATE THE WAGE
13 COMPLAINT. THE DIVISION SHALL INITIATE THE ADMINISTRATIVE
14 PROCEDURE BY SENDING A NOTICE OF COMPLAINT TO THE EMPLOYER BY
15 MAIL OR ELECTRONIC MEANS IN ACCORDANCE WITH RULES AS THE
16 DIRECTOR MAY PROMULGATE WHEN THE COMPLAINT STATES A CLAIM FOR
17 RELIEF. THE NOTICE OF THE COMPLAINT MUST INCLUDE:

- 18 (A) THE NAME OF THE COMPLAINANT;
- 19 (B) THE NATURE OF THE COMPLAINT; AND
- 20 (C) THE AMOUNT FOR WHICH THE EMPLOYER MAY BE LIABLE,
21 INCLUDING ANY POTENTIAL FINES OR PENALTIES.

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

24 (III) THE DIVISION SHALL ISSUE A DETERMINATION WITHIN NINETY
25 DAYS AFTER THE NOTICE OF COMPLAINT IS SENT UNLESS THE DIVISION
26 EXTENDS THE TIME PERIOD BY PROVIDING ADVANCE WRITTEN NOTICE TO
27 THE EMPLOYEE AND EMPLOYER STATING GOOD CAUSE FOR THE EXTENSION

1 OF TIME.

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

9 (c) IF THE DIVISION DETERMINES THAT AN EMPLOYER HAS
10 VIOLATED THIS ARTICLE FOR NONPAYMENT OF WAGES OR COMPENSATION,
11 THE DIVISION SHALL ISSUE A CITATION AND NOTICE OF ASSESSMENT FOR
12 THE AMOUNT DETERMINED THAT IS OWED, WHICH AMOUNT MUST INCLUDE
13 ALL WAGES AND COMPENSATION OWED, PENALTIES PURSUANT TO SECTION
14 8-4-109, AND ANY FINES PURSUANT TO SECTION 8-4-113.

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

23 (e) UPON PAYMENT BY AN EMPLOYER, AND ACCEPTANCE BY AN
24 EMPLOYEE, OF ALL WAGES, COMPENSATION, AND PENALTIES ASSESSED BY
25 THE DIVISION IN A CITATION AND NOTICE OF ASSESSMENT ISSUED TO THE
26 EMPLOYER, THE PAYMENT SHALL CONSTITUTE A FULL AND COMPLETE
27 SATISFACTION BY THE EMPLOYER AND BAR THE EMPLOYEE FROM

1 INITIATING OR PURSUING ANY CIVIL ACTION OR OTHER ADMINISTRATIVE
2 PROCEEDING BASED ON THE WAGE COMPLAINT ADDRESSED BY THE
3 CITATION AND NOTICE OF ASSESSMENT.

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

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

21 (5) THE DIVISION'S NOTICE TO THE EMPLOYER OF A COMPLAINT
22 FILED PURSUANT TO SUBSECTION (2) OF THIS SECTION SATISFIES THE
23 REQUIREMENT OF A WRITTEN DEMAND AS DESCRIBED IN SECTION 8-4-109

24 (3) (a).

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

1 OR WITH RESPECT TO AN EMPLOYER IN THE ABSENCE OF A WAGE
2 COMPLAINT.

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

11 ~~(2)~~ (8) Nothing in this article shall be construed to limit the
12 authority of the district attorney of any county or city and county or the
13 city attorney of any city to prosecute actions for such violations of this
14 article as may come to his or her knowledge, or to enforce the provisions
15 of this article independently and without specific direction of the director,
16 or to limit the right of any wage claimant to sue directly or through an
17 assignee for any wages or penalty due him or her under the provisions of
18 this article.

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

21 **8-4-111.5. Hearing officer review and appeals of**
22 **administrative actions.** (1) PURSUANT TO POLICIES ESTABLISHED BY THE
23 DIRECTOR BY RULE, ANY INTERESTED PARTY WHO IS DISSATISFIED WITH
24 THE DIVISION'S DECISION ON A WAGE COMPLAINT FILED PURSUANT TO
25 SECTION 8-4-111 (2) MAY FILE A REQUEST FOR A HEARING WITHIN
26 THIRTY-FIVE DAYS AFTER THE DIVISION'S DECISION IS SENT. IF NO REQUEST
27 IS FILED WITHIN THE THIRTY-FIVE-DAY PERIOD, THE DIVISION'S DECISION

1 IS FINAL.

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

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

21 (II) IT IS A MISDEMEANOR FOR A PERSON WHO, WITHOUT JUST
22 CAUSE, FAILS OR REFUSES TO ATTEND AND TESTIFY OR TO ANSWER ANY
23 LAWFUL INQUIRY OR TO PRODUCE BOOKS, PAPERS, CORRESPONDENCE,
24 MEMORANDA, AND OTHER RECORDS IN OBEDIENCE TO A SUBPOENA OF THE
25 HEARING OFFICER, AND, UPON CONVICTION THEREOF, THE PERSON SHALL
26 BE PUNISHED BY A FINE OF NOT MORE THAN TWO HUNDRED DOLLARS, OR
27 BY IMPRISONMENT IN THE COUNTY JAIL FOR NOT MORE THAN SIXTY DAYS,

1 OR BY BOTH SUCH FINE AND IMPRISONMENT. EACH DAY THE FAILURE OR
2 REFUSAL CONTINUES IS A SEPARATE OFFENSE.

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

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

23 (b) EVIDENCE AND REQUIREMENTS OF PROOF IN A HEARING
24 CONDUCTED PURSUANT TO THIS SECTION MUST CONFORM, TO THE EXTENT
25 PRACTICABLE, WITH THOSE IN CIVIL NONJURY CASES IN THE DISTRICT
26 COURTS OF THIS STATE. HOWEVER, WHEN NECESSARY TO DO SO IN ORDER
27 TO ASCERTAIN FACTS AFFECTING THE SUBSTANTIAL RIGHTS OF THE

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

20 (c) WHEN THE SAME OR SUBSTANTIALLY SIMILAR EVIDENCE IS
21 RELEVANT AND MATERIAL TO THE MATTERS AT ISSUE IN CLAIMS BY MORE
22 THAN ONE INDIVIDUAL OR IN CLAIMS BY A SINGLE INDIVIDUAL WITH
23 RESPECT TO TWO OR MORE CLAIMED VIOLATIONS, IF, IN THE JUDGMENT OF
24 THE HEARING OFFICER, CONSOLIDATION OF ONE OR MORE PROCEEDINGS
25 WOULD NOT PREJUDICE ANY INTERESTED PARTY, THE HEARING OFFICER
26 MAY:

27 (I) CONDUCT HEARINGS AT THE SAME TIME AND PLACE;

- 1 (II) CONDUCT JOINT HEARINGS;
2 (III) MAKE A SINGLE RECORD OF THE PROCEEDINGS; AND
3 (IV) CONSIDER EVIDENCE INTRODUCED WITH RESPECT TO ONE
4 PROCEEDING AS IF INTRODUCED IN THE OTHERS.

5 (d) THE DIVISION SHALL KEEP A FULL AND COMPLETE RECORD OF
6 ALL PROCEEDINGS IN CONNECTION WITH THE WAGE COMPLAINT. ALL
7 TESTIMONY AT ANY HEARING UPON A WAGE COMPLAINT MUST BE
8 RECORDED BUT NEED NOT BE TRANSCRIBED UNLESS THE WAGE COMPLAINT
9 IS PRESENTED FOR FURTHER REVIEW. THE DIVISION SHALL PROMPTLY
10 PROVIDE ALL INTERESTED PARTIES WITH COPIES OF THE HEARING OFFICER'S
11 DECISION.

12 (4) FOR THE CONVENIENCE OR NECESSITY OF THE EMPLOYEE OR
13 THE EMPLOYER, THE DIVISION SHALL PERMIT PARTIES TO PARTICIPATE IN
14 HEARINGS BY TELEPHONE, INCLUDING IN SITUATIONS IN WHICH THE
15 PARTIES WOULD OTHERWISE BE REQUIRED TO TRAVEL TO LOCATIONS OF
16 THE DIVISION FROM OUTSIDE THE GENERAL VICINITY OF SUCH LOCATIONS.

17 (5) AN INTERESTED PARTY WHO IS DISSATISFIED WITH THE
18 HEARING OFFICER'S DECISION MAY APPEAL THAT DECISION TO THE
19 DISTRICT COURT OF COMPETENT JURISDICTION WITHIN TWENTY-ONE DAYS
20 AFTER THE DATE OF MAILING OF THE DECISION BY THE DIVISION. THE
21 APPEAL WILL BE CONDUCTED IN ACCORDANCE WITH SECTIONS (a), (b), (c),
22 AND (d) OF RULE 411 OF THE COLORADO RULES OF CIVIL PROCEDURE, OR
23 A SUCCESSOR RULE, WITH REFERENCE IN THAT RULE TO "CIVIL ACTION"
24 AND THE "COUNTY COURT" REPLACED WITH "THE PROCEEDINGS", "THE
25 HEARING OFFICER", OR OTHER APPROPRIATE WORDS. _____

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

1 **8-4-113. Fines pursuant to enforcement - wage theft**

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

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

25 (2) A certified copy of any ~~final order of the director, imposing a~~
26 ~~fine or penalty~~ CITATION, NOTICE OF ASSESSMENT, OR ORDER IMPOSING
27 WAGES DUE, FINES, OR PENALTIES pursuant to this article, may be filed

1 with the clerk of ~~the district~~ ANY court having jurisdiction over the parties
2 at any time after the entry of the order. The certified copy shall be
3 recorded by the clerk of the district court in the judgment book of said
4 court and entry thereof made in the judgment docket, and it shall
5 thenceforth have all the effect of a judgment of the district court, and
6 execution may issue thereon out of said court as in other cases. ~~All fines
7 and penalties collected shall be paid to the division and transmitted to the
8 state treasurer for credit to the general fund.~~

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

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

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

26 **8-6-118. Recovery of balance of minimum wage.** An employee
27 receiving less than the legal minimum wage applicable to such employee

1 is entitled to recover in a civil action the unpaid balance of the full
2 amount of such minimum wage, together with ~~costs of suit~~ REASONABLE
3 ATTORNEY FEES AND COURT COSTS, notwithstanding any agreement to
4 work for a lesser wage.

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

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

11 (2) In addition to any other appropriation, there is hereby
12 appropriated, to the department of labor and employment, for the fiscal
13 year beginning July 1, 2014, the sum of \$333,403, or so much thereof as
14 may be necessary, for allocation to the division of labor for the
15 implementation of this act. Of said sum, \$320,903 is from the general
16 fund, and \$12,500 is from the wage theft enforcement fund created in
17 section 8-4-113 (3) (a), Colorado Revised Statutes.

18 (3) In addition to any other appropriation, there is hereby
19 appropriated to the governor - lieutenant governor - state planning and
20 budgeting, for the fiscal year beginning July 1, 2014, the sum of \$16,480,
21 or so much thereof as may be necessary, for allocation to the office of
22 information technology, for the provision of computer center services for
23 the department of labor and employment related to the implementation of
24 this act. Said sum is from reappropriated funds received from the
25 department of labor and employment out of the appropriation made in
26 subsection (2) of this section.

27 (4) In addition to any other appropriation, there is hereby

1 appropriated to the department of law, for the fiscal year beginning July
2 1, 2014, the sum of \$23,225, or so much thereof as may be necessary, for
3 the provision of legal services for the department of labor and
4 employment related to the implementation of this act. Said sum is from
5 reappropriated funds received from the department of labor and
6 employment out of the appropriation made in subsection (2) of this
7 section.

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

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

11 **SECTION 11. Safety clause.** The general assembly hereby finds,
12 determines, and declares that this act is necessary for the immediate
13 preservation of the public peace, health, and safety.