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SENATE BILL 14-005

BY SENATOR(S) Ulibarri, Aguilar, Guzman, Heath, Hodge, Johnston, Jones, Kefalas, Kerr, Newell, Nicholson, Schwartz, Steadman, Tochtrop, Todd, Zenzinger, Carroll;
also REPRESENTATIVE(S) Singer, Becker, Buckner, Duran, Exum, Fields, Fischer, Foote, Garcia, Ginal, Hullinghorst, Kagan, Labuda, Lebsock, Lee, McCann, Melton, Moreno, Pettersen, Primavera, Rosenthal, Ryden, Salazar, Tyler, Williams, Young.

CONCERNING ALTERNATIVE ADMINISTRATIVE REMEDIES FOR THE
PROCESSING OF CERTAIN WAGE CLAIMS, AND, IN CONNECTION
THEREWITH, AMENDING THE PROVISIONS FOR WRITTEN NOTICES OF
A WAGE CLAIM, AND IN CONNECTION THEREWITH, MAKING AND
REDUCING APPROPRIATIONS.

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

SECTION 1. Short title. This act shall be known as the "Wage Protection Act of 2014".

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

8-4-101. Definitions. As used in this article, unless the context

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

otherwise requires:

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

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

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

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

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

~~(5)~~ (6) "Employer" means every person, firm, partnership, association, corporation, migratory field labor contractor or crew leader, receiver, or other officer of court in Colorado, and any agent or officer thereof, of the above mentioned classes, employing any person in Colorado; except that the provisions of this article shall not apply to the state or its agencies or entities, counties, cities and counties, municipal corporations, quasi-municipal corporations, school districts, and irrigation, reservoir, or drainage conservation companies or districts organized and existing under the laws of Colorado.

~~(6)~~ (7) "Field labor contractor" means anyone who contracts with an employer to recruit, solicit, hire, or furnish migratory labor for agricultural purposes to do any one or more of the following activities in this state: Hoeing, thinning, topping, sacking, hauling, harvesting, cleaning, cutting, sorting, and other direct manual labor affecting beets, onions,

lettuce, potatoes, tomatoes, and other products, fruits, or crops in which labor is seasonal in this state. Such term shall not include a farmer or grower, packinghouse operator, ginner, or warehouseman or any full-time regular and year-round employee of the farmer or grower, packinghouse operator, ginner, or warehouseman who engages in such activities, nor shall it include any migratory laborer who engages in such activities with regard to such migratory laborer's own children, spouse, parents, siblings, or grandparents.

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

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

(10) "NOTICE OF ASSESSMENT" MEANS A WRITTEN NOTICE BY THE DIVISION, BASED ON A CITATION, THAT THE EMPLOYER MUST PAY THE AMOUNT OF WAGES, PENALTIES, OR FINES ASSESSED.

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

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

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

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

(I) All amounts for labor or service performed by employees, whether the amount is fixed or ascertained by the standard of time, task,

piece, commission basis, or other method of calculating the same or whether the labor or service is performed under contract, subcontract, partnership, subpartnership, station plan, or other agreement for the performance of labor or service if the labor or service to be paid for is performed personally by the person demanding payment. No amount is considered to be wages or compensation until such amount is earned, vested, and determinable, at which time such amount shall be payable to the employee pursuant to this article.

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

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

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

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

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

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

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

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

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

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

(b) If an employee's earned, vested, and determinable wages or compensation ~~are not mailed to the place of receipt specified in a demand for payment and postmarked within fourteen days after the receipt of such demand~~ IS NOT PAID WITHIN FOURTEEN DAYS AFTER THE WRITTEN DEMAND IS SENT IN THE MANNER SET FORTH IN PARAGRAPH (d) OF THIS SUBSECTION (3), the employer shall be liable to the employee for the wages or compensation, and a penalty of the sum of the following amounts of wages or compensation due or, if greater, the employee's average daily earnings for each day, not to exceed ten days, until such payment or other settlement satisfactory to the employee is made:

(I) One hundred twenty-five percent of that amount of such wages

or compensation up to and including seven thousand five hundred dollars; and

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

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

(d) (I) ~~The daily earnings penalty shall not begin to accrue until the employer receives the written demand set forth in paragraph (a) of this subsection (3).~~ THE EMPLOYER SHALL SEND OR DELIVER PAYMENT, BY CHECK, DRAFT, OR VOUCHER IN THE EMPLOYEE'S NAME, TO THE EMPLOYEE AT THE ADDRESS CONTAINED IN THE WRITTEN DEMAND; OR MAKE THE PAYMENT BY DIRECT DEPOSIT AUTHORIZED UNDER SECTION 8-4-102 (2) IF THE EMPLOYEE HAS NOT REVOKED THE AUTHORIZATION. THE EMPLOYER MAY, BUT IS NOT REQUIRED TO, MAKE THE PAYMENT BY DIRECT DEPOSIT TO AN ACCOUNT SPECIFIED BY THE EMPLOYEE IN THE DEMAND, EVEN IF THE EMPLOYEE HAS NOT PREVIOUSLY AUTHORIZED DIRECT DEPOSIT OF THE EMPLOYEE'S COMPENSATION, OR MAKE THE PAYMENT BY ANOTHER METHOD REQUESTED BY THE EMPLOYEE IN THE DEMAND, IF APPLICABLE. IF THE EMPLOYEE HAS NOT PREVIOUSLY AUTHORIZED DIRECT DEPOSIT OF COMPENSATION AND THE DEMAND DOES NOT STATE AN ADDRESS TO WHICH THE PAYMENT SHOULD BE MAILED, THE EMPLOYER SHALL MAKE THE PAYMENT AS FOLLOWS:

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

(B) IF APPLICABLE AND IF THE EMPLOYER SO ELECTS, AS OTHERWISE REQUESTED BY THE EMPLOYEE IN THE DEMAND.

(II) The employee or his or her designated agent may commence a civil action to recover the penalty set forth in this subsection (3). ~~Any employee or his or her designated agent who has not made a written demand for the payment within sixty days after the date of separation or who has otherwise not been available to receive payment shall not be~~

~~entitled to any such penalty under this subsection (3). A payment under this subsection (3) shall be made in the form of a check draft or voucher in the name of the employee.~~ FOR AN ACTION FILED IN A SMALL CLAIMS COURT, ESTABLISHED PURSUANT TO PART 4 OF ARTICLE 6 OF TITLE 13, C.R.S., IF THE EMPLOYER HAS NOT RECEIVED A WRITTEN DEMAND AT LEAST FOURTEEN DAYS BEFORE THE EMPLOYER IS SERVED WITH THE COMPLAINT OR OTHER DOCUMENT COMMENCING THE ACTION, SERVICE OF THE COMPLAINT OR OTHER DOCUMENT SERVES AS THE WRITTEN DEMAND UNDER THIS SUBSECTION (3). IF AN EMPLOYER MAKES A LEGAL TENDER OF THE FULL AMOUNT CLAIMED IN THE ACTION WITHIN FOURTEEN DAYS AFTER SERVICE OF THE COMPLAINT OR OTHER DOCUMENT COMMENCING THE ACTION, THE EMPLOYEE SHALL DISMISS THE ACTION.

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

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

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

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

(A) THE NAME OF THE COMPLAINANT;

(B) THE NATURE OF THE COMPLAINT; AND

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

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

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

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

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

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

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

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

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

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

(6) NOTHING IN THIS SECTION SHALL BE CONSTRUED TO LIMIT THE

RIGHT OF THE DIVISION TO PURSUE ANY ACTION AVAILABLE WITH RESPECT TO AN EMPLOYEE THAT IS IDENTIFIED AS A RESULT OF A WAGE COMPLAINT OR WITH RESPECT TO AN EMPLOYER IN THE ABSENCE OF A WAGE COMPLAINT.

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

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

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

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

(2) (a) IF A REQUEST IS FILED PURSUANT TO SUBSECTION (1) OF THIS SECTION, THE DIRECTOR SHALL DESIGNATE A HEARING OFFICER. THE HEARING OFFICER SHALL HAVE THE POWER AND AUTHORITY TO CALL, PRESIDE AT, AND CONDUCT HEARINGS. IN THE DISCHARGE OF THE DUTIES IMPOSED BY THIS ARTICLE, THE HEARING OFFICER HAS THE POWER TO ADMINISTER OATHS AND AFFIRMATIONS, TAKE DEPOSITIONS, CERTIFY TO OFFICIAL ACTS, PERMIT PARTIES TO PARTICIPATE BY TELEPHONE, AND ISSUE SUBPOENAS TO COMPEL THE ATTENDANCE OF WITNESSES AND THE

PRODUCTION OF BOOKS, PAPERS, CORRESPONDENCE, MEMORANDA, AND OTHER RECORDS DEEMED NECESSARY AS EVIDENCE IN CONNECTION WITH A DISPUTED CLAIM PURSUANT TO THIS ARTICLE.

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

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

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

(3) (a) THE HEARING OFFICER, AFTER AFFORDING ALL INTERESTED PARTIES A REASONABLE OPPORTUNITY FOR A FAIR HEARING PURSUANT TO

THE PROVISIONS OF THIS ARTICLE AND THE ADMINISTRATIVE PROCEDURES OF THE DIVISION, SHALL MAKE A DECISION ON EACH RELEVANT ISSUE RAISED, INCLUDING FINDINGS OF FACT, CONCLUSIONS OF LAW, AND AN ORDER.

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

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

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

(II) CONDUCT JOINT HEARINGS;

(III) MAKE A SINGLE RECORD OF THE PROCEEDINGS; AND

(IV) CONSIDER EVIDENCE INTRODUCED WITH RESPECT TO ONE PROCEEDING AS IF INTRODUCED IN THE OTHERS.

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

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

(5) ANY PARTY TO THE ADMINISTRATIVE PROCEEDING MAY APPEAL THE HEARING OFFICER'S DECISION ONLY BY COMMENCING AN ACTION FOR JUDICIAL REVIEW IN THE DISTRICT COURT OF COMPETENT JURISDICTION WITHIN THIRTY-FIVE DAYS AFTER THE DATE OF MAILING OF THE DECISION BY THE DIVISION. THE HEARING OFFICER'S DECISION CONSTITUTES A FINAL AGENCY ACTION PURSUANT TO SECTION 24-4-106, C.R.S. JUDICIAL REVIEW IS LIMITED TO APPEAL BRIEFS AND THE RECORD DESIGNATED ON APPEAL.

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

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

~~by telephone if the employer would otherwise be required to travel to locations of the division of labor from outside the general vicinity of such locations.~~ THE DIVISION MAY COLLECT THE FINE THROUGH ITS CITATION AND NOTICE OF ASSESSMENT ISSUED PURSUANT TO SECTION 8-4-111 (2) OR AFTER A HEARING CONDUCTED PURSUANT TO SECTION 8-4-111.5.

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

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

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

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

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

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

SECTION 9. Appropriation - adjustments to 2014 long bill.

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

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

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

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

appropriation made in subsection (2) of this section.

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

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

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

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

Morgan Carroll
PRESIDENT OF
THE SENATE

Mark Ferrandino
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Cindi L. Markwell
SECRETARY OF
THE SENATE

Marilyn Eddins
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

APPROVED _____

John W. Hickenlooper
GOVERNOR OF THE STATE OF COLORADO