

SENATE COMMITTEE OF REFERENCE REPORT

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Chair of Committee

\_\_\_\_\_  
Date

April 20, 2022

Committee on Business, Labor, & Technology.

After consideration on the merits, the Committee recommends the following:

SB22-161 be amended as follows, and as so amended, be referred to the Committee on Appropriations with favorable recommendation:

1 Amend printed bill, page 4, line 11, after "CONTINUES." add "THE  
2 DIVISION SHALL TRANSMIT ANY PENALTY IMPOSED AND COLLECTED  
3 PURSUANT TO THIS SECTION TO THE STATE TREASURER, WHO SHALL  
4 CREDIT THE MONEY TO THE WAGE THEFT ENFORCEMENT FUND CREATED IN  
5 SECTION 8-4-113 (3).

6 **SECTION 2.** In Colorado Revised Statutes, 8-1-116, **amend** (2)  
7 as follows:

8 **8-1-116. Investigators to have access to premises - penalty.**  
9 (2) Any person who hinders or obstructs the director or any ~~such~~ person  
10 authorized by the director in the exercise of any power conferred by this  
11 article 1, or any employer who in bad faith refuses reasonable access to  
12 the employer's premises, or any person who gives advance notice of any  
13 inspection to be conducted under this article 1 without authority from the  
14 director or the director's designee ~~commits a class 2 misdemeanor~~ IS  
15 SUBJECT TO A PENALTY OF NOT LESS THAN FIFTY DOLLARS FOR EACH DAY  
16 THAT THE CONDUCT CONTINUES. THE DIVISION SHALL TRANSMIT ANY  
17 PENALTY IMPOSED AND COLLECTED PURSUANT TO THIS SECTION TO THE  
18 STATE TREASURER, WHO SHALL CREDIT THE MONEY TO THE WAGE THEFT  
19 ENFORCEMENT FUND CREATED IN SECTION 8-4-113 (3).

20 **SECTION 3.** In Colorado Revised Statutes, 8-1-117, **amend** (2)  
21 as follows:

22 **8-1-117. Director to have access to books - penalty.** (2) Any  
23 employer ~~who~~ THAT refuses to exhibit and furnish ~~said~~ THE director or  
24 any agents of the division an inspection of any books, records, and  
25 payrolls of ~~such~~ THE employer, showing or reflecting in any way upon the  
26 amount of wage expenditure of ~~such employers~~ THE EMPLOYER, and other  
27 data, facts, and statistics appertaining to the purposes of this ~~article~~  
28 ARTICLE 1 or ~~who~~ THAT refuses to admit ~~such~~ THE director or any agent

1 of the division to any place of employment shall pay a penalty of not less  
2 than fifty dollars for each day that ~~such~~ THE failure, neglect, or refusal  
3 continues. THE DIVISION SHALL TRANSMIT ANY PENALTY IMPOSED AND  
4 COLLECTED PURSUANT TO THIS SECTION TO THE STATE TREASURER, WHO  
5 SHALL CREDIT THE MONEY TO THE WAGE THEFT ENFORCEMENT FUND  
6 CREATED IN SECTION 8-4-113 (3).

7 **SECTION 4.** In Colorado Revised Statutes, 8-1-140, **amend** (2)  
8 as follows:

9 **8-1-140. Violation - penalty.** (2) If any employer, employee, or  
10 any other person fails, refuses, or neglects to perform any duty lawfully  
11 enjoined within the time prescribed by the director or fails, neglects, or  
12 refuses to obey any lawful order made by the director or any judgment or  
13 decree made by any court as provided in this ~~article~~ ARTICLE 1, for each  
14 such violation, ~~such~~ THE employer, employee, or any other person shall  
15 pay a penalty of not less than one hundred dollars for each day ~~such~~ THE  
16 violation, failure, neglect, or refusal continues. THE DIVISION SHALL  
17 TRANSMIT ANY PENALTY IMPOSED AND COLLECTED PURSUANT TO THIS  
18 SECTION TO THE STATE TREASURER, WHO SHALL CREDIT THE MONEY TO  
19 THE WAGE THEFT ENFORCEMENT FUND CREATED IN SECTION 8-4-113 (3).

20 **SECTION 5.** In Colorado Revised Statutes, **amend** 8-1-142 as  
21 follows:

22 **8-1-142. Collection of penalties.** All penalties provided for in this  
23 ~~article~~ ARTICLE 1 shall be collected in a civil action brought against the  
24 employer or employee in the name of the director, WHICH CIVIL ACTION  
25 MAY BE AN ADMINISTRATIVE ACTION OR A JUDICIAL ACTION AUTHORIZED  
26 BY LAW. Any fine provided in this ~~article~~ ARTICLE 1 is considered a  
27 penalty and recoverable in a civil action as provided in this section unless  
28 the violation of this ~~article~~ ARTICLE 1, for the punishment of which said  
29 fine is provided, is designated as a misdemeanor or other crime."

30 Renumber succeeding sections accordingly.

31 Page 4, strike lines 23 through 25 and substitute "SECTION."

32 Page 6, line 18, strike "~~at the time of such discharge~~" and substitute "at  
33 the time of ~~such discharge~~ EMPLOYEE SEPARATION OR".

34 Page 7, line 16, strike "OWED," and substitute "OWED FOR ANY VIOLATION  
35 OF THIS ARTICLE 4,".

36 Page 7, line 20, strike "If" and substitute "ON OR AFTER JANUARY 1, 2023,  
37 if".

1 Page 7, line 21, strike "an employee's" and substitute "~~an employee's~~  
2 ALL".

3 Page 8, line 7, strike "THREE" and substitute "THE GREATER OF TWO".

4 Page 8, line 8, strike "compensation," and substitute "compensation".

5 Page 8, line 9, strike "FOR THE EMPLOYER'S FIRST".

6 Page 8, strike lines 10 and 11 and substitute "OR ONE THOUSAND  
7 DOLLARS; OR".

8 Page 8, line 12, strike "THE" and substitute "IF THE EMPLOYEE CAN SHOW  
9 THAT THE EMPLOYER'S FAILURE OR REFUSAL TO PAY WAGES OR  
10 COMPENSATION WAS WILLFUL, THE WAGE CLAIM IS FOR LESS THAN FIFTY  
11 THOUSAND DOLLARS, AND THE EMPLOYEE IS NOT A HIGHLY COMPENSATED  
12 EMPLOYEE, AS DEFINED IN THE ANNUAL COLORADO OVERTIME AND  
13 MINIMUM PAY STANDARDS (COMPS) ORDER ADOPTED BY THE DIRECTOR,  
14 THE".

15 Page 8, strike lines 14 through 27 and substitute "THREE thousand ~~five~~  
16 ~~hundred~~ dollars.

17 (c) ~~If the employee can show that the employer's failure to pay is~~  
18 ~~willful, the penalty required under paragraph (b) of this subsection (3)~~  
19 ~~shall increase by fifty percent.~~ Evidence that a judgment OR WAGE  
20 DETERMINATION OF THE".

21 Page 9, line 3, after "conduct." add "AN EMPLOYER'S FAILURE OR REFUSAL  
22 TO PAY WAGES OR COMPENSATION IS PER SE WILLFUL IF THE EMPLOYEE  
23 CAN SHOW THAT THE CLAIM FOR WHICH A PENALTY UNDER SUBSECTION  
24 (3)(b) OF THIS SECTION IS ASSESSED IS THE EMPLOYER'S SECOND OR  
25 SUBSEQUENT FAILURE OR REFUSAL TO PAY TO EMPLOYEES WAGES OR  
26 COMPENSATION OF THE SAME OR SIMILAR TYPE WITHIN THE FIVE YEARS  
27 IMMEDIATELY PRECEDING THE CLAIM.".

28 Page 10, strike lines 4 through 7 and substitute "~~under this subsection (3):~~  
29 If, ~~an~~ WITHIN FOURTEEN DAYS AFTER A WRITTEN DEMAND IS SENT TO OR  
30 AN ADMINISTRATIVE CLAIM OR A CIVIL ACTION IS SENT TO OR SERVED ON  
31 THE EMPLOYER, THE employer makes a FULL legal tender of ~~the full~~  
32 ~~amount claimed in the action within fourteen days after service of the~~  
33 ~~complaint or other document commencing the action~~ ALL AMOUNTS  
34 DEMANDED FOR ALL EMPLOYEES, the employee shall dismiss the action.".

1 Page 10, line 10, strike "If," and substitute "(a) THE DIVISION OR COURT,  
2 AS APPLICABLE, MAY AWARD THE EMPLOYER REASONABLE COSTS  
3 INCURRED IN THE ADMINISTRATIVE CLAIM OR CIVIL ACTION IF, WITHIN  
4 FOURTEEN DAYS AFTER A WRITTEN DEMAND LETTER IS SENT OR AN  
5 ADMINISTRATIVE CLAIM OR A CIVIL ACTION IS SENT TO OR SERVED ON THE  
6 EMPLOYER FOR UNPAID WAGES OR COMPENSATION:

7 (I) THE EMPLOYER MAKES FULL LEGAL TENDER OF ALL AMOUNTS  
8 DEMANDED FOR ALL EMPLOYEES; AND

9 (II) THE EMPLOYEES RECEIVING SUCH TENDER:

10 (A) ARE HIGHLY COMPENSATED EMPLOYEES, AS DEFINED IN THE  
11 ANNUAL COLORADO OVERTIME AND MINIMUM PAY STANDARDS (COMPS)  
12 ORDER ADOPTED BY THE DIRECTOR, WHO PROCEED WITH AN  
13 ADMINISTRATIVE CLAIM OR CIVIL ACTION SEEKING MORE THAN FIFTY  
14 THOUSAND DOLLARS IN WAGES OR COMPENSATION PER EMPLOYEE; AND

15 (B) ULTIMATELY FAIL TO RECOVER A TOTAL SUM THAT IS  
16 GREATER THAN THE AMOUNT THE EMPLOYER TENDERED.

17 (b) If,".

18 Page 12, line 22, strike "(A)".

19 Page 13, line 1, strike "(B)" and substitute "(II)".

20 Page 13, strike lines 7 through 14.

21 Page 14, line 14, strike "AND ANY PENALTY".

22 Page 15, strike lines 12 through 16.

23 Page 15, line 17, strike "OF THE COURT. THE" and substitute:

24 "(c) (I) UPON RECORDING PURSUANT TO SUBSECTION (2)(b) OF  
25 THIS SECTION, THE".

26 Page 15, strike lines 23 through 25.

27 Page 15, line 26, strike "AND PENALTIES".

28 Page 15, line 27, after "section" insert "OR SECTION 8-1-114 (2), 8-1-116  
29 (2), 8-1-117 (2), OR 8-1-140 (2)".

30 Page 16, line 13, strike "IF" and substitute "ON OR AFTER JANUARY 1,  
31 2023, IF".

- 1 Page 17, line 6, strike "ASSETS," and substitute "ASSETS THAT IS FILED
- 2 LATER IN TIME;".
- 3 Page 17, strike lines 7 and 8.
- 4 Page 21, strike lines 11 through 27.
- 5 Page 22, strike lines 1 through 6.
- 6 Renumber succeeding sections accordingly.
- 7 Page 23, line 15, after "(2);" add "AND".
- 8 Page 23, strike line 16.
- 9 Renumber succeeding subparagraph accordingly.
- 10 Page 26, strike lines 18 through 27.
- 11 Strike pages 27 through 35.
- 12 Page 36, strike lines 1 through 20.
- 13 Renumber succeeding section accordingly.
- 14 Page 36, line 21, strike "This" and substitute "Section 6 of this act takes
- 15 effect January 1, 2023, and the remainder of this".
- 16 Page 37, line 2, strike "governor." and substitute "governor; except that
- 17 section 6 of this act takes effect on January 1, 2023."

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