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SENATE BILL 22-161

BY SENATOR(S) Danielson and Jaquez Lewis, Buckner, Ginal, Gonzales, Hansen, Kolker, Lee, Moreno, Pettersen, Rodriguez, Story;
also REPRESENTATIVE(S) Duran and Froelich, Benavidez, Bird, Boesenecker, Caraveo, Cutter, Esgar, Exum, Gonzales-Gutierrez, Herod, Hooton, Jodeh, Kipp, Lindsay, Lontine, Mullica, Ricks, Sirota, Sullivan, Titone, Valdez A., Woodrow.

CONCERNING THE MODERNIZATION OF PROCEDURES FOR THE ENFORCEMENT
OF LAWS GOVERNING THE EMPLOYER-EMPLOYEE RELATIONSHIP, AND,
IN CONNECTION THEREWITH, MAKING AN APPROPRIATION.

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

SECTION 1. In Colorado Revised Statutes, 8-1-114, **amend** (2) as follows:

8-1-114. Employers and employees to furnish information - penalty. (2) Any employer or employee who fails or refuses to furnish such information as may be required by the division under authority of this article is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of two hundred dollars if an employer and twenty-five dollars if an employee ARTICLE 1 SHALL PAY A PENALTY OF NOT LESS THAN FIFTY

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

DOLLARS FOR EACH DAY THAT THE FAILURE OR REFUSAL CONTINUES. THE DIVISION SHALL TRANSMIT ANY PENALTY IMPOSED AND COLLECTED PURSUANT TO THIS SECTION TO THE STATE TREASURER, WHO SHALL CREDIT THE MONEY TO THE WAGE THEFT ENFORCEMENT FUND CREATED IN SECTION 8-4-113 (3).

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

8-1-116. Investigators to have access to premises - penalty.

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

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

8-1-117. Director to have access to books - penalty.

(2) Any employer ~~who~~ THAT refuses to exhibit and furnish ~~said~~ THE director or any agents of the division an inspection of any books, records, and payrolls of ~~such~~ THE employer, showing or reflecting in any way upon the amount of wage expenditure of ~~such employers~~ THE EMPLOYER, and other data, facts, and statistics appertaining to the purposes of this ~~article~~ ARTICLE 1 or ~~who~~ THAT refuses to admit ~~such~~ THE director or any agent of the division to any place of employment shall pay a penalty of not less than fifty dollars for each day that ~~such~~ THE failure, neglect, or refusal continues. THE DIVISION SHALL TRANSMIT ANY PENALTY IMPOSED AND COLLECTED PURSUANT TO THIS SECTION TO THE STATE TREASURER, WHO SHALL CREDIT THE MONEY TO THE WAGE THEFT ENFORCEMENT FUND CREATED IN SECTION 8-4-113 (3).

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

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

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

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

SECTION 6. In Colorado Revised Statutes, 8-4-105, **amend** (1) introductory portion and (1)(e) as follows:

8-4-105. Payroll deductions permitted - notice required. (1) ~~No~~ AN employer shall NOT make a deduction from the wages or compensation of an employee except as follows:

(e) (I) A deduction for the amount of money or the value of property that the employee failed to properly pay or return to the employer in the case where a terminated employee was entrusted during ~~his or her~~ THE EMPLOYEE'S employment with the collection, disbursement, or handling of such money or property, BUT ONLY AFTER PROVIDING NOTICE OF THE DEDUCTION AS SPECIFIED IN SUBSECTION (1)(e)(II) OF THIS SECTION.

(II) The employer ~~shall have~~ HAS ten calendar days after the termination of employment to:

(A) Audit and adjust the accounts and property value of any items entrusted to the employee before the employee's wages or compensation shall be paid as provided in section 8-4-109. This is an exception to the pay requirements in section 8-4-109. The penalty provided in section 8-4-109 shall apply only from the date of demand made after the expiration of the ten-day period allowed for payment of the employee's wages or compensation.

(B) PROVIDE NOTICE TO THE EMPLOYEE THAT THE EMPLOYER IS DEDUCTING FROM THE EMPLOYEE'S WAGES OR COMPENSATION THE AMOUNT OF MONEY OR THE VALUE OF PROPERTY THAT THE EMPLOYEE FAILED TO PROPERLY PAY OR RETURN TO THE EMPLOYER, WHICH NOTICE MUST INCLUDE A WRITTEN ACCOUNTING SPECIFYING THE AMOUNT OF MONEY OR THE SPECIFIC PROPERTY THAT THE EMPLOYEE FAILED TO PAY OR RETURN, THE REPLACEMENT VALUE OF THE PROPERTY, AND, TO THE EXTENT KNOWN, WHEN THE MONEY OR PROPERTY WAS PROVIDED TO THE EMPLOYEE AND WHEN THE EMPLOYER BELIEVES THE EMPLOYEE SHOULD HAVE PAID THE MONEY OR RETURNED THE PROPERTY TO THE EMPLOYER.

(III) AFTER AN EMPLOYER PROVIDES THE NOTICE REQUIRED BY SUBSECTION (1)(e)(II)(B) OF THIS SECTION AND MAKES A DEDUCTION FROM THE WAGES OR COMPENSATION OF AN EMPLOYEE, IF THE EMPLOYEE, WITHIN FOURTEEN DAYS AFTER THE EMPLOYER PROVIDES THE NOTICE, PAYS THE MONEY OR RETURNS THE PROPERTY THAT WAS THE BASIS FOR THE DEDUCTION, THE EMPLOYER SHALL PAY THE EMPLOYEE THE AMOUNT OF THE DEDUCTION WITHIN FOURTEEN DAYS AFTER THE EMPLOYEE PAYS THE MONEY OR RETURNS THE PROPERTY TO THE EMPLOYER.

(IV) If, ~~upon such audit and adjustment of~~ AFTER AUDITING AND ADJUSTING the accounts and property value of any items entrusted to the employee PURSUANT TO SUBSECTION (1)(e)(II)(A) OF THIS SECTION AND PROVIDING NOTICE PURSUANT TO SUBSECTION (1)(e)(II)(B) OF THIS SECTION, it is found that any money or property entrusted to the employee by the employer has not been properly paid or returned TO the employer as provided by the terms of any agreement between the employer and the employee, the employee ~~shall not be~~ IS NOT entitled to the benefit of payment pursuant to section 8-4-109, but the EMPLOYEE'S claim for unpaid wages or compensation ~~of such employee~~ shall be disposed of as provided for by this ~~article~~ ARTICLE 4.

SECTION 7. In Colorado Revised Statutes, 8-4-109, **amend** (3) as follows:

8-4-109. Termination of employment - payments required - civil penalties - payments to surviving spouse or heir. (3) (a) If an employer refuses to pay wages or compensation in accordance with subsection (1) of this section OR SECTION 8-4-103 (1)(a), the employee, ~~his or her~~ THE EMPLOYEE'S designated agent, or the division may send a written demand for the payment ON BEHALF OF THE EMPLOYEE OR A GROUP OF SIMILARLY SITUATED EMPLOYEES OR MAY FILE AN ADMINISTRATIVE CLAIM OR CIVIL ACTION FOR THE PAYMENT.

(a.5) If the employer disputes the amount of wages or compensation claimed by an employee under this ~~article~~ ARTICLE 4 and if, within fourteen days after the written demand is sent OR THE ADMINISTRATIVE CLAIM OR CIVIL ACTION IS SENT TO OR SERVED ON THE EMPLOYER, the employer makes a legal tender of the FULL amount ~~that the employer in good faith believes is due~~ OF ALL WAGES THAT THE EMPLOYEE, THE EMPLOYEE'S DESIGNATED AGENT, OR THE DIVISION IN GOOD FAITH DEMANDS ARE OWED FOR ANY VIOLATION OF THIS ARTICLE 4, the employer shall not be liable for any penalty unless, in a legal 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~~ THE EMPLOYER tendered.

(b) ON OR AFTER JANUARY 1, 2023, if AN EMPLOYER FAILS OR REFUSES TO PAY, IN THE MANNER SPECIFIED IN SUBSECTION (3)(d) OF THIS SECTION, ~~an employee's~~ ALL earned, vested, and determinable wages or compensation is ~~not paid~~ within fourteen days after the written demand is sent ~~in the manner set forth in paragraph (d) of this subsection (3)~~ OR WITHIN FOURTEEN DAYS AFTER A CIVIL ACTION OR ADMINISTRATIVE CLAIM FOR THE WAGES OR COMPENSATION IS SENT TO OR SERVED ON THE EMPLOYER, the employer ~~shall be~~ IS liable to the employee OR GROUP OF SIMILARLY SITUATED EMPLOYEES for the AMOUNT OF THE EARNED, VESTED, DETERMINABLE, AND UNPAID wages or compensation ~~and a~~ PLUS AN AUTOMATIC 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~~ THE GREATER OF TWO TIMES THE amount of ~~such~~ THE UNPAID wages or compensation ~~up to and including seven thousand five hundred dollars, and~~ OR ONE THOUSAND DOLLARS; OR

(II) ~~Fifty percent of that~~ IF THE EMPLOYEE CAN SHOW THAT THE EMPLOYER'S FAILURE OR REFUSAL TO PAY WAGES OR COMPENSATION WAS WILLFUL, THE GREATER OF THREE TIMES THE amount of ~~such~~ THE UNPAID wages or compensation ~~that exceed seven~~ OR THREE 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 OR WAGE DETERMINATION OF THE DIVISION has, within the previous five years, been entered against the employer for failure to pay wages or compensation is admissible as evidence of willful conduct. AN EMPLOYER'S FAILURE OR REFUSAL TO PAY WAGES OR COMPENSATION IS PER SE WILLFUL IF THE EMPLOYEE CAN SHOW THAT THE CLAIM FOR WHICH A PENALTY UNDER SUBSECTION (3)(b) OF THIS SECTION IS ASSESSED IS THE EMPLOYER'S SECOND OR SUBSEQUENT FAILURE OR REFUSAL TO PAY TO EMPLOYEES WAGES OR COMPENSATION OF THE SAME OR SIMILAR TYPE WITHIN THE FIVE YEARS IMMEDIATELY PRECEDING THE CLAIM.

(d) (I) 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 ADMINISTRATIVE CLAIM OR CIVIL ACTION; 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, ADMINISTRATIVE CLAIM, OR COURT ACTION, 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, ADMINISTRATIVE CLAIM, OR COURT ACTION, if applicable. If the employee has not previously authorized direct deposit of compensation and the demand, ADMINISTRATIVE CLAIM, OR COURT ACTION 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, ADMINISTRATIVE CLAIM, OR COURT ACTION.

(II) The employee or ~~his or her~~ THE EMPLOYEE'S designated agent may commence a civil action to recover the penalty set forth in this subsection (3). ~~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~~ WITHIN FOURTEEN DAYS AFTER A WRITTEN DEMAND IS SENT TO OR AN ADMINISTRATIVE CLAIM OR A CIVIL ACTION IS SENT TO OR SERVED ON THE EMPLOYER, THE employer makes a FULL legal tender of ~~the full amount claimed in the action within fourteen days after service of the complaint or other document commencing the action~~ ALL AMOUNTS DEMANDED IN GOOD FAITH FOR ALL EMPLOYEES, the employee shall dismiss the action.

SECTION 8. In Colorado Revised Statutes, 8-4-110, **amend** (1) as follows:

8-4-110. Disputes - fees. (1) (a) THE COURT MAY AWARD THE EMPLOYER REASONABLE COSTS AND ATTORNEY FEES INCURRED IN A CIVIL ACTION IF, WITHIN FOURTEEN DAYS AFTER A WRITTEN DEMAND LETTER IS SENT TO OR A CIVIL ACTION IS SERVED ON THE EMPLOYER FOR UNPAID WAGES OR COMPENSATION:

(I) THE EMPLOYER MAKES FULL LEGAL TENDER OF ALL AMOUNTS DEMANDED IN GOOD FAITH FOR ALL EMPLOYEES; AND

(II) THE EMPLOYEES RECEIVING SUCH TENDER ULTIMATELY FAIL TO RECOVER A TOTAL SUM THAT IS GREATER THAN THE AMOUNT THE EMPLOYER TENDERED.

(b) If, in ~~any~~ AN ADMINISTRATIVE CLAIM OR CIVIL action ~~the employee fails to recover a greater sum than the amount tendered by the employer, the court may award the employer reasonable costs and attorney~~

~~fees incurred in such action when, in any pleading or other court filing, the employee claims wages or compensation that exceed the greater of seven thousand five hundred dollars in wages or compensation or the jurisdictional limit for the small claims court, whether or not the case was filed in small claims court or whether or not the total amount sought in the action was within small claims court jurisdictional limits. If, in any such action in which the employee seeks to recover any amount of wages or compensation, the employee recovers a sum greater than the amount tendered by the employer:~~

(I) The court, IN A CIVIL ACTION, may award the employee reasonable costs and attorney fees incurred in ~~such~~ THE CIVIL action; AND

(II) THE DIVISION, IN AN ADMINISTRATIVE CLAIM, MAY AWARD THE EMPLOYEE REASONABLE COSTS INCURRED IN THE ADMINISTRATIVE CLAIM AND MAY ALSO AWARD ATTORNEY FEES TO AN EMPLOYEE WHO RECOVERS MORE THAN FIVE THOUSAND DOLLARS IN UNPAID WAGES IN THE ADMINISTRATIVE CLAIM.

(c) If an employer fails or refuses to make a tender within fourteen days after the demand OR ADMINISTRATIVE CLAIM OR CIVIL ACTION, then such failure or refusal ~~shall~~ MUST be treated as a tender of no money for any purpose under this ~~article~~ ARTICLE 4.

SECTION 9. In Colorado Revised Statutes, 8-4-111, **amend** (1), (2)(a)(I) introductory portion, and (2)(c); and **add** (2)(f) as follows:

8-4-111. Enforcement - duty of director - duties of district or city attorneys - rules. (1) (a) (I) It is the duty of the director to:

(A) Inquire diligently for any violation of this ~~article, and to~~ ARTICLE 4;

(B) Institute the actions for penalties or fines provided for in this ~~article~~ ARTICLE 4 in such cases as ~~he or she may deem~~ THE DIRECTOR DEEMS proper; and to

(C) Enforce generally the provisions of this ~~article. For wages and compensation earned on and after January 1, 2015~~ ARTICLE 4.

(II) 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.

(III) The procedures ESTABLISHED PURSUANT TO SUBSECTION (1)(a)(II) OF THIS SECTION may include claims of employees where no interruption of the employer-employee relationship has occurred.

(IV) The penalties AND FINES established by section 8-4-109 (3) apply to actions instituted by the director OR ADJUDICATED AFTER A COMPLAINT WAS RECEIVED under this ~~article~~ ARTICLE 4 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 (c) of subsection (2)~~ SUBSECTION (2)(e) of this section.

(c) FOR PURPOSES OF INVESTIGATING WAGE COMPLAINTS AND FACILITATING THE COLLECTION OF UNPAID WAGES BEFORE OR AFTER A DETERMINATION PURSUANT TO THIS SECTION, THE DIVISION MAY APPLY THE INFORMATION-GATHERING PROVISIONS OF ARTICLE 1 OF THIS TITLE 8 TO ANY EMPLOYER, EMPLOYEE, OR OTHER PERSON OR ENTITY.

(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 MAY INVESTIGATE ANY WAGE COMPLAINT MADE ON BEHALF OF A GROUP OF SIMILARLY SITUATED EMPLOYEES. IF THE DIVISION DECLINES TO INVESTIGATE A GROUP COMPLAINT, SIMILARLY SITUATED EMPLOYEES MAY CONSENT IN WRITING TO PARTICIPATE AS PARTIES TO THAT COMPLAINT, AND THE DIVISION MAY PURSUE A DIRECT INVESTIGATION INFORMED BY AND CONCURRENT WITH THAT 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:

(c) (I) If the division determines that an employer has violated this ~~article~~ ARTICLE 4 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.

(II) THE DIVISION SHALL NOTIFY THE WORKER AND EMPLOYEE PROTECTION UNIT IN THE DEPARTMENT OF LAW CREATED IN SECTION 24-31-1302, AT LEAST ONCE EVERY SIX MONTHS, OF ANY DETERMINATIONS PURSUANT TO THIS SUBSECTION (2)(c) THAT WERE BASED, IN WHOLE OR IN PART, ON A FINDING THAT THE EMPLOYER MISCLASSIFIED ONE OR MORE EMPLOYEES AS INDEPENDENT CONTRACTORS.

(f) IF AN EMPLOYER FAILS TO PAY AN EMPLOYEE THE AMOUNT THE DIVISION DETERMINES, PURSUANT TO SUBSECTION (2)(c) OF THIS SECTION, OR A HEARING OFFICER DETERMINES, PURSUANT TO SECTION 8-4-111.5, TO BE OWED WITHIN SIXTY DAYS AFTER THE DIVISION'S DETERMINATION OR THE HEARING OFFICER'S DECISION, WHICHEVER IS APPLICABLE, THE FOLLOWING MAY BE RECOVERED FROM THE EMPLOYER:

(I) ATTORNEY FEES INCURRED IN PURSUING A CIVIL ACTION TO ENFORCE THE DIVISION'S DETERMINATION OR THE HEARING OFFICER'S DECISION;

(II) AN ADDITIONAL FINE EQUAL TO FIFTY PERCENT OF THE AMOUNT DETERMINED PURSUANT TO SUBSECTION (2)(c) OF THIS SECTION; AND

(III) A PENALTY EQUAL TO THE GREATER OF FIFTY PERCENT OF THE AMOUNT DETERMINED PURSUANT TO SUBSECTION (2)(c) OF THIS SECTION OR THREE THOUSAND DOLLARS.

SECTION 10. In Colorado Revised Statutes, **amend** 8-4-113 as follows:

8-4-113. Fines pursuant to enforcement - wage theft enforcement fund - created - administrative lien and levy of employer assets - definition. (1) (a) (I) 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~~ THE EMPLOYER'S employees shall forfeit to the people of the state of Colorado 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.

(II) The division may collect the fine IMPOSED PURSUANT TO THIS SUBSECTION (1)(a) 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~~ THE DIRECTOR OR HEARING OFFICER finds good cause for an extension of the time for the employer to file the response.

(2) (a) THE DIVISION MAY, AND, ON OR AFTER JANUARY 1, 2023, AT THE REQUEST OF A WORKER SHALL, FILE a certified copy of any citation, notice of assessment, or order imposing wages due, fines, ~~or~~ penalties, OR OTHER RELIEF pursuant to this ~~article may be filed~~ ARTICLE 4 with the clerk of any court having jurisdiction over the parties at any time after the entry of the CITATION, NOTICE, OR order. ~~The certified copy shall be recorded by~~ THE DIVISION MAY FILE ONE CERTIFIED COPY OF THE CITATION, NOTICE, OR ORDER FOR ALL AMOUNTS OWED TO, OR FOR OTHER RELIEF FOR, ALL EMPLOYEES.

(b) The clerk of the ~~district~~ court SHALL RECORD THE CITATION, NOTICE, OR ORDER in the judgment book of ~~said~~ THE court and MAKE AN entry ~~thereof made~~ in the judgment docket. ~~and it shall thenceforth have all~~ UPON RECORDING, THE CITATION, NOTICE OF ASSESSMENT, OR ORDER HAS the effect of AND MAY BE EXECUTED AS a judgment of the ~~district~~ court. ~~and execution may issue thereon out of said court as in other cases.~~

(c) (I) UPON RECORDING PURSUANT TO SUBSECTION (2)(b) OF THIS SECTION, THE JUDGMENT IS SUFFICIENT TO SUPPORT THE ISSUANCE OF WRITS OF GARNISHMENT IN THE MANNER PROVIDED BY LAW IN THE CASE OF A JUDGMENT THAT IS WHOLLY OR PARTIALLY UNSATISFIED.

(II) THE COURT SHALL MAIL A COPY OF THE JUDGMENT TO THE EMPLOYER WITHIN THREE DAYS AFTER THE DIVISION HAS FILED THE CITATION, NOTICE, OR ORDER WITH THE CLERK OF THE COURT.

(3) (a) The division shall transmit all fines collected FOR THE STATE pursuant to this section OR SECTION 8-1-114 (2), 8-1-116 (2), 8-1-117 (2), OR 8-1-140 (2) 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~~ MONEY in the fund ~~are~~ IS subject to annual appropriation by the general assembly to the division for the direct and indirect costs associated with implementing this ~~article~~ ARTICLE 4.

(b) The state treasurer may invest any ~~moneys~~ MONEY in the fund not expended for the purpose of this ~~article~~ ARTICLE 4 as provided by law. The state treasurer shall credit all interest and income derived from the investment and deposit of ~~moneys~~ MONEY in the fund to the fund. Any unexpended and unencumbered ~~moneys~~ MONEY remaining in the fund at the end of a fiscal year ~~remain~~ REMAINS in the fund and must not be credited or transferred to the general fund or another fund.

(4) (a) ON OR AFTER JANUARY 1, 2023, IF AN EMPLOYER FAILS TO PAY WAGES DETERMINED TO BE DUE TO THE EMPLOYER'S EMPLOYEES OR FINES OR PENALTIES DETERMINED TO BE DUE PURSUANT TO THIS ARTICLE 4, WITHIN SIXTY DAYS AFTER RECEIVING A WRITTEN EMPLOYEE REQUEST OR UPON ITS OWN INITIATIVE, THE DIVISION MAY ISSUE A NOTICE OF ADMINISTRATIVE LIEN AND LEVY TO THE EMPLOYER OR ANY OTHER PERSON THAT HAS POSSESSION, CUSTODY, OR CONTROL OF THE EMPLOYER'S ASSETS. THE DIVISION MAY ISSUE THE NOTICE OF ADMINISTRATIVE LIEN AND LEVY WHEN AN EMPLOYER IS PAST DUE ON PAYING WAGES DETERMINED TO BE DUE TO ITS EMPLOYEES AND ANY FINES OR PENALTIES DETERMINED TO BE DUE PURSUANT TO THIS ARTICLE 4 WITHOUT AN ORDER STAYING OR REVERSING THE APPLICABLE DEADLINE FOR PAYMENT. THE NOTICE MUST INCLUDE THE FOLLOWING STATEMENTS AND INFORMATION:

(I) THE NAME AND ADDRESS OF THE PERSON THAT HAS POSSESSION, CUSTODY, OR CONTROL OF THE EMPLOYER'S ASSETS;

(II) THE EMPLOYER'S NAME, LAST-KNOWN ADDRESS, AND TAXPAYER IDENTIFICATION NUMBER, IF KNOWN;

(III) THE TOTAL AMOUNT OWED FOR PAST-DUE WAGES, FINES, AND PENALTIES, AS IDENTIFIED BY THE DIVISION AS PROVIDED IN THIS ARTICLE 4;

(IV) THE NAMES OF ALL EMPLOYEES DETERMINED TO BE OWED WAGES OR PENALTIES AND THE AMOUNTS DUE TO EACH NAMED EMPLOYEE;

(V) A STATEMENT THAT:

(A) THE NOTICE OF ADMINISTRATIVE LIEN AND LEVY TAKES EFFECT, AND IS SUPERIOR TO ANY OTHER LIEN ON THE SAME ASSETS THAT IS FILED LATER IN TIME;

(B) UNLESS THE DIVISION CONSENTS TO AN EARLIER DISPOSITION, THE PERSON MAY NOT TRANSFER OR DISPOSE OF THE ASSETS IN THE POSSESSION, CUSTODY, OR CONTROL OF THE PERSON FROM THE DATE THE PERSON RECEIVED THE NOTICE UNTIL FURTHER ORDER; AND

(C) A PERSON THAT RECEIVES NOTICE PURSUANT TO THIS SUBSECTION (4) AND THAT TRANSFERS OR DISPOSES OF THE ASSETS AFTER RECEIPT OF THE NOTICE IS LIABLE FOR THE AMOUNT OF THE PAST-DUE WAGES, FINES, AND PENALTIES OWED BY THE EMPLOYER, TO THE EXTENT OF THE VALUE OF THE TRANSFERRED OR DISPOSED OF ASSETS;

(VI) INSTRUCTIONS ON THE REMITTANCE, TRANSMISSION, OR TRANSFER OF THE WITHHELD OR SURRENDERED AMOUNTS OR OTHER ASSETS, INCLUDING THE REQUIREMENT THAT EACH CHECK, REMITTANCE, TRANSMISSION, OR TRANSFER:

(A) FOR PAST-DUE WAGES AND PENALTIES, BE PAYABLE TO, TRANSMITTED TO, OR TRANSFERRED TO THE EMPLOYEE, EMPLOYEES, PAYEE, OR TRANSFEREE DESIGNATED BY THE DIVISION IN THE NOTICE AND SENT TO THE ADDRESS INDICATED IN THE NOTICE OR OTHERWISE TRANSMITTED OR TRANSFERRED AS SPECIFIED IN THE NOTICE;

(B) FOR FINES, BE PAYABLE TO, TRANSMITTED TO, OR TRANSFERRED TO THE DIVISION OR OTHER PAYEE OR TRANSFEREE DESIGNATED BY THE DIVISION IN THE NOTICE AND SENT TO THE ADDRESS INDICATED IN THE NOTICE OR OTHERWISE TRANSMITTED OR TRANSFERRED AS SPECIFIED IN THE NOTICE;

(C) BE SURRENDERED WITHIN THIRTY DAYS AFTER THE DATE OF THE NOTICE OF THE LIEN AND LEVY; AND

(D) INCLUDE THE DIVISION CASE NUMBER ON THE FACE OF THE CHECK, REMITTANCE, TRANSMISSION, OR TRANSFER;

(VII) A STATEMENT THAT, IF INSUFFICIENT ASSETS ARE AVAILABLE TO COVER ALL AMOUNTS DETERMINED TO BE OWED BY THE EMPLOYER, THE PERSON MUST FIRST PAY WAGES AND PENALTIES DETERMINED TO BE DUE TO THE EMPLOYEE OR EMPLOYEES AND THEREAFTER PAY FINES DETERMINED TO BE OWED TO THE STATE;

(VIII) A STATEMENT THAT, IF NO ASSETS ARE AVAILABLE FOR SURRENDER, THE PERSON MUST RETURN THE REMITTANCE NOTICE WITHIN THIRTY DAYS AFTER THE DATE OF THE NOTICE OF THE LIEN AND LEVY; AND

(IX) A STATEMENT THAT THE ADMINISTRATIVE LIEN AND LEVY IS AUTOMATICALLY INACTIVATED ONCE THE PERSON RETURNS THE REMITTANCE NOTICE OR SURRENDERS THE ASSETS HELD BY THE PERSON.

(b) (I) IN ORDER TO ATTACH AND COLLECT AN EMPLOYER'S ASSETS THAT ARE IN THE POSSESSION, CUSTODY, OR CONTROL OF ANOTHER PERSON FOR PURPOSES OF COLLECTING PAST-DUE WAGES, FINES, AND PENALTIES, THE DIVISION IS AUTHORIZED TO SERVE, BY FIRST-CLASS OR OVERNIGHT MAIL, BY PERSONAL DELIVERY, OR, IF MUTUALLY AGREED UPON, THROUGH ELECTRONIC MEANS PUBLISHED BY THE PERSON, A NOTICE OF ADMINISTRATIVE LIEN AND LEVY ON ANY PERSON THAT HAS POSSESSION, CUSTODY, OR CONTROL OF THE EMPLOYER'S ASSETS. A NOTICE OF ADMINISTRATIVE LIEN AND LEVY IS EFFECTIVE IF IT IS DELIVERED OR MAILED TO THE PRINCIPAL OFFICE OR ANY BRANCH OFFICE OF THE PERSON THAT HAS POSSESSION, CUSTODY, OR CONTROL OF THE EMPLOYER'S ASSETS.

(II) THE ADMINISTRATIVE LIEN AND LEVY APPLIES AGAINST ALL ASSETS OF THE EMPLOYER THAT ARE IN THE POSSESSION, CUSTODY, OR CONTROL OF THE PERSON SERVED WITH THE NOTICE AT THE TIME OF, AND WITHIN SIXTY DAYS AFTER, RECEIPT OF THE NOTICE.

(III) THE DIVISION SHALL PROVIDE A COPY OF THE ADMINISTRATIVE LIEN AND LEVY TO THE EMPLOYER AND SHALL INCLUDE INFORMATION ON THE EMPLOYER'S RIGHT TO FILE AN APPLICABLE EXCEPTION, EXEMPTION, OR

APPEAL, AS SPECIFIED BY THE DIRECTOR BY RULE, INCLUDING AN EXCEPTION, EXEMPTION, OR APPEAL FOR CUSTODIAL ACCOUNTS PURSUANT TO SECTION 11-50-110, THE EARNINGS LIMITATIONS SET FORTH IN SECTION 13-54-104 (3), OR THE APPEAL POLICY FOR JOINTLY OWNED OR SHARED ACCOUNTS.

(IV) UPON SATISFACTION OF THE PAST-DUE WAGE, FINE, OR PENALTY OBLIGATIONS GIVING RISE TO THE ADMINISTRATIVE LIEN AND LEVY, THE EMPLOYER MAY REQUEST AND BE PROVIDED CONFIRMATION THAT THE LIEN IS EXTINGUISHED.

(c) THIS SUBSECTION (4) APPLIES TO ALL PAST-DUE WAGE, FINE, AND PENALTY OBLIGATIONS ORDERED AS PART OF ANY PROCEEDING, REGARDLESS OF WHEN THE ORDER WAS ENTERED, AND ALL EMPLOYERS THAT OWE WAGES, FINES, OR PENALTIES ARE SUBJECT TO NOTICE OF ADMINISTRATIVE LIEN AND LEVY AS DESCRIBED IN THIS SUBSECTION (4).

(d) THE DIRECTOR MAY ADOPT RULES AS NECESSARY TO IMPLEMENT THIS SUBSECTION (4).

(e) AS USED IN THIS SUBSECTION (4), "ASSET" MEANS ANY:

(I) REAL, INTANGIBLE, OR PERSONAL PROPERTY OF AN EMPLOYER;

(II) AN EMPLOYER'S RIGHT TO REAL, INTANGIBLE, OR PERSONAL PROPERTY;

(III) PAYMENTS DUE TO AND ACCOUNTS RECEIVABLE OF AN EMPLOYER; AND

(IV) CREDITS OR DEBTS INVOLVING THE EMPLOYER.

SECTION 11. In Colorado Revised Statutes, **amend** 8-4-120 as follows:

8-4-120. Discrimination and retaliation prohibited - employee protections - criminal penalties - civil remedies. (1) ~~NO~~ AN employer shall NOT intimidate, threaten, restrain, coerce, blacklist, discharge, or in any manner discriminate OR RETALIATE against any employee who has:

(a) Filed any complaint or instituted or caused to be instituted any

proceeding under this article 4 or ~~related~~ ANY OTHER law OR RULE RELATED TO WAGES OR HOURS; or ~~who has~~

(b) Testified OR PROVIDED OTHER EVIDENCE, or may testify OR PROVIDE OTHER EVIDENCE, in any proceeding on behalf of ~~himself, herself,~~ THE EMPLOYEE or another PERSON regarding afforded protections under this article 4 OR UNDER ANY OTHER LAW OR RULE RELATED TO WAGES OR HOURS.

(2) ~~Any~~ AN employer who violates ~~the provisions of~~ this section commits a class 2 misdemeanor.

(3)(a) AN EMPLOYEE WHO ALLEGES A VIOLATION OF SUBSECTION (1) OF THIS SECTION MAY FILE A CIVIL ACTION IN A COURT OF COMPETENT JURISDICTION AGAINST THE EMPLOYER ALLEGED TO HAVE VIOLATED THIS SECTION TO SEEK LEGAL AND EQUITABLE RELIEF AS APPROPRIATE TO REMEDY THE VIOLATION, INCLUDING:

(I) BACK PAY;

(II) REINSTATEMENT OF EMPLOYMENT OR, IF REINSTATEMENT IS NOT FEASIBLE, FRONT PAY;

(III) THE PAYMENT OF WAGES UNLAWFULLY WITHHELD;

(IV) INTEREST ON UNPAID WAGES AT A RATE OF TWELVE PERCENT PER ANNUM FROM THE DATE THE WAGES WERE FIRST DUE;

(V) THE PAYMENT OF A PENALTY OF FIFTY DOLLARS PER DAY FOR EACH EMPLOYEE WHOSE RIGHTS UNDER THIS SECTION WERE VIOLATED AND FOR EACH DAY THAT THE VIOLATION OCCURRED OR CONTINUED;

(VI) LIQUIDATED DAMAGES IN AN AMOUNT EQUAL TO THE GREATER OF TWO TIMES THE AMOUNT OF THE UNPAID WAGES OR TWO THOUSAND DOLLARS; AND

(VII) INJUNCTIVE RELIEF.

(b) IF THE EMPLOYEE PREVAILS IN A CIVIL ACTION BROUGHT PURSUANT TO THIS SUBSECTION (3), THE COURT SHALL AWARD THE EMPLOYEE REASONABLE ATTORNEY FEES AND COSTS.

(4) THE DIVISION MAY INVESTIGATE AND ENFORCE DISCRIMINATION OR RETALIATION PROHIBITED BY THIS ARTICLE 4 OR ARTICLE 6 OF THIS TITLE 8 AND, AFTER INVESTIGATION, MAY ORDER THE RELIEF SPECIFIED IN SUBSECTION (3)(a) OF THIS SECTION.

SECTION 12. In Colorado Revised Statutes, 8-72-114, **amend** (9) as follows:

8-72-114. Employee misclassification - investigations - enforcement - advisory opinions - rules - employee misclassification advisory opinion fund - statewide study - report - definitions - legislative declaration. (9) (a) Subject to the approval of the executive director, the director may enter into an interagency agreement with the department of law for assistance in enforcing this section. The director is authorized to transfer to the department of law from the unemployment revenue fund created in section 8-77-106 such money as is necessary to pay for reasonable costs associated with enforcement actions by the department of law.

(b) REGARDLESS OF WHETHER THE DIRECTOR HAS ENTERED INTO AN INTERAGENCY AGREEMENT WITH THE DEPARTMENT OF LAW PURSUANT TO SUBSECTION (9)(a) OF THIS SECTION, AT LEAST ONCE EVERY TWELVE MONTHS, BEGINNING JANUARY 1, 2024, THE DIRECTOR SHALL SHARE WITH THE WORKER AND EMPLOYEE PROTECTION UNIT IN THE DEPARTMENT OF LAW CREATED IN SECTION 24-31-1302 ANY ORDERS ISSUED PURSUANT TO THIS SECTION FINDING THAT ANY EMPLOYERS HAVE ENGAGED IN THE MISCLASSIFICATION OF EMPLOYEES.

SECTION 13. In Colorado Revised Statutes, 24-31-101, **amend** (1)(i) as follows:

24-31-101. Powers and duties of attorney general. (1) The attorney general:

(i) May INDEPENDENTLY INITIATE AND bring civil and criminal actions to enforce state laws, including actions brought pursuant to:

(I) The "Colorado Antitrust Act of 1992", in article 4 of title 6;

(II) The "Colorado Consumer Protection Act", in article 1 of title 6;

(III) The "Unfair Practices Act", in article 2 of title 6;

(IV) Article 12 of title 6; ~~and sections~~

(V) SECTION 6-1-110;

(VI) SECTION 11-51-603.5;

(VII) SECTION 24-34-505.5; ~~and~~

(VIII) SECTION 25.5-4-306;

(IX) ARTICLE 4 OF TITLE 8, SUBJECT TO SECTION 24-31-1303 (2);

AND

(X) THE "COLORADO EMPLOYMENT SECURITY ACT", ARTICLES 70 TO 82 OF TITLE 8, SUBJECT TO SECTION 24-31-1303 (1).

SECTION 14. In Colorado Revised Statutes, 24-31-102, **amend** (1)(h); **repeal** (1)(i); and **add** (1)(j) and (1)(k) as follows:

24-31-102. Offices, boards, and divisions. (1) The department of law, the chief executive officer of which is the attorney general, includes the following:

(h) The financial empowerment office, created in part 11 of this article 31; ~~and~~

(i) ~~Notwithstanding section 24-1-107, any other division, office, or unit established by the attorney general or by law.~~

(j) THE WORKER AND EMPLOYEE PROTECTION UNIT, CREATED IN PART 13 OF THIS ARTICLE 31; AND

(k) NOTWITHSTANDING SECTION 24-1-107, ANY OTHER DIVISION, OFFICE, OR UNIT ESTABLISHED BY THE ATTORNEY GENERAL OR BY LAW.

SECTION 15. In Colorado Revised Statutes, **add** part 13 to article 31 of title 24 as follows:

PART 13
ENFORCEMENT OF WORKER PROTECTION LAWS

24-31-1301. Definitions. AS USED IN THIS PART 13, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "DIVISION OF LABOR STANDARDS AND STATISTICS" MEANS THE DIVISION OF LABOR STANDARDS AND STATISTICS IN THE DEPARTMENT OF LABOR AND EMPLOYMENT CREATED PURSUANT TO SECTION 8-1-103.

(2) "DIVISION OF UNEMPLOYMENT INSURANCE" MEANS THE DIVISION OF UNEMPLOYMENT INSURANCE IN THE DEPARTMENT OF LABOR AND EMPLOYMENT CREATED PURSUANT TO SECTION 8-71-101.

(3) "UNIT" MEANS THE WORKER AND EMPLOYEE PROTECTION UNIT CREATED IN SECTION 24-31-1302.

24-31-1302. Worker and employee protection unit - creation - duties. (1) THERE IS CREATED WITHIN THE DEPARTMENT OF LAW AND UNDER THE CONTROL OF THE OFFICE OF THE ATTORNEY GENERAL THE WORKER AND EMPLOYEE PROTECTION UNIT.

(2) IN ADDITION TO ANY OTHER AUTHORITIES GRANTED BY LAW, THE UNIT HAS THE FOLLOWING POWERS AND DUTIES:

(a) ISSUE OR CAUSE TO BE ISSUED CIVIL INVESTIGATIVE DEMANDS AND SUBPOENAS OR OTHER PROCESS IN AID OF INVESTIGATIONS AND PROSECUTIONS;

(b) ADMINISTER OATHS AND TAKE SWORN STATEMENTS UNDER PENALTY OF PERJURY; AND

(c) SERVE AND EXECUTE, IN ANY COUNTY, SEARCH WARRANTS THAT RELATE TO INVESTIGATIONS.

24-31-1303. Worker misclassification - wage determinations - investigation and enforcement by the unit - coordination with department of labor and employment. (1) (a) THE UNIT MAY INVESTIGATE ALLEGED VIOLATIONS OF, AND BRING AN ACTION AGAINST AN EMPLOYER TO ENFORCE, SECTION 8-72-114, REGARDLESS OF WHETHER A

COMPLAINT IS FILED AGAINST THE EMPLOYER PURSUANT TO SAID SECTION, TO ENFORCE THAT SECTION IF THE DIVISION OF UNEMPLOYMENT INSURANCE DIRECTLY REFERS A FINDING OF MISCLASSIFICATION TO THE UNIT TO PURSUE FURTHER REMEDIES.

(b) THE UNIT MAY INVESTIGATE AND ENFORCE AN ALLEGED MISCLASSIFICATION THAT IS NOT DESCRIBED IN SUBSECTION (1)(a) OF THIS SECTION IF THE UNIT PROVIDES WRITTEN NOTICE TO THE DIVISION OF UNEMPLOYMENT INSURANCE OF THE UNIT'S INTENT TO PURSUE A MISCLASSIFICATION INVESTIGATION AND THE DIVISION OF UNEMPLOYMENT INSURANCE:

(I) DECLINES TO INVESTIGATE THE MATTER;

(II) HAS INVESTIGATED THE MATTER AND MADE A FORMAL DETERMINATION; OR

(III) FAILS TO RESPOND TO THE UNIT WITHIN THIRTY DAYS AFTER THE DATE OF THE NOTICE.

(2) (a) THE UNIT MAY ENFORCE WAGE DETERMINATIONS MADE BY THE DIVISION OF LABOR STANDARDS AND STATISTICS PURSUANT TO ARTICLE 4 OF TITLE 8 IF THE DIVISION OF LABOR STANDARDS AND STATISTICS REFERS THE WAGE DETERMINATION TO THE UNIT FOR ENFORCEMENT.

(b) IF THE DIVISION OF LABOR STANDARDS AND STATISTICS HAS NOT REFERRED A WAGE DETERMINATION TO THE UNIT, THE UNIT MAY ENFORCE THE WAGE DETERMINATION IF THE UNIT PROVIDES WRITTEN NOTICE TO THE DIVISION OF LABOR STANDARDS AND STATISTICS OF THE UNIT'S INTENT TO ENFORCE THE WAGE DETERMINATION AND THE DIVISION OF LABOR STANDARDS AND STATISTICS:

(I) DECLINES TO PURSUE ENFORCEMENT OF THE WAGE DETERMINATION;

(II) HAS ATTEMPTED TO PURSUE ENFORCEMENT OF THE WAGE DETERMINATION AND HAS BEEN UNSUCCESSFUL IN ENFORCING THE DETERMINATION IN FULL AFTER THE LATER OF TWELVE MONTHS AFTER THE DETERMINATION OR THE CONCLUSION OF ANY APPEALS;

(III) FAILS TO RESPOND TO THE UNIT WITHIN THIRTY DAYS AFTER THE DATE OF THE NOTICE; OR

(IV) HAS NOT INITIATED AN INVESTIGATION.

SECTION 16. Appropriation. (1) For the 2022-23 state fiscal year, \$345,069 is appropriated to the department of labor and employment. This appropriation is from the general fund. To implement this act, the department may use this appropriation as follows:

(a) \$314,019 for use by division of labor standards and statistics for program costs related to labor standards, which amount is based on an assumption that the division will require an additional 3.4 FTE; and

(b) \$31,050 for the purchase of legal services.

(2) For the 2022-23 state fiscal year, \$31,050 is appropriated to the department of law. This appropriation is from reappropriated funds received from the department of labor and employment under subsection (1)(b) of this section and is based on an assumption that the department of law will require an additional 0.2 FTE. To implement this act, the department of law may use this appropriation to provide legal services for the department of labor and employment.

(3) For the 2022-23 state fiscal year, \$95,200 is appropriated to the department of law for use by consumer protection. This appropriation is from the general fund and is based on an assumption that the department will require an additional 0.8 FTE. To implement this act, the department may use this appropriation for consumer protection and antitrust.

SECTION 17. Act subject to petition - effective date. Sections 6, 7, 8, and 9 of this act take effect January 1, 2023, and the remainder of this act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly; except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in

November 2022 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor; except that sections 6, 7, 8, and 9 of this act take effect on January 1, 2023.

Steve Fenberg
PRESIDENT OF
THE SENATE

Alec Garnett
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Cindi L. Markwell
SECRETARY OF
THE SENATE

Robin Jones
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

APPROVED _____
(Date and Time)

Jared S. Polis
GOVERNOR OF THE STATE OF COLORADO