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SENATE BILL 23-231

BY SENATOR(S) Bridges and Zenzinger, Kirkmeyer, Buckner, Coleman, Cutter, Danielson, Exum, Fields, Hinrichsen, Jaquez Lewis, Kolker, Moreno, Mullica, Priola, Winter F.;;
also REPRESENTATIVE(S) Sirota and Bockenfeld, Bird, Amabile, Bacon, Brown, Froelich, Garcia, Gonzales-Gutierrez, Hamrick, Jodeh, Joseph, Kipp, Lieder, Lindsay, Michaelson Jenet, Ricks, Snyder, Story, Vigil, Willford.

CONCERNING THE ABILITY OF THE DIVISION OF LABOR STANDARDS AND STATISTICS IN THE DEPARTMENT OF LABOR AND EMPLOYMENT TO DISBURSE MONEY IN THE WAGE THEFT ENFORCEMENT FUND TO EMPLOYEES AFTER AN EMPLOYER FAILS TO MAKE PAYMENTS DETERMINED TO BE OWED TO THE EMPLOYEES, 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, 8-4-113, **amend** (3)(a); and **add** (3)(c), (3)(d), and (5) as follows:

8-4-113. Fines pursuant to enforcement - wage theft enforcement fund - created - administrative lien and levy of employer

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.

assets - wage claim payments from the fund - definition - rules.

(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~~ MONEY to the wage theft enforcement fund, which fund is created and referred to in this section as the "fund". The money in the fund is ~~subject to annual appropriation by the general assembly to the division~~ MAY BE USED BY THE DIVISION TO MAKE PAYMENTS TO EMPLOYEES FOR UNPAID LIABILITIES FOR WAGE LAW VIOLATIONS PURSUANT TO SUBSECTION (5) OF THIS SECTION AND for the DIVISION'S direct and indirect costs associated with implementing this article 4.

(c) THE MONEY IN THE FUND IS:

(I) SUBJECT TO ANNUAL APPROPRIATION BY THE GENERAL ASSEMBLY TO THE DIVISION FOR THE DIRECT AND INDIRECT COSTS ASSOCIATED WITH IMPLEMENTING THIS ARTICLE 4; AND

(II) CONTINUOUSLY APPROPRIATED TO THE DIVISION FOR THE PURPOSE OF MAKING PAYMENTS TO EMPLOYEES FOR UNPAID LIABILITIES FOR WAGE LAW VIOLATIONS PURSUANT TO SUBSECTION (5) OF THIS SECTION.

(d) THE LIMITATIONS SPECIFIED IN SECTION 24-75-402 DO NOT APPLY TO THE FUND.

(5) (a) ON AND AFTER APRIL 1, 2024, IF AN EMPLOYER FAILS TO PAY AN EMPLOYEE AN AMOUNT OF WAGES OR COMPENSATION OWED THE EMPLOYEE, AS DETERMINED BY THE DIVISION PURSUANT TO SECTION 8-4-111 (2)(c) OR AS DECIDED BY A HEARING OFFICER PURSUANT TO SECTION 8-4-111.5, WITHIN SIX MONTHS AFTER THE DIVISION'S DETERMINATION, THE HEARING OFFICER'S DECISION, OR THE EXPIRATION OF ANY ORDER FROM THE DIVISION, THE HEARING OFFICER, OR A COURT STAYING OR POSTPONING THE EMPLOYER'S PAYMENT OBLIGATION, WHICHEVER IS LATER, THE DIVISION MAY DISBURSE THE AMOUNT OF WAGES OR COMPENSATION DETERMINED TO BE OWED THE EMPLOYEE, SUBJECT TO AVAILABLE RESOURCES IN THE FUND AND THE DIVISION'S PRIORITIZATION, FROM THE FUND TO THE EMPLOYEE.

(b) IF THE DIVISION DISBURSES PAYMENT TO AN EMPLOYEE FROM THE FUND PURSUANT TO THIS SUBSECTION (5):

(I) THE EMPLOYEE MAY NOT RECOVER THAT PAYMENT AMOUNT FROM THE EMPLOYER;

(II) THE DIVISION REPLACES THE EMPLOYEE AS THE CREDITOR OF THE EMPLOYER FOR THE AMOUNT OF THE PAYMENT, THE DIVISION MAY CONTINUE TO PURSUE PAYMENT FROM THE EMPLOYER PURSUANT TO SECTION 8-4-111 AND THIS SECTION, AND ANY MONEY RECOVERED FROM THE EMPLOYER TOWARD THE AMOUNT DISBURSED TO THE EMPLOYEE MUST BE CREDITED TO THE FUND; AND

(III) THE DIVISION SHALL, TO THE EXTENT NECESSARY, SUPPLEMENT OR AMEND ANY DOCUMENTS FILED PURSUANT TO AN ADMINISTRATIVE CLAIM OR COURT ACTION REGARDING THE EMPLOYER'S DEBT TO REFLECT ANY CHANGE IN THE AMOUNT AND THE CREDITOR OF THE DEBT RESULTING FROM PAYMENT PURSUANT TO THIS SUBSECTION (5).

(c) ON OR BEFORE DECEMBER 29, 2023, THE DIVISION SHALL PROMULGATE RULES SPECIFYING THE PROCEDURES AND CRITERIA FOR EMPLOYEES TO SUBMIT INFORMATION AND REQUEST PAYMENT PURSUANT TO THIS SUBSECTION (5), SPECIFYING THE PROCEDURES AND CRITERIA FOR THE DIVISION TO REVIEW, EVALUATE, AND RESOLVE THE EMPLOYEE PAYMENT REQUESTS, AND AS NECESSARY TO IMPLEMENT THIS SUBSECTION (5).

SECTION 2. In Colorado Revised Statutes, 24-75-402, add (5)(bbb) as follows:

24-75-402. Cash funds - limit on uncommitted reserves - reduction in the amount of fees - exclusions - definitions.
(5) Notwithstanding any provision of this section to the contrary, the following cash funds are excluded from the limitations specified in this section:

(bbb) THE WAGE THEFT ENFORCEMENT FUND CREATED IN SECTION 8-4-113 (3)(a).

SECTION 3. Appropriation. For the 2023-24 state fiscal year, \$12,657 is appropriated to the department of labor and employment for use by the executive director's office. This appropriation is from the wage theft enforcement fund created in section 8-4-113 (3)(a), C.R.S., and is based on an assumption that the department will require an additional 0.2 FTE. To

implement this act, the department may use this appropriation for personal services.

SECTION 4. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, or safety.

Steve Fenberg
PRESIDENT OF
THE SENATE

Julie McCluskie
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