

HOUSE BILL 24-1008

BY REPRESENTATIVE(S) Duran and Froelich, Epps, Brown, deGruy Kennedy, Garcia, Hamrick, Hernandez, Joseph, Lieder, Lindstedt, Mabrey, Mauro, Ricks, Rutinel, Story, Velasco, Vigil, Amabile, Bacon, Bird, Boesenecker, Clifford, Daugherty, Herod, Jodeh, Kipp, Lindsay, Lukens, Marshall, Martinez, Marvin, McCormick, Ortiz, Parenti, Sirota, Titone, Weissman, Willford, Young;
also SENATOR(S) Danielson and Kolker, Exum, Gonzales, Marchman, Sullivan, Cutter, Fields, Jaquez Lewis, Michaelson Jenet, Priola.

CONCERNING MEASURES TO EXPAND GENERAL CONTRACTOR ACCOUNTABILITY FOR WAGE CLAIMS INVOLVING CONTRACTORS IN THE CONSTRUCTION INDUSTRY, AND, IN CONNECTION THEREWITH, MAKING AN APPROPRIATION.

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

SECTION 1. Legislative declaration. (1) The general assembly finds and declares that:

(a) Wage theft, the failure to pay an employee the employee's legally earned wages, is the largest form of theft in the United States, and the Colorado Fiscal Institute estimates that wage theft transfers nearly \$728

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.

million dollars to employers from the pockets of approximately 438,260 Colorado workers each year. Minor workers, women, and workers of color are disproportionately impacted by wage theft.

(b) Wage theft not only affects Coloradans' ability to pay rent and put food on the table, but it also denies our state and local governments between \$25 million and \$42 million in revenue each year;

(c) To combat wage theft, the state must keep up with changes in the marketplace. One of the most significant changes involves the increasing use of labor market intermediaries to directly employ workers. Too often, this fissuring of the labor market is used to outsource an employer's responsibility to workers required by labor and employment laws.

(d) Construction is an industry with extraordinary labor market fissuring, with layers upon layers of contractors, subcontractors, labor brokers, staffing agencies, etc. This incentivizes wage theft by favoring inexpensive subcontractors. It also creates barriers to wage recovery because undercapitalized subcontractors cannot or will not pay wages.

(e) Due in part to these practices, workers in the construction industry are disproportionately likely to experience wage theft. Federal Department of Labor, Wage and Hour Division data show that Colorado's construction industry has double the number of wage theft violations that it should have in proportion to the number of workers in the industry. This is consistent with Colorado Department of Labor and Employment data showing that while only 7% of Colorado workers are in construction, construction workers make up 17% of administrative wage theft complaints that are found valid after a full agency investigation.

(f) Federal data also show that in fiscal years 2022 and 2023, the construction industry saw the highest dollar amount of wage theft of any industry, totaling over \$35 million in federal fiscal year 2023 alone. In addition, the construction industry has among the highest number of individual workers who are victims of wage theft.

(g) To effectively combat wage theft in the construction industry, the state needs a tailored solution to ensure not only that workers have substantive legal protection against wage theft, but also that the state has the right alignment of business incentives to prevent wage theft before it

happens and the right access to capital to ensure that workers can recover stolen wages;

(h) Creating general contractor accountability for wage theft committed on their projects by a subcontractor at any tier provides such a tailored solution. Such accountability will enlist general contractors in the fight against wage theft, incentivize engagement with law-abiding subcontractors who pay their workers correctly, and encourage general contractors to root out bad actors who underbid for contracts knowing they will make up the difference by denying their workers the wages they earned.

(i) While creating general contractor liability for wage claims, this act will also ensure that general contractors can efficiently seek reimbursement from subcontractor employers for any amounts paid out for wage claims owed to the subcontractors' employees. In this way, the act will ensure that workers get paid, but will not leave general contractors on the hook for a subcontractor's wage debts.

(j) This act narrowly focuses on general contractor liability for wage debts owed to the workers on their projects who were engaged by the general contractor's subcontractors at any tier. Such liability does not extend to wage debts owed to the workers of general contractor suppliers or other business partners. Also, liability for debts owed based on a wage claim or investigation does not include liability for a subcontractor's retaliatory acts.

(k) This act does not alter the division of labor standards and statistics' existing obligation to treat a notice of citation or a notice of assessment issued to an employer for a violation of wage law as a public record pursuant to section 8-1-115 (1)(b), Colorado Revised Statutes, and does not require the additional publication of a notice of citation or a notice of assessment issued to a general contractor that is not the employer of an employee who is the victim of wage theft; and

(l) With this act, Colorado hopes not only to ensure that workers get paid their legally earned wages, but also to partner with the many general contractors who are abiding by the law and want to ensure all workers on their job sites are paid in full and on time.

(2) Therefore, the general assembly declares that wage theft is an unacceptable business practice, and the state should use or adopt all

available tools to prevent wage theft before it happens and give workers the means to recover stolen wages.

SECTION 2. In Colorado Revised Statutes, 8-4-101, **add** (1.5), (8.7), (11.5), and (12.5) as follows:

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

(1.5) "CONSTRUCTION CONTRACT" MEANS AN EXPRESS OR IMPLIED AGREEMENT:

(a) FOR THE CONSTRUCTION, RECONSTRUCTION, ALTERATION, MAINTENANCE, MOVING, OR DEMOLITION OF ANY BUILDING, STRUCTURE, OR IMPROVEMENT; OR

(b) RELATING TO THE EXCAVATION OF OR OTHER DEVELOPMENT OF OR IMPROVEMENT TO LAND.

(8.7) "GENERAL CONTRACTOR" MEANS ANY PERSON, INCLUDING A CONSTRUCTION MANAGER, JOINT VENTURE, OR ANY COMBINATION THEREOF, ALONG WITH THE PERSON'S SUCCESSORS, HEIRS, OR ASSIGNS, THAT ENTERS INTO A CONSTRUCTION CONTRACT WITH AN OWNER. "GENERAL CONTRACTOR" INCLUDES AN OWNER THAT ENTERS INTO A CONSTRUCTION CONTRACT WITH MORE THAN ONE CONTRACTOR OR SUBCONTRACTOR, IF SUCH CONTRACT RELATES TO REAL PROPERTY OTHER THAN PROPERTY FOR WHICH THE OWNER COULD CLAIM THE HOMESTEAD EXEMPTION PURSUANT TO PART 2 OF ARTICLE 41 OF TITLE 38.

(11.5) "OWNER" MEANS ANY PERSON WITH AN OWNERSHIP INTEREST IN REAL PROPERTY, WHETHER THE INTEREST IS IN FEE, AS VENDEE UNDER A CONTRACT TO PURCHASE, AS LESSEE, OR ANOTHER INTEREST OR ESTATE LESS THAN FEE.

(12.5) "SUBCONTRACTOR" MEANS ANY PERSON THAT IS A PARTY TO AN EXPRESS OR IMPLIED CONTRACT WITH A GENERAL CONTRACTOR OR WITH A GENERAL CONTRACTOR'S SUBCONTRACTORS AT ANY TIER TO PERFORM ANY PORTION OF WORK WITHIN THE SCOPE OF THE GENERAL CONTRACTOR'S CONSTRUCTION CONTRACT WITH THE OWNER, INCLUDING A PERSON THAT HAS NO DIRECT PRIVITY OF CONTRACT WITH THE GENERAL CONTRACTOR.

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

8-4-109. Termination of employment - payments required - civil penalties - payments to surviving spouse or heir. (3) (a.3) (I) IF AN EMPLOYER THAT RECEIVES A WRITTEN DEMAND FOR PAYMENT UNDER SUBSECTION (3)(a) OF THIS SECTION IS A SUBCONTRACTOR, THE EMPLOYER SHALL FORWARD A COPY OF THE WRITTEN DEMAND FOR PAYMENT TO THE GENERAL CONTRACTOR WITHIN THREE BUSINESS DAYS AFTER RECEIVING THE WRITTEN DEMAND. THE EMPLOYER SHALL ALSO SIMULTANEOUSLY SEND TO THE WAGE CLAIMANT A COPY OF THE CORRESPONDENCE SENT TO THE GENERAL CONTRACTOR AND THE GENERAL CONTRACTOR'S NAME AND ADDRESS.

(II) AN EMPLOYER THAT FAILS TO FORWARD A WRITTEN DEMAND FOR PAYMENT TO A GENERAL CONTRACTOR AS REQUIRED IN SUBSECTION (3)(a.3)(I) OF THIS SECTION IS SUBJECT TO A FINE OF TWO THOUSAND DOLLARS, PAID TO THE GENERAL CONTRACTOR, IN ADDITION TO ANY AMOUNTS OWED PURSUANT TO SECTION 8-4-110.5 OR ANY OTHER LAW.

SECTION 4. In Colorado Revised Statutes, **add** 8-4-110.5 as follows:

8-4-110.5. General contractor responsibility for wage claims in the construction industry. (1) (a) A GENERAL CONTRACTOR ENTERING INTO A CONSTRUCTION CONTRACT IN THIS STATE IS LIABLE FOR ALL AMOUNTS OWED TO AN EMPLOYEE PURSUANT TO THIS ARTICLE 4 OR ARTICLE 6 OF THIS TITLE 8 FOR THE EMPLOYEE'S LABOR, CONSTRUCTION, OR OTHER WORK INCLUDED WITHIN THE SCOPE OF THE CONSTRUCTION CONTRACT, INCLUDING AMOUNTS OWED BY A SUBCONTRACTOR AT ANY TIER ACTING UNDER, BY, OR FOR THE GENERAL CONTRACTOR OR THE GENERAL CONTRACTOR'S SUBCONTRACTORS.

(b) THE GENERAL CONTRACTOR'S RESPONSIBILITY UNDER SUBSECTION (1)(a) OF THIS SECTION DOES NOT EXTEND TO DAMAGES OWED FOR RETALIATION COMMITTED BY A SUBCONTRACTOR PURSUANT TO SECTION 8-4-120 (3).

(2) UNLESS THE VIOLATION IS CAUSED BY THE GENERAL CONTRACTOR'S LACK OF PAYMENT TO THE SUBCONTRACTOR IN ACCORDANCE

WITH THE TERMS OF THE CONTRACT BETWEEN THE GENERAL CONTRACTOR AND THE SUBCONTRACTOR:

(a) A SUBCONTRACTOR EMPLOYER SHALL INDEMNIFY THE GENERAL CONTRACTOR FOR:

(I) ALL AMOUNTS OWED BY THE GENERAL CONTRACTOR PURSUANT TO SUBSECTION (1) OF THIS SECTION DUE TO THE SUBCONTRACTOR'S VIOLATION OF THIS ARTICLE 4 OR ARTICLE 6 OF THIS TITLE 8; AND

(II) ALL ATTORNEY FEES PAID BY THE GENERAL CONTRACTOR TO DEFEND AGAINST LIABILITY FOR SUBCONTRACTOR VIOLATIONS OF THIS ARTICLE 4 OR ARTICLE 6 OF THIS TITLE 8;

(b) A GENERAL CONTRACTOR MAY BRING A CROSSCLAIM FOR INDEMNIFICATION AGAINST THE SUBCONTRACTOR EMPLOYER IN ANY ACTION RELATED TO THE WAGE CLAIM.

(3) A SUBCONTRACTOR'S FAILURE TO INDEMNIFY THE GENERAL CONTRACTOR IS NOT A DEFENSE TO ANY ACTION BROUGHT AGAINST THE GENERAL CONTRACTOR PURSUANT TO SUBSECTION (1) OF THIS SECTION.

(4) A GENERAL CONTRACTOR MAY REQUIRE THE FOLLOWING INFORMATION FROM EACH SUBCONTRACTOR ACTING UNDER, BY, OR FOR THE GENERAL CONTRACTOR:

(a) PAY DATA SHOWING THE HOURS WORKED, PAY, OVERTIME, AND DEDUCTIONS FOR EACH INDIVIDUAL WORKER ENGAGED BY THE SUBCONTRACTOR, REGARDLESS OF WHETHER THE INDIVIDUAL WORKER IS CLASSIFIED AS AN EMPLOYEE OR AN INDEPENDENT CONTRACTOR'S INDIVIDUAL LABORER. THE SUBCONTRACTOR SHALL REDACT THESE RECORDS TO DISCLOSE ONLY THE LAST FOUR DIGITS OF THE INDIVIDUAL WORKER'S SOCIAL SECURITY NUMBER OR INDIVIDUAL TAXPAYER IDENTIFICATION NUMBER.

(b) CONTACT INFORMATION FOR ALL ADDITIONAL SUBCONTRACTORS THAT PERFORM ANY PORTION OF WORK WITHIN THE SCOPE OF THE SUBCONTRACTOR'S CONTRACT WITH THE GENERAL CONTRACTOR OR WITH ANOTHER SUBCONTRACTOR THAT IS IN PRIVITY OF CONTRACT WITH THE GENERAL CONTRACTOR; AND

(c) (I) AN AFFIDAVIT ATTESTING TO WHETHER THE SUBCONTRACTOR OR ANY OF ITS CURRENT PRINCIPALS HAS PARTICIPATED IN ANY CIVIL OR ADMINISTRATIVE PROCEEDING WITHIN THE PRECEDING FIVE YEARS THAT INVOLVED ANY ALLEGATIONS OF A WAGE AND HOUR VIOLATION AGAINST THE SUBCONTRACTOR OR PRINCIPAL UNDER LOCAL, STATE, OR FEDERAL LAW; AND

(II) IF THE PROCEEDING IS COMPLETE, THE OUTCOME OF THE PROCEEDING, INCLUDING ANY DAMAGES, FEES, OR PENALTY AMOUNTS PAID TO WORKERS OR TO A GOVERNMENT AGENCY.

(5) A SUBCONTRACTOR'S FAILURE TO COMPLY WITH THIS SECTION DOES NOT RELIEVE A GENERAL CONTRACTOR FROM LIABILITY UNDER SUBSECTION (1) OF THIS SECTION.

(6) (a) NOTHING IN THIS SECTION DIMINISHES THE RIGHTS, PRIVILEGES, OR REMEDIES OF ANY EMPLOYEE UNDER ANY COLLECTIVE BARGAINING AGREEMENT.

(b) A COLLECTIVE BARGAINING AGREEMENT MAY WAIVE THE REQUIREMENTS OF THIS SECTION IF THE AGREEMENT:

(I) IS ENTERED INTO BY A BONA FIDE BUILDING AND CONSTRUCTION TRADE LABOR ORGANIZATION THAT HAS ESTABLISHED ITSELF OR ITS AFFILIATES AS THE COLLECTIVE BARGAINING REPRESENTATIVE FOR PERSONS PERFORMING WORK ON A PROJECT;

(II) CONTAINS A GRIEVANCE PROCEDURE THAT RESULTS IN A FINAL AND BINDING DECISION;

(III) MAY BE USED TO RECOVER UNPAID WAGES ON BEHALF OF EMPLOYEES COVERED BY THE AGREEMENT;

(IV) PROVIDES FOR THE COLLECTION OF UNPAID CONTRIBUTIONS TO FRINGE BENEFIT TRUST FUNDS ESTABLISHED PURSUANT TO 29 U.S.C. SEC. 186 (c)(5) AND (c)(6), BY OR ON BEHALF OF SUCH TRUST FUNDS; AND

(V) DOES NOT DIMINISH OR IMPAIR THE RIGHTS OF AN EMPLOYEE PROVIDED UNDER ANY OTHER SECTION OF THIS ARTICLE 4.

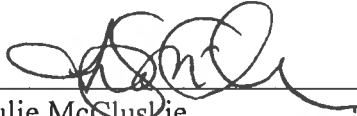
SECTION 5. Appropriation. (1) For the 2024-25 state fiscal year, \$55,179 is appropriated to the department of labor and employment for use by the division of labor standards and statistics. This appropriation is from the general fund. To implement this act, the division may use this appropriation for program costs related to labor standards. This amount is based on an assumption that the division will require an additional 0.5 FTE.

(2) For the 2024-25 state fiscal year, \$44,807 is appropriated to the department of personnel for use by the executive director's office. This appropriation is from the general fund. To implement this act, the department may use this appropriation for the purchase of legal services.

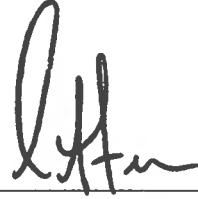
(3) For the 2024-25 state fiscal year, \$44,807 is appropriated to the department of law. This appropriation is from reappropriated funds received from the department of personnel under subsection (2) of this section and is based on an assumption that the department of law will require an additional 0.2 FTE. To implement this act, the department of law may use this appropriation to provide legal services for the department of personnel.

SECTION 6. Act subject to petition - effective date - applicability. (1) This act takes effect July 1, 2025; 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 the ninety-day period after final adjournment of the general assembly, 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 2024 and, in such case, will take effect July 1, 2025, or on the date of the official declaration of the vote thereon by the governor, whichever is later.

(2) This act applies to wage claims brought and investigations commenced on or after the applicable effective date of this act.



Julie McCluskie
SPEAKER OF THE HOUSE
OF REPRESENTATIVES



Steve Fenberg
PRESIDENT OF
THE SENATE



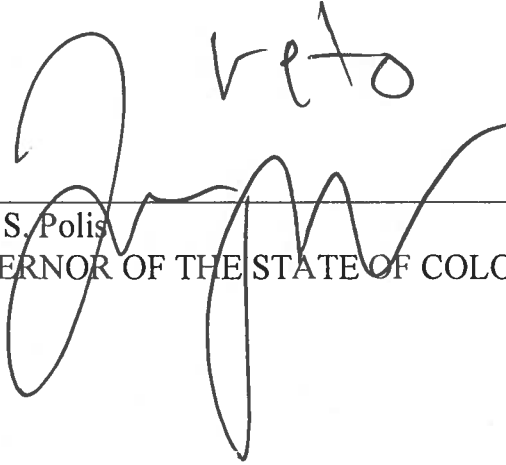
Robin Jones
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES



Cindi L. Markwell
SECRETARY OF
THE SENATE

VETO

DISAPPROVED AND VETOED on Friday May 17th 2024 at 4:15 pm
(Date and Time)

veto


Jared S. Polis
GOVERNOR OF THE STATE OF COLORADO