

**First Regular Session
Seventy-second General Assembly
STATE OF COLORADO**

INTRODUCED

LLS NO. 19-0930.01 Conrad Imel x2313

HOUSE BILL 19-1267

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A BILL FOR AN ACT

101 **CONCERNING CRIMINAL OFFENSES FOR FAILURE TO PAY WAGES, AND,**
102 **IN CONNECTION THEREWITH, IMPLEMENTING**
103 **RECOMMENDATIONS FROM THE COLORADO HUMAN**
104 **TRAFFICKING COUNCIL.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

Under existing law, an employer who willfully refuses to pay a wage claim, or falsely denies the amount of a wage claim, or the validity thereof, or that the same is due, with intent to secure any discount or

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

underpayment of such unpaid wage or with intent to annoy, harass, oppress, hinder, delay, or defraud the person who is owed wages (wage theft), is guilty of a misdemeanor.

The bill prohibits wage theft with the intent to coerce a person who is owed wages. The bill defines wage theft as theft, which is a felony when the theft is of an amount greater than \$2,000.

The bill removes the exemption from criminal penalties for an employer who is unable to pay wages or compensation because of a chapter 7 bankruptcy action or other court action resulting in the employer having limited control over his or her assets. The bill includes in the definition of employee any person who performs work that is an integral part of the employer's business and includes in the definition of employer foreign labor contractors, officers or agents of an employer entity, and any person acting directly or indirectly in the interest of an employer in relation to an employee.

Under existing law, an employer who pays an employee a wage less than the minimum wage is guilty of a misdemeanor. Under the bill, a person who willfully pays a wage less than the minimum commits theft, which is a felony when the theft is of an amount greater than \$2,000.

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

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

4 (a) The Colorado human trafficking council, created pursuant to
5 House Bill 14-1273, enacted in 2014, was established to improve services
6 for victims of human trafficking, assist in the prosecution of human
7 traffickers, and combat the unlawful practice of human trafficking;

8 (b) The nonpartisan 31-member Colorado human trafficking
9 council, its staff, and its partner volunteers should be recognized for their
10 public service, dedication, and work in studying the epidemic of labor
11 trafficking in Colorado and in committing themselves to the eradication
12 of human trafficking in all its forms;

13 (c) The Colorado human trafficking council's 2018 annual report
14 to the general assembly found that:

1 (I) Between 2015 and 2017, state prosecutors filed 129 cases
2 using the new human trafficking statutes, only one of which was for labor
3 trafficking;

4 (II) Victims of labor trafficking, like those of sex trafficking,
5 should not be seen as complicit in their victimization and are worthy of
6 justice;

7 (III) Persons who commit the crime of human trafficking often
8 commit other crimes such as wage theft, tax evasion, and workers'
9 compensation fraud, which drains local and state resources, as well as
10 denies the state its right to revenue;

11 (IV) A comprehensive approach is needed to address the crime of
12 labor trafficking; and

13 (V) A bill enacted by the general assembly to recognize labor as
14 a thing of value that can be subject to theft would aid law enforcement in
15 combating the crime of labor trafficking.

16 (2) The general assembly acknowledges that not all victims of
17 wage theft are victims of human trafficking. Studies have found that,
18 apart from human trafficking, wage theft costs individual workers in
19 Colorado hundreds of millions of dollars in wages and benefits each year
20 and costs the state of Colorado tens of millions of dollars in revenue.

21 (3) Therefore, the general assembly declares that:

22 (a) It is in the public interest of the state to adopt the
23 recommendation of the Colorado human trafficking council to codify that
24 labor is a thing of value subject to theft to assist in the enforcement and
25 prosecution of laws designed to combat labor trafficking, which is a form
26 of modern-day slavery;

27 (b) Existing law, as interpreted by the Colorado supreme court in

1 *Leonard v. McMorris*, 63 P.3d 323 (2003), does not provide sufficient
2 protections for workers and their families; and

3 (c) In order to protect all workers, it is necessary to close
4 loopholes that allow for the exploitation of human labor for profit.

5 **SECTION 2.** In Colorado Revised Statutes, 8-4-101, **amend** the
6 introductory portion, (5), and (6); and **add** (8.5) as follows:

7 **8-4-101. Definitions.** As used in this ~~article~~ ARTICLE 4, unless the
8 context otherwise requires:

9 (5) "Employee" means any person, including a migratory laborer,
10 performing labor or services for the benefit of an employer in which the
11 employer may command when, where, and how much labor or services
12 ~~shall be~~ ARE performed OR WHO PERFORMS WORK THAT IS AN INTEGRAL
13 PART OF THE EMPLOYER'S BUSINESS. For the purpose of this ~~article~~
14 ARTICLE 4, an individual primarily free from control and direction in the
15 performance of the service, both under his or her contract for the
16 performance of service and in fact, and who is customarily engaged in an
17 independent trade, occupation, profession, or business related to the
18 service performed is not an "employee".

19 (6) "Employer" means every INDIVIDUAL, person, firm,
20 partnership, association, corporation, migratory field labor contractor or
21 crew leader, FOREIGN LABOR CONTRACTOR, receiver, ~~or~~ other officer of
22 court in Colorado, ~~and any agent or officer thereof, of the above~~
23 ~~mentioned classes,~~ OR ANY OTHER ENTITY employing any person in
24 ~~Colorado; except that the~~ COLORADO. "EMPLOYER" INCLUDES ANY
25 PERSON, INCLUDING ANY OFFICER, AGENT, OR EMPLOYEE OF AN ENTITY
26 DESCRIBED IN THIS SUBSECTION (6), ACTING DIRECTLY OR INDIRECTLY IN
27 THE INTEREST OF AN EMPLOYER IN RELATION TO AN EMPLOYEE. THE

1 provisions of this ~~article shall~~ ARTICLE 4 DO not apply to the state or its
2 agencies or entities, counties, cities and counties, municipal corporations,
3 quasi-municipal corporations, school districts, and irrigation, reservoir,
4 or drainage conservation companies or districts organized and existing
5 under the laws of Colorado.

6 (8.5) "FOREIGN LABOR CONTRACTOR" MEANS ANY PERSON WHO
7 RECRUITS OR SOLICITS FOR COMPENSATION A FOREIGN WORKER WHO
8 RESIDES OUTSIDE OF THE UNITED STATES IN FURTHERANCE OF THAT
9 WORKER'S EMPLOYMENT IN COLORADO; EXCEPT THAT "FOREIGN LABOR
10 CONTRACTOR" DOES NOT INCLUDE ANY ENTITY OF THE FEDERAL, STATE,
11 OR LOCAL GOVERNMENT.

12 **SECTION 3.** In Colorado Revised Statutes, 8-4-114, **amend** (2)
13 as follows:

14 **8-4-114. Criminal penalties.** (2) In addition to any other penalty
15 imposed by this ~~article~~ ARTICLE 4, any employer or agent of an employer
16 who ~~being able to pay wages or compensation and being under a duty to~~
17 ~~pay,~~ willfully refuses to pay WAGES OR COMPENSATION as provided in this
18 ~~article~~ ARTICLE 4, or falsely denies the amount of a wage claim, or the
19 validity thereof, or that the same is due, with intent to secure for himself,
20 herself, or another person any discount upon such indebtedness or any
21 underpayment of such indebtedness or with intent to annoy, harass,
22 oppress, hinder, COERCE, delay, or defraud the person to whom such
23 indebtedness is due, ~~is guilty of a misdemeanor and, upon conviction~~
24 ~~thereof, shall be punished by a fine of not more than three hundred~~
25 ~~dollars, or by imprisonment in the county jail for not more than thirty~~
26 ~~days, or by both such fine and imprisonment. For purposes of this section,~~
27 ~~"being able to pay wages or compensation" does not include an employer~~

1 ~~who is unable to pay wages or compensation by reason of a chapter 7~~
2 ~~bankruptcy action or other court action that results in the employer having~~
3 ~~limited control over his or her assets~~ COMMITS THEFT AS DEFINED IN
4 SECTION 18-4-401.

5 **SECTION 4.** In Colorado Revised Statutes, **amend** 8-6-116 as
6 follows:

7 **8-6-116. Violation - penalty.** The minimum wages fixed by the
8 director, as provided in this ~~article, shall be~~ ARTICLE 6, ARE the minimum
9 wages paid to the employees, and the payment to such employees of a
10 wage less than the minimum so fixed is unlawful, and every employer or
11 other person who WILLFULLY, individually or as an officer, agent, or
12 employee of a corporation or other person, pays or causes to be paid to
13 any such employee a wage less than the minimum ~~is guilty of a~~
14 ~~misdemeanor and, upon conviction thereof, shall be punished by a fine of~~
15 ~~not less than one hundred dollars nor more than five hundred dollars, or~~
16 ~~by imprisonment in the county jail for not less than thirty days nor more~~
17 ~~than one year, or by both such fine and imprisonment~~ COMMITS THEFT AS
18 DEFINED IN SECTION 18-4-401.

19 **SECTION 5. Potential appropriation.** Pursuant to section
20 2-2-703, C.R.S., any bill that results in a net increase in periods of
21 imprisonment in state correctional facilities must include an appropriation
22 of money that is sufficient to cover any increased capital construction, any
23 operational costs, and increased parole costs that are the result of the bill
24 for the department of corrections in each of the first five years following
25 the effective date of the bill. Because this act may increase periods of
26 imprisonment, this act may require a five-year appropriation.

27 **SECTION 6. Act subject to petition - effective date -**

1 **applicability.** (1) This act takes effect January 1, 2020; except that, if a
2 referendum petition is filed pursuant to section 1 (3) of article V of the
3 state constitution against this act or an item, section, or part of this act
4 within the ninety-day period after final adjournment of the general
5 assembly, then the act, item, section, or part will not take effect unless
6 approved by the people at the general election to be held in November
7 2020 and, in such case, will take effect on the date of the official
8 declaration of the vote thereon by the governor.

9 (2) This act applies to offenses committed on or after the
10 applicable effective date of this act.