

Second Regular Session
Seventy-second General Assembly
STATE OF COLORADO

ENGROSSED

*This Version Includes All Amendments Adopted
on Second Reading in the House of Introduction*

LLS NO. 20-1307.01 Yelana Love x2295

HOUSE BILL 20-1415

HOUSE SPONSORSHIP

Herod and Sullivan,

SENATE SPONSORSHIP

Pettersen and Rodriguez,

House Committees

Finance
Appropriations

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING A WORKER'S RIGHTS IN THE WORKPLACE FOR CONDUCT**
102 **RELATED TO A PRINCIPAL'S ACTIONS DURING A PUBLIC HEALTH**
103 **EMERGENCY, AND, IN CONNECTION THEREWITH, MAKING AN**
104 **APPROPRIATION.**

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>.)

The bill prohibits a principal, which includes an employer, certain labor contractors, public employers, and entities that rely on independent contractors for a specified percentage of their workforce, from

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.

HOUSE
Amended 2nd Reading
June 8, 2020

discriminating, retaliating, or taking adverse action against any worker who:

- ! Raises any concern about workplace health and safety practices or hazards related to a public health emergency to the principal, the principal's agent, other workers, a government agency, or the public if the workplace health and safety practices fail to meet guidelines established by a federal, state, or local public health agency with jurisdiction over the workplace; or
- ! Voluntarily wears at the worker's workplace the worker's own personal protective equipment, such as a mask, faceguard, or gloves.

A person may seek relief for a violation of the bill by:

- ! Filing a complaint with the division of labor standards and statistics in the department of labor and employment;
- ! Bringing an action in district court, after exhausting administrative remedies; or
- ! Bringing a whistleblower action in the name of the state in district court, after exhausting administrative remedies.

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

2 **SECTION 1.** In Colorado Revised Statutes, **add** article 14.4 to
3 title 8 as follows:

4 **ARTICLE 14.4**

5 **Worker Rights Related to a Public Health Emergency**

6 **8-14.4-101. Definitions.** AS USED IN THIS ARTICLE 14.4, UNLESS
7 THE CONTEXT OTHERWISE REQUIRES:

8 (1) "DEPARTMENT" MEANS THE DEPARTMENT OF LABOR AND
9 EMPLOYMENT.

10 (2) "DIVISION" MEANS THE DIVISION OF LABOR STANDARDS AND
11 STATISTICS IN THE DEPARTMENT.

12 (3) "PRINCIPAL" MEANS:

13 (a) AN "EMPLOYER" AS SET FORTH IN THE FEDERAL "FAIR LABOR
14 STANDARDS ACT OF 1938", 29 U.S.C. SEC. 203 (d);

1 (b) A FOREIGN LABOR CONTRACTOR AND A MIGRATORY FIELD
2 LABOR CONTRACTOR OR CREW LEADER;

3 (c) THE STATE OF COLORADO, LOCAL GOVERNMENTS, AND
4 POLITICAL SUBDIVISIONS OF THE STATE AS DEFINED IN SECTION 1-7.5-103
5 (6); AND

6 (d) AN ENTITY THAT CONTRACTS WITH FIVE OR MORE
7 INDEPENDENT CONTRACTORS IN THE STATE EACH YEAR.

8 (4) "PUBLIC HEALTH EMERGENCY" MEANS:

9 (a) A PUBLIC HEALTH ORDER ISSUED BY A STATE OR LOCAL PUBLIC
10 HEALTH AGENCY; OR

11 (b) A DISASTER EMERGENCY DECLARED BY THE GOVERNOR BASED
12 ON A PUBLIC HEALTH CONCERN.

13 (5) "WORKER" MEANS:

14 (a) AN EMPLOYEE AS DEFINED IN SECTION 8-4-101 (5); OR

15 (b) A PERSON WHO WORKS FOR AN ENTITY THAT CONTRACTS WITH
16 FIVE OR MORE INDEPENDENT CONTRACTORS IN THE STATE EACH YEAR.

17 **8-14.4-102. Prohibition against discrimination based on claims**
18 **related to a public health emergency.** (1) A PRINCIPAL SHALL NOT
19 DISCRIMINATE, TAKE ADVERSE ACTION, OR RETALIATE AGAINST ANY
20 WORKER WHO, IN GOOD FAITH, RAISES ANY REASONABLE CONCERN ABOUT
21 WORKPLACE VIOLATIONS OF GOVERNMENT HEALTH OR SAFETY RULES, OR
22 ABOUT AN OTHERWISE SIGNIFICANT WORKPLACE THREAT TO HEALTH OR
23 SAFETY, RELATED TO A PUBLIC HEALTH EMERGENCY TO THE PRINCIPAL,
24 THE PRINCIPAL'S AGENT, OTHER WORKERS, A GOVERNMENT AGENCY, OR
25 THE PUBLIC IF THE WORKPLACE HEALTH AND SAFETY PRACTICES FAIL TO
26 MEET GUIDELINES ESTABLISHED BY A FEDERAL, STATE, OR LOCAL PUBLIC
27 HEALTH AGENCY WITH JURISDICTION OVER THE WORKPLACE.

1 (2) (a) A PRINCIPAL SHALL NOT REQUIRE OR ATTEMPT TO REQUIRE
2 A WORKER TO SIGN A CONTRACT OR OTHER AGREEMENT THAT WOULD
3 LIMIT OR PREVENT THE WORKER FROM DISCLOSING INFORMATION ABOUT
4 WORKPLACE HEALTH AND SAFETY PRACTICES OR HAZARDS RELATED TO A
5 PUBLIC HEALTH EMERGENCY OR TO OTHERWISE ABIDE BY A WORKPLACE
6 POLICY THAT WOULD LIMIT OR PREVENT SUCH DISCLOSURES.

7 (b) A CONTRACT OR AGREEMENT THAT VIOLATES SUBSECTION
8 (2)(a) OF THIS SECTION IS VOID AND UNENFORCEABLE AS CONTRARY TO
9 THE PUBLIC POLICY OF THIS STATE. A PRINCIPAL'S ATTEMPT TO IMPOSE
10 SUCH A CONTRACT OR AGREEMENT IS AN ADVERSE ACTION IN VIOLATION
11 OF THIS ARTICLE 14.4.

12 (3) A PRINCIPAL SHALL NOT DISCRIMINATE, TAKE ADVERSE
13 ACTION, OR RETALIATE AGAINST A WORKER WHO VOLUNTARILY WEARS AT
14 THE WORKER'S WORKPLACE THE WORKER'S OWN PERSONAL PROTECTIVE
15 EQUIPMENT, SUCH AS A MASK, FACEGUARD, OR GLOVES, IF THE PERSONAL
16 PROTECTIVE EQUIPMENT:

17 (a) PROVIDES A HIGHER LEVEL OF PROTECTION THAN THE
18 EQUIPMENT PROVIDED BY THE PRINCIPAL;

19 (b) IS RECOMMENDED BY A FEDERAL, STATE, OR LOCAL PUBLIC
20 HEALTH AGENCY WITH JURISDICTION OVER THE WORKER'S WORKPLACE;
21 AND

22 (c) DOES NOT RENDER THE WORKER INCAPABLE OF PERFORMING
23 THE WORKER'S JOB OR PREVENT A WORKER FROM FULFILLING THE DUTIES
24 OF THE WORKER'S POSITION.

25 (4) A PRINCIPAL SHALL NOT DISCRIMINATE, TAKE ADVERSE
26 ACTION, OR RETALIATE AGAINST A WORKER FOR OPPOSING ANY PRACTICE
27 THE WORKER REASONABLY BELIEVES IS UNLAWFUL UNDER THIS ARTICLE

1 14.4 OR FOR MAKING A CHARGE, TESTIFYING, ASSISTING, OR
2 PARTICIPATING IN ANY MANNER IN AN INVESTIGATION, PROCEEDING, OR
3 HEARING AS TO ANY MATTER THE WORKER REASONABLY BELIEVES TO BE
4 UNLAWFUL UNDER THIS ARTICLE 14.4.

5 (5) [REDACTED] THIS SECTION DOES NOT APPLY TO A WORKER WHO
6 DISCLOSES INFORMATION:

7 (a) THAT THE WORKER KNOWS TO BE FALSE; OR

8 (b) WITH RECKLESS DISREGARD FOR THE TRUTH OR FALSITY OF THE
9 INFORMATION.

10 [REDACTED]

11 (6) NOTHING IN THIS SECTION AUTHORIZES A WORKER TO SHARE
12 INDIVIDUAL HEALTH INFORMATION THAT IS OTHERWISE PROHIBITED FROM
13 DISCLOSURE UNDER STATE OR FEDERAL LAW.

14 **8-14.4-103. Principal post notice of rights - rules.** (1) A
15 PRINCIPAL SHALL POST NOTICE OF A WORKER'S RIGHTS UNDER THIS
16 ARTICLE 14.4 IN A CONSPICUOUS LOCATION ON THE PRINCIPAL'S PREMISES.

17 (2) THE DIVISION SHALL PROMULGATE RULES TO ESTABLISH THE
18 FORM OF THE NOTICE REQUIRED IN SUBSECTION (1) OF THIS SECTION.

19 **8-14.4-104. Relief for aggrieved person.** (1) A PERSON MAY
20 SEEK RELIEF FOR A VIOLATION OF THIS ARTICLE 14.4 BY:

21 (a) FILING A COMPLAINT WITH THE DIVISION PURSUANT TO SECTION
22 8-14.4-105; OR

23 (b) BRINGING AN ACTION IN DISTRICT COURT PURSUANT TO
24 SECTION 8-14.4-106.

25 [REDACTED]

26 (2) A PERSON SHALL EXHAUST ADMINISTRATIVE REMEDIES
27 PURSUANT TO SECTION 8-14.4-105 PRIOR TO BRINGING AN ACTION IN

1 COURT.

2 **8-14.4-105. Enforcement by the division - rules.** (1)(a) WITHIN
3 TWO YEARS AFTER AN ALLEGED VIOLATION OF THIS ARTICLE 14.4, AN
4 AGGRIEVED INDIVIDUAL OR WHISTLEBLOWER MAY FILE A COMPLAINT
5 AGAINST A PRINCIPAL WITH THE DIVISION AS SPECIFIED IN THIS
6 SUBSECTION (1).

7 (b) UNTIL THE DATE THE DIVISION MAKES A COMPLAINT FORM
8 PUBLICLY AVAILABLE:

9 (I) AN AGGRIEVED INDIVIDUAL OR WHISTLEBLOWER MAY FILE A
10 COMPLAINT OF A VIOLATION OF THIS ARTICLE 14.4 WITH THE DIVISION IN
11 ANY FORM, BY MAIL OR ELECTRONIC MAIL;

12 (II) THE DIVISION MAY LATER REQUIRE THE AGGRIEVED
13 INDIVIDUAL OR WHISTLEBLOWER TO COMPLETE THE DIVISION'S COMPLAINT
14 FORM; AND

15 (III) THE FILING DATE IS THE DATE OF THE CLAIMANT'S ORIGINAL
16 FILING, EVEN IF THE DIVISION LATER REQUESTS ADDITIONAL INFORMATION
17 OR COMPLETION OF THE DIVISION'S COMPLAINT FORM.

18 (c) AFTER THE DIVISION MAKES A COMPLAINT FORM PUBLICLY
19 AVAILABLE, AN AGGRIEVED INDIVIDUAL OR WHISTLEBLOWER MAY FILE A
20 COMPLAINT ONLY BY COMPLETING THE REQUIRED FORM.

21 (2) THE DIVISION SHALL EITHER:

22 (a) INVESTIGATE ALLEGED PRINCIPAL VIOLATIONS OF, OR
23 INTERFERENCE WITH RIGHTS OR RESPONSIBILITIES UNDER, THIS ARTICLE
24 14.4 AND COMPLAINTS FILED WITH THE DIVISION BY AGGRIEVED
25 INDIVIDUALS AND WHISTLEBLOWERS; OR

26 (b) AUTHORIZE AN AGGRIEVED INDIVIDUAL OR WHISTLEBLOWER
27 TO PROCEED WITH AN ACTION IN DISTRICT COURT AS PROVIDED IN

1 SECTIONS 8-14.4-106 AND 8-14.4-107. A PERSON WHO RECEIVES
2 AUTHORIZATION PURSUANT TO THIS SUBSECTION (2)(b) IS CONSIDERED TO
3 HAVE EXHAUSTED ADMINISTRATIVE REMEDIES.

4 (3) IN AN INVESTIGATION OF ALLEGED PRINCIPAL RETALIATION OR
5 INTERFERENCE WITH WORKER RIGHTS, IF AN INVESTIGATION YIELDS A
6 DETERMINATION THAT:

7 (a) A VIOLATION HAS OCCURRED, THE DIVISION MAY AWARD
8 REASONABLE ATTORNEY FEES AND IMPOSE FINES PURSUANT TO SECTION
9 8-1-140 (2);

10 (b) RIGHTS OF MULTIPLE WORKERS HAVE BEEN VIOLATED, THE
11 VIOLATION AS TO EACH WORKER IS A SEPARATE VIOLATION FOR PURPOSES
12 OF FINES, PENALTIES, OR OTHER REMEDIES; AND

13 (c) A WORKER WAS FIRED, VOLUNTARILY LEFT EMPLOYMENT, OR
14 EXPERIENCED A REDUCTION IN PAY DUE TO A PRINCIPAL'S VIOLATION,
15 THE DETERMINATION MAY INCLUDE AN ORDER TO:

16 (I) REINSTATE OR REHIRE THE WORKER AND PAY THE WORKER'S
17 BACK PAY UNTIL REINSTATEMENT OR REHIRING; OR

18 (II) PAY THE WORKER FRONT PAY FOR A REASONABLE PERIOD
19 AFTER THE ORDER, IF REINSTATEMENT OR REHIRING IS DETERMINED NOT
20 TO BE FEASIBLE.

21 (4) DETERMINATIONS MADE BY THE DIVISION UNDER THIS SECTION
22 ARE APPEALABLE PURSUANT TO SECTION 8-4-111.5 AND RULES
23 PROMULGATED BY THE DEPARTMENT REGARDING APPEALS AND STRATEGIC
24 ENFORCEMENT.

25 **8-14.4-106. Relief authorized.** (1) AN AGGRIEVED INDIVIDUAL
26 MAY, WITHIN NINETY DAYS AFTER EXHAUSTING ADMINISTRATIVE
27 REMEDIES PURSUANT TO SECTION 8-14.4-105, COMMENCE AN ACTION IN

1 DISTRICT COURT AGAINST A PRINCIPAL FOR A VIOLATION OF THIS ARTICLE
2 14.4.

3 (2) A COURT MAY ORDER AFFIRMATIVE RELIEF THAT THE COURT
4 DETERMINES TO BE APPROPRIATE, INCLUDING THE FOLLOWING RELIEF,
5 AGAINST A RESPONDENT WHO IS FOUND TO HAVE ENGAGED IN A
6 DISCRIMINATORY, ADVERSE, OR RETALIATORY EMPLOYMENT PRACTICE
7 PROHIBITED BY THIS ARTICLE 14.4:

8 (a) REINSTATEMENT OR REHIRING OF A WORKER, WITH OR
9 WITHOUT BACK PAY;

10 (b) THE GREATER OF EITHER:

11 (I) TEN THOUSAND DOLLARS; OR

12 (II) ANY LOST PAY RESULTING FROM THE VIOLATION, INCLUDING
13 BACK PAY FOR A REINSTATED OR REHIRED WORKER AND FRONT PAY FOR
14 A WORKER WHO IS NOT REINSTATED OR REHIRED; AND

15 (c) ANY OTHER EQUITABLE RELIEF THE COURT DEEMS
16 APPROPRIATE.

17 (3) (a) IN ADDITION TO THE RELIEF AVAILABLE PURSUANT TO
18 SUBSECTION (2) OF THIS SECTION, IN A CIVIL ACTION BROUGHT BY A
19 PLAINTIFF UNDER THIS ARTICLE 14.4 AGAINST A DEFENDANT WHO IS
20 FOUND TO HAVE ENGAGED IN AN INTENTIONAL DISCRIMINATORY,
21 ADVERSE, OR RETALIATORY EMPLOYMENT PRACTICE, THE PLAINTIFF MAY
22 RECOVER COMPENSATORY AND PUNITIVE DAMAGES AS SPECIFIED IN THIS
23 SUBSECTION (3).

24 (b) A PLAINTIFF MAY RECOVER PUNITIVE DAMAGES AGAINST A
25 DEFENDANT IF THE PLAINTIFF DEMONSTRATES BY CLEAR AND CONVINCING
26 EVIDENCE THAT THE DEFENDANT ENGAGED IN A DISCRIMINATORY,
27 ADVERSE, OR RETALIATORY EMPLOYMENT PRACTICE WITH MALICE OR

1 RECKLESS INDIFFERENCE TO THE RIGHTS OF THE PLAINTIFF. HOWEVER, IF
2 THE DEFENDANT DEMONSTRATES GOOD-FAITH EFFORTS TO COMPLY WITH
3 THIS ARTICLE 14.4 AND TO PREVENT DISCRIMINATORY, ADVERSE, AND
4 RETALIATORY EMPLOYMENT PRACTICES IN THE WORKPLACE, THE COURT
5 SHALL NOT AWARD PUNITIVE DAMAGES AGAINST THE DEFENDANT.

6 (c) A PLAINTIFF MAY RECOVER COMPENSATORY DAMAGES
7 AGAINST A DEFENDANT FOR OTHER PECUNIARY LOSSES, EMOTIONAL PAIN
8 AND SUFFERING, INCONVENIENCE, MENTAL ANGUISH, LOSS OF ENJOYMENT
9 OF LIFE, AND OTHER NONPECUNIARY LOSSES.

10 (d) IN DETERMINING THE APPROPRIATE LEVEL OF DAMAGES TO
11 AWARD A PLAINTIFF WHO HAS BEEN THE VICTIM OF AN INTENTIONAL
12 DISCRIMINATORY, ADVERSE, OR RETALIATORY EMPLOYMENT PRACTICE,
13 THE COURT SHALL CONSIDER THE SIZE AND ASSETS OF THE DEFENDANT
14 AND THE EGREGIOUSNESS OF THE DISCRIMINATORY, ADVERSE, OR
15 RETALIATORY EMPLOYMENT PRACTICE.

16 (e) COMPENSATORY OR PUNITIVE DAMAGES AWARDED PURSUANT
17 TO THIS SUBSECTION (3) ARE IN ADDITION TO, AND DO NOT INCLUDE,
18 FRONT PAY, BACK PAY, INTEREST ON BACK PAY, OR ANY OTHER TYPE OF
19 RELIEF AWARDED PURSUANT TO SUBSECTION (2) OF THIS SECTION.

20 (4) IF A PLAINTIFF IN A CIVIL ACTION FILED UNDER THIS ARTICLE
21 14.4 SEEKS COMPENSATORY OR PUNITIVE DAMAGES PURSUANT TO
22 SUBSECTION (3) OF THIS SECTION, ANY PARTY TO THE CIVIL ACTION MAY
23 DEMAND A TRIAL BY JURY.

24 (5) THE COURT SHALL AWARD REASONABLE ATTORNEY FEES TO A
25 PLAINTIFF WHO PREVAILS IN AN ACTION BROUGHT PURSUANT TO THIS
26 SECTION.

27 **8-14.4-107. Whistleblower enforcement - qui tam - definition.**

1 (1) AS USED IN THIS SECTION, "WHISTLEBLOWER" MEANS A WORKER WITH
2 KNOWLEDGE OF AN ALLEGED VIOLATION OF THIS ARTICLE 14.4, OR THE
3 WORKER'S REPRESENTATIVE.

4 (2) (a) A WHISTLEBLOWER WHO HAS EXHAUSTED THE
5 ADMINISTRATIVE REMEDIES PURSUANT TO SECTION 8-14.4-105 MAY BRING
6 A CIVIL ACTION AGAINST A PRINCIPAL FOR A VIOLATION OF THIS ARTICLE
7 14.4 ON BEHALF OF THE STATE IN DISTRICT COURT PURSUANT TO THIS
8 SECTION. THE STATE MAY INTERVENE IN THE ACTION TO PROSECUTE IN ITS
9 OWN NAME.

10 (b) AT THE TIME THAT THE ACTION IS FILED, THE WHISTLEBLOWER
11 SHALL GIVE WRITTEN NOTICE TO THE DIVISION OF THE SPECIFIC
12 PROVISIONS OF THIS ARTICLE 14.4 ALLEGED TO HAVE BEEN VIOLATED.

13 (c) IF THE COURT FINDS THAT A VIOLATION HAS OCCURRED, THE
14 COURT MAY ENTER A JUDGMENT AGAINST THE PRINCIPAL OF NOT LESS
15 THAN ONE HUNDRED DOLLARS AND NOT MORE THAN ONE THOUSAND
16 DOLLARS FOR EACH VIOLATION, AND FOR APPROPRIATE INJUNCTIVE AND
17 EQUITABLE RELIEF. THE COURT SHALL AWARD THE WHISTLEBLOWER
18 REASONABLE ATTORNEY FEES. THE ATTORNEY FEES ARE NOT SUBJECT TO
19 THE DISTRIBUTION SPECIFIED IN SUBSECTION (3) OF THIS SECTION.

20 (3) THE PROCEEDS OF ANY JUDGMENT ENTERED PURSUANT TO THIS
21 SECTION SHALL BE DISTRIBUTED AS FOLLOWS:

22 (a) SEVENTY-FIVE PERCENT TO THE DIVISION FOR ENFORCEMENT
23 OF THIS ARTICLE 14.4; AND

24 (b) TWENTY-FIVE PERCENT TO THE FIRST WHISTLEBLOWER WHO
25 FILED THE ACTION.

26 (4) THE RIGHT TO BRING AN ACTION UNDER THIS SECTION SHALL
27 NOT BE IMPAIRED BY ANY PRIVATE CONTRACT. AN ACTION UNDER THIS

1 SECTION SHALL BE TRIED PROMPTLY, WITHOUT REGARD TO CONCURRENT
2 ADJUDICATION OF PRIVATE CLAIMS.

3 **8-14.4-108. Rulemaking.** THE DIVISION MAY PROMULGATE RULES
4 NECESSARY TO IMPLEMENT THIS ARTICLE 14.4.

5 **8-14.4-109. Repeal.** This article 14.4 is repealed, effective July 1,
6 2022.

7 **SECTION 2.** In Colorado Revised Statutes, 8-77-109, **add**
8 (2)(a)(II)(C) as follows:

9 **8-77-109. Employment support fund - employment and**
10 **training technology fund - created - uses.** (2) (a) The state treasurer
11 shall credit the moneys collected pursuant to this section to the
12 employment support fund created in subsection (1) of this section. The
13 general assembly shall appropriate the moneys in the employment support
14 fund annually to the department of labor and employment:

15 (II) (C) (i) TO FUND THE ADMINISTRATION OF ARTICLE 14.4 OF THIS
16 TITLE 8.

17 (ii) THIS SUBSECTION (2)(a)(II)(C) is repealed, effective July 1,
18 2022.

19 **SECTION 3. Appropriation.** (1) For the 2020-21 state fiscal
20 year, \$270,153 is appropriated to the department of labor and
21 employment. This appropriation is from the employment support fund
22 created in section 8-77-109 (1)(b), C.R.S. To implement this act, the
23 department may use this appropriation as follows:

24 (a) \$206,193 for use by for use by the division of labor standards
25 and statistics for enforcement of workers' rights related to a public health
26 emergency, which amount is based on an assumption that the division will
27 require an additional 2.5 FTE; and

1 (b) \$63,960 for the purchase of legal services.

2 (2) For the 2020-21 state fiscal year, \$63,960 is appropriated to
3 the department of law. This appropriation is from reappropriated funds
4 received from the department of labor and employment under subsection
5 (1)(b) of this section and is based on an assumption that the department
6 of law will require an additional 0.3 FTE. To implement this act, the
7 department of law may use this appropriation to provide legal services for
8 the department of labor and employment.

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