

First Regular Session
Seventy-third General Assembly
STATE OF COLORADO

ENGROSSED

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

LLS NO. 21-0463.01 Kristen Forrestal x4217

SENATE BILL 21-039

SENATE SPONSORSHIP

Zenzinger and Hisey,

HOUSE SPONSORSHIP

Caraveo and Pelton,

Senate Committees

Business, Labor, & Technology
Appropriations

House Committees

A BILL FOR AN ACT

101 **CONCERNING THE ELIMINATION OF SUBMINIMUM WAGE EMPLOYMENT**
102 **BY PROVIDING SUPPORTS TO ENSURE SUCCESSFUL TRANSITIONS**
103 **FOR INDIVIDUALS CURRENTLY WORKING IN SUBMINIMUM WAGE**
104 **JOBS, AND, IN CONNECTION THEREWITH, MAKING AN**
105 **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 phases out subminimum wage employment for employers that hold a special certificate from the United States department of labor

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.

SENATE
Amended 2nd Reading
April 23, 2021

that authorizes the employers to pay less than the minimum wage to employees whose earning capacity is impaired by age, physical or mental disability, or injury. The bill requires each employer that holds a special certificate to submit a transition plan to the Colorado department of labor and employment detailing how the employer plans to phase out subminimum wage employment.

The bill requires the employment first advisory partnership in the Colorado department of labor and employment (partnership) to:

- Develop actionable recommendations to address structural and fiscal barriers to phasing out subminimum wage employment and successfully implementing competitive integrated employment; and
- Report the recommendations to the general assembly.

The bill continues operation of the partnership, which is scheduled to repeal on July 1, 2021, indefinitely.

The bill requires the department of health care policy and financing to add employment-related services for individuals with intellectual and developmental disabilities.

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

2 **SECTION 1.** In Colorado Revised Statutes, 8-6-108.5, **repeal** (2)
3 as follows:

4 **8-6-108.5. Minimum wage - rules.** (2) ~~An employer may pay a~~
5 ~~rate of fifteen percent lower than the minimum wage to persons certified~~
6 ~~by the director to be less efficient due to a physical disability.~~

7 **SECTION 2.** In Colorado Revised Statutes, **add** 8-6-108.7 as
8 follows:

9 **8-6-108.7. Elimination of subminimum wage for individuals**
10 **with disabilities - legislative declaration - definitions - repeal.** (1) THE

11 GENERAL ASSEMBLY FINDS AND DECLARES THAT:

12 (a) COLORADO IS AN EMPLOYMENT FIRST STATE COMMITTED TO
13 THE GOAL OF ACHIEVING COMPETITIVE INTEGRATED EMPLOYMENT FOR
14 INDIVIDUALS WITH DISABILITIES;

15 (b) ENSURING THAT INDIVIDUALS WITH DISABILITIES HAVE THE

1 OPPORTUNITY TO PURSUE EMPLOYMENT PAID IN AN AMOUNT EQUAL TO
2 MINIMUM WAGE OR HIGHER IS A CRITICAL ELEMENT OF ACHIEVING THIS
3 GOAL;

4 (c) DUE TO SYSTEMIC BARRIERS, MANY INDIVIDUALS WITH
5 DISABILITIES ARE PAID LESS THAN THE MINIMUM WAGE APPLICABLE TO
6 OTHER EMPLOYEES AND HAVE LIMITED OPPORTUNITIES TO PURSUE
7 COMPETITIVE INTEGRATED EMPLOYMENT;

8 (d) THE PAYMENT OF SUBMINIMUM WAGES IS AN ECONOMIC
9 JUSTICE ISSUE FOR INDIVIDUALS WITH DISABILITIES, IMPACTING THEIR
10 ABILITY TO EARN WAGES EQUAL TO THEIR PEERS WITHOUT DISABILITIES
11 AND DEVALUING THEIR CONTRIBUTIONS BASED ON THEIR DISABILITIES;

12 (e) SERVICE ENHANCEMENTS AND PUBLIC POLICY CHANGES ARE
13 NEEDED TO ADDRESS THESE SYSTEMIC BARRIERS AND ASSIST INDIVIDUALS
14 IN SUBMINIMUM WAGE JOBS TO PURSUE COMPETITIVE INTEGRATED
15 EMPLOYMENT; AND

16 (f) THE ELIMINATION OF SUBMINIMUM WAGE EMPLOYMENT, ALONG
17 WITH THE IMPLEMENTATION OF CRITICAL SERVICE ENHANCEMENTS AND
18 POLICY CHANGES, IS ESSENTIAL TO PROMOTING ECONOMIC JUSTICE FOR,
19 AND THE ENHANCED SELF-SUFFICIENCY OF, INDIVIDUALS WITH
20 DISABILITIES WHILE ENSURING THAT INDIVIDUALS CURRENTLY WORKING
21 IN SUBMINIMUM WAGE JOBS CAN SUCCESSFULLY TRANSITION TO
22 COMPETITIVE INTEGRATED EMPLOYMENT, SUPPORTED EMPLOYMENT, OR
23 INTEGRATED COMMUNITY ACTIVITIES RELATED TO EACH INDIVIDUAL'S
24 EMPLOYMENT GOALS.

25 (2) (a) ON AND AFTER JULY 1, 2021, IF AN EMPLOYER DOES NOT
26 HOLD A SPECIAL CERTIFICATE ISSUED ON OR BEFORE JUNE 30, 2021, THE
27 EMPLOYER SHALL NOT PAY AN EMPLOYEE AT A WAGE RATE THAT IS BELOW

1 THE HIGHEST APPLICABLE MINIMUM WAGE.

2 (b) ON AND AFTER JULY 1, 2021, AN EMPLOYER SHALL NOT HIRE
3 ANY NEW EMPLOYEES AT A WAGE RATE THAT IS BELOW THE HIGHEST
4 APPLICABLE MINIMUM WAGE.

5 (c) (I) AN EMPLOYER THAT HOLDS A SPECIAL CERTIFICATE ISSUED
6 ON OR BEFORE JUNE 30, 2021, SHALL SUBMIT A TRANSITION PLAN TO THE
7 DEPARTMENT ON OR BEFORE JUNE 30, 2022, DETAILING HOW THE
8 EMPLOYER PLANS TO PHASE OUT SUBMINIMUM WAGE EMPLOYMENT BY
9 JULY 1, 2025, AND SUPPORT INDIVIDUALS CURRENTLY IN SUBMINIMUM
10 WAGE JOBS TO PURSUE COMPETITIVE INTEGRATED EMPLOYMENT,
11 SUPPORTED EMPLOYMENT, OR INTEGRATED COMMUNITY ACTIVITIES
12 RELATED TO EACH INDIVIDUAL'S EMPLOYMENT GOALS.

13 (II) THE TRANSITION PLAN MUST INCLUDE MEASURABLE
14 BENCHMARKS, BE INFORMED BY EVIDENCE-BASED PRACTICES AND
15 EFFECTIVE EMPLOYMENT MODELS, AND BE UPDATED AND RESUBMITTED TO
16 THE DEPARTMENT ANNUALLY UNTIL THE EMPLOYER IS NO LONGER PAYING
17 SUBMINIMUM WAGES. THE TRANSITION PLAN MUST BE ALIGNED WITH THE
18 EMPLOYER'S EFFORTS TO COMPLY WITH FEDERAL HOME- AND
19 COMMUNITY-BASED SERVICES REGULATIONS, IF APPLICABLE. THE
20 DEPARTMENT SHALL COLLABORATE WITH EMPLOYERS AND OTHER
21 INTERESTED STAKEHOLDERS TO CREATE A PROCESS FOR APPROVING
22 TRANSITION PLANS. THE PROCESS FOR APPROVING TRANSITION PLANS
23 MUST ENSURE THAT AN EMPLOYER HAS UNTIL JULY 1, 2025, TO ELIMINATE
24 SUBMINIMUM WAGE EMPLOYMENT SO THAT INDIVIDUALS CURRENTLY
25 WORKING IN SUBMINIMUM WAGE JOBS CAN SUCCESSFULLY TRANSITION TO
26 COMPETITIVE INTEGRATED EMPLOYMENT, SUPPORTED EMPLOYMENT, OR
27 INTEGRATED COMMUNITY ACTIVITIES RELATED TO EACH INDIVIDUAL'S

1 EMPLOYMENT GOALS.

2 == ==

3 (d) THIS SUBSECTION (2) IS REPEALED, EFFECTIVE JULY 1, 2025.

4 (3) ON AND AFTER JULY 1, 2025, AN EMPLOYER SHALL NOT PAY AN
5 EMPLOYEE WITH A DISABILITY LESS THAN THE HIGHEST APPLICABLE
6 MINIMUM WAGE REGARDLESS OF WHETHER THE EMPLOYER WAS ISSUED A
7 SPECIAL CERTIFICATE.

8 (4) AS USED IN THIS SECTION:

9 (a) "COMPETITIVE INTEGRATED EMPLOYMENT" HAS THE SAME
10 MEANING AS SET FORTH IN SECTION 8-84-301 (3).

11 (b) "DEPARTMENT" MEANS THE DEPARTMENT OF LABOR AND
12 EMPLOYMENT.

13 (c) "SPECIAL CERTIFICATE" MEANS A SPECIAL CERTIFICATE ISSUED
14 BY THE UNITED STATES DEPARTMENT OF LABOR PURSUANT TO SECTION
15 214 (c) OF THE "FAIR LABOR STANDARDS ACT OF 1938", AS AMENDED, 29
16 U.S.C. SEC. 201 ET SEQ., TO AN EMPLOYER THAT AUTHORIZES THE
17 EMPLOYER TO PAY WAGES THAT ARE LESS THAN THE MINIMUM WAGE
18 OTHERWISE REQUIRED BY LAW TO EMPLOYEES WHOSE EARNING OR
19 PRODUCTIVE CAPACITY IS IMPAIRED BY AGE, PHYSICAL OR MENTAL
20 DISABILITY, OR INJURY.

21 **SECTION 3.** In Colorado Revised Statutes, 8-84-303, **repeal** (8)
22 as follows:

23 **8-84-303. Employment first advisory partnership -**
24 **memorandum of understanding - reporting.** (8) ~~(a) This section is~~
25 ~~repealed, effective September 1, 2021.~~

26 ~~(b) Prior to repeal of the employment first advisory partnership,~~
27 ~~the department of regulatory agencies shall conduct a sunset review~~

1 ~~pursuant to the provisions of section 2-3-1203, C.R.S.~~

2 **SECTION 4.** In Colorado Revised Statutes, 8-84-304, **repeal** (4);
3 and **add** (3.5) as follows:

4 **8-84-304. Duties of the employment first advisory partnership**
5 **- strategic plan - report - repeal.** (3.5) (a) ON OR BEFORE APRIL 1, 2022,

6 THE EMPLOYMENT FIRST ADVISORY PARTNERSHIP SHALL DEVELOP
7 ACTIONABLE RECOMMENDATIONS FOR ADDRESSING STRUCTURAL AND
8 FISCAL BARRIERS TO PHASING OUT SUBMINIMUM WAGE EMPLOYMENT AND
9 SUCCESSFULLY IMPLEMENTING COMPETITIVE INTEGRATED EMPLOYMENT.

10 THE RECOMMENDATIONS TO ADDRESS BARRIERS MUST:

11 (I) INCLUDE PAYMENT REFORM FOR EMPLOYMENT-RELATED
12 SERVICES;

13 (II) ESTABLISH ADEQUATE REIMBURSEMENT RATES FOR
14 EMPLOYMENT-RELATED SERVICES TO ENSURE THE AVAILABILITY OF
15 HIGH-QUALITY SUPPORT SERVICES;

16 (III) ADDRESS UNIT CAPS ON EMPLOYMENT-RELATED SERVICES;
17 AND

18 (IV) ADDRESS ANY NECESSARY MEDICAID WAIVER AND STATE
19 REGULATORY BARRIERS.

20 (b) ON OR BEFORE APRIL 1, 2022, THE PARTNERSHIP SHALL SEND
21 A REPORT CONCERNING THE RECOMMENDATIONS REQUIRED IN THIS
22 SUBSECTION (3.5) TO THE FOLLOWING COMMITTEES OF THE GENERAL
23 ASSEMBLY:

24 (I) THE JOINT BUDGET COMMITTEE;

25 (II) THE BUSINESS AFFAIRS AND LABOR, THE PUBLIC AND
26 BEHAVIORAL HEALTH AND HUMAN SERVICES, AND THE HEALTH AND
27 INSURANCE COMMITTEES OF THE HOUSE OF REPRESENTATIVES, OR ANY

1 SUCCESSOR COMMITTEES; AND

2 (III) THE BUSINESS, LABOR, AND TECHNOLOGY AND THE HEALTH
3 AND HUMAN SERVICES COMMITTEES OF THE SENATE, OR ANY SUCCESSOR
4 COMMITTEES.

5 (c) THIS SUBSECTION (3.5) IS REPEALED, EFFECTIVE JULY 1, 2022.

6 (4) (a) ~~This section is repealed, effective September 1, 2021.~~

7 (b) ~~Prior to repeal of the employment first advisory partnership,
8 the department of regulatory agencies shall conduct a sunset review
9 pursuant to the provisions of section 2-3-1203.~~

10 SECTION 5. In Colorado Revised Statutes, 2-3-1203, **repeal**
11 (12)(a)(VI) as follows:

12 **2-3-1203. Sunset review of advisory committees - legislative**
13 **declaration - definition - repeal.** (12) (a) The following statutory
14 authorizations for the designated advisory committees will repeal on
15 September 1, 2021:

16 (VI) ~~The employment first advisory partnership in the department
17 of labor and employment described in sections 8-84-303 and 8-84-304.~~

18 SECTION 6. In Colorado Revised Statutes, **add** 25.5-6-413 as
19 follows:

20 **25.5-6-413. Elimination of subminimum wage - transition plan**
21 **for individuals with disabilities - waiver - legislative declaration -**
22 **definition.** (1) THE GENERAL ASSEMBLY FINDS AND DECLARES THAT:

23 (a) THE PAYMENT OF SUBMINIMUM WAGES IS AN ECONOMIC
24 JUSTICE ISSUE FOR INDIVIDUALS WITH DISABILITIES, IMPACTING THEIR
25 ABILITY TO EARN WAGES EQUAL TO THEIR PEERS WITHOUT DISABILITIES
26 AND DEVALUING THEIR CONTRIBUTIONS BASED ON THEIR DISABILITIES;

27 (b) SERVICE ENHANCEMENTS AND PUBLIC POLICY CHANGES ARE

1 NEEDED TO ADDRESS THESE SYSTEMIC BARRIERS AND ASSIST INDIVIDUALS
2 IN SUBMINIMUM WAGE JOBS TO PURSUE COMPETITIVE INTEGRATED
3 EMPLOYMENT; AND

4 (c) THE ELIMINATION OF SUBMINIMUM WAGE EMPLOYMENT,
5 ALONG WITH THE IMPLEMENTATION OF CRITICAL SERVICE ENHANCEMENTS
6 AND POLICY CHANGES, IS ESSENTIAL TO PROMOTING ECONOMIC JUSTICE
7 FOR, AND THE ENHANCED SELF-SUFFICIENCY OF, INDIVIDUALS WITH
8 DISABILITIES WHILE ENSURING THAT INDIVIDUALS CURRENTLY WORKING
9 IN SUBMINIMUM WAGE JOBS CAN SUCCESSFULLY TRANSITION TO
10 COMPETITIVE INTEGRATED EMPLOYMENT, SUPPORTED EMPLOYMENT, OR
11 INTEGRATED COMMUNITY ACTIVITIES RELATED TO EACH INDIVIDUAL'S
12 EMPLOYMENT GOALS.

13 (2) (a) THE STATE DEPARTMENT SHALL SEEK FEDERAL APPROVAL,
14 WITH AN EFFECTIVE DATE ON OR BEFORE JULY 1, 2023, TO ADD THE
15 FOLLOWING MEDICAID WAIVER SERVICES FOR ADULTS WITH INTELLECTUAL
16 AND DEVELOPMENTAL DISABILITIES TO ASSIST THEM WITH PURSUING
17 COMPETITIVE INTEGRATED EMPLOYMENT:

18 (I) SUPPORT TO PROVIDE LINE-OF-SIGHT SUPERVISION ON THE JOB
19 AS A LESS INTENSIVE AND LESS EXPENSIVE ALTERNATIVE TO INDIVIDUAL
20 JOB COACHING, WHEN APPROPRIATE; AND

21 (II) ONGOING BENEFITS COUNSELING TO ASSIST SUCH ADULTS IN
22 EARNING HIGHER INCOMES WHILE RETAINING NECESSARY SUPPORTS.

23 (b) THE STATE DEPARTMENT SHALL COLLABORATE WITH
24 STAKEHOLDERS TO DEVELOP SERVICE COVERAGE STANDARDS,
25 REIMBURSEMENT RATES, AND LIMITATIONS ON THE SERVICES DESCRIBED
26 IN SUBSECTION (2)(a) OF THIS SECTION.

27 (3) THE STATE DEPARTMENT SHALL SEEK FEDERAL APPROVAL,

1 WITH AN EFFECTIVE DATE ON OR BEFORE JULY 1, 2023, TO REMOVE THE
2 FOLLOWING SERVICES FROM THE SERVICE PLAN AUTHORIZATION LIMITS TO
3 ENSURE ACCESS TO EMPLOYMENT SUPPORTS:

4 (a) JOB COACHING, INDIVIDUAL; AND

5 (b) JOB DEVELOPMENT, INDIVIDUAL.

6 (4) THE STATE DEPARTMENT SHALL COLLABORATE WITH
7 STAKEHOLDERS TO PUBLISH CLARIFYING GUIDANCE REGARDING
8 ALLOWABLE ACTIVITIES UNDER SERVICES DESCRIBED IN SUBSECTION (3)
9 OF THIS SECTION.

10 (5) AS USED IN THIS SECTION, "COMPETITIVE INTEGRATED
11 EMPLOYMENT" HAS THE SAME MEANING AS SET FORTH IN SECTION
12 8-84-301 (3).

13 **SECTION 7.** In Colorado Revised Statutes, 25.5-6-1403, **amend**
14 (4) as follows:

15 **25.5-6-1403. Waivers and amendments.** (4) The state
16 department shall seek federal authorization to implement a medicaid
17 buy-in program for adults who are eligible to receive home- and
18 community-based services pursuant to the supported living services
19 waiver; THE DEVELOPMENTAL DISABILITIES WAIVER OR ITS SUCCESSOR,
20 PART 4 OF THIS ARTICLE 6; the persons with brain injury waiver, part 7 of
21 this ~~article~~ ARTICLE 6; and the spinal cord injury waiver pilot program,
22 part 13 of this ~~article~~ ARTICLE 6. The state department shall prepare and
23 submit any requests necessary for federal approval not later than January
24 1, 2017 2023, and shall implement the medicaid buy-in program pursuant
25 to this subsection (4) not later than three months after receiving federal
26 approval.

27 **SECTION 8. Appropriation.** (1) For the 2021-22 state fiscal

1 year, \$82,641 is appropriated to the department of health care policy and
2 financing for use by the executive director's office. This appropriation
3 consists of \$74,364 from the general fund, \$4,284 from the children's
4 basic health plan trust created in Section 25.5-8-105 (1), C.R.S., and
5 \$3,993 from the healthcare affordability and sustainability fee cash fund
6 created in Section 25.5-4-402.4 (5)(a), C.R.S. To implement this act, the
7 office may use this appropriation as follows:

8 (a) \$34,940 from the general fund for personal services, which
9 amount is based on an assumption that the office will require an
10 additional 0.9 FTE;

11 (b) \$4,009 from the general fund for operating expenses;

12 (c) \$27,051 from the general fund for medicaid management
13 system maintenance and projects; and

14 (d) \$16,641 for Colorado benefits management systems operating
15 and contracts, which consists of \$8,364 from the general fund, which
16 amount is subject to the "(M)" notation as defined in the annual general
17 appropriation act for the same fiscal year, \$4,284 from the children's basic
18 health plan trust created in Section 25.5-8-105 (1), C.R.S., and \$3,993
19 from the healthcare affordability and sustainability fee cash fund created
20 in Section 25.5-4-402.4 (5)(a), C.R.S.

21 (2) For the 2021-22 state fiscal year, the general assembly
22 anticipates that the department of health care policy and financing will
23 receive \$391,075 in federal funds to implement this act. The
24 appropriation in subsection (1) of this section is based on the assumption
25 that the department will receive this amount of federal funds to be used
26 as follows:

27 (a) \$30,861 for personal services;

1 (b) \$3,541 for operating expenses;

2 (c) \$243,455 for medicaid management system maintenance and
3 projects; and

4 (d) \$113,218 for Colorado benefits management systems
5 operating and contracts.

6 (3) For the 2021-22 state fiscal year, \$129,859 is appropriated to
7 the office of the governor for use by the office of information technology.
8 This appropriation is from reappropriated funds received from the
9 department of health care policy and financing under subsections (1)(d)
10 and (2)(d) of this section. To implement this act, the office may use this
11 appropriation to provide information technology services for the
12 department of health care policy and financing.

13 (4) For the 2021-22 state fiscal year, \$46,490 is appropriated to
14 the department of labor and employment for use by the division of labor
15 standards and statistics. This appropriation is from the general fund, and
16 is based on an assumption that the division will require an additional 0.6
17 FTE. To implement this act, the division may use this appropriation for
18 program costs related to labor standards.

19 **SECTION 9. Effective date - applicability.** This act takes effect
20 July 1, 2021, and applies to wages paid on or after said date.

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