

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

**PREAMENDED**

*This Unofficial Version Includes Committee  
Amendments Not Yet Adopted on Second Reading*

LLS NO. 21-0463.01 Kristen Forrestal x4217

**SENATE BILL 21-039**

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**SENATE SPONSORSHIP**

**Zenzinger and Hisey,**

**HOUSE SPONSORSHIP**

**Caraveo and Pelton,**

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**Senate Committees**

Business, Labor, & Technology  
Appropriations

**House Committees**

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**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.**

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**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 that authorizes the employers to pay less than the minimum wage to

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.

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.

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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  
16 OPPORTUNITY TO PURSUE EMPLOYMENT PAID IN AN AMOUNT EQUAL TO

1 MINIMUM WAGE OR HIGHER IS A CRITICAL ELEMENT OF ACHIEVING THIS  
2 GOAL;

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

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

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

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

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

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

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

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

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

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

(4) AS USED IN THIS SECTION:

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

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

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

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

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

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

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

3           **8-84-304. Duties of the employment first advisory partnership**  
4   **- strategic plan - report - repeal.** (3.5) (a) ON OR BEFORE APRIL 1, 2022,  
5   THE EMPLOYMENT FIRST ADVISORY PARTNERSHIP SHALL DEVELOP  
6   ACTIONABLE RECOMMENDATIONS FOR ADDRESSING STRUCTURAL AND  
7   FISCAL BARRIERS TO PHASING OUT SUBMINIMUM WAGE EMPLOYMENT AND  
8   SUCCESSFULLY IMPLEMENTING COMPETITIVE INTEGRATED EMPLOYMENT.  
9   THE RECOMMENDATIONS TO ADDRESS BARRIERS MUST:

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

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

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

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

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

23           (I) THE JOINT BUDGET COMMITTEE;

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

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

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

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

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

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

11 **2-3-1203. Sunset review of advisory committees - legislative**  
12 **declaration - definition - repeal.** (12) (a) The following statutory  
13 authorizations for the designated advisory committees will repeal on  
14 September 1, 2021:

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

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

19 **25.5-6-413. Elimination of subminimum wage - transition plan**  
20 **for individuals with disabilities - waiver - legislative declaration -**  
21 **definition.** (1) THE GENERAL ASSEMBLY FINDS AND DECLARES THAT:

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

26 (b) SERVICE ENHANCEMENTS AND PUBLIC POLICY CHANGES ARE  
27 NEEDED TO ADDRESS THESE SYSTEMIC BARRIERS AND ASSIST INDIVIDUALS

1 IN SUBMINIMUM WAGE JOBS TO PURSUE COMPETITIVE INTEGRATED  
2 EMPLOYMENT; AND

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

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

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

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

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

26 (3) THE STATE DEPARTMENT SHALL SEEK FEDERAL APPROVAL,  
27 WITH AN EFFECTIVE DATE ON OR BEFORE JULY 1, 2023, TO REMOVE THE



1 FOLLOWING SERVICES FROM THE SERVICE PLAN AUTHORIZATION LIMITS TO  
2 ENSURE ACCESS TO EMPLOYMENT SUPPORTS:

3 (a) JOB COACHING, INDIVIDUAL; AND

4 (b) JOB DEVELOPMENT, INDIVIDUAL.

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

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

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

14 **25.5-6-1403. Waivers and amendments.** (4) The state  
15 department shall seek federal authorization to implement a medicaid  
16 buy-in program for adults who are eligible to receive home- and  
17 community-based services pursuant to the supported living services  
18 waiver; THE DEVELOPMENTAL DISABILITIES WAIVER OR ITS SUCCESSOR,  
19 PART 4 OF THIS ARTICLE 6; the persons with brain injury waiver, part 7 of  
20 this ~~article~~ ARTICLE 6; and the spinal cord injury waiver pilot program,  
21 part 13 of this ~~article~~ ARTICLE 6. The state department shall prepare and  
22 submit any requests necessary for federal approval not later than January  
23 1, 2017 2023, and shall implement the medicaid buy-in program pursuant  
24 to this subsection (4) not later than three months after receiving federal  
25 approval.

26 **SECTION 8. Effective date - applicability.** This act takes effect  
27 July 1, 2021, and applies to wages paid on or after said date.

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