

**First 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. 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.

HOUSE
Amended 2nd Reading
April 9, 2019

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 performed.~~ For the purpose of this ~~article~~, ARTICLE 4, RELEVANT
13 FACTORS IN DETERMINING WHETHER A PERSON IS AN EMPLOYEE INCLUDE
14 THE DEGREE OF CONTROL THE EMPLOYER MAY OR DOES EXERCISE OVER
15 THE PERSON AND THE DEGREE TO WHICH THE PERSON PERFORMS WORK
16 THAT IS THE PRIMARY WORK OF THE EMPLOYER; EXCEPT THAT an
17 individual primarily free from control and direction in the performance
18 of the service, both under his or her contract for the performance of
19 service and in fact, and who is customarily engaged in an independent
20 trade, occupation, profession, or business related to the service performed
21 is not an "employee".

22 (6) ~~"Employer" means every person, firm, partnership,~~
23 ~~association, corporation, migratory field labor contractor or crew leader,~~
24 ~~receiver, or other officer of court in Colorado, and any agent or officer~~
25 ~~thereof, of the above mentioned classes, employing any person in~~
26 ~~Colorado;~~ HAS THE SAME MEANING AS SET FORTH IN THE FEDERAL "FAIR
27 LABOR STANDARDS ACT", 29 U.S.C. SEC. 203 (d), AND INCLUDES A

1 FOREIGN LABOR CONTRACTOR AND A MIGRATORY FIELD LABOR
2 CONTRACTOR OR CREW LEADER; except that the provisions of this ~~article~~
3 ~~shall~~ ARTICLE 4 DO not apply to the state or its agencies or entities,
4 counties, cities and counties, municipal corporations, quasi-municipal
5 corporations, school districts, and irrigation, reservoir, or drainage
6 conservation companies or districts organized and existing under the laws
7 of Colorado. █

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

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

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

1 ~~days, or by both such fine and imprisonment. For purposes of this section,~~
2 ~~"being able to pay wages or compensation" does not include an employer~~
3 ~~who is unable to pay wages or compensation by reason of a chapter 7~~
4 ~~bankruptcy action or other court action that results in the employer having~~
5 ~~limited control over his or her assets~~ COMMITS THEFT AS DEFINED IN
6 SECTION 18-4-401.

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

9 **8-6-116. Violation - penalty.** (1) The minimum wages fixed by
10 the director, as provided in this ~~article, shall be~~ ARTICLE 6, ARE the
11 minimum wages paid to the employees, and the payment to such
12 employees of a wage less than the minimum so fixed is unlawful, and
13 every employer or other person who INTENTIONALLY, individually or as
14 an officer, agent, or employee of a corporation or other person, pays or
15 causes to be paid to any such employee a wage less than the minimum is
16 ~~guilty of a misdemeanor and, upon conviction thereof, shall be punished~~
17 ~~by a fine of not less than one hundred dollars nor more than five hundred~~
18 ~~dollars, or by imprisonment in the county jail for not less than thirty days~~
19 ~~nor more than one year, or by both such fine and imprisonment~~ COMMITS
20 THEFT AS DEFINED IN SECTION 18-4-401.

21 (2) FOR THE PURPOSE OF THIS SECTION, THE AMOUNT OF THE THEFT
22 IS THE UNPAID BALANCE OF THE FULL AMOUNT OF THE MINIMUM WAGE, AS
23 DESCRIBED IN SECTION 8-6-118.

24 **SECTION 5. Potential appropriation.** Pursuant to section
25 2-2-703, C.R.S., any bill that results in a net increase in periods of
26 imprisonment in state correctional facilities must include an appropriation
27 of money that is sufficient to cover any increased capital construction, any

1 operational costs, and increased parole costs that are the result of the bill
2 for the department of corrections in each of the first five years following
3 the effective date of the bill. Because this act may increase periods of
4 imprisonment, this act may require a five-year appropriation.

5 **SECTION 6. Act subject to petition - effective date -**
6 **applicability.** (1) This act takes effect January 1, 2020; except that, if a
7 referendum petition is filed pursuant to section 1 (3) of article V of the
8 state constitution against this act or an item, section, or part of this act
9 within the ninety-day period after final adjournment of the general
10 assembly, then the act, item, section, or part will not take effect unless
11 approved by the people at the general election to be held in November
12 2020 and, in such case, will take effect on the date of the official
13 declaration of the vote thereon by the governor.

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