SENATE BILL 21-039

SENATE SPONSORSHIP
Zenzinger and Hisey,

HOUSE SPONSORSHIP
Caraveo and Pelton,

Senate Committees
Business, Labor, & Technology

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

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

as follows:

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

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

**8-6-108.7. Elimination of subminimum wage for individuals with disabilities - legislative declaration - definitions - repeal.** (1) The general assembly finds and declares that:

(a) Colorado is an employment first state committed to the goal of achieving competitive integrated employment for individuals with disabilities;

(b) Ensuring that individuals with disabilities have the opportunity to pursue employment paid in an amount equal to
MINIMUM WAGE OR HIGHER IS A CRITICAL ELEMENT OF ACHIEVING THIS GOAL;

(c) DUE TO SYSTEMIC BARRIERS, INCLUDING THE SPECIFIC LEGAL AUTHORITY GRANTED TO EMPLOYERS TO PAY SUBMINIMUM WAGE, MANY INDIVIDUALS WITH DISABILITIES ARE PAID LESS THAN THE MINIMUM WAGE APPLICABLE TO OTHER EMPLOYEES AND HAVE LIMITED OPPORTUNITIES TO PURSUE COMPETITIVE INTEGRATED EMPLOYMENT;

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

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

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

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

(b) On and after July 1, 2021, an employer shall not hire any new employees at a wage rate that is below the highest applicable minimum wage.

(c)(I) An employer that holds a special certificate issued on or before June 30, 2021, shall submit a transition plan to the department on or before June 30, 2022, detailing how the employer plans to phase out subminimum wage employment by July 1, 2025, and support individuals currently in subminimum wage jobs to pursue competitive integrated employment, supported employment, or integrated community activities related to each individual’s employment goals.

(II) The transition plan must include measurable benchmarks, be informed by evidence-based practices and effective employment models, and be updated and resubmitted to the department annually until the employer is no longer paying subminimum wages. The transition plan must be aligned with the employer’s efforts to comply with federal home- and community-based services regulations, if applicable. The department shall collaborate with employers and other interested stakeholders to create a process for approving transition plans.

(III) An employer that holds a special certificate issued on or before June 30, 2021, is authorized to continue operating programs within its special certificate in accordance with section 214 (c) of the "Fair Labor Standards Act of 1938", 29 U.S.C. sec. 201 et seq., as amended, through June 30, 2025.
ENSURE THAT INDIVIDUALS CURRENTLY WORKING IN SUBMINIMUM WAGE
JOBS CAN SUCCESSFULLY TRANSITION TO COMPETITIVE INTEGRATED
EMPLOYMENT, SUPPORTED EMPLOYMENT, OR INTEGRATED COMMUNITY
ACTIVITIES RELATED TO EACH INDIVIDUAL’S EMPLOYMENT GOALS.

(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.

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

8-84-304. Duties of the employment first advisory partnership - strategic plan - report - repeal. (3.5) (a) On or before April 1, 2022, the employment first advisory partnership shall develop actionable recommendations for addressing structural and fiscal barriers to phasing out subminimum wage employment and successfully implementing competitive integrated employment. The recommendations to address barriers must:

(I) Include payment reform for employment-related services;

(II) Establish adequate reimbursement rates for employment-related services to ensure the availability of high-quality support services;

(III) Address unit caps on employment-related services; and

(IV) Address any necessary Medicaid waiver and state regulatory barriers.

(b) On or before April 1, 2022, the partnership shall send a report concerning the recommendations required in this subsection (3.5) to the following committees of the general assembly:

(I) The joint budget committee;

(II) The business affairs and labor, the public and
BEHAVIORAL HEALTH AND HUMAN SERVICES, AND THE HEALTH AND INSURANCE COMMITTEES OF THE HOUSE OF REPRESENTATIVES, OR ANY SUCCESSOR COMMITTEES; AND

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

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

(4) (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.

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

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

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

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

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

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

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

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

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

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

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

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

(3) THE STATE DEPARTMENT SHALL SEEK FEDERAL APPROVAL, WITH AN EFFECTIVE DATE ON OR BEFORE JULY 1, 2023, TO REMOVE THE FOLLOWING SERVICES FROM THE SERVICE PLAN AUTHORIZATION LIMITS TO ENSURE ACCESS TO EMPLOYMENT SUPPORTS:

(a) JOB COACHING, INDIVIDUAL; AND
(b) JOB DEVELOPMENT, INDIVIDUAL.

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

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

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

25.5-6-1403. Waivers and amendments. (4) The state department shall seek federal authorization to implement a medicaid buy-in program for adults who are eligible to receive home- and community-based services pursuant to the supported living services waiver; THE DEVELOPMENTAL DISABILITIES WAIVER OR ITS SUCCESSOR, PART 4 OF THIS ARTICLE 6; the persons with brain injury waiver, part 7 of this article, ARTICLE 6; and the spinal cord injury waiver pilot program, part 13 of this article, ARTICLE 6. The state department shall prepare and submit any requests necessary for federal approval not later than January 1, 2023, and shall implement the medicaid buy-in program pursuant to this subsection (4) not later than three months after receiving federal approval.
SECTION 8. Effective date - applicability. This act takes effect July 1, 2021, and applies to wages paid on or after said date.

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

approval.