

CHAPTER 286

LABOR AND INDUSTRY

HOUSE BILL 03-1206

BY REPRESENTATIVE(S) Rhodes, Butcher, Crane, and Jahn;
also SENATOR(S) McElhany.

AN ACT

**CONCERNING THE CLARIFICATION OF RESPONSIBILITIES RELATED TO COMPENSATION FOR
EMPLOYMENT.**

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

SECTION 1. Article 4 of title 8, Colorado Revised Statutes, is amended, WITH THE RELOCATION OF PROVISIONS, to read:

ARTICLE 4
Wages

8-4-101. Definitions. As used in this article, unless the context otherwise requires:

~~(1) Repealed.~~

~~(2)~~ (1) "Credit" means an arrangement or understanding with the bank or other drawee for the payment of an order, check, draft, note, memorandum, or other acknowledgment of indebtedness.

~~(3)~~ (2) "Director" means the director of the division of labor OR HIS OR HER DESIGNEE.

~~(4)~~ (3) "Division" means the division of labor in the department of labor and employment.

~~(5)~~ (4) "Employee" means any person, including a migratory laborer, performing labor or services for the benefit of an employer in which the employer may command when, where, and how much labor or services shall be performed. For the purpose

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

of this article, an individual primarily free from control and direction in the performance of the service, both under his OR HER contract for the performance of service and in fact, and who is customarily engaged in an independent trade, occupation, profession, or business related to the service performed is not an "employee".

~~(6)~~ (5) "Employer" means every person, firm, partnership, association, corporation, migratory field labor contractor or crew leader, receiver, or other officer of court in Colorado, and any agent or officer thereof, of the above mentioned classes, employing any person in Colorado; except that the provisions of this article shall not apply to THE STATE OR ITS AGENCIES OR ENTITIES, counties, cities and counties, municipal corporations, quasi-municipal corporations, school districts, and irrigation, reservoir, or drainage conservation companies or districts organized and existing under the laws of Colorado.

~~(7)~~ (6) "Field labor contractor" means anyone who contracts with an employer to recruit, solicit, hire, or furnish migratory labor for agricultural purposes to do any one or more of the following activities in this state: Hoeing, thinning, topping, sacking, hauling, harvesting, cleaning, cutting, sorting, and other direct manual labor affecting beets, onions, lettuce, potatoes, tomatoes, and other products, fruits, or crops in which labor is seasonal in this state. Such term shall not include a farmer or grower, packinghouse operator, ginner, or warehouseman or any full-time regular and year-round employee of the farmer or grower, packinghouse operator, ginner, or warehouseman who engages in such activities, nor shall it include any migratory laborer who engages in such activities with regard to his SUCH MIGRATORY LABORER'S own children, spouse, parents, siblings, or grandparents.

~~(7.5)~~ "Lawful charges or indebtedness" means:

~~(a)~~ Deductions mandated by or in accordance with local, state, or federal law including, but not limited to, deductions for taxes, "Federal Insurance Contributions Act" ("FICA") requirements, garnishments, or any other court-ordered deduction;

~~(b)~~ Deductions for loans, advances, goods or services, and equipment or property provided by an employer to an employee pursuant to a written agreement between such employer and employee, so long as it is enforceable and not in violation of law;

~~(c)~~ Any deduction necessary to cover the replacement cost of a shortage due to theft by an employee if a report has been filed with the proper law enforcement agency in connection with such theft pending a final adjudication by a court of competent jurisdiction; except that if the accused employee is found not guilty in a court action or if criminal charges related to such theft are not filed against the accused employee within ninety days of the filing of the report with the proper law enforcement agency, or such charges are dismissed, the accused employee shall be entitled to recover any amount wrongfully withheld plus interest. In the event an employer acts without good faith, in addition to the amount wrongfully withheld and legally proven to be due, the accused employee may be awarded an amount not to exceed treble the amount wrongfully withheld. In any such action the prevailing party shall be entitled to reasonable costs related to the recovery of such amount including attorney fees and court costs.

~~(d) Any deduction, not listed in paragraph (a), (b), or (c) of this subsection (7.5), which is authorized by an employee if such authorization is revocable including, but not limited to, deductions for hospitalization and medical insurance, other insurance, savings plans, stock purchases, voluntary pension plans, charities, and deposits to financial institutions.~~

~~(8)~~ (7) "Migratory laborer" means any person from within or without the limits of the state of Colorado who offers his OR HER services to a field labor contractor, whether from within or from without the limits of the state of Colorado, so that said field labor contractor may enter into a contract with any employer to furnish the services of said migratory laborers in seasonal employment.

~~(9)~~ (8) (a) "Wages" or "compensation" means:

(I) All amounts for labor or service performed by employees, whether the amount is fixed or ascertained by the standard of time, task, piece, commission basis, or other method of calculating the same or whether the labor or service is performed under contract, subcontract, partnership, subpartnership, station plan, or other agreement for the performance of labor or service if the labor or service to be paid for is performed personally by the person demanding payment. NO AMOUNT IS CONSIDERED TO BE WAGES OR COMPENSATION UNTIL SUCH AMOUNT IS EARNED, VESTED, AND DETERMINABLE, AT WHICH TIME SUCH AMOUNT SHALL BE PAYABLE TO THE EMPLOYEE PURSUANT TO THIS ARTICLE.

(II) BONUSES OR COMMISSIONS EARNED FOR LABOR OR SERVICES PERFORMED IN ACCORDANCE WITH THE TERMS OF ANY AGREEMENT BETWEEN AN EMPLOYER AND EMPLOYEE;

(III) VACATION PAY EARNED IN ACCORDANCE WITH THE TERMS OF ANY AGREEMENT. IF AN EMPLOYER PROVIDES PAID VACATION FOR AN EMPLOYEE, THE EMPLOYER SHALL PAY UPON SEPARATION FROM EMPLOYMENT ALL VACATION PAY EARNED AND DETERMINABLE IN ACCORDANCE WITH THE TERMS OF ANY AGREEMENT BETWEEN THE EMPLOYER AND THE EMPLOYEE.

(b) "WAGES" OR "COMPENSATION" DOES NOT INCLUDE SEVERANCE PAY.

8-4-102. Proper payment - record of wages. (1) Negotiable instrument required. No employer or agent or officer thereof shall issue, in payment of or as an evidence of indebtedness for wages due an employee, any order, check, draft, note, memorandum, or other acknowledgment of indebtedness unless the same is negotiable and payable upon demand without discount in cash at a bank organized and existing under the general banking laws of the state of Colorado or the United States or at some established place of business in the state. The name and address of the drawee shall appear upon the face of the order, check, draft, note, memorandum, or other acknowledgment of indebtedness; except that such provisions shall not apply to a public utility engaged in interstate commerce and otherwise subject to the power of the public utilities commission. At the time of the issuance of same, the maker or drawer shall have sufficient funds in or credit with the bank or other drawee for the payment of same. Where such order, check, draft, note, memorandum, or other acknowledgment of indebtedness is protested or dishonored on the ground of insufficiency of funds or credit, the notice of memorandum of protest or dishonor

thereof shall be admissible as proof of presentation, nonpayment, and protest.

~~(1.5)~~ (2) **Direct deposit.** Nothing in this article shall prohibit an employer from depositing wages due or to become due or an advance on wages to be earned in an account in any bank, savings and loan association, credit union, or other financial institution authorized by the United States or one of the several states to receive deposits in the United States if the employee has voluntarily authorized such deposit in the financial institution of the employee's choice.

~~(2)~~ (3) **Scrip prohibited.** No employer or agent or officer thereof shall issue in payment of wages due, or wages to become due an employee, or as an advance on wages to be earned by an employee any scrip, coupons, cards, or other things redeemable in merchandise unless such scrip, coupons, cards, or other things may be redeemed in cash when due, but nothing contained in this section shall be construed to prohibit an employer from guaranteeing the payment of bills incurred by an employee for the necessities of life or for the tools and implements used by such employee in the performance of his OR HER duties.

~~(3)~~ Each field labor contractor shall keep, for a period of three years on each migratory laborer, records of wage rates offered, wages earned, number of hours worked, or, in the case of contractual or piecework where a field labor contractor pays the employee, the aggregate amount earned and all withholdings from wages on a form furnished by and in the manner prescribed by the division. In addition, in each pay period, each field labor contractor shall provide to each migratory laborer engaged in agricultural employment a statement of the gross earnings of the laborer for the period and all deductions and withholdings therefrom. The director may prescribe appropriate forms for use pursuant to this subsection (3). All such payroll records shall be filed with the division quarterly or at any time said labor contractor leaves this state or terminates his contract. The director is charged with the responsibility of making periodic reports to the governor's committee on migrant labor.

~~(4)~~ Repeated:

8-4-103. [Formerly 8-4-105] Payment of wages - pay statement - record retention - tip notification. (1) All wages or compensation, other than those mentioned in section ~~8-4-104~~ 8-4-109, earned by any employee in any employment, other than those specified in subsection (3) of this section, shall be due and payable for regular pay periods of no greater duration than one calendar month or thirty days, whichever is longer, and on regular paydays no later than ten days following the close of each pay period unless the employer and the employee shall mutually agree on any other alternative period of wage or salary payments.

(2) In agricultural and horticultural pursuits and in stock or poultry raising, when the employee in such employments is boarded and lodged by the employer, all wages or compensation earned by any employee in such employment shall be due and payable for regular periods of no greater duration than one month and on paydays no later than ten days following the close of each pay period.

(3) Nothing in this article shall apply to compensation payments due an employee under a profit-sharing plan, a pension plan, or other similar deferred compensation

programs.

(4) Every employer shall at least monthly, or at the time of each payment of wages or compensation, furnish to each employee an itemized pay statement in writing showing the following:

- (a) Gross wages earned;
- (b) All withholdings and deductions;
- (c) Net wages earned;
- (d) The inclusive dates of the pay period;
- (e) The name of the employee or the employee's social security number; and
- (f) The name and address of the employer.

(5) **[Formerly 8-4-102 (3)]** Each field labor contractor shall keep, for a period of three years on each migratory laborer, records of wage rates offered, wages earned, number of hours worked, or, in the case of contractual or piecework where a field labor contractor pays the employee, the aggregate amount earned and all withholdings from wages on a form furnished by and in the manner prescribed by the division. In addition, in each pay period, each field labor contractor shall provide to each migratory laborer engaged in agricultural employment a statement of the gross earnings of the laborer for the period and all deductions and withholdings therefrom. The director may prescribe appropriate forms for use pursuant to this subsection ~~(3)~~ (5). All such payroll records shall be filed with the division quarterly or at any time said labor contractor leaves this state or terminates his OR HER contract. The director is charged with the responsibility of making periodic reports to the governor's committee on migrant labor.

(6) **[Formerly 8-4-115]** It is unlawful for any employer engaged in any business where the custom prevails of the giving of presents, tips, or gratuities by patrons thereof to an employee of said business to assert any claim to, or right of ownership in, or control over such presents, tips, or gratuities; and such presents, tips, or gratuities shall be the sole property of the employee of said business unless the employer posts in his OR HER place of business in a conspicuous place a printed card, at least twelve inches by fifteen inches in size, containing a notice to the general public in letters at least one-half inch high that all presents, tips, or gratuities given by any patron of said business to an employee thereof are not the property of said employee but belong to the employer. Nothing in this section shall prevent an employer covered hereby from requiring employees to share or allocate such presents, tips, or gratuities on a preestablished basis among the employees of such business.

8-4-104. [Formerly 8-4-103] Funds available to pay wages - mining industry. Every person, firm, association, corporation, or agent, manager, superintendent, or officer thereof engaged in the business of extracting or of extracting and refining or reducing metals or minerals other than petroleum, or other than parties having a free unencumbered title to the fee simple of the property being worked, and also other than mining partnerships in respect to the members of the partnerships, shall, before

commencing work in any period for which a single payment of wages is to be made, have on hand, either physically or by deposit with a bank or trust company in the county where such property is located or, if there is no bank or trust company in the county, in the bank or trust company nearest the property, cash or readily salable securities of a market value equivalent to such cash, or accounts receivable payable in the normal course of business prior to the next payday, in a sufficient amount to make the payment of wages without discount or loss to any person employed on the mining property for such period.

8-4-105. [Formerly 8-4-101 (7.5)] Payroll deductions permitted. (1) ~~"Lawful charges or indebtedness" means:~~ NO EMPLOYER SHALL MAKE A DEDUCTION FROM THE WAGES OR COMPENSATION OF AN EMPLOYEE EXCEPT AS FOLLOWS:

(a) Deductions mandated by or in accordance with local, state, or federal law including, but not limited to, deductions for taxes, "Federal Insurance Contributions Act" ("FICA") requirements, garnishments, or any other court-ordered deduction;

(b) Deductions for loans, advances, goods or services, and equipment or property provided by an employer to an employee pursuant to a written agreement between such employer and employee, so long as it is enforceable and not in violation of law;

(c) Any deduction necessary to cover the replacement cost of a shortage due to theft by an employee if a report has been filed with the proper law enforcement agency in connection with such theft pending a final adjudication by a court of competent jurisdiction; except that, if the accused employee is found not guilty in a court action or if criminal charges related to such theft are not filed against the accused employee within ninety days ~~of~~ AFTER the filing of the report with the proper law enforcement agency, or such charges are dismissed, the accused employee shall be entitled to recover any amount wrongfully withheld plus interest. In the event an employer acts without good faith, in addition to the amount wrongfully withheld and legally proven to be due, the accused employee may be awarded an amount not to exceed treble the amount wrongfully withheld. In any such action the prevailing party shall be entitled to reasonable costs related to the recovery of such amount including attorney fees and court costs.

(d) Any deduction, not listed in paragraph (a), (b), or (c) of this subsection ~~(7.5)~~ (1), which is authorized by an employee if such authorization is revocable including, but not limited to, deductions for hospitalization and medical insurance, other insurance, savings plans, stock purchases, voluntary pension plans, charities, and deposits to financial institutions;

(e) A DEDUCTION FOR THE AMOUNT OF MONEY OR THE VALUE OF PROPERTY THAT THE EMPLOYEE FAILED TO PROPERLY PAY OR RETURN TO THE EMPLOYER IN THE CASE WHERE A TERMINATED EMPLOYEE WAS ENTRUSTED DURING HIS OR HER EMPLOYMENT WITH THE COLLECTION, DISBURSEMENT, OR HANDLING OF SUCH MONEY OR PROPERTY. THE EMPLOYER SHALL HAVE TEN CALENDAR DAYS AFTER THE TERMINATION OF EMPLOYMENT TO AUDIT AND ADJUST THE ACCOUNTS AND PROPERTY VALUE OF ANY ITEMS ENTRUSTED TO THE EMPLOYEE BEFORE THE EMPLOYEE'S WAGES OR COMPENSATION SHALL BE PAID AS PROVIDED IN SECTION 8-4-109. THIS IS AN EXCEPTION TO THE PAY REQUIREMENTS IN SECTION 8-4-109. THE PENALTY PROVIDED IN SECTION 8-4-109 SHALL APPLY ONLY FROM THE DATE OF DEMAND MADE AFTER THE

EXPIRATION OF THE TEN-DAY PERIOD ALLOWED FOR PAYMENT OF THE EMPLOYEE'S WAGES OR COMPENSATION. IF, UPON SUCH AUDIT AND ADJUSTMENT OF THE ACCOUNTS AND PROPERTY VALUE OF ANY ITEMS ENTRUSTED TO THE EMPLOYEE, IT IS FOUND THAT ANY MONEY OR PROPERTY ENTRUSTED TO THE EMPLOYEE BY THE EMPLOYER HAS NOT BEEN PROPERLY PAID OR RETURNED TO THE EMPLOYER AS PROVIDED BY THE TERMS OF ANY AGREEMENT BETWEEN THE EMPLOYER AND THE EMPLOYEE, THE EMPLOYEE SHALL NOT BE ENTITLED TO THE BENEFIT OF PAYMENT PURSUANT TO SECTION 8-4-109, BUT THE CLAIM FOR UNPAID WAGES OR COMPENSATION OF SUCH EMPLOYEE SHALL BE DISPOSED OF AS PROVIDED FOR BY THIS ARTICLE.

(2) NOTHING IN THIS SECTION AUTHORIZES A DEDUCTION BELOW THE MINIMUM WAGE APPLICABLE UNDER THE "FAIR LABOR STANDARDS ACT OF 1938", 29 U.S.C. SEC. 201 ET SEQ.

8-4-106. Early payment of wages permitted. Nothing contained in this article shall in any way limit or prohibit the payment of wages or compensation at earlier dates, or at more frequent intervals, or in greater amounts, or in full when or before due.

8-4-107. Post notice of paydays. Every employer shall post and keep posted conspicuously at the place of work if practicable, or otherwise where it can be seen as employees come or go to their places of work, or at the office or nearest agency for payment kept by the employer a notice specifying the regular paydays and the time and place of payment, in accordance with the provisions of section ~~8-4-105~~ 8-4-103, and also any changes concerning them that may occur from time to time.

8-4-108. Payment in the event of a strike. (1) IN THE EVENT OF A STRIKE, every employee who is discharged shall be paid at the place of discharge, and every employee who quits or resigns shall be paid at the office or agency of the employer in the county or city and county where such employee has been performing the labor or service for the employer. All payments of money or compensation shall be made in the manner provided by law.

(2) In the event of any strike, the unpaid wages or compensation earned by such striking employee shall become due and payable on the employer's next regular payday, and the payment or settlement shall include all amounts due such striking employee without abatement or reduction. The employer shall return to each striking employee, upon request, any deposit or money or other guaranty required by the employer from the employee for the faithful performance of the duties of his OR HER employment.

8-4-109. [Formerly 8-4-104] Termination of employment - payments required - civil penalties - payments to surviving spouse or heir. (1) (a) When an interruption in the employer-employee relationship by volition of the employer occurs, the wages or compensation for labor or service earned, VESTED, DETERMINABLE, and unpaid at the time of such discharge is due and payable immediately. If at such time the employer's accounting unit, responsible for the drawing of payroll checks, is not regularly scheduled to be operational, then the wages due the separated employee shall be made available to the employee no later than six hours after the start of such employer's ACCOUNTING UNIT'S next regular workday; except that, if the accounting unit is located off the work site, the employer

shall deliver the check for wages due the separated employee no later than twenty-four hours after the start of such employer's ACCOUNTING UNIT'S next regular workday to one of the following locations selected by the employer:

- (I) The work site;
- (II) The employer's local office; or
- (III) The employee's last-known mailing address.

(b) When an employee quits or resigns such employee's employment, the wages or compensation shall become due and payable upon the next regular payday. When a separation of employment occurs, the employer shall make the separated employee's check for wages due available at one of the following locations selected by the employer:

- (I) The work site;
- (II) The employer's local office; or
- (III) The employee's last-known mailing address.

(2) Nothing in subsection (1) of this section shall limit the right of an employer to set off any ~~lawful charges or indebtedness~~ DEDUCTIONS PURSUANT TO SECTION 8-4-105 owing by the employee to the employer or require the payment at the time employment is severed of compensation not yet fully earned under the compensation agreement between the employee and employer, whether written or oral.

(3) If an employer refuses to pay wages or compensation in accordance with subsection (1) of this section, ~~upon request by the employee and without a good faith legal justification for such refusal, the employer is liable to the employee, in addition to the compensation legally proven to be due, as a penalty for such refusal the greater of an amount equal to fifty percent thereof or an amount equal to the amount of the wages payable per day to such employee not to exceed ten days. The wages payable per day shall be calculated at the same rate which the employee was receiving at the time of separation.~~ the employee or his OR HER designated agent shall make a written demand for the payment within sixty days ~~from~~ AFTER the date of separation and shall state in the demand where such payment can be received. IF AN EMPLOYEE'S EARNED, VESTED, AND DETERMINABLE WAGES OR COMPENSATION ARE NOT MAILED TO THE PLACE OF RECEIPT SPECIFIED IN A DEMAND FOR PAYMENT AND POSTMARKED WITHIN TEN DAYS AFTER THE RECEIPT OF SUCH DEMAND, THE EMPLOYER SHALL BE LIABLE TO THE EMPLOYEE FOR AN AMOUNT, IN ADDITION TO THE WAGES OR COMPENSATION, EQUAL TO THE GREATER OF: FIFTY PERCENT OF THE AMOUNT OF WAGES OR COMPENSATION DUE OR THE EMPLOYEE'S AVERAGE DAILY EARNINGS FOR EACH DAY, NOT TO EXCEED TEN DAYS, UNTIL SUCH PAYMENT OR OTHER SETTLEMENT SATISFACTORY TO THE EMPLOYEE IS MADE. The daily ~~wage~~ EARNINGS penalty shall not ~~be imposed~~ BEGIN TO ACCRUE until the employer receives such written demand. The employee or his OR HER designated agent may commence a civil action to recover such penalty. Any employee or his OR HER designated agent who has not made a written demand for the payment within sixty days ~~from~~ AFTER the date of separation or who has otherwise not been available to receive payment shall not be entitled to

any such penalty under this subsection (3). A payment under this subsection (3) shall be made in the form of a check draft or voucher in the name of the employee.

(4) IF, AT THE TIME OF THE DEATH OF ANY EMPLOYEE, AN EMPLOYER IS INDEBTED TO THE EMPLOYEE FOR WAGES OR COMPENSATION, AND NO PERSONAL REPRESENTATIVE OF THE EMPLOYEE'S ESTATE HAS BEEN APPOINTED, SUCH EMPLOYER SHALL PAY THE AMOUNT EARNED, VESTED, AND DETERMINABLE TO THE DECEASED EMPLOYEE'S SURVIVING SPOUSE. IF THERE IS NO SURVIVING SPOUSE, THE EMPLOYER SHALL PAY THE AMOUNT DUE TO THE DECEASED EMPLOYEE'S NEXT LEGAL HEIR UPON THE REQUEST OF SUCH HEIR. IF A PERSONAL REPRESENTATIVE FOR THE EMPLOYEE HAS BEEN APPOINTED AND IS KNOWN TO THE EMPLOYER PRIOR TO PAYMENT OF THE AMOUNT DUE TO THE SPOUSE OR OTHER LEGAL HEIR, THE EMPLOYER SHALL PAY THE AMOUNT DUE TO SUCH PERSONAL REPRESENTATIVE UPON THE REQUEST OF SUCH REPRESENTATIVE. THE EMPLOYER SHALL REQUIRE PROOF OF A CLAIMANT'S RELATIONSHIP TO THE DECEASED EMPLOYEE BY AFFIDAVIT, AND REQUIRE SUCH CLAIMANT TO ACKNOWLEDGE THE RECEIPT OF ANY PAYMENT IN WRITING. ANY PAYMENTS MADE BY THE EMPLOYER PURSUANT TO THE PROVISIONS OF THIS SECTION SHALL OPERATE AS A FULL AND COMPLETE DISCHARGE OF THE EMPLOYER'S INDEBTEDNESS TO THE EXTENT OF THE PAYMENT, AND NO EMPLOYER SHALL THEREAFTER BE LIABLE TO THE DECEASED EMPLOYEE'S ESTATE OR TO THE DECEASED EMPLOYEE'S PERSONAL REPRESENTATIVE. ANY AMOUNTS RECEIVED BY A SURVIVING SPOUSE OR LEGAL HEIR SHALL BE CONSIDERED IN DIMINUTION OF THE ALLOWANCE TO THE SPOUSE OR LEGAL HEIR PURSUANT TO THE "COLORADO PROBATE CODE", ARTICLES 10 TO 17 OF TITLE 15, C.R.S. NOTHING IN THIS SECTION SHALL CREATE A SUBSTANTIVE RIGHT THAT DOES NOT EXIST IN ANY AGREEMENT BETWEEN THE EMPLOYER AND THE EMPLOYEE.

8-4-110. Disputes - penalties. (1) ~~In case of a dispute over wages, the employer shall pay, without condition and within the time set by this article, all wages or parts of wages conceded by him to be due, leaving to the employee all remedies he might otherwise be entitled to as to any balance he may claim. The acceptance, whether written or oral, by an employee of a conceded amount shall not be considered evidence that the employee has made any agreement as to the amounts in dispute.~~ IF THE EMPLOYER DISPUTES THE AMOUNT OF WAGES OR COMPENSATION CLAIMED BY AN EMPLOYEE UNDER THE PROVISIONS OF THIS ARTICLE, AND THE EMPLOYER MAKES A LEGAL TENDER OF THE AMOUNT THAT THE EMPLOYER IN GOOD FAITH BELIEVES IS DUE, THE EMPLOYER SHALL NOT BE LIABLE FOR ANY PENALTY, UNLESS, IN A LEGAL ACTION, THE EMPLOYEE RECOVERS A GREATER SUM THAN THE AMOUNT SO TENDERED; AND IF, IN SUCH ACTION, THE EMPLOYEE FAILS TO RECOVER A GREATER SUM THAN THE AMOUNT TENDERED, THE EMPLOYEE SHALL PAY THE COST OF THE ACTION AND THE EMPLOYER'S REASONABLE ATTORNEY FEES INCURRED IN SUCH ACTION. IF THE EMPLOYEE RECOVERED A SUM GREATER THAN THE AMOUNT TENDERED, THE EMPLOYER SHALL PAY THE COST OF THE ACTION AND THE EMPLOYEE'S REASONABLE ATTORNEY FEES INCURRED IN SUCH ACTION.

(2) **[Formerly 8-4-123]** Any person claiming to be aggrieved by violation of any provisions of this article or regulations prescribed pursuant to this article may file suit in any court having jurisdiction over the parties without regard to exhaustion of any administrative remedies.

8-4-111. Enforcement - duty of director - duties of district or city attorneys.

(1) It is the duty of the director to inquire diligently for any violation of this article, and to institute the actions for penalties provided for in this article in such cases as he OR SHE may deem proper, and to enforce generally the provisions of this article.

(2) **[Formerly 8-4-112]** Nothing in this article shall be construed to limit the authority of the district attorney of any county or city and county or the city attorney of any city to prosecute actions for such violations of this article as may come to his OR HER knowledge, or to enforce the provisions of this article independently and without specific direction of the director, or to limit the right of any wage claimant to sue directly or through an assignee for any wages or penalty due him OR HER under the provisions of this article.

8-4-112. [Formerly 8-4-113] Enforcement of director subpoenas. All courts shall take judicial notice of the seal of the director. Obedience to subpoenas issued by the director or his OR HER duly authorized representative shall be enforced by the courts in any county or city and county, as provided in section 24-4-105 (5), C.R.S., if said subpoenas do not call for any appearance at a distance greater than one hundred miles.

8-4-113. [Formerly 8-4-109] Penalties pursuant to enforcement. (1) IF A CASE AGAINST AN EMPLOYER IS ENFORCED PURSUANT TO SECTION 8-4-111, ~~every~~ ANY employer who without good faith legal justification fails to pay the wages of each of his OR HER employees shall forfeit to the people of the state of Colorado an amount determined by the director but no more than the sum of fifty dollars per day for each such failure to pay each employee, commencing from the date that such wages first became due and payable, to be recovered by order of the director in a hearing held pursuant to section 24-4-105, C.R.S. For the convenience and necessity of the parties or their representatives, the division is authorized to conduct such hearing by telephone if the employer would otherwise be required to travel to locations of the division of labor from outside the general vicinity of such locations.

(2) A certified copy of any final order of the director, imposing a fine or penalty pursuant to this article, may be filed with the clerk of the district court having jurisdiction over the parties at any time after the entry of the order. The certified copy shall be recorded by ~~him~~ THE CLERK OF THE DISTRICT COURT in the judgment book of said court and entry thereof made in the judgment docket, and it shall thenceforth have all the effect of a judgment of the district court, and execution may issue thereon out of said court as in other cases. All fines and penalties collected shall be paid to the division and transmitted to the state treasurer for credit to the general fund.

8-4-114. Criminal penalties. (1) **[Formerly 8-4-116]** Any employer who violates the provisions of section ~~8-4-115~~ 8-4-103 (6) is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than three hundred dollars, or by imprisonment in the county jail for not more than thirty days, or by both such fine and imprisonment.

(2) **[Formerly 8-4-117]** In addition to any other penalty imposed by this article, any employer or agent of an employer who, being able to pay wages or compensation and being under a duty to pay, willfully refuses to pay as provided in this article, or falsely denies the amount of a wage claim, or the validity thereof, or that the same is

due, with intent to secure for himself, HERSELF, or another person any discount upon such indebtedness or any underpayment of such indebtedness or with intent to annoy, harass, oppress, hinder, delay, or defraud the person to whom such indebtedness is due, is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than three hundred dollars, or by imprisonment in the county jail for not more than thirty days, or by both such fine and imprisonment. For purposes of this section, "being able to pay wages or compensation" does not include an employer who is unable to pay wages or compensation by reason of a chapter 7 bankruptcy action or other court action ~~which~~ THAT results in the employer having limited control over his OR HER assets.

8-4-115. [Formerly 8-4-118] Certificate of registration required. No person shall engage in activities as a field labor contractor unless ~~he~~ THE PERSON first obtains a certificate of registration from the division and unless such certificate is in full force and effect and in such person's immediate possession.

8-4-116. [Formerly 8-4-119] Issuance of certificate of registration. (1) The director, after appropriate investigation, shall issue a certificate of registration to any person who:

(a) Has executed and filed with the director a written application subscribed and sworn to by the applicant containing such information concerning his OR HER conduct and method of operation as a field labor contractor as the director may require in order to effectively carry out the provisions of this article;

(b) Has consented to designation of the director as the agent available to accept service of process for any action against such field labor contractor at any and all times when such field labor contractor has departed from the jurisdiction of this state or has become unavailable to accept service;

(c) Has demonstrated evidence to the director that he OR SHE has satisfied the insurance requirements of articles 40 to 47 of this title.

(2) Upon notice and hearing in accordance with ~~regulations and~~ rules prescribed by the director, the director may refuse to issue and may suspend, revoke, or refuse to renew a certificate of registration of any field labor contractor if ~~he~~ THE DIRECTOR finds that such field labor contractor:

(a) Knowingly has made any misrepresentation or false statement in his OR HER application for a certificate of registration or any renewal thereof;

(b) Knowingly has given false or misleading information to any migratory laborer concerning the terms, conditions, or existence of agricultural employment;

(c) Has failed, without justification, to perform agreements entered into or to comply with arrangements made with farm operators;

(d) Has failed, without justification, to comply with the terms of any working arrangements he OR SHE has made with migratory laborers;

(e) Has permitted his OR HER insurance maintained pursuant to the requirements

of paragraph (c) of subsection (1) of this section to terminate, lapse, or otherwise become inoperative;

(f) Is not in fact the real party in interest in any such application or certificate of registration and that the real party in interest is a person, firm, partnership, association, or corporation which previously has been denied a certificate of registration; has had a certificate of registration suspended or revoked; or which does not presently qualify for a certificate of registration.

8-4-117. [Formerly 8-4-120] Additional obligations. (1) Every field labor contractor shall:

(a) Carry ~~his~~ A certificate of registration ~~with him~~ at all times while engaging in activities as a field labor contractor and exhibit the same to all persons with whom he OR SHE intends to deal in ~~his~~ THE capacity ~~as~~ OF a field labor contractor;

(b) Ascertain and disclose in writing to each migratory laborer, in a language in which the migratory laborer is fluent at the time the migratory laborer is recruited, the following information:

(I) The area of employment;

(II) The crops and operations on which the migratory laborer may be employed;

(III) Transportation, housing, and insurance to be provided to the migratory laborer;

(IV) The wage rate to be paid;

(V) The charges by the field labor contractor for his OR HER services; and

(VI) The existence of any strikes at the place of contracted employment;

(c) Promptly pay or deliver, when due to the migratory laborer entitled thereto, all moneys or other things of value entrusted to the field labor contractor by or on behalf of such migratory laborer.

8-4-118. [Formerly 8-4-121] Authority to obtain information. The director or ~~his~~ THE DIRECTOR'S designated representative may investigate and gather data pertinent to matters ~~which~~ THAT may aid in carrying out the provisions of this article. In any case where a complaint has been filed with the director or ~~his~~ THE DIRECTOR'S designated representative regarding a violation of this article, or where the director has reasonable grounds to believe that a field labor contractor has violated provisions of this article, the director or ~~his~~ THE DIRECTOR'S designated representative may investigate and issue subpoenas as provided by section ~~8-4-113~~ 8-4-112 requiring the attendance and testimony of any witness or the production of any evidence in connection with such investigation.

8-4-119. [Formerly 8-4-122] Penalty provisions. (1) Any field labor contractor who commits a violation of any provision of this article or implementing regulation shall be subject to a civil penalty of not more than two hundred fifty dollars

for each violation. The penalty shall be assessed by the director pursuant to a published schedule of penalties and after written notice and after an opportunity for hearing under procedures established by the director. This provision as to civil penalties shall not exclude the possibility of criminal penalties as set forth in this article.

(2) The director, in ~~his~~ THE DIRECTOR'S discretion, may grant a reasonable period of time, but in no event longer than ten days ~~from~~ AFTER the day of notification, for correction of the violation. In the event the violation is corrected within that period, no penalty shall be imposed.

8-4-120. [Formerly 8-4-124] Discrimination prohibited - employee protections. No employer shall intimidate, threaten, restrain, coerce, blacklist, discharge, or in any manner discriminate against any employee who has filed any complaint or instituted or caused to be instituted any proceeding under this article or related law or who has testified or may testify in any proceeding on behalf of himself, HERSELF, or another regarding afforded protections under this article. Any employer who violates the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than five hundred dollars, or by imprisonment in the county jail for not more than sixty days, or by both such fine and imprisonment.

8-4-121. [Formerly 8-4-125] Nonwaiver of employee rights. Any agreement, written or oral, by any employee purporting to waive or to modify ~~his~~ SUCH EMPLOYEE'S rights in violation of this article shall be void.

8-4-122. [Formerly 8-4-126] Limitation of actions. All actions brought pursuant to this article shall be commenced within two years after the cause of action accrues and not after that time; except that all actions brought for a willful violation of this article shall be commenced within three years after the cause of action accrues and not after that time.

8-4-123. [Formerly 8-4-127] Termination of occupancy pursuant to a contract of employment - legislative declaration. (1) The general assembly hereby finds, determines, and declares that many businesses, such as nursing homes or building management companies, either desire or are required by law to have staff on premises at all times. As part of the compensation for such employees, many employers offer housing to employees. However, once that employment relationship ceases, it may become undesirable for such employees to occupy the premises for many reasons, including the safety of the employer's patients, clients, customers, or tenants. Under traditional landlord and tenant law, such employees may have established the technical or legal right to occupy the premises for a fixed term that continues far beyond the cessation of the employment relationship. However, in employment situations, such occupancy is not a tenancy, but a license to occupy the premises pursuant to an employment relationship. The occupancy of the premises by the employee is not entered into by the employer for the purpose of providing housing, but merely as a means to provide services to the employer's patients, clients, customers, or tenants. In certain cases, it may be necessary to curtail the occupancy of former employees in order to protect the rights or safety of an employer's tenants or patients.

(2) (a) Pursuant to a written agreement meeting the requirements of paragraph (b) of this subsection (2), a license to occupy the premises entered into as part of an employee's compensation may be terminated at any time after the employment relationship ceases between an employer and employee. A termination of a license to occupy the premises shall be effective three days after the service of written notice of termination of a license to occupy the premises.

(b) An agreement made pursuant to this section shall be in writing and shall include the following:

(I) The names of the employer and employee;

(II) A statement that the license to occupy the premises is provided to the employee as part of the employee's compensation and is subject to termination at any time after the employment relationship ceases;

(III) The address of the premises; and

(IV) The signature of both the employer and the employee.

(c) The notice of termination of a license to occupy the premises shall describe the premises and shall set forth the time when the license to occupy the premises will terminate. The notice shall be signed by the employer or the employer's agent or attorney.

(3) If an employee fails to vacate the premises within three days after the receipt of the notice of termination of the license to occupy the premises, the employer may contact the county sheriff to have the employee removed from the premises. The county sheriff shall remove the employee and any personal property of the employee from the premises upon the showing to the county sheriff of the notice of termination of the license to occupy the premises and agreement pursuant to which the license to occupy the premises was granted.

SECTION 2. Repeal of provision not being relocated in this act. 8-4-114, Colorado Revised Statutes, is repealed.

SECTION 3. Effective date - applicability. (1) This act shall take effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly that is allowed for submitting a referendum petition pursuant to article V, section 1 (3) of the state constitution; except that, if a referendum petition is filed against this act or an item, section, or part of this act within such period, then the act, item, section, or part, if approved by the people, shall take effect on the date of the official declaration of the vote thereon by proclamation of the governor.

(2) The provisions of this act shall apply to matters subject to article 4 of title 8, Colorado Revised Statutes, on or after the applicable effective date of this act.

Approved: May 21, 2003