

Second Regular Session
Seventy-second General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 20-0445.01 Kristen Forrestal x4217

HOUSE BILL 20-1263

HOUSE SPONSORSHIP

Caraveo and Pelton,

SENATE SPONSORSHIP

Gonzales,

House Committees

Business Affairs & Labor
Appropriations

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING THE ELIMINATION OF SUB-MINIMUM WAGE EMPLOYMENT**
102 **BY PROVIDING SUPPORTS TO ENSURE SUCCESSFUL TRANSITIONS**
103 **FOR INDIVIDUALS CURRENTLY WORKING IN SUB-MINIMUM WAGE**
104 **JOBS.**

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 sub-minimum wage employment for employers that hold a special certificate from the United States department of labor that authorizes employers to pay employees whose earning capacity is

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.

impaired by age, physical or mental deficiency, or injury less than the minimum wage. 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 sub-minimum wage employment.

The bill requires the employment first advisory partnership in the department of labor and employment to develop actionable recommendations to address structural and fiscal barriers to phase out sub-minimum wage employment and successfully implement competitive integrated employment and report the recommendations to the general assembly.

The bill requires the department of health care policy and financing to grant money to private employers, not to exceed \$25,000 per employer, to provide assistance in developing and implementing a transition plan to phase out sub-minimum wage employment. 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 sub-minimum wage for individuals**
10 **with disabilities - legislative declaration - definition - repeal.** (1) THE
11 GENERAL ASSEMBLY HEREBY 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 AT MINIMUM WAGE OR
2 HIGHER IS A CRITICAL ELEMENT OF ACHIEVING THIS 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 SUB-MINIMUM 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 SYSTEMIC BARRIERS AND ASSIST INDIVIDUALS IN
13 SUB-MINIMUM WAGE JOBS TO PURSUE COMPETITIVE INTEGRATED
14 EMPLOYMENT; AND

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

23 (2) (a) AS USED IN THIS SUBSECTION (2), "SPECIAL CERTIFICATE"
24 MEANS A SPECIAL CERTIFICATE ISSUED BY THE UNITED STATES
25 DEPARTMENT OF LABOR PURSUANT TO SECTION 214 (c) OF THE "FAIR
26 LABOR STANDARDS ACT OF 1938", 29 U.S.C. SEC. 201 ET SEQ., AS
27 AMENDED, TO AN EMPLOYER THAT AUTHORIZES THE EMPLOYER TO PAY

1 EMPLOYEES WHOSE EARNING OR PRODUCTIVE CAPACITY IS IMPAIRED BY
2 AGE, PHYSICAL OR MENTAL DEFICIENCY, OR INJURY WAGES THAT ARE LESS
3 THAN THE MINIMUM WAGE.

4 (b) (I) ON AND AFTER JULY 1, 2020, IF AN EMPLOYER DOES NOT
5 HOLD A SPECIAL CERTIFICATE ISSUED ON OR BEFORE JUNE 30, 2020, THE
6 EMPLOYER SHALL NOT PAY AN EMPLOYEE AT A WAGE RATE THAT IS BELOW
7 THE STATE OR FEDERAL MINIMUM WAGE.

8 (II) ON AND AFTER JULY 1, 2020, AN EMPLOYER SHALL NOT HIRE
9 ANY NEW EMPLOYEES AT A WAGE RATE THAT IS BELOW THE STATE OR
10 FEDERAL MINIMUM WAGE.

11 (III) (A) AN EMPLOYER THAT HOLDS A SPECIAL CERTIFICATE
12 ISSUED ON OR BEFORE JUNE 30, 2020, SHALL SUBMIT A TRANSITION PLAN
13 TO THE DEPARTMENT OF LABOR AND EMPLOYMENT ON OR BEFORE JUNE 30,
14 2021, DETAILING HOW THE EMPLOYER PLANS TO PHASE OUT SUB-MINIMUM
15 WAGE EMPLOYMENT AND SUPPORT INDIVIDUALS CURRENTLY IN
16 SUB-MINIMUM WAGE JOBS TO PURSUE COMPETITIVE INTEGRATED
17 EMPLOYMENT; SUPPORTED EMPLOYMENT; OR INTEGRATED COMMUNITY
18 ACTIVITIES RELATED TO EACH INDIVIDUAL'S EMPLOYMENT GOALS.

19 (B) THE TRANSITION PLAN MUST INCLUDE MEASURABLE
20 BENCHMARKS, BE INFORMED BY EVIDENCE-BASED PRACTICES AND
21 EFFECTIVE EMPLOYMENT MODELS, AND BE UPDATED ANNUALLY UNTIL THE
22 EMPLOYER IS NO LONGER PAYING SUB-MINIMUM WAGES. THE TRANSITION
23 PLAN MUST BE ALIGNED WITH THE EMPLOYER'S EFFORTS TO COMPLY WITH
24 FEDERAL HOME- AND COMMUNITY-BASED SERVICES REGULATIONS, IF
25 APPLICABLE. THE DEPARTMENT OF LABOR AND EMPLOYMENT SHALL
26 COLLABORATE WITH EMPLOYERS TO CREATE A PROCESS FOR APPROVING
27 TRANSITION PLANS.

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

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

7 **SECTION 3.** In Colorado Revised Statutes, 8-84-304, **add** (3.5)
8 as follows:

9 **8-84-304. Duties of the employment first advisory partnership**
10 **- strategic plan - repeal.** (3.5) (a) ON OR BEFORE JULY 1, 2021, THE
11 PARTNERSHIP SHALL DEVELOP ACTIONABLE RECOMMENDATIONS FOR
12 ADDRESSING STRUCTURAL AND FISCAL BARRIERS TO PHASING OUT
13 SUB-MINIMUM WAGE EMPLOYMENT AND SUCCESSFULLY IMPLEMENTING
14 COMPETITIVE INTEGRATED EMPLOYMENT. THE RECOMMENDATIONS TO
15 ADDRESS BARRIERS SHALL INCLUDE:

- 16 (I) PAYMENT REFORM FOR EMPLOYMENT-RELATED SERVICES;
- 17 (II) THE ESTABLISHMENT OF ADEQUATE REIMBURSEMENT RATES
18 FOR EMPLOYMENT-RELATED SERVICES TO ENSURE THE AVAILABILITY OF
19 HIGH-QUALITY SUPPORT SERVICES;
- 20 (III) ADDRESSING UNIT CAPS ON EMPLOYMENT-RELATED SERVICES;
- 21 AND
- 22 (IV) ADDRESSING ANY MEDICAID WAIVER AND STATE
23 REGULATORY BARRIERS.

24 (b) ON OR BEFORE JULY 1, 2021, THE PARTNERSHIP SHALL SEND A
25 REPORT TO THE BUSINESS AFFAIRS AND LABOR COMMITTEE OF THE HOUSE
26 OF REPRESENTATIVES AND THE BUSINESS, LABOR, AND TECHNOLOGY
27 COMMITTEE OF THE SENATE, OR THEIR SUCCESSOR COMMITTEES,

1 CONCERNING THE RECOMMENDATIONS REQUIRED IN THIS SUBSECTION
2 (3.5).

3 **SECTION 4.** In Colorado Revised Statutes, **add** 25.5-6-413 as
4 follows:

5 **25.5-6-413. Private employers - grant money - elimination of**
6 **sub-minimum wage - transition plan for individuals with disabilities**
7 **- waiver - legislative declaration - repeal.** (1) THE GENERAL ASSEMBLY
8 HEREBY FINDS AND DECLARES THAT:

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

13 (b) SERVICE ENHANCEMENTS AND PUBLIC POLICY CHANGES ARE
14 NEEDED TO ADDRESS SYSTEMIC BARRIERS AND ASSIST INDIVIDUALS IN
15 SUB-MINIMUM WAGE JOBS TO PURSUE COMPETITIVE INTEGRATED
16 EMPLOYMENT; AND

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

25 (2) (a) ON OR BEFORE JUNE 30, 2022, THE STATE DEPARTMENT
26 SHALL AWARD GRANTS TO ELIGIBLE PRIVATE EMPLOYERS THAT EMPLOY
27 INDIVIDUALS AT A RATE BELOW THE STATE OR FEDERAL MINIMUM WAGE

1 AND THAT HOLD A SPECIAL CERTIFICATE ISSUED BY THE UNITED STATES
2 DEPARTMENT OF LABOR PURSUANT TO SECTION 214 (c) OF THE "FAIR
3 LABOR STANDARDS ACT OF 1938", 29 U.S.C. SEC. 201 ET SEQ., AS
4 AMENDED, TO PROVIDE ASSISTANCE TO EACH PRIVATE EMPLOYER THAT
5 RECEIVES A GRANT IN DEVELOPING AND IMPLEMENTING A TRANSITION
6 PLAN TO PHASE OUT SUB-MINIMUM WAGE EMPLOYMENT AS REQUIRED BY
7 SECTION 8-6-108.7. EACH PRIVATE EMPLOYER THAT HOLDS A SPECIAL
8 CERTIFICATE, AS DEFINED IN SECTION 8-6-108.7 (2)(a), IS ELIGIBLE FOR
9 ONE GRANT NOT TO EXCEED TWENTY-FIVE THOUSAND DOLLARS. THE
10 STATE DEPARTMENT SHALL DETERMINE THE FORM AND MANNER FOR A
11 PRIVATE EMPLOYER TO APPLY FOR A GRANT PURSUANT TO THIS SECTION
12 AND SHALL DETERMINE THE ELIGIBILITY OF PRIVATE EMPLOYER
13 APPLICANTS IN ACCORDANCE WITH THIS SECTION.

14 (b) EACH PRIVATE EMPLOYER THAT RECEIVES A GRANT MAY USE
15 THE MONEY FOR THE FOLLOWING ACTIVITIES RELATED TO IMPLEMENTING
16 A TRANSITION PLAN TO PHASE OUT SUB-MINIMUM WAGE EMPLOYMENT:

17 (I) CONTRACTING WITH SUBJECT MATTER EXPERTS TO ADVISE THE
18 EMPLOYER ON TRANSITION ACTIVITIES;

19 (II) BUSINESS PLANNING;

20 (III) COACHING FOR EXECUTIVES AND PROGRAM LEADERS;

21 (IV) STAFF TRAINING;

22 (V) OUTREACH TO INDIVIDUALS EMPLOYED IN SUB-MINIMUM
23 WAGE JOBS AND THEIR FAMILIES TO PREPARE AND SUPPORT THEM
24 THROUGH THE TRANSITION;

25 (VI) ACQUISITION AND INTEGRATION OF TECHNOLOGY TO ASSIST
26 WITH THE JOB DEVELOPMENT PROCESS; AND

27 (VII) DAY PROGRAM REDESIGN AND QUALITY IMPROVEMENT.

1 (c) FOR THE 2020-21 STATE FISCAL YEAR, THE GENERAL ASSEMBLY
2 SHALL APPROPRIATE MONEY FROM THE GENERAL FUND TO THE STATE
3 DEPARTMENT FOR THE PURPOSES OF THIS SUBSECTION (2).

4 (d) THIS SUBSECTION (2) IS REPEALED, EFFECTIVE JANUARY 1,
5 2025.

6 (3) (a) ON OR BEFORE JANUARY 1, 2022, THE STATE DEPARTMENT
7 SHALL SEEK FEDERAL APPROVAL TO ADD THE FOLLOWING MEDICAID
8 WAIVER SERVICES FOR ADULTS WITH INTELLECTUAL AND DEVELOPMENTAL
9 DISABILITIES FOR ASSISTANCE WITH PURSUING COMPETITIVE INTEGRATED
10 EMPLOYMENT:

11 (I) SUPPORT TO ASSIST INDIVIDUALS WITH ENGAGING IN
12 MEANINGFUL COMMUNITY ACTIVITIES TO HELP DEVELOP SOCIAL CAPITAL
13 AND LEARN AND BUILD ON SKILLS RELATED TO EACH INDIVIDUAL'S
14 IDENTIFIED EMPLOYMENT GOALS PROVIDED ON AN INDIVIDUALIZED BASIS
15 WITH ONE-TO-ONE SUPPORT;

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

19 (III) ONGOING BENEFITS COUNSELING TO ASSIST ADULTS IN
20 EARNING HIGHER INCOMES WHILE RETAINING NECESSARY SUPPORTS.

21 (b) THE STATE DEPARTMENT SHALL COLLABORATE WITH
22 STAKEHOLDERS TO DEVELOP SERVICE COVERAGE STANDARDS,
23 REIMBURSEMENT RATES, AND LIMITATIONS ON THE SERVICES DESCRIBED
24 IN SUBSECTION (3)(a) OF THIS SECTION.

25 (4) THE STATE DEPARTMENT SHALL REMOVE THE FOLLOWING
26 SERVICES FROM THE SERVICE PLAN AUTHORIZATION LIMITS TO ENSURE
27 ACCESS TO EMPLOYMENT SUPPORTS:

1 (a) JOB COACHING, INDIVIDUAL; AND

2 (b) JOB DEVELOPMENT, INDIVIDUAL.

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

7 **SECTION 5.** In Colorado Revised Statutes, 25.5-6-1403, **amend**
8 (4) as follows:

9 **25.5-6-1403. Waivers and amendments.** (4) The state
10 department shall seek federal authorization to implement a medicaid
11 buy-in program for adults who are eligible to receive home- and
12 community-based services pursuant to the supported living services
13 waiver; THE DEVELOPMENTAL DISABILITIES WAIVER OR ITS SUCCESSOR,
14 PART 4 OF THIS ARTICLE 6; the persons with brain injury waiver, part 7 of
15 this ~~article~~ ARTICLE 6; and the spinal cord injury waiver pilot program,
16 part 13 of this ~~article~~ ARTICLE 6. The state department shall prepare and
17 submit any requests necessary for federal approval not later than January
18 1, ~~2017~~ 2021, and shall implement the medicaid buy-in program pursuant
19 to this subsection (4) not later than three months after receiving federal
20 approval.

21 **SECTION 6. Effective date - applicability.** This act takes effect
22 July 1, 2020, and applies to wages paid on or after said date.

23 **SECTION 7. Safety clause.** The general assembly hereby finds,
24 determines, and declares that this act is necessary for the immediate
25 preservation of the public peace, health, or safety.