

Second Regular Session
Seventy-second General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 20-1307.01 Yelana Love x2295

HOUSE BILL 20-1415

HOUSE SPONSORSHIP

Herod and Sullivan,

SENATE SPONSORSHIP

Pettersen and Rodriguez,

House Committees
Finance

Senate Committees

A BILL FOR AN ACT

101 CONCERNING A WORKER'S RIGHTS IN THE WORKPLACE FOR CONDUCT
102 RELATED TO A PRINCIPAL'S ACTIONS DURING A PUBLIC HEALTH
103 EMERGENCY.

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 prohibits a principal, which includes an employer, certain labor contractors, public employers, and entities that rely on independent contractors for a specified percentage of their workforce, from discriminating, retaliating, or taking adverse action against any worker who:

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.

- ! Raises any concern about workplace health and safety practices or hazards related to a public health emergency to the principal, the principal's agent, other workers, a government agency, or the public if the workplace health and safety practices fail to meet guidelines established by a federal, state, or local public health agency with jurisdiction over the workplace; or
- ! Voluntarily wears at the worker's workplace the worker's own personal protective equipment, such as a mask, faceguard, or gloves.

A person may seek relief for a violation of the bill by:

- ! Filing a complaint with the division of labor standards and statistics in the department of labor and employment;
- ! Bringing an action in district court, after exhausting administrative remedies; or
- ! Bringing a whistleblower action in the name of the state in district court, after exhausting administrative remedies.

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

2 **SECTION 1.** In Colorado Revised Statutes, **add** article 14.4 to
 3 title 8 as follows:

4 **ARTICLE 14.4**

5 **Worker Rights Related to a Public Health Emergency**

6 **8-14.4-101. Definitions.** AS USED IN THIS ARTICLE 14.4, UNLESS
 7 THE CONTEXT OTHERWISE REQUIRES:

8 (1) "DEPARTMENT" MEANS THE DEPARTMENT OF LABOR AND
 9 EMPLOYMENT.

10 (2) "DIVISION" MEANS THE DIVISION OF LABOR STANDARDS AND
 11 STATISTICS IN THE DEPARTMENT.

12 (3) (a) "PRINCIPAL" HAS THE SAME MEANING AS "EMPLOYER" AS
 13 SET FORTH IN THE FEDERAL "FAIR LABOR STANDARDS ACT OF 1938", 29
 14 U.S.C. SEC. 203 (d).

15 (b) "PRINCIPAL" INCLUDES:

16 (I) A FOREIGN LABOR CONTRACTOR AND A MIGRATORY FIELD

1 LABOR CONTRACTOR OR CREW LEADER;

2 (II) THE STATE OF COLORADO, LOCAL GOVERNMENTS, AND
3 POLITICAL SUBDIVISIONS OF THE STATE AS DEFINED IN SECTION 1-7.5-103
4 (6); AND

5 (III) AN ENTITY THAT RELIES ON INDEPENDENT CONTRACTORS FOR
6 SEVENTY-FIVE PERCENT OR MORE OF THE ENTITY'S WORKFORCE IN THE
7 STATE.

8 (4) "PUBLIC HEALTH EMERGENCY" MEANS:

9 (a) A PUBLIC HEALTH ORDER ISSUED BY A STATE OR LOCAL PUBLIC
10 HEALTH AGENCY; OR

11 (b) A DISASTER EMERGENCY DECLARED BY THE GOVERNOR BASED
12 ON A PUBLIC HEALTH CONCERN.

13 (5) "WORKER" MEANS ANY INDIVIDUAL, INCLUDING A MIGRATORY
14 LABORER, PERFORMING LABOR OR SERVICES FOR THE BENEFIT OF A
15 PRINCIPAL. FOR THE PURPOSE OF THIS ARTICLE 14.4, RELEVANT FACTORS
16 IN DETERMINING WHETHER AN INDIVIDUAL IS A WORKER INCLUDE THE
17 DEGREE OF CONTROL THE PRINCIPAL MAY OR DOES EXERCISE OVER THE
18 INDIVIDUAL AND THE DEGREE TO WHICH THE INDIVIDUAL PERFORMS WORK
19 THAT IS THE PRIMARY WORK OF THE PRINCIPAL; EXCEPT THAT AN
20 INDIVIDUAL PRIMARILY FREE FROM CONTROL AND DIRECTION IN THE
21 PERFORMANCE OF THE SERVICE, BOTH UNDER THE INDIVIDUAL'S CONTRACT
22 FOR THE PERFORMANCE OF SERVICE AND IN FACT, AND WHO IS
23 CUSTOMARILY ENGAGED IN AN INDEPENDENT TRADE, OCCUPATION,
24 PROFESSION, OR BUSINESS RELATED TO THE SERVICE PERFORMED IS NOT A
25 "WORKER" UNLESS THE INDIVIDUAL WORKS FOR A PRINCIPAL THAT RELIES
26 ON INDEPENDENT CONTRACTORS FOR SEVENTY-FIVE PERCENT OR MORE OF
27 ITS WORKFORCE.

1 **8-14.4-102. Prohibition against discrimination based on claims**
2 **related to a public health emergency.** (1) A PRINCIPAL SHALL NOT
3 DISCRIMINATE, TAKE ADVERSE ACTION, OR RETALIATE AGAINST ANY
4 WORKER WHO, IN GOOD FAITH, RAISES ANY REASONABLE CONCERN ABOUT
5 WORKPLACE VIOLATIONS OF GOVERNMENT HEALTH OR SAFETY RULES, OR
6 ABOUT AN OTHERWISE SIGNIFICANT WORKPLACE THREAT TO HEALTH OR
7 SAFETY, RELATED TO A PUBLIC HEALTH EMERGENCY TO THE PRINCIPAL,
8 THE PRINCIPAL'S AGENT, OTHER WORKERS, A GOVERNMENT AGENCY, OR
9 THE PUBLIC IF THE WORKPLACE HEALTH AND SAFETY PRACTICES FAIL TO
10 MEET GUIDELINES ESTABLISHED BY A FEDERAL, STATE, OR LOCAL PUBLIC
11 HEALTH AGENCY WITH JURISDICTION OVER THE WORKPLACE.

12 (2) (a) A PRINCIPAL SHALL NOT REQUIRE OR ATTEMPT TO REQUIRE
13 A WORKER TO SIGN A CONTRACT OR OTHER AGREEMENT THAT WOULD
14 LIMIT OR PREVENT THE WORKER FROM DISCLOSING INFORMATION ABOUT
15 WORKPLACE HEALTH AND SAFETY PRACTICES OR HAZARDS RELATED TO A
16 PUBLIC HEALTH EMERGENCY OR TO OTHERWISE ABIDE BY A WORKPLACE
17 POLICY THAT WOULD LIMIT OR PREVENT SUCH DISCLOSURES.

18 (b) A CONTRACT OR AGREEMENT THAT VIOLATES SUBSECTION
19 (2)(a) OF THIS SECTION IS VOID AND UNENFORCEABLE AS CONTRARY TO
20 THE PUBLIC POLICY OF THIS STATE. A PRINCIPAL'S ATTEMPT TO IMPOSE
21 SUCH A CONTRACT OR AGREEMENT IS AN ADVERSE ACTION IN VIOLATION
22 OF THIS ARTICLE 14.4.

23 (3) A PRINCIPAL SHALL NOT DISCRIMINATE, TAKE ADVERSE
24 ACTION, OR RETALIATE AGAINST A WORKER WHO VOLUNTARILY WEARS AT
25 THE WORKER'S WORKPLACE THE WORKER'S OWN PERSONAL PROTECTIVE
26 EQUIPMENT, SUCH AS A MASK, FACEGUARD, OR GLOVES, IF THE PERSONAL
27 PROTECTIVE EQUIPMENT:

1 (a) PROVIDES A HIGHER LEVEL OF PROTECTION THAN THE
2 EQUIPMENT PROVIDED BY THE PRINCIPAL;

3 (b) IS RECOMMENDED BY A FEDERAL, STATE, OR LOCAL PUBLIC
4 HEALTH AGENCY WITH JURISDICTION OVER THE WORKER'S WORKPLACE;
5 AND

6 (c) DOES NOT RENDER THE WORKER INCAPABLE OF PERFORMING
7 THE WORKER'S JOB.

8 (4) A PRINCIPAL SHALL NOT DISCRIMINATE, TAKE ADVERSE
9 ACTION, OR RETALIATE AGAINST A WORKER FOR OPPOSING ANY PRACTICE
10 THE WORKER REASONABLY BELIEVES IS UNLAWFUL UNDER THIS ARTICLE
11 14.4 OR FOR MAKING A CHARGE, TESTIFYING, ASSISTING, OR
12 PARTICIPATING IN ANY MANNER IN AN INVESTIGATION, PROCEEDING, OR
13 HEARING AS TO ANY MATTER THE WORKER REASONABLY BELIEVES TO BE
14 UNLAWFUL UNDER THIS ARTICLE 14.4.

15 (5) (a) THIS SECTION DOES NOT APPLY TO A WORKER WHO
16 DISCLOSES INFORMATION:

17 (I) THAT THE WORKER KNOWS TO BE FALSE; OR

18 (II) WITH RECKLESS DISREGARD FOR THE TRUTH OR FALSITY OF
19 THE INFORMATION.

20 (b) THE PRINCIPAL MUST ESTABLISH BY CLEAR AND CONVINCING
21 EVIDENCE THAT THE WORKER HAS MADE FALSE ASSERTIONS ABOUT
22 WORKPLACE SAFETY, WITH KNOWLEDGE OR RECKLESS DISREGARD OF
23 THEIR FALSITY, FOR THE EXCLUSION SPECIFIED IN THIS SUBSECTION (5) TO
24 APPLY.

25 (6) NOTHING IN THIS SECTION AUTHORIZES A WORKER TO SHARE
26 INDIVIDUAL HEALTH INFORMATION THAT IS OTHERWISE PROHIBITED FROM
27 DISCLOSURE UNDER STATE OR FEDERAL LAW.

1 **8-14.4-103. Principal post notice of rights - rules.** (1) A
2 PRINCIPAL SHALL POST NOTICE OF A WORKER'S RIGHTS UNDER THIS
3 ARTICLE 14.4 IN A CONSPICUOUS LOCATION ON THE PRINCIPAL'S PREMISES.

4 (2) THE DIVISION SHALL PROMULGATE RULES TO ESTABLISH THE
5 FORM OF THE NOTICE REQUIRED IN SUBSECTION (1) OF THIS SECTION.

6 **8-14.4-104. Relief for aggrieved person.** (1) A PERSON MAY
7 SEEK RELIEF FOR A VIOLATION OF THIS ARTICLE 14.4 BY:

8 (a) FILING A COMPLAINT WITH THE DIVISION PURSUANT TO SECTION
9 8-14.4-105;

10 (b) BRINGING AN ACTION IN DISTRICT COURT PURSUANT TO
11 SECTION 8-14.4-106; OR

12 (c) BRINGING AN ACTION IN THE NAME OF THE STATE IN DISTRICT
13 COURT PURSUANT TO SECTION 8-14.4-107.

14 (2) A PERSON SHALL EXHAUST ADMINISTRATIVE REMEDIES
15 PURSUANT TO SECTION 8-14.4-105 PRIOR TO BRINGING AN ACTION IN
16 COURT.

17 **8-14.4-105. Enforcement by the division - rules.** (1) (a) AN
18 AGGRIEVED INDIVIDUAL MAY FILE A COMPLAINT AGAINST A PRINCIPAL
19 WITH THE DIVISION AS SPECIFIED IN THIS SUBSECTION (1).

20 (b) UNTIL THE DATE THE DIVISION MAKES A COMPLAINT FORM
21 PUBLICLY AVAILABLE:

22 (I) AN AGGRIEVED INDIVIDUAL MAY FILE A COMPLAINT OF A
23 VIOLATION OF THIS ARTICLE 14.4 WITH THE DIVISION IN ANY FORM, BY
24 MAIL OR ELECTRONIC MAIL;

25 (II) THE DIVISION MAY LATER REQUIRE THE AGGRIEVED
26 INDIVIDUAL TO COMPLETE THE DIVISION'S COMPLAINT FORM; AND

27 (III) THE FILING DATE IS THE DATE OF THE CLAIMANT'S ORIGINAL

1 FILING, EVEN IF THE DIVISION LATER REQUESTS ADDITIONAL INFORMATION
2 OR COMPLETION OF THE DIVISION'S COMPLAINT FORM.

3 (c) AFTER THE DIVISION MAKES A COMPLAINT FORM PUBLICLY
4 AVAILABLE, AN AGGRIEVED INDIVIDUAL MAY FILE A COMPLAINT ONLY BY
5 COMPLETING THE REQUIRED FORM.

6 (2) THE DIVISION SHALL EITHER:

7 (a) INVESTIGATE ALLEGED PRINCIPAL VIOLATIONS OF, OR
8 INTERFERENCE WITH RIGHTS OR RESPONSIBILITIES UNDER, THIS ARTICLE
9 14.4 AND COMPLAINTS FILED WITH THE DIVISION BY AGGRIEVED
10 INDIVIDUALS; OR

11 (b) AUTHORIZE AN AGGRIEVED INDIVIDUAL TO PROCEED WITH AN
12 ACTION IN DISTRICT COURT AS PROVIDED IN SECTIONS 8-14.4-106 AND
13 8-14.4-107. A PERSON WHO RECEIVES AUTHORIZATION PURSUANT TO THIS
14 SUBSECTION (2)(b) IS CONSIDERED TO HAVE EXHAUSTED ADMINISTRATIVE
15 REMEDIES.

16 (3) IN AN INVESTIGATION OF ALLEGED PRINCIPAL RETALIATION OR
17 INTERFERENCE WITH WORKER RIGHTS, IF AN INVESTIGATION YIELDS A
18 DETERMINATION THAT:

19 (a) A VIOLATION HAS OCCURRED, THE DIVISION MAY IMPOSE FINES
20 PURSUANT TO SECTION 8-1-140 (2);

21 (b) RIGHTS OF MULTIPLE WORKERS HAVE BEEN VIOLATED, THE
22 VIOLATION AS TO EACH WORKER IS A SEPARATE VIOLATION FOR PURPOSES
23 OF FINES, PENALTIES, OR OTHER REMEDIES; AND

24 (c) A WORKER WAS FIRED, VOLUNTARILY LEFT EMPLOYMENT, OR
25 EXPERIENCED A REDUCTION IN RATE OF PAY DUE TO A PRINCIPAL'S
26 VIOLATION, THE DETERMINATION MAY INCLUDE AN ORDER TO:

27 (I) REINSTATE OR REHIRE THE WORKER AND PAY THE WORKER'S

1 BACK PAY UNTIL REINSTATEMENT OR REHIRING; OR

2 (II) PAY THE WORKER FRONT PAY FOR A REASONABLE PERIOD
3 AFTER THE ORDER, IF REINSTATEMENT OR REHIRING IS DETERMINED NOT
4 TO BE FEASIBLE.

5 (4) DETERMINATIONS MADE BY THE DIVISION UNDER THIS SECTION
6 ARE APPEALABLE PURSUANT TO SECTION 8-4-111.5 AND RULES
7 PROMULGATED BY THE DEPARTMENT REGARDING APPEALS AND STRATEGIC
8 ENFORCEMENT.

9 **8-14.4-106. Relief authorized.** (1) AN AGGRIEVED INDIVIDUAL
10 WHO HAS EXHAUSTED ADMINISTRATIVE REMEDIES PURSUANT TO SECTION
11 8-14.4-105 MAY COMMENCE AN ACTION IN DISTRICT COURT AGAINST A
12 PRINCIPAL FOR A VIOLATION OF THIS ARTICLE 14.4.

13 (2) A COURT MAY ORDER AFFIRMATIVE RELIEF THAT THE COURT
14 DETERMINES TO BE APPROPRIATE, INCLUDING THE FOLLOWING RELIEF,
15 AGAINST A RESPONDENT WHO IS FOUND TO HAVE ENGAGED IN A
16 DISCRIMINATORY, ADVERSE, OR RETALIATORY EMPLOYMENT PRACTICE
17 PROHIBITED BY THIS ARTICLE 14.4:

18 (a) REINSTATEMENT OR REHIRING OF A WORKER, WITH OR
19 WITHOUT BACK PAY;

20 (b) THE GREATER OF EITHER:

21 (I) TEN THOUSAND DOLLARS; OR

22 (II) ANY LOST PAY RESULTING FROM THE VIOLATION, INCLUDING
23 BACK PAY FOR A REINSTATED OR REHIRED WORKER AND FRONT PAY FOR
24 A WORKER WHO IS NOT REINSTATED OR REHIRED; AND

25 (c) ANY OTHER EQUITABLE RELIEF THE COURT DEEMS
26 APPROPRIATE.

27 (3) (a) IN ADDITION TO THE RELIEF AVAILABLE PURSUANT TO

1 SUBSECTION (2) OF THIS SECTION, IN A CIVIL ACTION BROUGHT BY A
2 PLAINTIFF UNDER THIS ARTICLE 14.4 AGAINST A DEFENDANT WHO IS
3 FOUND TO HAVE ENGAGED IN AN INTENTIONAL DISCRIMINATORY,
4 ADVERSE, OR RETALIATORY EMPLOYMENT PRACTICE, THE PLAINTIFF MAY
5 RECOVER COMPENSATORY AND PUNITIVE DAMAGES AS SPECIFIED IN THIS
6 SUBSECTION (3).

7 (b) A PLAINTIFF MAY RECOVER PUNITIVE DAMAGES AGAINST A
8 DEFENDANT IF THE PLAINTIFF DEMONSTRATES BY CLEAR AND CONVINCING
9 EVIDENCE THAT THE DEFENDANT ENGAGED IN A DISCRIMINATORY,
10 ADVERSE, OR RETALIATORY EMPLOYMENT PRACTICE WITH MALICE OR
11 RECKLESS INDIFFERENCE TO THE RIGHTS OF THE PLAINTIFF. HOWEVER, IF
12 THE DEFENDANT DEMONSTRATES GOOD-FAITH EFFORTS TO COMPLY WITH
13 THIS ARTICLE 14.4 AND TO PREVENT DISCRIMINATORY, ADVERSE, AND
14 RETALIATORY EMPLOYMENT PRACTICES IN THE WORKPLACE, THE COURT
15 SHALL NOT AWARD PUNITIVE DAMAGES AGAINST THE DEFENDANT.

16 (c) A PLAINTIFF MAY RECOVER COMPENSATORY DAMAGES
17 AGAINST A DEFENDANT FOR OTHER PECUNIARY LOSSES, EMOTIONAL PAIN
18 AND SUFFERING, INCONVENIENCE, MENTAL ANGUISH, LOSS OF ENJOYMENT
19 OF LIFE, AND OTHER NONPECUNIARY LOSSES.

20 (d) IN DETERMINING THE APPROPRIATE LEVEL OF DAMAGES TO
21 AWARD A PLAINTIFF WHO HAS BEEN THE VICTIM OF AN INTENTIONAL
22 DISCRIMINATORY, ADVERSE, OR RETALIATORY EMPLOYMENT PRACTICE,
23 THE COURT SHALL CONSIDER THE SIZE AND ASSETS OF THE DEFENDANT
24 AND THE EGREGIOUSNESS OF THE DISCRIMINATORY, ADVERSE, OR
25 RETALIATORY EMPLOYMENT PRACTICE.

26 (e) COMPENSATORY OR PUNITIVE DAMAGES AWARDED PURSUANT
27 TO THIS SUBSECTION (3) ARE IN ADDITION TO, AND DO NOT INCLUDE,

1 FRONT PAY, BACK PAY, INTEREST ON BACK PAY, OR ANY OTHER TYPE OF
2 RELIEF AWARDED PURSUANT TO SUBSECTION (2) OF THIS SECTION.

3 (4) IF A PLAINTIFF IN A CIVIL ACTION FILED UNDER THIS ARTICLE
4 14.4 SEEKS COMPENSATORY OR PUNITIVE DAMAGES PURSUANT TO
5 SUBSECTION (3) OF THIS SECTION, ANY PARTY TO THE CIVIL ACTION MAY
6 DEMAND A TRIAL BY JURY.

7 **8-14.4-107. Whistleblower enforcement - qui tam - definition.**

8 (1) AS USED IN THIS SECTION, "WHISTLEBLOWER" MEANS A WORKER WITH
9 KNOWLEDGE OF AN ALLEGED VIOLATION OF THIS ARTICLE 14.4, OR THE
10 WORKER'S REPRESENTATIVE.

11 (2) (a) A WHISTLEBLOWER WHO HAS EXHAUSTED THE
12 ADMINISTRATIVE REMEDIES PURSUANT TO SECTION 8-14.4-105 MAY BRING
13 A CIVIL ACTION AGAINST A PRINCIPAL FOR A VIOLATION OF THIS ARTICLE
14 14.4 ON BEHALF OF THE STATE IN DISTRICT COURT PURSUANT TO THIS
15 SECTION.

16 (b) AT THE TIME THAT THE ACTION IS FILED, THE WHISTLEBLOWER
17 SHALL GIVE WRITTEN NOTICE TO THE DIVISION OF THE SPECIFIC
18 PROVISIONS OF THIS ARTICLE 14.4 ALLEGED TO HAVE BEEN VIOLATED.

19 (c) IF THE COURT FINDS THAT A VIOLATION HAS OCCURRED, THE
20 COURT MAY ENTER A JUDGMENT AGAINST THE PRINCIPAL OF NOT LESS
21 THAN ONE HUNDRED DOLLARS AND NOT MORE THAN ONE THOUSAND
22 DOLLARS FOR EACH VIOLATION.

23 (3) THE PROCEEDS OF ANY JUDGMENT ENTERED PURSUANT TO THIS
24 SECTION SHALL BE DISTRIBUTED AS FOLLOWS:

25 (a) SEVENTY-FIVE PERCENT TO THE DIVISION FOR ENFORCEMENT
26 OF THIS ARTICLE 14.4; AND

27 (b) TWENTY-FIVE PERCENT TO THE WHISTLEBLOWER.

1 (4) THE RIGHT TO BRING AN ACTION UNDER THIS SECTION SHALL
2 NOT BE IMPAIRED BY ANY PRIVATE CONTRACT. AN ACTION UNDER THIS
3 SECTION SHALL BE TRIED PROMPTLY, WITHOUT REGARD TO CONCURRENT
4 ADJUDICATION OF PRIVATE CLAIMS.

5 **8-14.4-108. Rulemaking.** THE DIVISION MAY PROMULGATE RULES
6 NECESSARY TO IMPLEMENT THIS ARTICLE 14.4.

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