

## CHAPTER 238

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**GOVERNMENT - STATE**


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**SENATE BILL 09-110**

BY SENATOR(S) Morse, Carroll M., Hudak, Boyd, Foster, Gibbs, Groff, Heath, Hodge, Keller, Newell, Sandoval, Schwartz, Shaffer B., Tapia, Tochtrop, Williams;  
 also REPRESENTATIVE(S) Levy, Apuan, Court, Frangas, Green, Hullinghorst, Judd, Labuda, McFadyen, Merrifield, Miklosi, Pace, Ryden, Schafer S., Todd, Vigil, Carroll T.

**AN ACT****CONCERNING THE CONTINUATION OF THE REGULATION OF CIVIL RIGHTS ISSUES.**

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

**SECTION 1. Repeal.** 24-34-104 (40) (f), Colorado Revised Statutes, is repealed as follows:

**24-34-104. General assembly review of regulatory agencies and functions for termination, continuation, or reestablishment.** (40) The following agencies, functions, or both, shall terminate on July 1, 2009:

(f) ~~The Colorado civil rights division, including the Colorado civil rights commission, created by part 3 of this article, and the subpoena powers granted to the director of the Colorado civil rights division in cases relating to allegations of unfair employment practices, as defined in part 4 of this article;~~

**SECTION 2.** 24-34-104 (49), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

**24-34-104. General assembly review of regulatory agencies and functions for termination, continuation, or reestablishment.** (49) The following agencies, functions, or both, shall terminate on July 1, 2018:

(h) THE COLORADO CIVIL RIGHTS DIVISION, INCLUDING THE COLORADO CIVIL RIGHTS COMMISSION, CREATED BY PART 3 OF THIS ARTICLE.

**SECTION 3.** 24-34-304 (2), Colorado Revised Statutes, is amended to read:

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

**24-34-304. Division and commission subject to termination - repeal of part.**

(2) This part 3 is repealed, effective July 1, ~~2009~~ 2018. Prior to such repeal, the functions of the division and commission shall be reviewed as provided for in section 24-34-104.

**SECTION 4.** 24-34-302, Colorado Revised Statutes, is amended to read:

**24-34-302. Civil rights division - director - powers and duties.** (1) There is hereby created within the department of regulatory agencies a division of state government to be known and designated as the Colorado civil rights division, the head of which shall be the director of the Colorado civil rights division. ~~which office is hereby created.~~ The director shall be appointed by the executive director of the department of regulatory agencies pursuant to section 13 of article XII of the state constitution, and the executive director shall give good faith consideration to the recommendations of the commission prior to making ~~such~~ THE appointment.

(2) The director shall appoint such investigators and other personnel as may be necessary to carry out the functions and duties of the division. THE DIRECTOR AND THE STAFF OF THE DIVISION SHALL RECEIVE, INVESTIGATE, AND MAKE DETERMINATIONS ON CHARGES ALLEGING UNFAIR OR DISCRIMINATORY PRACTICES IN VIOLATION OF PARTS 4 TO 7 OF THIS ARTICLE.

**SECTION 5. Repeal.** 24-34-305 (1) (b), Colorado Revised Statutes, is repealed as follows:

**24-34-305. Powers and duties of commission.** (1) The commission has the following powers and duties:

(b) ~~To receive, investigate, and pass upon charges alleging unfair or discriminatory practices in violation of parts 4 to 7 of this article;~~

**SECTION 6.** 24-34-306 (1), (2), and (15), Colorado Revised Statutes, are amended to read:

**24-34-306. Charge - complaint - hearing - procedure - exhaustion of administrative remedies.** (1) (a) Any person claiming to be aggrieved by a discriminatory or unfair practice as defined by parts 4 to 7 of this article may, by himself OR HERSELF OR THROUGH his OR HER attorney-at-law, make, sign, and file with the ~~commission~~ DIVISION a verified written charge ~~in duplicate which shall state~~ STATING the name and address of the respondent alleged to have committed the discriminatory or unfair practice, ~~and which shall set~~ SETTING forth the particulars ~~thereof~~ OF THE ALLEGED DISCRIMINATORY OR UNFAIR PRACTICE, and ~~contain such~~ CONTAINING ANY other information ~~as may be~~ required by the ~~commission~~ DIVISION.

(b) The commission, a commissioner, or the attorney general ON ITS OWN MOTION may ~~in like manner~~ make, sign, and file ~~such~~ A charge ALLEGING A DISCRIMINATORY OR UNFAIR PRACTICE IN CASES WHERE THE COMMISSION, A COMMISSIONER, OR THE ATTORNEY GENERAL DETERMINES THAT THE ALLEGED DISCRIMINATORY OR UNFAIR PRACTICE IMPOSES A SIGNIFICANT SOCIETAL OR COMMUNITY IMPACT. THE CHARGE SHALL BE FILED IN THE SAME MANNER AND SHALL CONTAIN THE SAME INFORMATION

AS REQUIRED FOR A CHARGE FILED BY AN INDIVIDUAL PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (1). WHEN THE COMMISSION, A COMMISSIONER, OR THE ATTORNEY GENERAL FILES A CHARGE PURSUANT TO THIS PARAGRAPH (b), THE REMEDY AVAILABLE FOR THE DISCRIMINATORY OR UNFAIR PRACTICE SHALL BE LIMITED TO EQUITABLE RELIEF TO ELIMINATE THE DISCRIMINATORY OR UNFAIR PRACTICE.

(c) Prior to any other action by the ~~commission~~ DIVISION REGARDING THE CHARGE, the DIVISION SHALL NOTIFY THE respondent ~~shall be notified~~ of the charges filed against him OR HER.

(2) (a) After the filing of a charge ALLEGING A DISCRIMINATORY OR UNFAIR PRACTICE AS DEFINED BY PARTS 4 TO 7 OF THIS ARTICLE, the director, with the assistance of the DIVISION'S staff, shall make a prompt investigation ~~thereof. If such charge alleges an unfair employment practice as defined in part 4 of this article or an unfair housing practice as defined in part 5 of this article,~~ OF THE CHARGE. The director may subpoena witnesses and compel the testimony of witnesses and the production of books, papers, and records if the testimony, books, papers, and records sought are limited to matters directly related to the charge. Any subpoena issued pursuant to this paragraph (a) shall be enforceable in the district court for the district in which the alleged discriminatory or unfair practice occurred and shall be issued only if the person or entity to be subpoenaed has refused or failed, after a proper request from the director, to provide voluntarily to the director the information sought by the subpoena.

(b) The director OR THE DIRECTOR'S DESIGNEE, WHO SHALL BE AN EMPLOYEE OF THE DIVISION, shall determine as promptly as possible whether probable cause exists for crediting the allegations of the charge, and shall follow one of the following courses of action:

(I) If the director OR THE DIRECTOR'S DESIGNEE determines that probable cause does not exist, he OR SHE shall dismiss the charge and shall notify the person filing the charge and the respondent of ~~such~~ THE dismissal. In addition, in ~~such~~ THE notice, the director OR THE DIRECTOR'S DESIGNEE shall advise both parties:

(A) That the charging party has the right to file an appeal of ~~such~~ THE dismissal with the commission within ten days ~~of~~ AFTER the date ~~of mailing of~~ the notification of ~~such~~ dismissal IS MAILED;

(B) That, if the charging party wishes to file a civil action in a district court in this state ~~which action is~~ based on the alleged discriminatory or unfair practice that was the subject of the charge ~~he~~ filed with the commission, he OR SHE must do so: Within ninety days ~~of~~ AFTER the date ~~of mailing of~~ the notice specified in this subparagraph (I) IS MAILED if he OR SHE does not file an appeal with the commission pursuant to sub-subparagraph (A) of this subparagraph (I); or within ninety days ~~of~~ AFTER the date ~~of mailing of~~ THE notice that the commission has dismissed the appeal specified in sub-subparagraph (A) of this subparagraph (I) IS MAILED;

(C) That, if the charging party does not file an action within the time limits specified in sub-subparagraph (B) of this subparagraph (I), ~~such~~ THE action will be barred, and no district court shall have jurisdiction to hear ~~such~~ THE action.

(II) If the director OR THE DIRECTOR'S DESIGNEE determines that probable cause exists, the DIRECTOR OR THE DIRECTOR'S DESIGNEE SHALL SERVE THE respondent ~~shall be served~~ with written notice ~~which states~~ STATING with specificity the legal authority and jurisdiction of the commission and the matters of fact and law asserted. ~~and~~ IN ADDITION, the director OR THE DIRECTOR'S DESIGNEE shall order the charging party and the respondent to participate in compulsory mediation. Immediately after ~~such~~ THE DIRECTOR OR THE DIRECTOR'S DESIGNEE SERVES notice ~~has been given~~ ON THE RESPONDENT, the director OR THE DIRECTOR'S DESIGNEE shall endeavor to eliminate ~~such~~ THE discriminatory or unfair practice by conference, conciliation, and persuasion and by means of the compulsory mediation required by this subparagraph (II).

(c) ~~The director's subpoena powers in cases relating to allegations of unfair employment practices are repealed on July 1, 2009. Prior to such repeal, the director's subpoena powers in such cases shall be reviewed in connection with the scheduled review of the Colorado civil rights division, including the Colorado civil rights commission, as provided for in section 24-34-104.~~

(15) The charging party in any action may request THE DIVISION TO ISSUE a written notice of right to sue at any time prior to service of a notice and complaint pursuant to subsection (4) of this section. ~~Any~~ THE CHARGING PARTY SHALL MAKE THE request for notice of right to sue ~~shall be~~ in writing. THE DIVISION SHALL PROMPTLY GRANT a claimant's request for notice of right to sue made after the expiration of one hundred eighty days following the filing of the charge. ~~shall be granted promptly.~~ If a claimant makes a request for a notice of right to sue prior to the expiration of one hundred eighty days following the filing of the charge, ~~said request~~ THE DIVISION shall be granted GRANT THE REQUEST upon a determination by ~~the commission, a commissioner, or the administrative law judge~~ that the investigation of the charge will not be completed within one hundred eighty days following the filing of the charge. A notice of right to sue shall constitute final agency action and exhaustion of administrative remedies and proceedings pursuant to this part 3.

**SECTION 7.** 24-34-402 (1) (a), Colorado Revised Statutes, is amended to read:

**24-34-402. Discriminatory or unfair employment practices.** (1) It shall be a discriminatory or unfair employment practice:

(a) For an employer to refuse to hire, to discharge, to promote or demote, to harass during the course of employment, or to discriminate in matters of compensation, TERMS, CONDITIONS, OR PRIVILEGES OF EMPLOYMENT against any person otherwise qualified because of disability, race, creed, color, sex, sexual orientation, religion, age, national origin, or ancestry; but, with regard to a disability, it is not a discriminatory or an unfair employment practice for an employer to act as provided in this paragraph (a) if there is no reasonable accommodation that the employer can make with regard to the disability, the disability actually disqualifies the person from the job, and the disability has a significant impact on the job. For purposes of this paragraph (a), "harass" means to create a hostile work environment based upon an individual's race, national origin, sex, sexual orientation, disability, age, or religion. Notwithstanding the provisions of this paragraph (a), harassment is not an illegal act unless a complaint is filed with

the appropriate authority at the complainant's workplace and such authority fails to initiate a reasonable investigation of a complaint and take prompt remedial action if appropriate.

**SECTION 8.** 24-34-602 (1) and (2), Colorado Revised Statutes, are amended to read:

**24-34-602. Penalty and civil liability.** (1) Any person who violates ~~any of the provisions of section 24-34-601 by denying to any citizen, except for reasons applicable alike to all citizens of every disability, race, creed, color, sex, sexual orientation, marital status, national origin, or ancestry, and regardless of disability, race, creed, color, sex, sexual orientation, marital status, national origin, or ancestry, the full enjoyment of any of the accommodations, advantages, facilities, or privileges in said section enumerated or by aiding or inciting such denial, for every such offense,~~ shall forfeit and pay a sum of BE FINED not less than fifty dollars nor more than five hundred dollars ~~to the person aggrieved thereby to be recovered FOR EACH VIOLATION. A PERSON AGGRIEVED BY THE VIOLATION OF SECTION 24-34-601 SHALL BRING AN ACTION in any court of competent jurisdiction in the county where said offense was committed~~ THE VIOLATION OCCURRED. UPON FINDING A VIOLATION, THE COURT SHALL ORDER THE DEFENDANT TO PAY THE FINE TO THE AGGRIEVED PARTY.

(2) For each ~~offense described in subsection (1) of this section~~ VIOLATION OF SECTION 24-34-601, the person is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than ten dollars nor more than three hundred dollars, or by imprisonment in the county jail for not more than one year, or by both such fine and imprisonment.

**SECTION 9. Effective date - applicability.** This act shall take effect July 1, 2009, and shall apply to causes of action alleging discriminatory or unfair practices accruing on or after said date.

**SECTION 10. Safety clause.** The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: May 11, 2009