SENATE BILL 21-132

A BILL FOR AN ACT

CONCERNING THE REGULATION OF DIGITAL COMMUNICATIONS, AND,
IN CONNECTION THERewith, CREATING THE DIGITAL COMMUNICATIONS DIVISION AND THE DIGITAL COMMUNICATIONS COMMISSION.

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 creates the digital communications division (division) and the digital communications commission (commission) within the department of regulatory agencies. On an annual basis and for a
reasonable fee determined by the commission, the division shall register
digital communications platforms, which are certain
communications-oriented online businesses, such as social media
platforms or media-sharing platforms, that conduct business in Colorado
or own or operate services that are offered to Colorado residents. A
digital communications platform that fails to register with the division
commits a class 2 misdemeanor, punishable by a fine of up to $5,000 for
each day that the violation continues.

The division shall investigate and the commission may hold
hearings on claims filed with the division alleging that a digital
communications platform has allowed a person to engage in one or more
unfair or discriminatory digital communications practices on the platform,
which practices:

- Include practices that promote hate speech; undermine
election integrity; disseminate intentional disinformation,
conspiracy theories, or fake news; or authorize, encourage,
or carry out violations of users' privacy; and
- May include business, political, or social practices that are
conducted in a manner that a person aggrieved by the
practices can demonstrate are unfair or discriminatory to
the aggrieved person. Such practices, if done in an unfair
or discriminatory manner, might include:
  - Practices that target users for purposes of collecting
  and disseminating users' personal data, including
  users' sensitive data;
  - Profiling users based on their personal data
  collected;
  - Selling or authorizing others to use users' personal
data to provide location-based advertising or
targeted advertising; or
  - Using facial recognition software and other tracking
  technology.

If a person who files a complaint with the division exhausts all
administrative remedies and proceedings, the person may file a civil
action in district court alleging an unfair or discriminatory digital
communications practice.

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1 Be it enacted by the General Assembly of the State of Colorado:
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3 SECTION 1. In Colorado Revised Statutes, 24-1-122, add (2)(m)
4 as follows:
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6 24-1-122. Department of regulatory agencies - creation.
(2) The department of regulatory agencies shall consist of the following divisions:

   (m) THE DIGITAL COMMUNICATIONS DIVISION, THE HEAD OF WHICH IS THE DIRECTOR OF THE DIGITAL COMMUNICATIONS DIVISION. THE DIGITAL COMMUNICATIONS DIVISION, THE DIRECTOR, AND THE DIGITAL COMMUNICATIONS COMMISSION, CREATED BY PART 10 OF ARTICLE 34 OF THIS TITLE 24, SHALL EXERCISE THEIR POWERS AND PERFORM THEIR DUTIES AND FUNCTIONS AS IF TRANSFERRED BY A TYPE 1 TRANSFER.

SECTION 2. In Colorado Revised Statutes, 24-34-104, add (32)(a)(VI) as follows:

   24-34-104. General assembly review of regulatory agencies and functions for repeal, continuation, or reestablishment - legislative declaration - repeal. (32) (a) The following agencies, functions, or both, are scheduled for repeal on September 1, 2031:

   (VI) THE DIGITAL COMMUNICATIONS DIVISION AND THE DIGITAL COMMUNICATIONS COMMISSION CREATED IN Part 10 of this Article 34.

SECTION 3. In Colorado Revised Statutes, add part 10 to article 34 of title 24 as follows:

PART 10

DIGITAL COMMUNICATIONS

24-34-1001. Short title. The short title of this Part 10 is the "COLORADO DIGITAL COMMUNICATIONS ACT".

24-34-1002. Definitions. As used in this Part 10, unless the context otherwise requires:

   (1) "COMMISSION" means the digital communications commission created in section 24-34-1004.

   (2) "CONTROLLER" mean a person that, whether alone or
JOINTLY WITH OTHERS, DETERMINES THE PURPOSES FOR AND MEANS OF PROCESSING PERSONAL DATA.

(3) "DE-IDENTIFIED DATA" MEANS DATA THAT DO NOT IDENTIFY AN INDIVIDUAL AND WITH RESPECT TO WHICH THERE IS NO REASONABLE BASIS TO BELIEVE THAT THE INFORMATION CAN BE USED TO IDENTIFY AN INDIVIDUAL.

(4) "DEPARTMENT" MEANS THE DEPARTMENT OF REGULATORY AGENCIES CREATED IN SECTION 24-34-101.

(5) (a) "DIGITAL COMMUNICATIONS PLATFORM" OR "PLATFORM" MEANS A COMMUNICATIONS-ORIENTED ONLINE BUSINESS THAT:

(I) FACILITATES COMMUNICATIONS BETWEEN USERS AND ALLOWS USERS TO CREATE AND SHARE CONTENT WITH OTHER USERS ONLINE ACROSS THE PLATFORM;

(II) ALLOWS BUSINESSES TO ADVERTISE TO COLORADO RESIDENTS USING THE PLATFORM THROUGH THE USE OF GEOLOCATION TECHNOLOGY ACCESSED FROM USERS' ELECTRONIC DEVICES; AND

(III) CONDUCTS BUSINESS IN COLORADO OR OWNS OR OPERATES SERVICES THAT ARE OFFERED TO COLORADO RESIDENTS AND SATISFIES ONE OR BOTH OF THE FOLLOWING THRESHOLDS:

(A) IS A CONTROLLER OR PROCESSOR OF THE PERSONAL DATA OF ONE HUNDRED THOUSAND CONSUMERS OR MORE; OR

(B) DERIVES REVENUE OR RECEIVES A DISCOUNT ON THE PRICE OF GOODS OR SERVICES FROM THE SALE OF PERSONAL DATA AND IS A CONTROLLER OR PROCESSOR OF THE PERSONAL DATA OF TWENTY-FIVE THOUSAND CONSUMERS OR MORE.

(b) "DIGITAL COMMUNICATIONS PLATFORM" INCLUDES SOCIAL MEDIA PLATFORMS LIKE FACEBOOK, TWITTER, AND INSTAGRAM AND
MEDIA-SHARING PLATFORMS LIKE YOUTUBE AND TWITCH.

(c) "DIGITAL COMMUNICATIONS PLATFORM" DOES NOT INCLUDE MARKETPLACE FACILITATORS, AS DEFINED IN SECTION 39-26-102 (5.9), OR OTHER SERVICE-ORIENTED PLATFORMS LIKE TRANSPORTATION NETWORK COMPANIES, AS DEFINED IN SECTION 40-10.1-602 (3), OR SHORT-TERM RENTAL PLATFORMS LIKE AIRBNB.

(6) "DIRECTOR" MEANS THE DIRECTOR OF THE DIVISION APPOINTED PURSUANT TO SECTION 24-34-1003 (1).

(7) "DIVISION" MEANS THE DIGITAL COMMUNICATIONS DIVISION CREATED IN SECTION 24-34-1003.

(8) "ELECTRONIC DEVICE" MEANS A DEVICE THAT ENABLES ACCESS TO OR USE OF ELECTRONIC COMMUNICATIONS OR THE INTERNET.

(9) "GEOLOCATION TECHNOLOGY" MEANS TECHNOLOGY SUCH AS THE GLOBAL POSITIONING SYSTEM OR "GPS" OR AN INTERNET PROTOCOL ADDRESS OR "IP ADDRESS" USED TO IDENTIFY AND TRACK THE WHEREABOUTS OF AN ELECTRONIC DEVICE AND TO TRACK THE MOVEMENTS AND LOCATION OF THE USER FOR PURPOSES OF PROVIDING LOCATION-BASED SERVICES TO THE USER OR ALLOWING BUSINESSES TO CONDUCT LOCATION-BASED ADVERTISING OR MARKETING DIRECTED AT USERS IN A CERTAIN LOCATION.

(10) "LOCATION-BASED ADVERTISING" MEANS A FORM OF ADVERTISING IN WHICH A BUSINESS USES LOCATION-BASED SERVICES TO PROVIDE LOCATION-SPECIFIC ADVERTISEMENTS TO A USER ON THE USER’S ELECTRONIC DEVICE.

(11) "LOCATION-BASED SERVICES" MEANS SOFTWARE SERVICES THAT USE AN ELECTRONIC DEVICE’S GEOLOCATION TECHNOLOGY TO TRACK THE USER'S LOCATION AND PROVIDE THE USER TARGETED
INFORMATION OR SERVICES BASED ON THE USER'S LOCATION.

(12) "PERSONAL DATA":
(a) MEANS INFORMATION THAT IS LINKED OR REASONABLY LINKABLE TO AN IDENTIFIED OR IDENTIFIABLE INDIVIDUAL; AND
(b) DOES NOT INCLUDE DE-IDENTIFIED DATA OR PUBLICLY AVAILABLE INFORMATION.

(13) "PROCESSOR" MEANS A PERSON THAT PROCESSES PERSONAL DATA ON BEHALF OF A CONTROLLER.

(14) "PROFILEING" MEANS ANY FORM OF AUTOMATED PROCESSING OF PERSONAL DATA TO EVALUATE, ANALYZE, OR PREDICT PERSONAL ASPECTS CONCERNING AN IDENTIFIED OR IDENTIFIABLE INDIVIDUAL'S ECONOMIC SITUATION, HEALTH, PERSONAL PREFERENCES, INTERESTS, RELIABILITY, BEHAVIOR, LOCATION, OR MOVEMENTS.

(15) "PUBLICLY AVAILABLE INFORMATION" MEANS INFORMATION THAT IS LAWFULLY MADE AVAILABLE FROM FEDERAL, STATE, OR LOCAL GOVERNMENT RECORDS OR GENERALLY ACCESSIBLE OR WIDELY DISTRIBUTED MEDIA.

(16) "SENSITIVE DATA" MEANS:
(a) PERSONAL DATA REVEALING RACIAL OR ETHNIC ORIGIN, RELIGIOUS BELIEFS, A MENTAL OR PHYSICAL HEALTH CONDITION OR DIAGNOSIS, SEX LIFE OR SEXUAL ORIENTATION, OR CITIZENSHIP OR CITIZENSHIP STATUS; OR
(b) GENETIC OR BIOMETRIC DATA THAT MAY BE PROCESSED FOR THE PURPOSE OF UNIQUELY IDENTIFYING AN INDIVIDUAL.

(17) "TARGETED ADVERTISING":
(a) MEANS DISPLAYING TO A CONSUMER AN ADVERTISEMENT THAT IS SELECTED BASED ON PERSONAL DATA OBTAINED OR INFERRED OVER
TIME FROM THE CONSUMER'S ACTIVITIES ACROSS NONAFFILIATED
WEBSITES, APPLICATIONS, OR ONLINE SERVICES TO PREDICT CONSUMER
PREFERENCES OR INTERESTS; AND

(b) DOES NOT INCLUDE ADVERTISING TO A CONSUMER IN RESPONSE
TO THE CONSUMER'S REQUEST FOR INFORMATION OR FEEDBACK.

(18) "USER" MEANS AN ELECTRONIC DEVICE END USER.

24-34-1003. Digital communications division - director -
powers and duties. (1) THERE IS HEREBY CREATED WITHIN THE
DEPARTMENT THE DIGITAL COMMUNICATIONS DIVISION, THE HEAD OF
WHICH IS THE DIRECTOR OF THE DIVISION. THE EXECUTIVE DIRECTOR OF
THE DEPARTMENT SHALL APPOINT THE DIRECTOR PURSUANT TO SECTION
13 OF ARTICLE XII OF THE STATE CONSTITUTION.

(2) THE DIRECTOR SHALL APPOINT INVESTIGATORS AND OTHER
PERSONNEL AS MAY BE NECESSARY TO CARRY OUT THE FUNCTIONS AND
DUTIES OF THE DIVISION. THE DIRECTOR AND STAFF OF THE DIVISION
SHALL RECEIVE, INVESTIGATE, AND MAKE DETERMINATIONS ON CHARGES
ALLEGING UNFAIR AND DISCRIMINATORY DIGITAL COMMUNICATIONS
PRACTICES IN VIOLATION OF THIS PART 10.

24-34-1004. Digital communications commission - membership
- terms of office - compensation. (1) (a) THERE IS HEREBY CREATED
WITHIN THE DIVISION THE DIGITAL COMMUNICATIONS COMMISSION.

(b) THE COMMISSION CONSISTS OF THE FOLLOWING SEVEN
MEMBERS:

(I) THE CHIEF INFORMATION OFFICER OF THE OFFICE OF
INFORMATION TECHNOLOGY, APPOINTED PURSUANT TO SECTION
24-37.5-103, OR THE CHIEF INFORMATION OFFICER'S DESIGNEE;

(II) THE ATTORNEY GENERAL, ELECTED PURSUANT TO SECTION 1
OF ARTICLE IV OF THE STATE CONSTITUTION, OR THE ATTORNEY GENERAL'S DESIGNEE;

(III) FIVE MEMBERS WHOM THE GOVERNOR APPOINTS, WITH THE CONSENT OF THE SENATE IN ACCORDANCE WITH SECTION 6 OF ARTICLE IV OF THE STATE CONSTITUTION, AS FOLLOWS:

(A) TWO MEMBERS REPRESENTING THE BUSINESS COMMUNITY WHO DO NOT HAVE ANY DIRECT FINANCIAL AFFILIATION WITH A DIGITAL COMMUNICATIONS PLATFORM, WITH AT LEAST ONE MEMBER REPRESENTING A SMALL BUSINESS WITH FEWER THAN FIFTY EMPLOYEES; AND

(B) THREE MEMBERS FROM THE PUBLIC AT LARGE WHO DO NOT HAVE ANY DIRECT FINANCIAL AFFILIATION WITH A DIGITAL COMMUNICATIONS PLATFORM.

(c) (I) IN APPOINTING MEMBERS OF THE COMMISSION PURSUANT TO SUBSECTION (1)(b)(III) OF THIS SECTION, THE GOVERNOR SHALL STRIVE TO PROVIDE SOCIOECONOMIC, POLITICAL, AND GEOGRAPHIC DIVERSITY IN THE COMMISSION'S MEMBERSHIP, ENSURING THAT AT LEAST TWO OF THE APPOINTEES ARE FROM THE WESTERN SLOPE OR THE EASTERN PLAINS.

(II) THE APPOINTED MEMBERS OF THE COMMISSION SERVE FOUR-YEAR TERMS, EXCEPT AS PROVIDED IN SUBSECTION (1)(c)(III) OF THIS SECTION. APPOINTED MEMBERS MAY SERVE TWO TERMS ON THE COMMISSION, WHETHER CONSECUTIVE OR NONCONSECUTIVE.

(III) OF THE MEMBERS THAT THE GOVERNOR INITIALLY APPOINTS TO THE COMMISSION, ONE MEMBER APPOINTED PURSUANT TO SUBSECTION (1)(b)(III)(A) OF THIS SECTION AND ONE MEMBER APPOINTED PURSUANT TO SUBSECTION (1)(b)(III)(B) OF THIS SECTION SHALL SERVE AN INITIAL TWO-YEAR TERM AND A SUBSEQUENT FOUR-YEAR TERM.
(2) The governor shall fill vacancies on the commission by appointment, with the consent of the Senate in accordance with subsection (1)(b)(III) of this section, and the term of a member of the commission appointed to fill a vacancy is for the unexpired portion of the term for which the member is appointed.

(3) The governor may remove any appointed member of the commission from office for misconduct, incompetence, or neglect of duty.

(4) Appointed members of the commission shall receive a per diem allowance and shall be reimbursed for actual and necessary expenses that they incur while on official commission business, as provided in Section 12-20-103 (6).

(5) At their first meeting, the members of the commission shall appoint a chair and vice-chair. The commission may adopt, amend, or rescind rules for governing its meetings. Four members constitutes a quorum for purposes of conducting the business of the commission.

(6) The commission may use division staff to assist the commission in its work.

24-34-1005. Powers and duties of commission - rules. (1) The commission has the following powers and duties:

(a) To adopt, publish, amend, and rescind rules, in accordance with Section 24-4-103, that are reasonable and necessary for the implementation of this Part 10;

(b) To adopt rules to establish reasonable fees for the annual registration of digital communications platforms pursuant to Section 24-34-1006 (1)(a);
(c) To investigate and study the existence, character, causes, and extent of unfair and discriminatory digital communications practices and to formulate plans for the elimination of those practices by educational or other means;

(d) To hold hearings in accordance with subsection (2) of this section upon any complaint issued against a respondent pursuant to section 24-34-1007 (4); to subpoena witnesses and compel their attendance; to administer oaths and take the testimony of any person under oath; and to compel a respondent to produce for examination any books, papers, or records, whether in paper or electronic form, relating to any matter that is the subject of the complaint against the respondent;

(e) To issue publications and reports of investigations and research that in the commission's judgment will educate the public on, and provide recommendations on how to minimize adverse effects arising from, the use of digital communications platforms in the following practices:

(I) Unfair and discriminatory digital communications practices such as practices that promote hate speech; undermine election integrity; disseminate intentional disinformation, conspiracy theories, or fake news; or authorize, encourage, or carry out violations of users' privacy;

(II) Business, political, and social practices that target users for purposes of collecting and disseminating users' personal data, including users' sensitive data; profiling users based on their personal data collected; or selling or authorizing others to use users' personal data to provide
LOCATION-BASED ADVERTISING OR TARGETED ADVERTISING; AND

(III) THE USE OF FACIAL RECOGNITION SOFTWARE AND OTHER TRACKING TECHNOLOGY;

(f) TO RECOMMEND POLICIES REGARDING MEASURES TO ENSURE FAIR AND NONDISCRIMINATORY DIGITAL PLATFORM PRACTICES TO THE GOVERNOR AND SUBMIT RECOMMENDATIONS TO PERSONS IN THE PRIVATE SECTOR TO EFFECTUATE THE POLICIES;

(g) TO MAKE RECOMMENDATIONS TO THE GENERAL ASSEMBLY REGARDING PROPOSED LEGISLATION TO COMBAT THE UNFAIR AND DISCRIMINATORY DIGITAL COMMUNICATIONS PRACTICES LISTED IN SUBSECTION (1)(e)(I) OF THIS SECTION OR MINIMIZE OTHER ADVERSE EFFECTS ARISING FROM THE USE OF DIGITAL COMMUNICATIONS PLATFORMS WITH REGARD TO THE PRACTICES LISTED IN SUBSECTIONS (1)(e)(II) AND (1)(e)(III) OF THIS SECTION;

(h) WITHIN THE LIMITS OF ANY APPROPRIATIONS MADE FOR THE COMMISSION'S OPERATIONS, TO COOPERATE WITH AGENCIES AND ORGANIZATIONS, BOTH PUBLIC AND PRIVATE, WHOSE PURPOSES ARE CONSISTENT WITH THE COMMISSION'S PURPOSES SET FORTH IN THIS PART 10 TO PLAN AND CONDUCT EDUCATIONAL PROGRAMMING; AND

(i) TO ADOPT AN OFFICIAL SEAL.

(2) THE COMMISSION MAY HOLD A HEARING OR MAY ASSIGN A MEMBER OF THE COMMISSION OR ADMINISTRATIVE LAW JUDGE, APPOINTED PURSUANT TO PART 10 OF ARTICLE 30 OF THIS TITLE 24, TO PRESIDE OVER THE HEARING, SUBJECT TO APPROPRIATIONS FOR ADMINISTRATIVE LAW JUDGES MADE TO THE DEPARTMENT OF PERSONNEL. IF AN ADMINISTRATIVE LAW JUDGE IS NOT AVAILABLE WITHIN THE TIME LIMITS FOR HOLDING THE HEARING PURSUANT TO SECTION 24-34-1007 (4)(b), THE GOVERNOR, UPON
REQUEST OF THE COMMISSION, SHALL APPOINT AN ADMINISTRATIVE LAW
JUDGE TO BE PAID OUT OF MONEY APPROPRIATED TO THE DIVISION. IF A
WITNESS FAILS OR REFUSES TO OBEY A SUBPOENA ISSUED BY THE
COMMISSION, THE COMMISSION MAY PETITION THE DISTRICT COURT WITH
JURISDICTION FOR THE ISSUANCE OF A SUBPOENA. A REFUSAL TO OBEY A
SUBPOENA ISSUED BY THE DISTRICT COURT IS PUNISHABLE AS CONTEMPT.

(3) IN EXERCISING THE POWERS AND PERFORMING THE DUTIES AND
FUNCTIONS UNDER THIS PART 10, THE COMMISSION, THE DIVISION, AND
THE DIRECTOR SHALL PRESUME THAT THE CONDUCT OF ANY RESPONDENT
IS NOT UNFAIR OR DISCRIMINATORY UNTIL PROVEN OTHERWISE.

24-34-1006. Registration required - penalty - unfair or
discriminatory digital communications practices prohibited.
(1) (a) ON AND AFTER JANUARY 1, 2022, A DIGITAL COMMUNICATIONS
PLATFORM SHALL ANNUALLY REGISTER WITH THE DIVISION, IN THE FORM
AND MANNER DETERMINED BY THE DIVISION AND BY PAYMENT OF A FEE
IN AN AMOUNT THAT THE COMMISSION DETERMINES PURSUANT TO
SECTION 24-34-1005 (1)(b) WILL COVER THE DIVISION'S AND
COMMISSION'S DIRECT AND INDIRECT COSTS IN ENFORCING THIS PART 10.

(b) A DIGITAL COMMUNICATIONS PLATFORM THAT DOES NOT
REGISTER IN ACCORDANCE WITH THIS SUBSECTION (1) COMMITS A CLASS
2 MISDEMEANOR PUNISHABLE BY A FINE OF UP TO FIVE THOUSAND
DOLLARS FOR EACH DAY THAT THE VIOLATION CONTINUES.

(2) (a) IT IS AN UNFAIR OR DISCRIMINATORY DIGITAL
COMMUNICATIONS PRACTICE FOR A DIGITAL COMMUNICATIONS PLATFORM
TO ALLOW ANY OF THE FOLLOWING PRACTICES ON ITS PLATFORM:

(I) PRACTICES THAT PROMOTE HATE SPEECH;
(II) PRACTICES THAT UNDERMINE ELECTION INTEGRITY;
(III) Practices that disseminate intentional disinformation, conspiracy theories, or fake news; and

(IV) Practices that authorize, encourage, or carry out violations of users' privacy.

(b) It is an unfair or discriminatory digital communications practice for a digital communications platform to allow any of the following practices on its platform if the practice is conducted in a manner that a person aggrieved by the practice can demonstrate that the practice is unfair or discriminatory to the aggrieved person:

(I) Targeting users for purposes of collecting and disseminating users' personal data, including sensitive data;

(II) Profiling users based on their personal data collected;

(III) Selling or authorizing others to use users' personal data to provide location-based advertising or targeted advertising; and

(IV) Using facial recognition software or other tracking technology.

24-34-1007. Charge - complaint - hearing - procedure - exhaustion of administrative remedies - judicial review. (1) (a) A person claiming to be aggrieved by an unfair or discriminatory digital communications practice may, independently or through an attorney, make, sign, and file with the Division a verified written charge stating the name and address of the respondent alleged to have committed the unfair or discriminatory digital communications practice, setting forth the particulars of the
ALLEGED UNFAIR OR DISCRIMINATORY DIGITAL COMMUNICATIONS PRACTICE, AND INCLUDING ANY OTHER INFORMATION THAT THE DIVISION REQUIRES.

(b) In cases where the Commission, a member of the Commission, or the Attorney General determines that an alleged unfair or discriminatory digital communications practice imposes a significant societal or community impact, the Commission, a member of the Commission, or the Attorney General may make, sign, and file a charge alleging an unfair or discriminatory digital communications practice. The charge shall be filed in the same manner and shall contain the same information required for a charge filed by a person pursuant to subsection (1)(a) of this section. The remedy available for an unfair or discriminatory digital communications practice alleged by the Commission, a member of the Commission, or the Attorney General pursuant to this subsection (1)(b) is limited to equitable relief to eliminate the unfair or discriminatory digital communications practice.

(2) Once the Division receives a charge filed pursuant to subsection (1) of this section:

(a) the Division shall notify the respondent of the charge filed against the respondent; and

(b) the director, with the assistance of Division staff, shall promptly investigate the charge. The Director may subpoena witnesses and compel the testimony of witnesses and the production of books, papers, and records, whether in paper or electronic form, if the testimony, books, papers, or records...
SOUGHT ARE LIMITED TO MATTERS DIRECTLY RELATED TO THE CHARGE. A
SUBPOENA ISSUED PURSUANT TO THIS SUBSECTION (2)(b) IS ENFORCEABLE
IN THE DISTRICT COURT FOR THE DISTRICT IN WHICH THE ALLEGED UNFAIR
OR DISCRIMINATORY DIGITAL COMMUNICATIONS PRACTICE OCCURRED AND
SHALL BE ISSUED ONLY IF THE PERSON TO BE SUBPOENARED HAS REFUSED
OR FAILED, AFTER A PROPER REQUEST FROM THE DIRECTOR, TO PROVIDE
VOLUNTARILY TO THE DIRECTOR THE INFORMATION SOUGHT BY THE
SUBPOENA.

(3) (a) The director or the director's designee shall
determine, as promptly as possible upon investigation of the
matter, if probable cause exists for a charge alleged.

(b) If the director or the director's designee determines
that probable cause does not exist, the director or the
director's designee shall:

(I) Dismiss the charge and notify the person who filed the
charge and the respondent of the dismissal. The notice must
include an adviseement stating that:

(A) The charging party may appeal the dismissal by filing
an appeal with the commission within ten days after the date
that the notification was mailed;

(B) If the charging party wishes to file a civil action in
district court based on the alleged unfair or discriminatory
digital communications practice, the charging party must do so
within ninety days after the notice was mailed if the charging
party does not appeal the decision or within ninety days after
the commission notifies the parties that it has dismissed an
appeal of the matter; and
(C) If the charging party does not file an action within
the time limits set forth in subsection (3)(b)(I)(B) of this section,
the action is barred and a district court will not have
jurisdiction to hear the matter; and

(II) Not disclose to third parties the fact that the charge
was filed or the information gathered during the investigation.

(c) If the director or the director’s designee determines
that probable cause exists, the director or director’s designee
shall serve the respondent with written notice stating with
specificity the legal authority and jurisdiction of the
commission and the matters of fact and law asserted and shall
notify the commission of its determination.

(4) (a) Upon receiving a determination from the director
or the director’s designee that probable cause exists, the
commission, if it determines that the circumstances warrant,
shall issue and cause to be served in accordance with section
24-4-105 (2) a written notice and complaint requiring the
respondent to answer the charges at a formal hearing before
the commission, a member of the commission, or an administrative
law judge. The notice and complaint must state the time, place,
and nature of the hearing, the legal authority and jurisdiction
under which it is to be held, and the matters of fact and law
asserted.

(b) The commission, a member of the commission, or an
administrative law judge, as applicable, shall commence a
hearing within one hundred twenty days after service of the
written notice and complaint and shall hold the hearing in

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ACCORDANCE WITH SECTION 24-4-105.

(5) If the adjudicator at the hearing determines that the respondent engaged in an unfair or discriminatory digital communications practice, the commission may issue and cause to be served on the respondent an order requiring the respondent to cease and desist from the practice and to take action that the commission orders.

(6)(a) If written notice that a formal hearing will be held is not served within two hundred seventy days after the filing of the charge or if the hearing is not commenced within the one-hundred-twenty-day period required by subsection (4)(b) of this section, the commission's jurisdiction over the complaint ceases and the complainant may seek relief against the respondent by filing a civil action in the district court for the district in which the alleged unfair or discriminatory digital communications practice occurred. The complainant must file a civil action within ninety days after the date upon which the commission's jurisdiction ceased. If the complainant does not file a civil action within the ninety-day period, the action is barred and a district court does not have jurisdiction to hear the matter.

(b) A party may request an extension of any of the time periods set forth in this subsection (6) and the commission, a member of the commission, or an administrative law judge hearing the matter may grant the extension for good cause shown, but the period of all such extensions in a matter must not exceed ninety days granted to the complainant or ninety days...
GRANTED TO THE RESPONDENT OR, IF THERE ARE MULTIPLE PARTIES, ONE
HUNDRED EIGHTY DAYS TOTAL.

(7) ANY MEMBER OF THE COMMISSION AND ANY PERSON
PARTICIPATING IN GOOD FAITH IN MAKING A COMPLAINT OR REPORT OR IN
ANY INVESTIGATIVE OR ADMINISTRATIVE PROCEEDING AUTHORIZED BY
THIS PART 10 IS IMMUNE FROM LIABILITY IN ANY CIVIL ACTION BROUGHT
AGAINST THE PERSON FOR ACTS OCCURRING WHILE ACTING IN THE
PERSON'S CAPACITY AS A MEMBER OF THE COMMISSION OR AS A
PARTICIPANT IF THE PERSON WAS ACTING IN GOOD FAITH WITHIN THE
SCOPE OF THE PERSON'S RESPECTIVE CAPACITY, MADE A REASONABLE
EFFORT TO OBTAIN THE FACTS OF THE MATTER AS TO WHICH THE PERSON
ACTED, AND ACTED IN THE REASONABLE BELIEF THAT THE ACTION TAKEN
WAS WARRANTED BY THE FACTS.

(8) (a) A PERSON SHALL NOT FILE A CIVIL ACTION IN DISTRICT
COURT IN THIS STATE ALLEGING AN UNFAIR OR DISCRIMINATORY DIGITAL
COMMUNICATIONS PRACTICE PURSUANT TO THIS PART 10 WITHOUT
HAVING FIRST EXHAUSTED THE PROCEEDINGS AND REMEDIES AVAILABLE
UNDER THIS PART 10, UNLESS THE PERSON SHOWS BY CLEAR AND
CONVINCING EVIDENCE, IN AN ACTION FILED IN THE APPROPRIATE DISTRICT
COURT, THAT THE PERSON HAS HEALTH ISSUES OF SUCH A NATURE THAT
FIRST PURSUING ADMINISTRATIVE REMEDIES WOULD NOT PROVIDE TIMELY
AND REASONABLE RELIEF AND WOULD CAUSE IRREPARABLE HARM.

(b) (I) A PERSON WHO HAS FILED CHARGES PURSUANT TO
SUBSECTION (1) OF THIS SECTION MAY FILE A WRITTEN REQUEST THAT THE
DIVISION ISSUE A WRITTEN NOTICE OF RIGHT TO SUE AT ANY TIME BEFORE
SERVICE OF A NOTICE AND COMPLAINT HAS BEEN SERVED PURSUANT TO
SUBSECTION (4) OF THIS SECTION. THE DIVISION SHALL PROMPTLY GRANT

(II) A NOTICE OF RIGHT TO SUE CONSTITUTES A FINAL AGENCY ACTION AND EXHAUSTION OF ADMINISTRATIVE REMEDIES AND PROCEEDINGS PURSUANT TO THIS PART 10.

(9) A COMPLAINANT OR RESPONDENT CLAIMING TO BE AGGRIEVED BY A FINAL AGENCY ACTION SUCH AS A FINAL ORDER OF THE COMMISSION OR A REFUSAL TO ISSUE A FINAL ORDER MAY OBTAIN JUDICIAL REVIEW OF THE COMMISSION'S FINAL AGENCY ACTION PURSUANT TO PROCEEDINGS BROUGHT IN THE COURT OF APPEALS IN ACCORDANCE WITH SECTION 24-4-106.

24-34-1008. Division and commission subject to termination - repeal of part. THIS PART 10 IS REPEALED, EFFECTIVE SEPTEMBER 1, 2031. BEFORE THE REPEAL, THIS PART 10 IS SCHEDULED FOR REVIEW IN ACCORDANCE WITH SECTION 24-34-104.

SECTION 4. Act subject to petition - effective date - applicability. (1) This act takes effect January 1, 2022; except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within the ninety-day period after final adjournment of the general assembly, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November
2022 and, in such case, will take effect on the date of the official
declaration of the vote thereon by the governor.

(2) This act applies to conduct occurring on or after the applicable
effective date of this act.