

**Second Regular Session
Sixty-third General Assembly
STATE OF COLORADO**

REENGROSSED

*This Version Includes All Amendments
Adopted in the House of Introduction*

LLS NO. 02-0529.01 Christy Chase

SENATE BILL 02-074

SENATE SPONSORSHIP

Linkhart

HOUSE SPONSORSHIP

Veiga

Senate Committees

Business, Labor, and Finance
Appropriations

House Committees

A BILL FOR AN ACT

101 **CONCERNING THE EXPANSION OF EMPLOYMENT NONDISCRIMINATION**
102 **PROTECTIONS.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments that may be subsequently adopted.)

Adds sexual orientation and gender identity to the list of characteristics for which a person may not be discriminated against under state laws applying to:

- Employers' practices involving hiring, discharging, promoting, or demoting employees, the harassment of employees, and the compensation of employees;
- Employment agency practices involving listings, referrals, or complying with an employer's direct or indirect request

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
*Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.*

SENATE
3rd Reading Unamended
April 19, 2002

SENATE
Amended 2nd Reading
April 17, 2002

- to discriminate;
- Labor organization practices involving the exclusion, expulsion, or other discrimination in membership;
- Employer, employment agency, or labor organization practices involving the use of a discriminatory publication, application, or inquiry; and
- Apprenticeship training programs or other occupational instruction programs.

Excludes religious organizations from the definition of "employer" for purposes of complying with state employment nondiscrimination laws.

Defines terms.

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

2 **SECTION 1.** 24-34-401, Colorado Revised Statutes, is amended
3 BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS to
4 read:

5 **24-34-401. Definitions.** As used in this part 4, unless the context
6 otherwise requires:

7 (4.5) "GENDER IDENTITY" MEANS:

8 (a) HAVING A CHANGED GENDER AS A RESULT OF A SEX CHANGE
9 SURGERY; OR

10 (b) MANIFESTING, FOR REASONS OTHER THAN DRESS, AN IDENTITY
11 NOT TRADITIONALLY ASSOCIATED WITH ONE'S BIOLOGICAL MALENESS OR
12 FEMALENESS.

13 (7.5) "SEXUAL ORIENTATION" MEANS A PERSON'S ACTUAL OR
14 PERCEIVED ORIENTATION TOWARD HETEROSEXUALITY, HOMOSEXUALITY,
15 OR BISEXUALITY.

16 **SECTION 2.** 24-34-402 (1) (a), (1) (b), (1) (c), (1) (d), and (1)
17 (f), Colorado Revised Statutes, are amended, and the said 24-34-402 is
18 further amended BY THE ADDITION OF A NEW SUBSECTION, to
19 read:

1 **24-34-402. Discriminatory or unfair employment practices.**

2 (1) It shall be a discriminatory or unfair employment practice:

3 (a) For an employer to refuse to hire, to discharge, to promote or
4 demote, to harass during the course of employment, or to discriminate in
5 matters of compensation against any person otherwise qualified because
6 of disability, race, creed, color, sex, SEXUAL ORIENTATION, GENDER
7 IDENTITY, age, national origin, or ancestry; but, with regard to a
8 disability, it is not a discriminatory or an unfair employment practice for
9 an employer to act as provided in this paragraph (a) if there is no
10 reasonable accommodation that the employer can make with regard to the
11 disability, the disability actually disqualifies the person from the job, and
12 the disability has a significant impact on the job. For purposes of this
13 paragraph (a), "harass" means to create a hostile work environment based
14 upon an individual's race, national origin, sex, SEXUAL ORIENTATION,
15 GENDER IDENTITY, disability, age, or religion. Notwithstanding the
16 provisions of this paragraph (a), harassment is not an illegal act unless a
17 complaint is filed with the appropriate authority at the complainant's
18 workplace and such authority fails to initiate a reasonable investigation
19 of a complaint and take prompt remedial action if appropriate.

20 (b) For an employment agency to refuse to list and properly
21 classify for employment or to refer an individual for employment in a
22 known available job for which such individual is otherwise qualified
23 because of disability, race, creed, color, sex, SEXUAL ORIENTATION,
24 GENDER IDENTITY, age, national origin, or ancestry or for an employment
25 agency to comply with a request from an employer for referral of
26 applicants for employment if the request indicates either directly or
27 indirectly that the employer discriminates in employment on account of

1 disability, race, creed, color, sex, SEXUAL ORIENTATION, GENDER
2 IDENTITY, age, national origin, or ancestry; but, with regard to a
3 disability, it is not a discriminatory or an unfair employment practice for
4 an employment agency to refuse to list and properly classify for
5 employment or to refuse to refer an individual for employment in a
6 known available job for which such individual is otherwise qualified if
7 there is no reasonable accommodation that the employer can make with
8 regard to the disability, the disability actually disqualifies the applicant
9 from the job, and the disability has a significant impact on the job;

10 (c) For a labor organization to exclude any individual otherwise
11 qualified from full membership rights in such labor organization, or to
12 expel any such individual from membership in such labor organization,
13 or to otherwise discriminate against any of its members in the full
14 enjoyment of work opportunity because of disability, race, creed, color,
15 sex, SEXUAL ORIENTATION, GENDER IDENTITY, age, national origin, or
16 ancestry;

17 (d) For any employer, employment agency, or labor organization
18 to print or circulate or cause to be printed or circulated any statement,
19 advertisement, or publication, or to use any form of application for
20 employment or membership, or to make any inquiry in connection with
21 prospective employment or membership ~~which~~ THAT expresses, either
22 directly or indirectly, any limitation, specification, or discrimination as
23 to disability, race, creed, color, sex, SEXUAL ORIENTATION, GENDER
24 IDENTITY, age, national origin, or ancestry or intent to make any such
25 limitation, specification, or discrimination, unless based upon a bona fide
26 occupational qualification or required by and given to an agency of
27 government for security reasons;

1 (f) For any employer, labor organization, joint apprenticeship
2 committee, or vocational school providing, coordinating, or controlling
3 apprenticeship programs or providing, coordinating, or controlling
4 on-the-job training programs or other instruction, training, or retraining
5 programs:

6 (I) To deny to or withhold from any qualified person because of
7 disability, race, creed, color, sex, SEXUAL ORIENTATION, GENDER
8 IDENTITY, age, national origin, or ancestry the right to be admitted to or
9 participate in an apprenticeship training program, an on-the-job training
10 program, or any other occupational instruction, training, or retraining
11 program; but, with regard to a disability, it is not a discriminatory or an
12 unfair employment practice to deny or withhold the right to be admitted
13 to or participate in any such program if there is no reasonable
14 accommodation that can be made with regard to the disability, the
15 disability actually disqualifies the applicant from the program, and the
16 disability has a significant impact on participation in the program;

17 (II) To discriminate against any qualified person in pursuit of such
18 programs or to discriminate against such a person in the terms,
19 conditions, or privileges of such programs because of disability, race,
20 creed, color, sex, SEXUAL ORIENTATION, GENDER IDENTITY, age, national
21 origin, or ancestry;

22 (III) To print or circulate or cause to be printed or circulated any
23 statement, advertisement, or publication, or to use any form of application
24 for such programs, or to make any inquiry in connection with such
25 programs ~~which~~ THAT expresses, directly or indirectly, any limitation,
26 specification, or discrimination as to disability, race, creed, color, sex,
27 SEXUAL ORIENTATION, GENDER IDENTITY, age, national origin, or ancestry

1 or any intent to make any such limitation, specification, or discrimination,
2 unless based on a bona fide occupational qualification;

3 (5) FOR PURPOSES OF THIS SECTION, "EMPLOYER" DOES NOT
4 INCLUDE ANY RELIGIOUS ORGANIZATION OR ASSOCIATION, EXCEPT SUCH
5 ORGANIZATION OR ASSOCIATION THAT IS SUPPORTED IN WHOLE OR IN PART
6 BY MONEY RAISED BY TAXATION OR PUBLIC BORROWING.

7 **SECTION 3. Appropriation.** (1) In addition to any other
8 appropriation, there is hereby appropriated, out of any moneys in the
9 general fund not otherwise appropriated, to the department of regulatory
10 agencies, division of civil rights, for the fiscal year beginning July 1,
11 2002, the sum of seventy-five thousand five hundred forty-five dollars
12 (\$75,545) and 1.0 FTE, or so much thereof as may be necessary, for the
13 implementation of this act.

14 (2) In addition to any other appropriation, there is hereby
15 appropriated to the department of law, for the fiscal year beginning July
16 1, 2002, the sum of twenty-nine thousand two hundred fifteen dollars
17 (\$29,215) and 0.2 FTE, or so much thereof as may be necessary, for the
18 provision of legal services to the department of regulatory agencies
19 related to the implementation of this act. Said sum shall be from cash
20 funds exempt received from the department of regulatory agencies out of
21 the appropriation made in subsection (1) of this section.

22 (3) It is the intent of the general assembly that the general fund
23 appropriation in subsection (1) of this section for the implementation of
24 this act shall be derived from savings generated for the implementation
25 of the provisions of House Bill 02-1241, as enacted during the second
26 regular session of the sixty-third general assembly.

27 **SECTION 4. Effective date - applicability.** (1) This act shall

1 take effect July 1, 2002, and shall apply to employment practices engaged
2 in on or after said date; except that this act shall only take effect if:

3 (a) The final fiscal estimate for House Bill 02-1241, as reflected
4 in the appropriations clause for said act, shows a net general fund savings
5 that is equal to or greater than the general fund costs shown in section 3
6 of this act; and

7 (b) House Bill 02-1241 is enacted during the second regular
8 session of the sixty-third general assembly and becomes law.

9 **SECTION 5. Safety clause.** The general assembly hereby finds,
10 determines, and declares that this act is necessary for the immediate
11 preservation of the public peace, health, and safety.