

First Regular Session  
Sixty-seventh General Assembly  
STATE OF COLORADO

1.7.09

DRAFT

LLS NO. 09-0234.01 Christy Chase

SUNSET BILL

Sunset Process - Senate Judiciary Committee

**SHORT TITLE:** "Sunset Civil Rights Commission & Div"

**A BILL FOR AN ACT**

101 **CONCERNING THE CONTINUATION OF THE REGULATION OF CIVIL**  
102 **RIGHTS ISSUES.**

**Bill Summary**

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

**Sunset Process - Senate Judiciary Committee.** Implements the recommendations of the department of regulatory agencies in its sunset review of the Colorado civil rights division (division), the Colorado civil rights commission (commission), and the subpoena powers of the director of the division (director) as follows:

- *Recommendations 1 and 2.* Continues the commission and the division and their respective functions through July 1,

2018.

- *Recommendation 3.* Continues the subpoena powers of the director in employment discrimination cases, extends those powers to all other civil rights cases under the jurisdiction of the division and the commission, and eliminates the separate sunset review of the subpoena powers of the director.
- *Recommendation 4.* Authorizes the commission, a commissioner, or the attorney general to initiate a charge of a discriminatory or unfair practice in cases that indicate a significant societal or community impact and limits the remedy in such cases to equitable relief to eliminate the discriminatory or unfair practice.
- *Recommendation 5.* Authorizes the director to delegate certain tasks to division staff, including the ability to sign a determination of probable cause.
- *Recommendation 6.* Reassigns to the division some procedural tasks that are statutorily assigned to the commission but are currently performed by the division, including the intake and processing of complaints alleging a discriminatory or unfair practice and the issuance of right-to-sue letters.
- *Recommendation 7.* Eliminates the requirement that charges of discriminatory or unfair practices be filed in duplicate.
- *Recommendation 8.* Adds to the definition of "discriminatory or unfair employment practice" adverse employment actions that impact an employee's terms, conditions, or privileges of employment.
- *Recommendation 9.* Removes from the commission's jurisdiction cases in which an employee suffers an adverse employment action based on an inquiry about wages and instead allows the employee to sue directly in a court of competent jurisdiction.
- *Recommendation 10.* Harmonizes provisions relating to discrimination in places of public accommodation to ensure that the remedies apply to unlawful retaliation against persons who complain of unlawful discrimination in places of public accommodation.

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

2 **Recommendations 1 & 2**

1           **SECTION 1.** 24-34-304 (2), Colorado Revised Statutes, is  
2 amended to read:

3           **24-34-304. Division and commission subject to termination -**  
4 **repeal of part.** (2) This part 3 is repealed, effective July 1, 2009 2018.  
5 Prior to such repeal, the functions of the division and commission shall  
6 be reviewed as provided for in section 24-34-104.

7           **Recommendation 3**

8           **SECTION 2.** 24-34-306 (2) (a) and (2) (c), Colorado Revised  
9 Statutes, are amended to read:

10           **24-34-306. Charge - complaint - hearing - procedure -**  
11 **exhaustion of administrative remedies.** (2) (a) After the filing of a  
12 charge ALLEGING A DISCRIMINATORY OR UNFAIR PRACTICE AS DEFINED BY  
13 PARTS 4 TO 7 OF THIS ARTICLE, the director, with the assistance of the  
14 DIVISION'S staff, shall make a prompt investigation thereof. ~~If such~~  
15 ~~charge alleges an unfair employment practice as defined in part 4 of this~~  
16 ~~article or an unfair housing practice as defined in part 5 of this article, OF~~  
17 ~~THE CHARGE.~~ The director may subpoena witnesses and compel the  
18 testimony of witnesses and the production of books, papers, and records  
19 if the testimony, books, papers, and records sought are limited to matters  
20 directly related to the charge. Any subpoena issued pursuant to this  
21 paragraph (a) shall be enforceable in the district court for the district in  
22 which the alleged discriminatory or unfair practice occurred and shall be  
23 issued only if the person or entity to be subpoenaed has refused or failed,  
24 after a proper request from the director, to provide voluntarily to the  
25 director the information sought by the subpoena.

26           (c) ~~The director's subpoena powers in cases relating to allegations~~  
27 ~~of unfair employment practices are repealed on July 1, 2009. Prior to~~

1 ~~such repeal, the director's subpoena powers in such cases shall be~~  
2 ~~reviewed in connection with the scheduled review of the Colorado civil~~  
3 ~~rights division, including the Colorado civil rights commission, as~~  
4 ~~provided for in section 24-34-104.~~

5 **Recommendations 1, 2, & 3**

6 **SECTION 3. Repeal.** 24-34-104 (40) (f), Colorado Revised  
7 Statutes, is repealed as follows:

8 **24-34-104. General assembly review of regulatory agencies**  
9 **and functions for termination, continuation, or reestablishment.**

10 (40) The following agencies, functions, or both, shall terminate on July  
11 1, 2009:

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

17 **SECTION 4.** 24-34-104 (49), Colorado Revised Statutes, is  
18 amended BY THE ADDITION OF A NEW PARAGRAPH to read:

19 **24-34-104. General assembly review of regulatory agencies**  
20 **and functions for termination, continuation, or reestablishment.**

21 (49) The following agencies, functions, or both, shall terminate on July  
22 1, 2018:

23 (c) THE COLORADO CIVIL RIGHTS DIVISION, INCLUDING THE  
24 COLORADO CIVIL RIGHTS COMMISSION, CREATED BY PART 3 OF THIS  
25 ARTICLE.

26 **SECTION 5.** 24-34-306 (1), (2) (b), and (15), Colorado Revised  
27 Statutes, are amended to read:

1     **Recommendations 6 & 7**

2             **24-34-306. Charge - complaint - hearing - procedure -**  
3     **exhaustion of administrative remedies.** (1) (a) Any person claiming  
4     to be aggrieved by a discriminatory or unfair practice as defined by parts  
5     4 to 7 of this article may, by himself OR HERSELF or THROUGH his OR HER  
6     attorney-at-law, make, sign, and file with the ~~commission~~ DIVISION a  
7     verified written charge ~~in duplicate which shall state~~ STATING the name  
8     and address of the respondent alleged to have committed the  
9     discriminatory or unfair practice, ~~and which shall set~~ SETTING forth the  
10    particulars thereof OF THE ALLEGED DISCRIMINATORY OR UNFAIR  
11    PRACTICE, and ~~contain such~~ CONTAINING ANY other information as may  
12    be required by the ~~commission~~ DIVISION.

13    **Recommendation 4**

14            (b) The commission, a commissioner, or the attorney general ON  
15    ITS OWN MOTION may ~~in like manner~~ make, sign, and file such A charge  
16    ALLEGING A DISCRIMINATORY OR UNFAIR PRACTICE IN CASES WHERE THE  
17    COMMISSION, A COMMISSIONER, OR THE ATTORNEY GENERAL DETERMINES  
18    THAT THE ALLEGED DISCRIMINATORY OR UNFAIR PRACTICE IMPOSES A  
19    SIGNIFICANT SOCIETAL OR COMMUNITY IMPACT. THE CHARGE SHALL BE  
20    FILED IN THE SAME MANNER AND SHALL CONTAIN THE SAME INFORMATION  
21    AS REQUIRED FOR A CHARGE FILED BY AN INDIVIDUAL PURSUANT TO  
22    PARAGRAPH (a) OF THIS SUBSECTION (1). WHEN THE COMMISSION, A  
23    COMMISSIONER, OR THE ATTORNEY GENERAL FILES A CHARGE PURSUANT  
24    TO THIS PARAGRAPH (b), THE REMEDY AVAILABLE FOR THE  
25    DISCRIMINATORY OR UNFAIR PRACTICE SHALL BE LIMITED TO EQUITABLE  
26    RELIEF TO ELIMINATE THE DISCRIMINATORY OR UNFAIR PRACTICE.

27    **Recommendation 6**

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

4 **Recommendation 5**

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

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

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

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

27 (C) That, if the charging party does not file an action within the

1 time limits specified in sub-subparagraph (B) of this subparagraph (I),  
2 ~~such~~ THE action will be barred, and no district court shall have  
3 jurisdiction to hear ~~such~~ THE action.

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

16 **Recommendation 6**

17 (15) The charging party in any action may request THE DIVISION  
18 TO ISSUE a written notice of right to sue at any time prior to service of a  
19 notice and complaint pursuant to subsection (4) of this section. ~~Any~~ THE  
20 CHARGING PARTY SHALL MAKE THE request for notice of right to sue ~~shall~~  
21 ~~be in writing.~~ THE DIVISION SHALL PROMPTLY GRANT a claimant's request  
22 for notice of right to sue made after the expiration of one hundred eighty  
23 days following the filing of the charge. ~~shall be granted promptly.~~ If a  
24 claimant makes a request for a notice of right to sue prior to the expiration  
25 of one hundred eighty days following the filing of the charge, ~~said request~~  
26 THE DIVISION shall ~~be granted~~ GRANT THE REQUEST upon a determination  
27 ~~by the commission, a commissioner, or the administrative law judge that~~

1 the investigation of the charge will not be completed within one hundred  
2 eighty days following the filing of the charge. A notice of right to sue  
3 shall constitute final agency action and exhaustion of administrative  
4 remedies and proceedings pursuant to this part 3.

5 **Recommendation 6**

6 **SECTION 6.** 24-34-302, Colorado Revised Statutes, is amended  
7 to read:

8 **24-34-302. Civil rights division - director - powers and duties.**

9 (1) There is hereby created within the department of regulatory agencies  
10 a division of state government to be known and designated as the  
11 Colorado civil rights division, the head of which shall be the director of  
12 the Colorado civil rights division. ~~which office is hereby created.~~ The  
13 director shall be appointed by the executive director of the department of  
14 regulatory agencies pursuant to section 13 of article XII of the state  
15 constitution, and the executive director shall give good faith consideration  
16 to the recommendations of the commission prior to making ~~such~~ THE  
17 appointment.

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

24 **SECTION 7. Repeal.** 24-34-305 (1) (b), Colorado Revised  
25 Statutes, is repealed as follows:

26 **24-34-305. Powers and duties of commission.** (1) The  
27 commission has the following powers and duties:



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

3           **Recommendation 8**

4           **SECTION 8.** 24-34-402 (1) (a), Colorado Revised Statutes, is  
5 amended to read:

6           **24-34-402. Discriminatory or unfair employment practices.**

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

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

26           **Recommendation 9**

27           **SECTION 9.** Part 4 of article 34 of title 24, Colorado Revised

1 Statutes, is amended BY THE ADDITION OF A NEW SECTION to  
2 read:

3 **24-34-402.3. Unlawful action against employees - wage**  
4 **information - remedy.** (1) UNLESS OTHERWISE PERMITTED BY FEDERAL  
5 LAW, IT SHALL BE A DISCRIMINATORY OR UNFAIR EMPLOYMENT PRACTICE  
6 FOR AN EMPLOYER TO:

7 (a) DISCHARGE, DISCIPLINE, DISCRIMINATE AGAINST, COERCE,  
8 INTIMIDATE, THREATEN, OR INTERFERE WITH AN EMPLOYEE OR OTHER  
9 PERSON BECAUSE THE PERSON INQUIRED ABOUT, DISCLOSED, COMPARED,  
10 OR OTHERWISE DISCUSSED THE EMPLOYEE'S WAGES;

11 (b) REQUIRE NONDISCLOSURE OF AN EMPLOYEE'S WAGES AS A  
12 CONDITION OF EMPLOYMENT; OR

13 (c) REQUIRE AN EMPLOYEE TO SIGN A WAIVER OR OTHER  
14 DOCUMENT THAT PURPORTS TO DENY AN EMPLOYEE THE RIGHT TO  
15 DISCLOSE HIS OR HER WAGE INFORMATION.

16 (2) THIS SECTION SHALL NOT APPLY TO EMPLOYERS WHO ARE  
17 EXEMPT FROM THE "NATIONAL LABOR RELATIONS ACT", 29 U.S.C. SEC.  
18 151 ET SEQ., AS AMENDED.

19 (3) NOTWITHSTANDING ANY OTHER PROVISION OF PARTS 3 AND 4  
20 OF THIS ARTICLE TO THE CONTRARY, THE SOLE REMEDY FOR ANY PERSON  
21 CLAIMING TO BE AGGRIEVED BY A DISCRIMINATORY OR UNFAIR  
22 EMPLOYMENT PRACTICE AS DEFINED IN THIS SECTION SHALL BE TO BRING  
23 A CIVIL SUIT FOR DAMAGES OR EQUITABLE RELIEF, OR BOTH, IN ANY  
24 DISTRICT COURT OF COMPETENT JURISDICTION. THE PERSON MAY CLAIM  
25 AS DAMAGES ALL WAGES AND BENEFITS THAT WOULD HAVE BEEN DUE THE  
26 PERSON UP TO AND INCLUDING THE DATE OF THE JUDGMENT HAD THE  
27 DISCRIMINATORY OR UNFAIR EMPLOYMENT PRACTICE NOT OCCURRED.

1 NOTHING IN THIS SECTION SHALL BE CONSTRUED TO RELIEVE SUCH PERSON  
2 FROM THE OBLIGATION TO MITIGATE HIS OR HER DAMAGES.

3 **SECTION 10. Repeal.** 24-34-402 (1) (i), Colorado Revised  
4 Statutes, is repealed as follows:

5 **24-34-402. Discriminatory or unfair employment practices.**

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

7 (i) ~~Unless otherwise permitted by federal law, for an employer to~~  
8 ~~discharge, discipline, discriminate against, coerce, intimidate, threaten,~~  
9 ~~or interfere with any employee or other person because the employee~~  
10 ~~inquired about, disclosed, compared, or otherwise discussed the~~  
11 ~~employee's wages; to require as a condition of employment nondisclosure~~  
12 ~~by an employee of his or her wages; or to require an employee to sign a~~  
13 ~~waiver or other document that purports to deny an employee the right to~~  
14 ~~disclose his or her wage information. This paragraph (i) shall not apply~~  
15 ~~to employers who are exempt from the provisions of the "National Labor~~  
16 ~~Relations Act", 29 U.S.C. sec. 151 et seq.~~

17 **Recommendation 10**

18 **SECTION 11.** 24-34-602 (1) and (2), Colorado Revised Statutes,  
19 are amended to read:

20 **24-34-602. Penalty and civil liability.** (1) Any person who  
21 violates any of the provisions of section 24-34-601 by denying to any  
22 citizen, except for reasons applicable alike to all citizens of every  
23 disability, race, creed, color, sex, sexual orientation, marital status,  
24 national origin, or ancestry, and regardless of disability, race, creed, color,  
25 sex, sexual orientation, marital status, national origin, or ancestry, the full  
26 enjoyment of any of the accommodations, advantages, facilities, or  
27 privileges in said section enumerated or by aiding or inciting such denial,

1 ~~for every such offense, shall forfeit and pay a sum of~~ BE FINED not less  
2 than fifty dollars nor more than five hundred dollars ~~to the person~~  
3 ~~aggrieved thereby to be recovered~~ FOR EACH VIOLATION. A PERSON  
4 AGGRIEVED BY THE VIOLATION OF SECTION 24-34-601 SHALL BRING AN  
5 ACTION in any court of competent jurisdiction in the county where ~~said~~  
6 ~~offense was committed~~ THE VIOLATION OCCURRED. UPON FINDING A  
7 VIOLATION, THE COURT SHALL ORDER THE DEFENDANT TO PAY THE FINE  
8 TO THE AGGRIEVED PARTY.

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

15 **SECTION 12. Effective date.** This act shall take effect July 1,  
16 2009.

17 **SECTION 13. Safety clause.** The general assembly hereby finds,  
18 determines, and declares that this act is necessary for the immediate  
19 preservation of the public peace, health, and safety.