

**First Regular Session
Seventy-third General Assembly
STATE OF COLORADO**

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

LLS NO. 21-0558.01 Christy Chase x2008

SENATE BILL 21-176

SENATE SPONSORSHIP

Winter and Pettersen, Jaquez Lewis, Buckner, Danielson, Ginal, Gonzales, Hansen, Kolker, Story

HOUSE SPONSORSHIP

Lontine and Gray, Bernett, Caraveo, Cutter, Esgar, Froelich, Jackson, Jodeh, Kipp, McLachlan, Titone, Young

Senate Committees

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House Committees

A BILL FOR AN ACT

101 **CONCERNING PROTECTIONS FOR COLORADO WORKERS AGAINST**
102 **DISCRIMINATORY EMPLOYMENT PRACTICES.**

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>.)

For purposes of addressing discriminatory or unfair employment practices pursuant to Colorado's anti-discrimination laws, the bill:

- Allows an employment discrimination claim to be brought in any court of competent jurisdiction in the county or district where the alleged discriminatory or unfair employment practice occurred and allows an individual to

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.

file a civil action, without otherwise exhausting administrative proceedings and remedies, as long as the individual either files a charge with the Colorado civil rights commission (commission) or serves a written demand for the relief on the individual's employer and allows the employer 14 days to respond;

- Expands the definition of "employee" to include individuals in domestic service; individuals who perform a service for a price, including independent contractors, subcontractors, and their employees; and individuals who offer services or labor without pay;
- Adds new definitions of "caregiver", "care recipient", "child", "minor child", "harassment", "hostile work environment", and "independent contractor";
- Adds protections from discriminatory or unfair employment practices for individuals based on their "marital status" or "caregiver status";
- Specifies that it is a discriminatory or unfair employment practice for an employer to fail to initiate an investigation of a complaint or fail to take prompt remedial action if appropriate;
- Prohibits certain preemployment medical examinations, imposes limitations on inquiries and examinations about an employee's disability during employment, and specifies that violations of these prohibitions and limitations constitute discriminatory or unfair employment practices;
- Expands the time limit to file a charge with the commission from 6 months to 300 days after the alleged discriminatory or unfair employment practice occurred;
- Repeals the limits on remedies in cases involving age discrimination; and
- Limits the ability of an employer to require confidentiality of claims once a charge is filed with the commission.

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

2 **SECTION 1. Short title.** The short title of this act is the
3 **"Protecting Opportunities and Workers' Rights (POWR) Act"**.

4 **SECTION 2.** In Colorado Revised Statutes, 24-34-303, **amend**
5 **(1)(b)(II)(A)** as follows:

6 **24-34-303. Civil rights commission - membership.**

1 (1) (b) (II) In addition to the qualifications specified in subsection
2 (1)(b)(I) of this section, the members of the commission must at all times
3 include:

4 (A) At least four members who are members of groups of people
5 who have been or who might be discriminated against because of
6 disability, race, creed, color, sex, sexual orientation, national origin,
7 ancestry, marital status, CAREGIVER STATUS, religion, or age; and

8 **SECTION 3.** In Colorado Revised Statutes, **repeal** 24-34-304 as
9 follows:

10 **24-34-304. Division and commission subject to termination -**
11 **repeal of part.** (1) The provisions of section 24-34-104, concerning the
12 termination schedule for regulatory bodies of the state unless extended as
13 provided in that section, are applicable to the division and the commission
14 created by this part 3.

15 (2) This part 3 is repealed, effective September 1, 2027. Before its
16 repeal, the functions of the division and commission are scheduled for
17 review in accordance with section 24-34-104.

18 **SECTION 4.** In Colorado Revised Statutes, 24-34-306, **amend**
19 (1)(a), (2)(b) introductory portion, (2)(b)(I) introductory portion,
20 (2)(b)(I)(B), (2)(b)(I)(C), (11), and (14) as follows:

21 **24-34-306. Charge - complaint - hearing - procedure -**
22 **exhaustion of administrative remedies.** (1) (a) (I) Any person claiming
23 to be aggrieved by a discriminatory or unfair practice as defined by parts
24 4 to 7 of this article ARTICLE 34 may, by himself or herself or through his
25 or her THE PERSON'S attorney-at-law, make, sign, and file with the division
26 a verified written charge stating the name and address of the respondent
27 alleged to have committed the discriminatory or unfair practice, setting

1 forth the particulars of the alleged discriminatory or unfair practice, and
2 containing any other information required by the division.

3 (II) THE DIVISION SHALL INCLUDE ON ANY CHARGE FORM OR
4 CHARGE INTAKE MECHANISM AN OPTION TO SELECT "HARASSMENT" AS A
5 BASIS OR DESCRIPTION OF THE TYPE OF DISCRIMINATORY OR UNFAIR
6 EMPLOYMENT PRACTICE THAT IS THE SUBJECT OF THE CHARGE.

7 (2) (b) The director or the director's designee, who shall MUST be
8 an employee of the division, shall determine as promptly as possible
9 whether probable cause exists for crediting the allegations of the charge
10 and shall follow one of the following courses of action:

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

16 (B) That, if the charging party wishes to file a civil action in a
17 district court OF COMPETENT JURISDICTION IN A DISTRICT in this state OR,
18 IF APPLICABLE IN CASES ALLEGING A VIOLATION OF PART 4 OF THIS
19 ARTICLE 34, IN A COURT OF COMPETENT JURISDICTION IN A COUNTY IN THIS
20 STATE based on the alleged discriminatory or unfair practice that was the
21 subject of the charge filed with the commission, ~~he or she must do so~~ THE
22 CHARGING PARTY MUST FILE THE ACTION: Within ninety days after the
23 date the notice specified in this ~~subparagraph (F)~~ SUBSECTION (2)(b)(I) is
24 mailed if ~~he or she~~ THE CHARGING PARTY does not file an appeal with the
25 commission pursuant to ~~sub-subparagraph (A) of this subparagraph (F)~~
26 SUBSECTION (2)(b)(I)(A) OF THIS SECTION; or within ninety days after the
27 date the notice that the commission has dismissed the appeal specified in

1 sub-subparagraph (A) of this subparagraph (F) SUBSECTION (2)(b)(I)(A)
2 OF THIS SECTION is mailed;

3 (C) That, if the charging party does not file an action within the
4 time limits specified in sub-subparagraph (B) of this subparagraph (F)
5 SUBSECTION (2)(b)(I)(B) OF THIS SECTION, the action will be barred, and
6 no district court shall have HAS jurisdiction to hear the action.

7 (11) If written notice that a formal hearing will be held is not
8 served within two hundred seventy days after the filing of the charge, if
9 the complainant has requested and received a notice of right to sue
10 pursuant to subsection (15) of this section, or if the hearing is not
11 commenced within the one-hundred-twenty-day period prescribed by
12 subsection (4) of this section, the jurisdiction of the commission over the
13 complaint shall cease CEASES, and the complainant may seek the relief
14 authorized under this part 3 and parts 4 to 7 of this article ARTICLE 34
15 against the respondent by filing a civil action in the district court for the
16 A COURT OF COMPETENT JURISDICTION IN THE district OR, IF APPLICABLE
17 IN COMPLAINTS ALLEGING A VIOLATION OF PART 4 OF THIS ARTICLE 34, IN
18 THE COUNTY in which the alleged discriminatory or unfair practice
19 occurred. Such THE action must be filed within ninety days of AFTER the
20 date upon which the jurisdiction of the commission ceased, and if not so
21 filed, it shall be IS barred and the district court shall have HAS no
22 jurisdiction to hear such THE action. If any party requests the extension of
23 any time period prescribed by this subsection (11), such THE extension
24 may be granted for good cause by the commission, a commissioner, or the
25 administrative law judge, as the case may be, but the total period of all
26 such extensions to either the respondent or the complainant shall MUST
27 not exceed ninety days each, and, in the case of multiple parties, the total

1 period of all extensions shall MUST not exceed one hundred eighty days.

2 (14) No A person may NOT file a civil action in a district court in
3 this state based on an alleged discriminatory or unfair practice prohibited
4 by parts 4 to 7 of this article PARTS 5 TO 7 OF THIS ARTICLE 34 OR, IN
5 CASES ALLEGING A DISCRIMINATORY OR UNFAIR EMPLOYMENT PRACTICE
6 PROHIBITED BY PART 4 OF THIS ARTICLE 34, IN A COURT OF COMPETENT
7 JURISDICTION IN THE DISTRICT OR COUNTY IN WHICH THE ALLEGED
8 DISCRIMINATORY OR UNFAIR EMPLOYMENT PRACTICE OCCURRED without
9 first exhausting the proceedings and remedies available to him THE
10 PERSON under this part 3 unless he THE PERSON shows, in an action filed
11 in the appropriate district court, by clear and convincing evidence, his THE
12 PERSON'S ill health, which is of such a nature that pursuing administrative
13 remedies would not provide timely and reasonable relief and would cause
14 irreparable harm.

15 SECTION 5. In Colorado Revised Statutes, add 24-34-310 as
16 follows:

17 24-34-310. Training and education programs for employers -
18 commission to develop. IN ADDITION TO ANY EDUCATION AND OUTREACH
19 DUTIES SPECIFIED IN SECTION 24-34-305, THE COMMISSION SHALL
20 DEVELOP SAMPLE TRAINING AND EDUCATION PROGRAMS REGARDING THE
21 PREVENTION OF HARASSMENT AND DISCRIMINATION IN THE WORKPLACE,
22 BYSTANDER INTERVENTION, AND WORKPLACE CIVILITY. WITHIN SIX
23 MONTHS AFTER THE EFFECTIVE DATE OF THIS SECTION, THE COMMISSION
24 SHALL DEVELOP THE TRAINING AND EDUCATION PROGRAMS AND MAKE
25 THE PROGRAMS AVAILABLE TO EMPLOYERS, AT NO COST, ON THE
26 DIVISION'S WEBSITE AND IN OTHER MANNERS THAT ENABLE EMPLOYERS TO
27 ACCESS THE PROGRAMS.

1 **SECTION 6. In Colorado Revised Statutes, add 24-34-400.2 as**
2 **follows:**

3 **24-34-400.2. Legislative declaration. (1) THE GENERAL**
4 **ASSEMBLY FINDS THAT:**

5 **(a) ALL COLORADANS SHOULD HAVE AN EQUAL OPPORTUNITY TO**
6 **SUCCEED IN THE WORKPLACE AND ARE ENTITLED TO A WORKPLACE THAT**
7 **IS FREE FROM DISCRIMINATION, HOSTILITY, OR HARASSMENT BASED ON**
8 **THEIR PROTECTED STATUS;**

9 **(b) WHEN EMPLOYEES HAVE A SAFE WORKPLACE THAT IS FREE**
10 **FROM HARASSMENT AND DISCRIMINATION, THOSE EMPLOYEES ARE MORE**
11 **PRODUCTIVE AND ARE MORE INCLINED TO REMAIN IN THEIR JOBS, AND**
12 **EMPLOYERS BENEFIT FROM INCREASED EMPLOYEE PRODUCTIVITY AND**
13 **RETENTION;**

14 **(c) WHILE MANY EMPLOYERS HAVE MADE GREAT STRIDES IN**
15 **IMPROVING WORKPLACE ENVIRONMENTS BY MAKING THEM FREE FROM**
16 **HARASSMENT AND DISCRIMINATION SINCE THE FIRST ITERATION OF THIS**
17 **PART 4 WAS ENACTED IN 1951, MANY EMPLOYEES IN THIS STATE STILL**
18 **EXPERIENCE HARASSMENT AND DISCRIMINATION IN THE WORKPLACE,**
19 **RESULTING IN MENTAL, PHYSICAL, AND ECONOMIC HARM;**

20 **(d) WITH REGARD TO SEXUAL HARASSMENT IN THE WORKPLACE,**
21 **RECENT STUDIES AND REPORTS, INCLUDING THE 2018 HISCOX WORKPLACE**
22 **HARASSMENT STUDY AND A 2020 ISSUE BRIEF FROM THE CENTER FOR**
23 **WOMEN AND WORK IN THE RUTGERS SCHOOL OF MANAGEMENT AND**
24 **LABOR RELATIONS ENTITLED "ECONOMIC IMPACTS OF SEXUAL**
25 **HARASSMENT: COMBATING SEXUAL HARASSMENT CAN FURTHER GENDER**
26 **EQUALITY", HAVE SHOWN THAT:**

27 **(I) BASED ON DATA FROM A STUDY ON HARASSMENT IN THE**

1 WORKPLACE CONDUCTED BY A SPECIAL TASK FORCE OF THE UNITED
2 STATES EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, UP TO
3 EIGHTY-FIVE PERCENT OF ALL WOMEN HAVE EXPERIENCED SOME FORM OF
4 SEXUAL HARASSMENT WHILE AT WORK, AND, IN ABOUT TWELVE PERCENT
5 OF CASES, THE HARASSMENT OCCURRED ON A DAILY OR WEEKLY BASIS;

6 (II) UP TO THIRTY-ONE PERCENT OF PEOPLE SAY THAT NO ACTION
7 WAS TAKEN ON THEIR CLAIM OF SEXUAL HARASSMENT, EVEN THOUGH
8 INCIDENTS OCCURRED FREQUENTLY; AND

9 (III) FIFTY-THREE PERCENT OF EMPLOYEES WHO EXPERIENCED
10 SEXUAL HARASSMENT WERE TOO AFRAID TO REPORT THE UNWELCOME
11 BEHAVIOR;

12 (e) IT IS CRITICAL THAT EMPLOYERS ENGAGE IN PREVENTIVE AND
13 CORRECTIVE ACTIONS TO ELIMINATE WORKPLACE DISCRIMINATION AND
14 HARASSMENT AND ENSURE A SAFE WORKPLACE ENVIRONMENT FOR ALL
15 THEIR EMPLOYEES; AND

16 (f) COURTS SHOULD APPLY THE LAW CONSISTENTLY TO ALL
17 WORKPLACES.

18 (2) ADDITIONALLY, THE GENERAL ASSEMBLY:

19 (a) FINDS THAT THE "SEVERE OR PERVASIVE" STANDARD CREATED
20 BY COURTS TO DETERMINE IF HARASSMENT AT WORK IS A DISCRIMINATORY
21 OR UNFAIR EMPLOYMENT PRACTICE DOES NOT TAKE INTO ACCOUNT THE
22 REALITIES OF THE WORKPLACE OR THE HARM THAT WORKPLACE
23 HARASSMENT CAUSES; AND

24 (b) REJECTS THE "SEVERE OR PERVASIVE" STANDARD FOR PROOF
25 OF WORKPLACE HARASSMENT IN FAVOR OF A STANDARD THAT PROHIBITS
26 UNWELCOME HARASSMENT.

27 (3) THE GENERAL ASSEMBLY FURTHER FINDS AND DECLARES THAT:

1 (a) IT IS THE PUBLIC POLICY OF THE STATE TO ENCOURAGE:
2 (I) EMPLOYERS TO ADOPT EQUAL EMPLOYMENT OPPORTUNITY
3 POLICIES TO PREVENT AND DISINCENTIVIZE ILLEGAL DISCRIMINATION AND
4 HARASSMENT; AND
5 (II) THE FREE REPORTING, DISCUSSION, AND EXPOSURE OF
6 DISCRIMINATORY OR UNFAIR EMPLOYMENT PRACTICES IN ORDER TO
7 BETTER PROTECT EMPLOYEES AND DISCOURAGE DISCRIMINATORY OR
8 UNFAIR EMPLOYMENT PRACTICES; AND
9 (b) ATTEMPTS TO INTERFERE WITH EMPLOYEES' ABILITY TO
10 COMMUNICATE ABOUT AND REPORT ALLEGED DISCRIMINATORY OR UNFAIR
11 EMPLOYMENT PRACTICES ARE CONTRARY TO THE PUBLIC POLICY OF THE
12 STATE.

13 **SECTION 7. In Colorado Revised Statutes, 24-34-401, amend**
14 **(2); and add (1.3), (1.5), (1.7), (4.5), and (6.3) as follows:**

15 **24-34-401. Definitions. As used in this part 4, unless otherwise**
16 **defined in section 24-34-301 or unless the context otherwise requires:**

17 (1.3) "CAREGIVER" MEANS AN INDIVIDUAL WHO PROVIDES DIRECT
18 AND ONGOING CARE TO A MINOR CHILD OR CARE RECIPIENT.

19 (1.5) "CARE RECIPIENT" MEANS AN INDIVIDUAL WHO:

20 (a) (I) HAS A MENTAL OR PHYSICAL ILLNESS, INJURY, OR HEALTH
21 CONDITION;

22 (II) NEEDS TO OBTAIN A MEDICAL DIAGNOSIS, CARE, OR
23 TREATMENT FOR A MENTAL OR PHYSICAL ILLNESS, INJURY, OR HEALTH
24 CONDITION; OR

25 (III) NEEDS TO OBTAIN PREVENTIVE MEDICAL CARE;

26 (b) IS A FAMILY MEMBER, AS DEFINED IN SECTION 8-13.3-503 (11),
27 OF THE CAREGIVER OR RESIDES IN THE CAREGIVER'S HOUSEHOLD; AND

1 (c) RELIES ON THE CAREGIVER FOR MEDICAL CARE OR TO MEET THE
2 NEEDS OF DAILY LIVING.

3 (1.7) "CHILD" MEANS A BIOLOGICAL, ADOPTED, OR FOSTER CHILD;
4 A STEPCCHILD; A LEGAL WARD; A CHILD OF A DOMESTIC PARTNER; OR A
5 CHILD TO WHOM THE CAREGIVER STANDS IN LOCO PARENTIS.

6 (2)(a) "Employee" means any person INDIVIDUAL employed by an
7 employer. ~~except a person in the domestic service of any person.~~

8 (b) (I) FOR PURPOSES OF THIS PART 4 ONLY, AN INDIVIDUAL WHO
9 PERFORMS SERVICES FOR PAY FOR ANOTHER IS DEEMED AN EMPLOYEE,
10 IRRESPECTIVE OF WHETHER THE COMMON-LAW RELATIONSHIP OF MASTER
11 AND SERVANT EXISTS, UNLESS IT IS PROVED BY A PREPONDERANCE OF THE
12 EVIDENCE THAT THE INDIVIDUAL IS:

13 (A) FREE FROM CONTROL AND DIRECTION IN THE PERFORMANCE OF
14 THE SERVICE, BOTH UNDER THE CONTRACT FOR PERFORMANCE OF THE
15 SERVICE AND IN FACT; AND

16 (B) CUSTOMARILY ENGAGED IN AN INDEPENDENT TRADE,
17 OCCUPATION, PROFESSION, OR BUSINESS RELATED TO THE SERVICE
18 PERFORMED.

19 (II) FOR PURPOSES OF THIS PART 4 ONLY, TO PROVE THAT AN
20 INDIVIDUAL IS NOT AN EMPLOYEE AND IS ENGAGED IN AN INDEPENDENT
21 TRADE, OCCUPATION, PROFESSION, OR BUSINESS AND IS FREE FROM
22 CONTROL AND DIRECTION IN THE PERFORMANCE OF THE SERVICE, THE
23 PERSON FOR WHOM THE SERVICES ARE PERFORMED MUST SHOW BY A
24 PREPONDERANCE OF THE EVIDENCE THAT:

25 (A) THE CONDITIONS SPECIFIED IN SECTION 8-70-115 (1)(c) AND
26 (1)(d) HAVE BEEN SATISFIED; AND

27 (B) THE INDIVIDUAL PERFORMING THE SERVICES AND THE PERSON

1 FOR WHOM THE SERVICES ARE PERFORMED EXECUTED A SIGNED, WRITTEN
2 AGREEMENT UNDER WHICH THE PERSON FOR WHOM THE SERVICES ARE
3 PERFORMED UNAMBIGUOUSLY AGREES THAT, DURING THE PERFORMANCE
4 OF THE AGREEMENT, THE PERSON FOR WHOM THE SERVICES ARE
5 PERFORMED WILL NOT DISCRIMINATE AGAINST OR HARASS THE INDIVIDUAL
6 BECAUSE OF DISABILITY, RACE, CREED, COLOR, SEX, SEXUAL ORIENTATION,
7 GENDER IDENTITY, GENDER EXPRESSION, MARITAL STATUS, CAREGIVER
8 STATUS, RELIGION, AGE, NATIONAL ORIGIN, OR ANCESTRY.

9 (III) IF THE PERSON FOR WHOM THE SERVICES ARE PERFORMED
10 SATISFIES THE REQUIREMENTS OF SUBSECTION (2)(b)(II) OF THIS SECTION,
11 THE INDIVIDUAL PERFORMING THE SERVICES FOR THE PERSON WILL NOT BE
12 DEEMED AN EMPLOYEE FOR PURPOSES OF THIS PART 4 ONLY. A
13 DETERMINATION PURSUANT TO THIS SUBSECTION (2)(b) THAT AN
14 INDIVIDUAL IS NOT AN EMPLOYEE FOR PURPOSES OF THIS PART 4 DOES NOT
15 AFFECT THE RIGHTS OR LIABILITIES OF THE INDIVIDUAL PERFORMING
16 SERVICES OR THE PERSON FOR WHOM THE SERVICES ARE PERFORMED
17 UNDER THE AGREEMENT OR ANY OTHER LAW.

18 (4.5) (a) "HARASS" OR "HARASSMENT" MEANS TO SUBJECT AN
19 INDIVIDUAL TO UNWELCOME VERBAL, WRITTEN, OR PHYSICAL CONDUCT,
20 WHERE THE FOLLOWING FACTORS ARE MET:

21 (I) THE CONDUCT IS RELATED TO THE INDIVIDUAL'S DISABILITY,
22 RACE, CREED, COLOR, SEX, SEXUAL ORIENTATION, GENDER IDENTITY,
23 GENDER EXPRESSION, MARITAL STATUS, CAREGIVER STATUS, RELIGION,
24 AGE, NATIONAL ORIGIN, OR ANCESTRY; AND

25 (II) (A) SUBMISSION TO THE CONDUCT IS MADE EITHER EXPLICITLY
26 OR IMPLICITLY A TERM OR CONDITION OF THE INDIVIDUAL'S EMPLOYMENT;

27 (B) SUBMISSION TO OR REJECTION OF THE CONDUCT IS USED AS A

1 BASIS FOR EMPLOYMENT DECISIONS AFFECTING THE INDIVIDUAL; OR

2 (C) WHEN TAKEN AS A WHOLE, THE CONDUCT WOULD BE
3 OFFENSIVE TO A REASONABLE PERSON WITH THE SAME OR SIMILAR
4 CHARACTERISTICS AS THE INDIVIDUAL SUBJECTED TO THE CONDUCT AND
5 WAS OFFENSIVE TO THE INDIVIDUAL.

6 (b) WHETHER THE CONDUCT WOULD BE OFFENSIVE TO A
7 REASONABLE PERSON WITH THE SAME OR SIMILAR CHARACTERISTICS AS
8 THE INDIVIDUAL SUBJECTED TO THE CONDUCT MUST BE DETERMINED BY
9 A REVIEW OF THE TOTALITY OF THE CIRCUMSTANCES OF THE CONDUCT,
10 INCLUDING:

11 (I) THE TYPE OF CONDUCT;
12 (II) THE NATURE OF THE CONDUCT; AND
13 (III) THE FREQUENCY OF THE CONDUCT, RECOGNIZING THAT A
14 SINGLE ACT OF HARASSMENT MAY BE OFFENSIVE TO A REASONABLE
15 PERSON IN THE TOTALITY OF THE CIRCUMSTANCES.

16 (c) WHETHER THE CONDUCT WAS OFFENSIVE TO THE INDIVIDUAL
17 MUST BE DETERMINED BY A REVIEW OF THE TOTALITY OF THE
18 CIRCUMSTANCES OF THE CONDUCT, INCLUDING:

19 (I) THE IDENTITY OF THE INDIVIDUAL ENGAGING IN THE CONDUCT;
20 AND
21 (II) WHETHER THE INDIVIDUAL WHO WAS SUBJECTED TO THE
22 CONDUCT FELT EXPLICIT OR IMPLICIT PRESSURE TO CONDONE, ENCOURAGE,
23 OR PARTICIPATE IN THE CONDUCT.

24 (6.3) "MINOR CHILD" MEANS A CHILD WHO IS UNDER EIGHTEEN
25 YEARS OF AGE.

26 **SECTION 8.** In Colorado Revised Statutes, 24-34-402, **amend**
27 **(1) introductory portion, (1)(a), (1)(b), (1)(c), (1)(d), and (1)(f); and add**

1 (1)(j) and (1.5) as follows:

2 **24-34-402. Discriminatory or unfair employment practices.**

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

4 (a) (I) For an employer to refuse to hire, to discharge, to promote
5 or demote, to harass during the course of employment, or to discriminate
6 in matters of compensation, terms, conditions, or privileges of
7 employment against any person INDIVIDUAL otherwise qualified because
8 of disability, race, creed, color, sex, sexual orientation, MARITAL STATUS,
9 CAREGIVER STATUS, religion, age, national origin, or ancestry; but, with
10 regard to a disability, it is not a discriminatory or an unfair employment
11 practice for an employer to act as provided in this paragraph (a)
12 SUBSECTION (1)(a) if there is no reasonable accommodation that the
13 employer can make with regard to the disability, the disability actually
14 disqualifies the person INDIVIDUAL from the job, and the disability has a
15 significant impact on the job. For purposes of this paragraph (a), "harass"
16 means to create a hostile work environment based upon an individual's
17 race, national origin, sex, sexual orientation, disability, age, or religion.
18 Notwithstanding the provisions of this paragraph (a), harassment is not
19 an illegal act unless a complaint is filed with the appropriate authority at
20 the complainant's workplace and such authority fails to initiate a
21 reasonable investigation of a complaint and take prompt remedial action
22 if appropriate.

23 (II) FOR A HARASSMENT CLAIM UNDER THIS SUBSECTION (1)(a):

24 (A) THE LEGAL STANDARD FOR HARASSMENT DOES NOT VARY BY
25 TYPE OF WORKPLACE. IT IS IRRELEVANT THAT A PARTICULAR OCCUPATION
26 MAY HAVE BEEN CHARACTERIZED BY A GREATER FREQUENCY OF
27 DISCRIMINATORY COMMENTS OR CONDUCT IN THE PAST.

1 (B) THE CONDUCT DOES NOT NEED TO BE SEVERE OR PERVASIVE TO
2 CONSTITUTE A DISCRIMINATORY OR UNFAIR EMPLOYMENT PRACTICE
3 UNDER THIS SUBSECTION (1)(a).

4 (C) IT SHALL BE AN AFFIRMATIVE DEFENSE IF AN EMPLOYER
5 DEMONSTRATES THAT WHEN THE EMPLOYER KNEW OR SHOULD HAVE
6 KNOWN OF THE HARASSMENT, THE EMPLOYER TOOK PROMPT,
7 REASONABLE, REMEDIAL ACTION TO END THE HARASSMENT, DETER
8 FUTURE HARASSERS, AND PROTECT EMPLOYEES.

9 (b) For an employment agency to refuse to list and properly
10 classify for employment or to REFUSE TO refer an individual for
11 employment in a known available job for which ~~such~~ THE individual is
12 otherwise qualified because of disability, race, creed, color, sex, sexual
13 orientation, MARITAL STATUS, CAREGIVER STATUS, religion, age, national
14 origin, or ancestry or for an employment agency to comply with a request
15 from an employer for referral of applicants for employment if the request
16 indicates either directly or indirectly that the employer discriminates in
17 employment on account of disability, race, creed, color, sex, sexual
18 orientation, MARITAL STATUS, CAREGIVER STATUS, religion, age, national
19 origin, or ancestry; but, with regard to a disability, it is not a
20 discriminatory or an unfair employment practice for an employment
21 agency to refuse to list and properly classify for employment or to refuse
22 to refer an individual for employment in a known available job for which
23 ~~such~~ THE individual is otherwise qualified if there is no reasonable
24 accommodation that the employer can make with regard to the disability,
25 the disability actually disqualifies the applicant from the job, and the
26 disability has a significant impact on the job;

27 (c) For a labor organization to exclude any individual otherwise

1 qualified from full membership rights in such THE labor organization, or
2 to expel any such individual from membership in such THE labor
3 organization, or to otherwise discriminate against any of its members in
4 the full enjoyment of work opportunity because of disability, race, creed,
5 color, sex, sexual orientation, MARITAL STATUS, CAREGIVER STATUS,
6 religion, age, national origin, or ancestry;

7 (d) For any employer, employment agency, or labor organization
8 to print or circulate or cause to be printed or circulated any statement,
9 advertisement, or publication, or to use any form of CONTRACT OR
10 application for employment, WORK, or membership, or to make any
11 inquiry in connection with A POTENTIAL CONTRACT OR prospective
12 employment, WORK, or membership that expresses, either directly or
13 indirectly, any limitation, specification, or discrimination as to disability,
14 race, creed, color, sex, sexual orientation, MARITAL STATUS, CAREGIVER
15 STATUS, religion, age, national origin, or ancestry or intent to make any
16 such limitation, specification, or discrimination, unless based upon ON a
17 bona fide occupational qualification or required by and given to an
18 agency of government for security reasons;

19 (f) For any employer, labor organization, joint apprenticeship
20 committee, or vocational school providing, coordinating, or controlling
21 apprenticeship programs or providing, coordinating, or controlling
22 on-the-job training programs or other instruction, training, or retraining
23 programs;

24 (I) To deny to or withhold from any qualified person INDIVIDUAL,
25 because of disability, race, creed, color, sex, sexual orientation, MARITAL
26 STATUS, CAREGIVER STATUS, religion, age, national origin, or ancestry, the
27 right to be admitted to or participate in an apprenticeship training

1 program, an on-the-job training program, or any other occupational
2 instruction, training, or retraining program; but, with regard to a
3 disability, it is not a discriminatory or an unfair employment practice to
4 deny or withhold the right to be admitted to or participate in any such
5 program if there is no reasonable accommodation that can be made with
6 regard to the disability, the disability actually disqualifies the applicant
7 from the program, and the disability has a significant impact on
8 participation in the program;

9 (II) To discriminate against any qualified ~~person~~ INDIVIDUAL in
10 pursuit of such programs or to discriminate against ~~such a person~~ THE
11 INDIVIDUAL in the terms, conditions, or privileges of such programs
12 because of disability, race, creed, color, sex, sexual orientation, MARITAL
13 STATUS, CAREGIVER STATUS, religion, age, national origin, or ancestry; OR

14 (III) To print or circulate or cause to be printed or circulated any
15 statement, advertisement, or publication, or to use any form of application
16 for such programs, or to make any inquiry in connection with such
17 programs that expresses, directly or indirectly, any limitation,
18 specification, or discrimination as to disability, race, creed, color, sex,
19 sexual orientation, MARITAL STATUS, CAREGIVER STATUS, religion, age,
20 national origin, or ancestry or any intent to make any such limitation,
21 specification, or discrimination, unless based on a bona fide occupational
22 qualification;

23 (j) FOR AN EMPLOYER TO FAIL TO CONDUCT A REASONABLE
24 INVESTIGATION OF AN EMPLOYEE'S COMPLAINT OF HARASSMENT,
25 DISCRIMINATION, RETALIATION, OR ANY COMBINATION OF HARASSMENT,
26 DISCRIMINATION, OR RETALIATION OR TO FAIL TO TAKE PROMPT,
27 REASONABLE, REMEDIAL ACTION IN RESPONSE TO A COMPLAINT.

1 (1.5) WHEN AN EMPLOYEE CLAIMS THAT A SUPERVISOR HAS
2 UNLAWFULLY HARASSED THAT EMPLOYEE, THE EMPLOYER CAN AVOID
3 LIABILITY ONLY IF IT ESTABLISHES THAT:

4 (a) THE EMPLOYER HAS ESTABLISHED A PROGRAM THAT IS
5 REASONABLY DESIGNED TO END THE HARASSMENT, DETER FUTURE
6 HARASSERS, AND PROTECT EMPLOYEES FROM HARASSMENT;

7 (b) THE EMPLOYER HAS COMMUNICATED THE EXISTENCE AND
8 DETAILS OF THE PROGRAM SPECIFIED IN SUBSECTION (1.5)(a) OF THIS
9 SECTION TO BOTH ITS SUPERVISORY AND NONSUPERVISORY EMPLOYEES;

10 (c) NO EMPLOYEE HAS SUBMITTED A CHARGE OF RETALIATION FOR
11 A COMPLAINT OF ALLEGED UNLAWFUL HARASSMENT WITH THE DIVISION
12 OR THE UNITED STATES EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
13 WITHIN THE PRIOR SIX YEARS; AND

14 (d) THE EMPLOYEE HAS UNREASONABLY FAILED TO TAKE
15 ADVANTAGE OF THE EMPLOYER'S PROGRAM SPECIFIED IN SUBSECTION
16 (1.5)(a) OF THIS SECTION, AS ESTABLISHED BY THE TOTALITY OF THE
17 CIRCUMSTANCES.

18 **SECTION 9.** In Colorado Revised Statutes, **amend** 24-34-403 as
19 follows:

20 **24-34-403. Time limits on filing of charges.** Any charge alleging
21 a violation of this part 4 ~~shall~~ MUST be filed with the commission
22 pursuant to section 24-34-306 within ~~six months~~ THREE HUNDRED DAYS
23 after the alleged discriminatory or unfair employment practice occurred,
24 and if IT IS not so filed, it ~~shall be~~ IS barred.

25 **SECTION 10.** In Colorado Revised Statutes, 24-34-405, **amend**
26 (3)(a); and **repeal** (3)(g) as follows:

27 **24-34-405. Relief authorized - short title.** (3) (a) In addition to

1 the relief available pursuant to subsection (2) of this section, and except
2 as provided in paragraph (g) of this subsection (3); in a civil action
3 brought by a plaintiff under this part 4 against a defendant who is found
4 to have engaged in an intentional discriminatory or unfair employment
5 practice, the plaintiff may recover compensatory and punitive damages as
6 specified in this subsection (3). The court shall not award a plaintiff
7 compensatory or punitive damages when the defendant is found to have
8 engaged in an employment practice that is unlawful solely because of its
9 disparate impact.

10 (g) In a civil action involving a claim of discrimination based on
11 age, the plaintiff is entitled only to the relief authorized in subsection (2)
12 of this section and in 29 U.S.C. sec. 626 (b) and 29 U.S.C. sec. 216 (b) if
13 the court finds that the defendant engaged in a discriminatory or unfair
14 employment practice based on age. If, in addition to alleging
15 discrimination based on age, the plaintiff alleges discrimination based on
16 any other factor specified in section 24-34-402 (1), this paragraph (g)
17 does not preclude a plaintiff from recovering the relief authorized by this
18 section for that discrimination claim.

19 **SECTION 11.** In Colorado Revised Statutes, add 24-34-407 and
20 24-34-408 as follows:

21 **24-34-407. Nondisclosure agreements - requirements for**
22 **enforcement - prior charges against an employer - access.** (1) (a) ON
23 AND AFTER THE EFFECTIVE DATE OF THIS SECTION, A PROVISION IN AN
24 AGREEMENT BETWEEN AN EMPLOYER AND AN EMPLOYEE THAT LIMITS THE
25 ABILITY OF AN EMPLOYEE TO DISCLOSE OR DISCUSS, EITHER ORALLY OR IN
26 WRITING, ALLEGED DISCRIMINATORY OR UNFAIR EMPLOYMENT PRACTICES,
27 WHICH PROVISION IS REFERRED TO IN THIS SECTION AS A "NONDISCLOSURE

1 PROVISION", IS VOID UNLESS:
2 (I) THE NONDISCLOSURE PROVISION:
3 (A) WAS FIRST PROPOSED BY THE EMPLOYEE; AND
4 (B) APPLIES EQUALLY TO ALL PARTIES TO THE AGREEMENT;
5 (II) AN ADDENDUM, SIGNED BY ALL PARTIES TO THE AGREEMENT
6 AND ATTESTING TO COMPLIANCE WITH THIS SUBSECTION (1), IS ATTACHED
7 TO THE AGREEMENT;
8 (III) THE NONDISCLOSURE PROVISION DOES NOT RESTRAIN THE
9 EMPLOYEE FROM DISCLOSING THE UNDERLYING FACTS OF THE ALLEGED
10 DISCRIMINATORY OR UNFAIR EMPLOYMENT PRACTICE:
11 (A) TO THE EMPLOYEE'S IMMEDIATE FAMILY, RELIGIOUS ADVISOR,
12 MEDICAL OR MENTAL HEALTH PROVIDER, LEGAL COUNSEL, FINANCIAL
13 ADVISOR, OR TAX PREPARER; OR
14 (B) AS REQUIRED BY LAW; AND
15 (IV) THE AGREEMENT INCLUDES A CONDITION THAT ANY
16 MATERIAL MISREPRESENTATION BY THE EMPLOYER OR THE INDIVIDUAL OR
17 INDIVIDUALS WHO ENGAGED IN THE ALLEGED DISCRIMINATORY OR UNFAIR
18 EMPLOYMENT PRACTICE ABOUT THE COMPLAINING EMPLOYEE VOIDS THE
19 NONDISCLOSURE PROVISION AND ANY ASSOCIATED LIQUIDATED DAMAGES
20 FOR VIOLATIONS OF THE NONDISCLOSURE PROVISION, AS THE
21 NONDISCLOSURE PROVISION APPLIES TO THE EMPLOYEE, BUT THE
22 REMAINDER OF THE AGREEMENT REMAINS ENFORCEABLE.
23 (b) IN ANY CIVIL ACTION INVOLVING A CLAIM OF A
24 DISCRIMINATORY OR UNFAIR EMPLOYMENT PRACTICE, A PLAINTIFF MAY
25 PRESENT EVIDENCE THAT THE EMPLOYER AGAINST WHOM THE ACTION WAS
26 FILED ENTERED INTO ONE OR MORE AGREEMENTS THAT INCLUDED A
27 NONDISCLOSURE PROVISION INVOLVING THE CONDUCT OF THE SAME

1 INDIVIDUAL OR INDIVIDUALS WHO ARE ALLEGED IN THE ACTION TO HAVE
2 ENGAGED IN THE DISCRIMINATORY OR UNFAIR EMPLOYMENT PRACTICE. IF
3 SUCH EVIDENCE IS PRESENTED, THE COURT SHALL ALLOW THE JURY TO
4 CONSIDER THE EVIDENCE IN SUPPORT OF AN AWARD OF PUNITIVE
5 DAMAGES.

6 (2) (a) UPON THE FILING OF A CHARGE OF A DISCRIMINATORY OR
7 UNFAIR EMPLOYMENT PRACTICE PURSUANT TO SECTION 24-34-306(2), THE
8 DIVISION SHALL PROVIDE TO THE CHARGING PARTY ANY OTHER CHARGES
9 FILED WITH THE DIVISION AGAINST THE SAME RESPONDENT, INCLUDING
10 THE RESPONDENT'S POSITION STATEMENT PROVIDED TO THE DIVISION IN
11 RESPONSE TO A PREVIOUS CHARGE.

12 (b) BEFORE PROVIDING PRIOR CHARGES TO A CHARGING PARTY
13 PURSUANT TO THIS SECTION, THE DIVISION SHALL REDACT THE NAME OF
14 THE CHARGING PARTY IN ANY PREVIOUS CHARGE AGAINST THE SAME
15 RESPONDENT.

16 **24-34-408. Employer training requirements - records - notices**
17 **to employees - rules - enforcement. (1) (a) (I) STARTING ONE YEAR**
18 **AFTER THE EFFECTIVE DATE OF THIS SECTION, AN EMPLOYER WITH TWENTY**
19 **OR MORE EMPLOYEES SHALL PROVIDE TRAINING AND EDUCATION TO ALL**
20 **EMPLOYEES REGARDING HARASSMENT AND DISCRIMINATION PREVENTION,**
21 **BYSTANDER INTERVENTION, AND CIVILITY IN THE WORKPLACE.**

22 (II) THE EMPLOYER SHALL PROVIDE THE TRAINING AND EDUCATION
23 TO:

24 (A) NEW EMPLOYEES WITHIN ONE HUNDRED EIGHTY DAYS AFTER
25 HIRE; AND

26 (B) TO ALL EMPLOYEES AT LEAST ANNUALLY.

27 (b) THE EMPLOYER SHALL INCLUDE AS PART OF THE TRAINING AND

1 EDUCATION REQUIRED BY THIS SECTION THE NAMES OF AT LEAST TWO
2 INDIVIDUALS OR POSITIONS WITHIN THE ORGANIZATION TO WHOM
3 HARASSING OR DISCRIMINATORY CONDUCT SHOULD BE REPORTED.

4 (c) AN EMPLOYER MAY USE THE PROGRAMS DEVELOPED BY THE
5 COMMISSION OR ANY OTHER TRAINING AND EDUCATION PROGRAMS THAT
6 ADDRESS HARASSMENT AND DISCRIMINATION PREVENTION, BYSTANDER
7 INTERVENTION, AND CIVILITY IN THE WORKPLACE.

8 (d) AN EMPLOYER SHALL MAINTAIN RECORDS, IN A FORM AND
9 MANNER DETERMINED BY THE COMMISSION BY RULE, DEMONSTRATING
10 COMPLIANCE WITH THIS SECTION. AN EMPLOYER SHALL MAINTAIN THE
11 RECORDS FOR AT LEAST THREE YEARS AND SHALL MAKE THE RECORDS
12 AVAILABLE TO THE DIVISION UPON REQUEST.

13 (e) EMPLOYERS WITH FEWER THAN TWENTY EMPLOYEES ARE
14 ENCOURAGED TO PROVIDE THE TRAINING AND EDUCATION SPECIFIED IN
15 THIS SUBSECTION (1) TO THEIR EMPLOYEES.

16 (2) (a) ALL EMPLOYERS SHALL INFORM EMPLOYEES, AT THE TIME
17 OF HIRE, AND INCLUDE AS PART OF ANY EMPLOYEE HANDBOOK, MANUAL,
18 OR OTHER MATERIALS OUTLINING THE TERMS AND CONDITIONS OF THE
19 EMPLOYMENT RELATIONSHIP, THE FOLLOWING:

20 (I) THAT EMPLOYEES SHOULD EXPECT A WORKPLACE THAT IS FREE
21 FROM HARASSMENT AND DISCRIMINATION;

22 (II) THE NAME AND CONTACT INFORMATION FOR THE INDIVIDUALS
23 OR POSITIONS WITHIN THE ORGANIZATION TO WHOM AN EMPLOYEE IS TO
24 REPORT ANY HARASSING OR DISCRIMINATORY CONDUCT; AND

25 (III) THE CONTACT INFORMATION FOR THE DIVISION FOR PURPOSES
26 OF FILING A CHARGE IF THE EMPLOYEE IS NOT COMFORTABLE REPORTING
27 TO THE ORGANIZATION'S DESIGNATED INDIVIDUAL.

1 (b) EMPLOYERS SHALL INCLUDE THE INFORMATION SPECIFIED IN
2 SUBSECTION (2)(a) OF THIS SECTION ON A WRITTEN NOTICE POSTED IN A
3 CONSPICUOUS PLACE IN THE EMPLOYER'S PLACE OF BUSINESS IN AN AREA
4 ACCESSIBLE TO EMPLOYEES.

5 (3) UPON FINDING THAT AN EMPLOYER HAS FAILED TO COMPLY
6 WITH THE REQUIREMENTS OF THIS SECTION, THE DIRECTOR MAY ORDER
7 THE EMPLOYER TO PAY A FINE OF NO LESS THAN FIVE HUNDRED DOLLARS
8 AND NO MORE THAN TEN THOUSAND DOLLARS PER VIOLATION.

9 (4) IN ANY CIVIL ACTION INVOLVING A CLAIM OF A
10 DISCRIMINATORY OR UNFAIR EMPLOYMENT PRACTICE, A PLAINTIFF MAY
11 PRESENT EVIDENCE THAT THE EMPLOYER AGAINST WHOM THE ACTION WAS
12 FILED FAILED TO COMPLY WITH THE TRAINING REQUIREMENTS SPECIFIED
13 IN SUBSECTION (1) OF THIS SECTION. IF SUCH EVIDENCE IS PRESENTED, THE
14 COURT SHALL ALLOW THE JURY TO CONSIDER THE EVIDENCE IN SUPPORT
15 OF AN AWARD OF PUNITIVE DAMAGES.

16 **SECTION 12. In Colorado Revised Statutes, 24-34-104, repeal**
17 **(28)(a)(II) as follows:**

18 **24-34-104. General assembly review of regulatory agencies**
19 **and functions for repeal, continuation, or reestablishment - legislative**
20 **declaration - repeal.** (28) (a) The following agencies, functions, or both,
21 are scheduled for repeal on September 1, 2027:

22 (II) The Colorado civil rights division, including the Colorado
23 civil rights commission, created in part 3 of this article 34;

24 **SECTION 13. Act subject to petition - effective date -**
25 **applicability.** (1) This act takes effect at 12:01 a.m. on the day following
26 the expiration of the ninety-day period after final adjournment of the
27 general assembly; except that, if a referendum petition is filed pursuant

1 to section 1 (3) of article V of the state constitution against this act or an
2 item, section, or part of this act within such period, then the act, item,
3 section, or part will not take effect unless approved by the people at the
4 general election to be held in November 2022 and, in such case, will take
5 effect on the date of the official declaration of the vote thereon by the
6 governor.

7 (2) This act applies to employment practices occurring on or after
8 the applicable effective date of this act.