

**Second Regular Session
Seventy-first General Assembly
STATE OF COLORADO**

PREAMENDED

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

LLS NO. 18-0382.01 Christy Chase x2008

HOUSE BILL 18-1256

HOUSE SPONSORSHIP

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Gardner,

House Committees

Judiciary
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Judiciary
Appropriations

A BILL FOR AN ACT

101 **CONCERNING CONTINUATION OF THE REGULATION OF CIVIL RIGHTS**
102 **ISSUES, AND, IN CONNECTION THEREWITH, IMPLEMENTING THE**
103 **RECOMMENDATION IN THE DEPARTMENT OF REGULATORY**
104 **AGENCIES' 2017 SUNSET REVIEW AND REPORT ON THE**
105 **COLORADO CIVIL RIGHTS DIVISION AND THE COLORADO CIVIL**
106 **RIGHTS COMMISSION TO CONTINUE THE DIVISION AND**
107 **COMMISSION AND MAKING AN APPROPRIATION.**

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/>.)

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.

HOUSE
3rd Reading Unamended
March 21, 2018

HOUSE
Amended 2nd Reading
March 20, 2018

Sunset Process - House Judiciary Committee. The bill implements the recommendation of the department of regulatory agencies in its sunset review of the Colorado civil rights division and the Colorado civil rights commission to continue the commission and the division and their respective functions for 9 years, through September 1, 2027.

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

2 **SECTION 1.** In Colorado Revised Statutes, 24-34-304, **amend**
3 (2) as follows:

4 **24-34-304. Division and commission subject to termination -**
5 **repeal of part.** (2) This part 3 is repealed, effective July 1, 2018. Prior
6 to such SEPTEMBER 1, 2027. BEFORE ITS repeal, the functions of the
7 division and commission shall be reviewed as provided for in ARE
8 SCHEDULED FOR REVIEW IN ACCORDANCE WITH section 24-34-104.

9 **SECTION 2.** In Colorado Revised Statutes, 24-34-104, **repeal**
10 (14)(a)(VIII); and **add** (28)(a)(II) as follows:

11 **24-34-104. General assembly review of regulatory agencies**
12 **and functions for repeal, continuation, or reestablishment - legislative**
13 **declaration - repeal.** (14) (a) The following agencies, functions, or both,
14 are scheduled for repeal on July 1, 2018:

15 (VIII) ~~The Colorado civil rights division, including the Colorado~~
16 ~~civil rights commission, created in part 3 of this article.~~

17 (28) (a) The following agencies, functions, or both, are scheduled
18 for repeal on September 1, 2027:

19 (II) THE COLORADO CIVIL RIGHTS DIVISION, INCLUDING THE
20 COLORADO CIVIL RIGHTS COMMISSION, CREATED IN PART 3 OF THIS
21 ARTICLE 34.

22 **SECTION 3.** In Colorado Revised Statutes, **add 2-3-125 as**

1 follows:

2 **2-3-125. Periodic performance audits of Colorado civil rights**
3 **division and commission - reports.** BY DECEMBER 15, 2019, AND BY
4 DECEMBER 15, 2024, THE STATE AUDITOR SHALL COMPLETE OR CAUSE TO
5 BE CONDUCTED AND COMPLETED A PERFORMANCE AUDIT OF THE
6 COLORADO CIVIL RIGHTS DIVISION CREATED IN SECTION 24-34-302 AND
7 THE COLORADO CIVIL RIGHTS COMMISSION CREATED IN SECTION
8 24-34-303. THE STATE AUDITOR SHALL PREPARE A REPORT AND
9 RECOMMENDATIONS ON EACH AUDIT CONDUCTED AND SHALL PRESENT THE
10 REPORT AND RECOMMENDATIONS TO THE COMMITTEE.

11 **SECTION 4.** In Colorado Revised Statutes, 24-34-303, amend
12 (1), (2), and (3) as follows:

13 **24-34-303. Civil rights commission - membership - repeal.**
14 (1) (a) There is hereby created, within the division, the Colorado civil
15 rights commission.

16 (b) (I) The commission shall consist of seven members, who shall
17 be appointed by the governor, with the consent of the senate, for terms of
18 four years. The governor shall make appointments in such a manner that
19 there are at all times two members of the commission representing the
20 business community, at least one of whom shall be a representative of
21 small business, two members of the commission representing state or
22 local government entities, and three members of the commission from the
23 community at large. The membership of the commission shall at all times
24 be comprised of at least four members who are members of groups of
25 people who have been or who might be discriminated against because of
26 disability, race, creed, color, sex, sexual orientation, national origin,
27 ancestry, marital status, religion, or age. Appointments shall be made to

1 provide geographical area representation insofar as may be practicable,
2 and no more than four members shall belong to the same political party.

3 (II) THIS SUBSECTION (1)(b) IS REPEALED, EFFECTIVE MARCH 15,
4 2019.

5 (c) (I) STARTING MARCH 15, 2019, THE COMMISSION CONSISTS OF
6 EIGHT MEMBERS AS FOLLOWS:

7 (A) FOUR MEMBERS APPOINTED BY THE GOVERNOR WITH THE
8 CONSENT OF THE SENATE;

9 (B) TWO MEMBERS APPOINTED BY THE SPEAKER OF THE HOUSE OF
10 REPRESENTATIVES; EXCEPT THAT, IF THE SPEAKER SHARES THE SAME
11 POLITICAL PARTY REGISTRATION AS THE GOVERNOR, THE MINORITY
12 LEADER OF THE HOUSE OF REPRESENTATIVES SHALL APPOINT TWO
13 MEMBERS; AND

14 (C) TWO MEMBERS APPOINTED BY THE PRESIDENT OF THE SENATE;
15 EXCEPT THAT, IF THE PRESIDENT SHARES THE SAME POLITICAL PARTY
16 REGISTRATION AS THE GOVERNOR, THE MINORITY LEADER OF THE SENATE
17 SHALL APPOINT TWO MEMBERS.

18 (II) THE MEMBERSHIP OF THE COMMISSION MUST AT ALL TIMES BE
19 COMPRISED OF AT LEAST:

20 (A) ONE MEMBER FROM OR REPRESENTING A LABOR UNION OR
21 SIMILAR EMPLOYEE ASSOCIATION THAT REPRESENTS MEMBERS IN
22 COLORADO;

23 (B) ONE MEMBER WHO IS A MAJORITY OWNER OF A SMALL
24 BUSINESS THAT EMPLOYS AT LEAST FIVE EMPLOYEES;

25 (C) ONE MEMBER WHO IS A MAJORITY OWNER OF A SMALL
26 BUSINESS THAT EMPLOYS MORE THAN TWENTY-FIVE EMPLOYEES;

27 (D) TWO MEMBERS REPRESENTING STATE OR LOCAL GOVERNMENT

1 ENTITIES; AND

2 (E) THREE MEMBERS FROM THE COMMUNITY AT LARGE.

3 (III) FROM THE MEMBERS DESCRIBED IN SUBSECTIONS (1)(c)(II)(A)
4 TO (1)(c)(II)(E) OF THIS SECTION, AT LEAST FOUR MEMBERS MUST BE FROM
5 GROUPS OF PEOPLE WHO HAVE BEEN OR WHO MIGHT BE DISCRIMINATED
6 AGAINST BECAUSE OF DISABILITY, RACE, CREED, COLOR, SEX, SEXUAL
7 ORIENTATION, NATIONAL ORIGIN, ANCESTRY, MARITAL STATUS, RELIGION,
8 OR AGE.

9 (IV) APPOINTMENTS SHALL BE MADE TO PROVIDE GEOGRAPHICAL
10 AREA REPRESENTATION IN SO FAR AS MAY BE PRACTICABLE. NO MORE THAN
11 THREE MEMBERS MAY BELONG TO THE SAME POLITICAL PARTY, AND NO
12 MORE THAN SIX MEMBERS MAY BE AFFILIATED WITH ANY POLITICAL
13 PARTY. A MEMBER MUST HAVE BEEN REGISTERED WITH THE SAME
14 POLITICAL PARTY OR UNAFFILIATED WITH ANY POLITICAL PARTY FOR AT
15 LEAST FOUR YEARS PRIOR TO THE MEMBER'S APPOINTMENT TO THE
16 COMMISSION.

17 (V) MEMBERS OF THE COMMISSION SERVE FOUR-YEAR TERMS;
18 EXCEPT THAT, FOR PURPOSES OF ENSURING STAGGERED TERMS OF OFFICE,
19 TWO MEMBERS APPOINTED BY THE GOVERNOR, ONE MEMBER APPOINTED
20 BY THE SPEAKER OR MINORITY LEADER OF THE HOUSE OF
21 REPRESENTATIVES, AS APPLICABLE, AND ONE MEMBER APPOINTED BY THE
22 PRESIDENT OR MINORITY LEADER OF THE SENATE, AS APPLICABLE, SERVE
23 INITIAL TWO-YEAR TERMS.

24 (2) Vacancies on the commission shall be filled by the governor
25 by appointment with the consent of the senate, and BY THE APPOINTING
26 AUTHORITY OF THAT COMMISSIONER, WITH GOVERNOR APPOINTMENTS
27 SUBJECT TO CONSENT OF THE SENATE. The term of a commissioner so

1 appointed shall be TO FILL A VACANCY IS for the unexpired part of the
2 term for which the commissioner is appointed.

3 (3) Any commissioner may be removed from office by the
4 governor APPOINTING AUTHORITY OF THAT COMMISSIONER for
5 misconduct, incompetence, or neglect of duty.

6 SECTION 5. In Colorado Revised Statutes, 24-34-306, amend
7 (4), (11), (12), (14), and (15) as follows:

8 24-34-306. Charge - complaint - hearing - procedure -
9 exhaustion of administrative remedies - option to choose
10 administrative or district court proceeding. (4) (a) (I) When the
11 director is satisfied that further efforts to settle the matter by conference,
12 conciliation, and persuasion will be futile, he THE DIRECTOR shall so
13 report THAT AND REFER THE MATTER to the commission. UPON RECEIPT
14 OF THE MATTER, THE COMMISSION SHALL NOTIFY BOTH PARTIES OF THEIR
15 RIGHT TO CHOOSE TO CONTINUE WITH AN ADMINISTRATIVE PROCEEDING
16 BEFORE THE COMMISSION OR ADMINISTRATIVE LAW JUDGE OR TO PURSUE
17 THE MATTER IN THE APPROPRIATE DISTRICT COURT. THE NOTICE MUST
18 SPECIFY THAT:

19 (A) IF THE MATTER REMAINS IN THE COMMISSION'S JURISDICTION,
20 NEITHER PARTY MAY FILE A CLAIM IN DISTRICT COURT AND THE
21 COMMISSION RETAINS JURISDICTION OF THE MATTER UNTIL FINAL
22 RESOLUTION OF THE MATTER; AND

23 (B) IF EITHER PARTY OPTS TO PURSUE THE MATTER IN DISTRICT
24 COURT, THE COMMISSION'S JURISDICTION OVER THE MATTER CEASES, AND
25 ALL REMEDIES THAT MAY BE GRANTED BY THE COMMISSION ARE
26 AVAILABLE IN THE DISTRICT COURT PROCEEDING TO EITHER PARTY.

27 (II) THE PARTIES SHALL NOTIFY THE COMMISSION OF THEIR

1 SELECTION WITHIN TWENTY-ONE DAYS AFTER RECEIVING THE NOTICE
2 FROM THE COMMISSION. IF BOTH PARTIES CHOOSE TO CONTINUE WITH AN
3 ADMINISTRATIVE PROCEEDING, OR IF THE PARTIES DO NOT TIMELY
4 RESPOND, THE MATTER SHALL REMAIN IN THE COMMISSION'S JURISDICTION,
5 AND NEITHER PARTY MAY FILE THE MATTER IN DISTRICT COURT. IF EITHER
6 PARTY NOTIFIES THE COMMISSION THAT THE PARTY OPTS TO PURSUE THE
7 MATTER IN DISTRICT COURT, THE COMMISSION SHALL STAY THE MATTER
8 AND FILE THE MATTER IN THE APPROPRIATE DISTRICT COURT WITHIN
9 THIRTY DAYS AFTER RECEIPT OF THE NOTICE FROM EITHER PARTY.

10 (b) If the commission RETAINS JURISDICTION OF THE MATTER AND
11 determines that the circumstances warrant, it THE COMMISSION shall issue
12 and cause to be served, in the manner provided by section 24-4-105 (2),
13 a written notice and complaint requiring the respondent to answer the
14 charges at a formal hearing before the commission, a commissioner, or an
15 administrative law judge. Such THE hearing shall be commenced within
16 one hundred twenty days after the service of such THE written notice and
17 complaint. Such THE notice and complaint shall state the time, place, and
18 nature of the hearing, the legal authority and jurisdiction under which it
19 is to be held, and the matters of fact and law asserted.

20 (11) IF THE MATTER REMAINS IN THE JURISDICTION OF THE
21 COMMISSION PURSUANT TO SUBSECTION (4)(a) OF THIS SECTION, AND if
22 written notice that a formal hearing will be held is not served within two
23 hundred seventy days after the filing of the charge, if the complainant has
24 requested and received a notice of right to sue pursuant to subsection (15)
25 of this section, or if the hearing is not commenced within the
26 one-hundred-twenty-day period prescribed by subsection (4)(4)(b) of this
27 section, the jurisdiction of the commission over the complaint shall cease

1 CEASES, and the complainant may seek the relief authorized under this
2 part 3 and parts 4 to 7 of this article 34 against the respondent by filing a
3 civil action in the district court for the district in which the alleged
4 discriminatory or unfair practice occurred. ~~Such~~ THE COMPLAINANT MUST
5 FILE THE action ~~must be filed~~ within ninety days of AFTER the date upon
6 which the jurisdiction of the commission ceased, and if ~~not so filed, it~~
7 ~~shall be~~ THE COMPLAINANT FAILS TO TIMELY FILE THE ACTION IN THE
8 APPROPRIATE DISTRICT COURT, THE COMPLAINANT IS barred FROM FILING
9 THE ACTION IN THE COURT, and the district court ~~shall~~ DOES NOT have ~~no~~
10 jurisdiction to hear ~~such~~ THE action. If any party requests the extension of
11 any time period prescribed by this subsection (11), ~~such~~ THE COMMISSION,
12 A COMMISSIONER, OR THE ADMINISTRATIVE LAW JUDGE, AS THE CASE MAY
13 BE, MAY GRANT THE extension ~~may be granted~~ for good cause, by the
14 commission, a commissioner, or the administrative law judge, as the case
15 may be, but the total period of all ~~such~~ extensions to either the respondent
16 or the complainant ~~shall~~ MUST not exceed ninety days each, and, in the
17 case of multiple parties, the total period of all extensions ~~shall~~ MUST not
18 exceed one hundred eighty days.

19 (12) (a) The division shall maintain a central file of decisions
20 rendered under parts 3 to 7 of this article ~~and such~~ 34. THE DIVISION
21 SHALL MAKE THE file ~~shall be open~~ AVAILABLE to the public for
22 inspection during regular business hours AND SHALL POST THE FILE ON ITS
23 WEBSITE. THE DIVISION SHALL INCLUDE IN THE FILE A QUARTERLY
24 SUMMARY OF ALL CHARGES FILED WITH THE DIVISION DURING EACH
25 CALENDAR QUARTER, INCLUDING THE TYPES OF CHARGES FILED,
26 SPECIFYING WHETHER THE CHARGES ALLEGED VIOLATIONS OF PART 4, 5,
27 OR 6 OF THIS ARTICLE 34, AND THE OUTCOMES OF THE MATTERS,

1 SPECIFYING WHETHER:
2 (I) THE MATTER WAS RESOLVED BY THE DIVISION, AND IF SO,
3 WHETHER THE DIVISION DISMISSED THE CHARGES;
4 (II) THE DIVISION FOUND PROBABLE CAUSE;
5 (III) THE DIVISION REFERRED THE MATTER TO THE COMMISSION;
6 (IV) A CIVIL ACTION WAS FILED REGARDING THE MATTER; AND
7 (V) WHETHER THE COMMISSION OR DISTRICT COURT FOUND THAT
8 THE RESPONDENT ENGAGED IN A DISCRIMINATORY OR UNFAIR PRACTICE,
9 AND IF SO, WHETHER ANY REMEDIES WERE GRANTED.
10 (b) THE DIVISION SHALL NOT DISCLOSE THE NAMES OF THE PARTIES
11 OR THE SPECIFIC DETAILS OF ANY CASE OR CHARGE IN THE QUARTERLY
12 SUMMARY.
13 (14) ~~No~~ A person may NOT file a civil action in a district court in
14 this state based on an alleged discriminatory or unfair practice prohibited
15 by parts 4 to 7 of this article 34 without first exhausting the proceedings
16 and remedies available to him OR HER under this part 3 unless:
17 (a) ~~he~~ THE PERSON shows, in an action filed in the appropriate
18 district court, by clear and convincing evidence, THAT his OR HER ill
19 health ~~which~~ is of such a nature that pursuing administrative remedies
20 would not provide timely and reasonable relief and would cause
21 irreparable harm; OR
22 (b) THE PERSON HAS OPTED TO PURSUE THE MATTER IN DISTRICT
23 COURT IN ACCORDANCE WITH SUBSECTION (4)(a) OF THIS SECTION.
24 (15) The charging party in any action may request the division to
25 issue a written notice of right to sue at any time DURING THE
26 INVESTIGATION AND prior to REFERRAL OF THE MATTER BY THE DIVISION
27 TO THE COMMISSIONER PURSUANT TO SUBSECTION (4)(a) OF THIS SECTION

1 OR TO service of a notice and complaint pursuant to subsection ~~(4)~~ (4)(b)
2 of this section. The charging party shall make the request for notice of
3 right to sue in writing. The division shall promptly grant a claimant's
4 request for notice of right to sue made after the expiration of one hundred
5 eighty days following the filing of the charge IF THE MATTER HAS NOT
6 BEEN REFERRED TO THE COMMISSION PURSUANT TO SUBSECTION (4)(a) OF
7 THIS SECTION. If a claimant makes a request for a notice of right to sue
8 prior to the expiration of one hundred eighty days following the filing of
9 the charge, the division shall grant the request upon a determination that
10 the investigation of the charge will not be completed within one hundred
11 eighty days following the filing of the charge. A notice of right to sue
12 shall constitute final agency action and exhaustion of administrative
13 remedies and proceedings pursuant to this part 3.

14 **SECTION 6.** In Colorado Revised Statutes, 24-34-602, **amend**
15 (1)(a) as follows:

16 **24-34-602. Penalty and civil liability.** (1)(a)(I) Any person who
17 violates section 24-34-601 shall be fined ~~not less than fifty dollars nor~~
18 ~~more than five hundred dollars~~ for each violation:

19 (A) UP TO FIVE HUNDRED DOLLARS FOR THE FIRST VIOLATION;

20 (B) UP TO FIVE THOUSAND DOLLARS FOR THE SECOND VIOLATION;

21 AND

22 (C) UP TO TEN THOUSAND DOLLARS FOR THE THIRD OR ANY
23 SUBSEQUENT VIOLATION.

24 (II) FINES AUTHORIZED BY THIS SECTION ARE NOT ASSESSED ON A
25 PER-DAY BASIS.

26 (III) A person aggrieved by the violation of section 24-34-601
27 shall bring an action in any court of competent jurisdiction in the county

1 where the violation occurred. Upon finding a violation, the court shall
2 order the defendant to pay the fine to the aggrieved party.

3 **SECTION 7. Appropriation.** (1) For the 2018-19 state fiscal
4 year, \$1,642,843 is appropriated to the department of regulatory agencies
5 for use by the civil rights division. This appropriation consists of
6 \$1,082,522 from the general fund and \$560,321 reappropriated funds
7 from indirect cost recoveries, and is based on an assumption that the
8 division will require an additional 27.2 FTE. To implement this act, the
9 division may use this appropriation as follows:

10 (a) \$1,558,385, which consists of \$998,064 general fund and
11 \$560,321 reappropriated funds from indirect cost recoveries, for personal
12 services;

13 (b) \$62,284 from the general fund for operating expenses;

14 (c) \$17,000 from the general fund for hearings pursuant to
15 complaint; and

16 (d) \$5,174 from the general fund for commission meeting costs.

17 (2) For the 2018-19 state fiscal year, the general assembly
18 anticipates that the civil rights division will receive \$496,489 in federal
19 funds to implement this act, which amount is included for informational
20 purposes only. The appropriation in subsection (1) is based on the
21 assumption that the department will receive this amount of federal funds
22 to be used as follows:

23 (a) \$430,912 for personal services;

24 (b) \$43,176 for operating expenses;

25 (c) \$1,000 for hearings pursuant to complaint;

26 (d) \$7,200 for commission meeting costs; and

27 (e) \$14,201 for indirect cost assessment.

1 **SECTION 8. Effective date.** This act takes effect July 1, 2018.

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