

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

**PREAMENDED**

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

LLS NO. 23-0705.01 Christy Chase x2008

**SENATE BILL 23-172**

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**SENATE SPONSORSHIP**

**Winter F. and Gonzales**, Buckner, Cutter, Danielson, Hinrichsen, Jaquez Lewis, Marchman, Moreno, Sullivan

**HOUSE SPONSORSHIP**

**Weissman and Bacon**, deGruy Kennedy, Dickson, Epps, Froelich, Garcia, Jodeh, Kipp, Lindsay, Mabrey, Michaelson Jenet, Titone, Vigil, Willford, Woodrow

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**Senate Committees**

Judiciary  
Appropriations

**House Committees**

Judiciary  
Appropriations

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**A BILL FOR AN ACT**

101      **CONCERNING PROTECTIONS FOR COLORADO WORKERS AGAINST**  
102                    **DISCRIMINATORY EMPLOYMENT PRACTICES, AND, IN**  
103                    **CONNECTION THEREWITH, MAKING AN APPROPRIATION.**

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**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 enacts the "Protecting Opportunities and Workers' Rights (POWR) Act", which:

- Directs the Colorado civil rights division (division) to include "harassment" as a basis or description of

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.  
*Capital letters or bold & italic numbers indicate new material to be added to existing law.*  
*Dashes through the words or numbers indicate deletions from existing law.*

SENATE  
Amended 3rd Reading  
April 20, 2023

SENATE  
Amended 2nd Reading  
April 19, 2023

- discrimination on any charge form or charge intake mechanism;
- Adds a new definition of "harass" or "harassment" and repeals the current definition of "harass" that requires creation of a hostile work environment;
  - Adds protections from discriminatory or unfair employment practices for individuals based on their "marital status";
  - Specifies that in harassment claims, the alleged conduct need not be severe or pervasive to constitute a discriminatory or unfair employment practice;
  - For purposes of the exception to otherwise discriminatory practices for an employer that is unable to accommodate an individual with a disability who is otherwise qualified for the job, eliminates the ability for the employer to assert that the individual's disability has a significant impact on the job as a rationale for the employment practice;
  - Specifies that it is a discriminatory or an unfair employment practice for an employer to fail to initiate an investigation of a complaint or to fail to take prompt, reasonable, and remedial action;
  - Specifies the requirements for an employer to assert an affirmative defense to an employee's proven claim of unlawful harassment by a supervisor; and
  - Specifies the requirements that must be satisfied for a nondisclosure provision in an agreement between an employer and an employee or a prospective employee to be enforceable.

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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, 24-34-306, **amend**  
 5 (1)(a) as follows:

6           **24-34-306. Charge - complaint - hearing - procedure -**  
 7 **exhaustion of administrative remedies.** (1) (a) (I) Any person claiming  
 8 to be aggrieved by a discriminatory or AN unfair practice as defined by  
 9 parts 4 to 7 of this ~~article~~ ARTICLE 34 may, by ~~himself or herself~~ ONESELF

1 or through ~~his or her attorney-at-law~~ THE PERSON'S ATTORNEY, make,  
2 sign, and file with the division a verified written charge stating the name  
3 and address of the respondent alleged to have committed the  
4 discriminatory or unfair practice, setting forth the particulars of the  
5 alleged discriminatory or unfair practice, and containing any other  
6 information required by the division.

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

11 **SECTION 3.** In Colorado Revised Statutes, **add** 24-34-400.2 as  
12 follows:

13 **24-34-400.2. Legislative declaration.** (1) THE GENERAL  
14 ASSEMBLY FINDS THAT:

15 (a) ALL COLORADANS SHOULD HAVE AN EQUAL OPPORTUNITY TO  
16 SUCCEED IN THE WORKPLACE AND ARE ENTITLED TO A WORKPLACE THAT  
17 IS SAFE AND FREE FROM DISCRIMINATION AND HARASSMENT BASED ON  
18 THEIR PROTECTED STATUS;

19 (b) WHEN EMPLOYEES HAVE A SAFE WORKPLACE THAT IS FREE  
20 FROM DISCRIMINATION AND HARASSMENT, THOSE EMPLOYEES ARE MORE  
21 PRODUCTIVE AND ARE MORE INCLINED TO REMAIN IN THEIR JOBS, AND  
22 THEIR EMPLOYERS BENEFIT FROM INCREASED EMPLOYEE PRODUCTIVITY  
23 AND RETENTION;

24 (c) WHILE MANY EMPLOYERS HAVE MADE GREAT STRIDES IN  
25 IMPROVING WORKPLACE ENVIRONMENTS BY MAKING THEM FREE FROM  
26 DISCRIMINATION AND HARASSMENT SINCE THIS PART 4 WAS FIRST  
27 ENACTED IN 1951, MANY EMPLOYEES IN THIS STATE STILL EXPERIENCE

1 DISCRIMINATION AND HARASSMENT IN THE WORKPLACE, RESULTING IN  
2 MENTAL, PHYSICAL, AND ECONOMIC HARM;

3 (d) IT IS CRITICAL THAT EMPLOYERS ENGAGE IN PREVENTIVE AND  
4 CORRECTIVE ACTIONS TO ELIMINATE WORKPLACE DISCRIMINATION AND  
5 HARASSMENT AND ENSURE A SAFE WORKPLACE ENVIRONMENT FOR ALL  
6 THEIR EMPLOYEES; AND

7 (e) COURTS SHOULD APPLY THE LAW CONSISTENTLY TO ALL  
8 WORKPLACES.

9 (2) ADDITIONALLY, THE GENERAL ASSEMBLY:

10 (a) FINDS THAT THE "SEVERE OR PERVASIVE" STANDARD CREATED  
11 BY COURTS TO DETERMINE IF HARASSMENT AT WORK IS A DISCRIMINATORY  
12 OR AN UNFAIR EMPLOYMENT PRACTICE DOES NOT TAKE INTO ACCOUNT  
13 THE REALITIES OF THE WORKPLACE OR THE HARM THAT WORKPLACE  
14 HARASSMENT CAUSES; AND

15 (b) REJECTS THE "SEVERE OR PERVASIVE" STANDARD FOR PROOF  
16 OF WORKPLACE HARASSMENT IN FAVOR OF A STANDARD THAT PROHIBITS  
17 UNWELCOME HARASSMENT.

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

19 (a) IT IS THE PUBLIC POLICY OF THE STATE TO ENCOURAGE:

20 (I) EMPLOYERS TO ADOPT EQUAL EMPLOYMENT OPPORTUNITY  
21 POLICIES TO PREVENT AND DISINCENTIVIZE ILLEGAL HARASSMENT AND  
22 DISCRIMINATION; AND

23 (II) THE FREE REPORTING, DISCUSSION, AND EXPOSURE OF  
24 DISCRIMINATORY OR UNFAIR EMPLOYMENT PRACTICES IN ORDER TO  
25 BETTER PROTECT EMPLOYEES AND DISCOURAGE DISCRIMINATORY OR  
26 UNFAIR EMPLOYMENT PRACTICES; AND

27 (b) ATTEMPTS TO INTERFERE WITH EMPLOYEES' ABILITY TO

1 COMMUNICATE ABOUT AND REPORT ALLEGED DISCRIMINATORY OR UNFAIR  
2 EMPLOYMENT PRACTICES ARE CONTRARY TO THE PUBLIC POLICY OF THE  
3 STATE.

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5 **SECTION 4.** In Colorado Revised Statutes, 24-34-402, **amend**  
6 (1) introductory portion, (1)(a), (1)(b), (1)(c), (1)(d), (1)(f), (1)(h)(I), and  
7 (1)(h)(II) introductory portion; and **add** (1.3) and (1.5) as follows:

8 **24-34-402. Discriminatory or unfair employment practices -**  
9 **affirmative defense.** (1) It is a discriminatory or AN unfair employment  
10 practice:

11 (a) (I) For an employer to refuse to hire, to discharge, to promote  
12 or demote, to harass during the course of employment, or to discriminate  
13 in matters of compensation, terms, conditions, or privileges of  
14 employment against any individual otherwise qualified because of  
15 disability, race, creed, color, sex, sexual orientation, gender identity,  
16 gender expression, MARITAL STATUS, religion, age, national origin, or  
17 ancestry. ~~but,~~

18 (II) With regard to a disability, it is not a discriminatory or an  
19 unfair employment practice for an employer to act as provided in this  
20 subsection (1)(a) REFUSE TO HIRE, TO DISCHARGE, OR TO PROMOTE OR  
21 DEMOTE AN INDIVIDUAL WITH A DISABILITY if there is no reasonable  
22 accommodation that the employer can make with regard to the disability  
23 THAT WOULD ALLOW THE INDIVIDUAL TO SATISFY THE ESSENTIAL  
24 FUNCTIONS OF THE JOB AND the disability actually disqualifies the  
25 individual from the job. ~~and the disability has a significant impact on the~~  
26 ~~job. For purposes of this subsection (1)(a), "harass" means to create a~~  
27 ~~hostile work environment based upon an individual's race, national origin,~~

1 ~~sex, sexual orientation, gender identity, gender expression, disability, age,~~  
2 ~~or religion. Notwithstanding the provisions of this subsection (1)(a),~~  
3 ~~harassment is not an illegal act unless a complaint is filed with the~~  
4 ~~appropriate authority at the complainant's workplace and the authority~~  
5 ~~fails to initiate a reasonable investigation of a complaint and take prompt~~  
6 ~~remedial action if appropriate.~~

7

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8 (b) (I) For an employment agency to:

9 (A) Refuse to list and properly classify for employment or REFUSE  
10 to refer an individual for employment in a known available job for which  
11 the individual is otherwise qualified because of disability, race, creed,  
12 color, sex, sexual orientation, gender identity, gender expression,  
13 MARITAL STATUS, religion, age, national origin, or ancestry; or ~~for an~~  
14 ~~employment agency to~~

15 (B) Comply with a request from an employer for referral of  
16 applicants for employment if the request indicates either directly or  
17 indirectly that the employer discriminates in employment on account of  
18 disability, race, creed, color, sex, sexual orientation, gender identity,  
19 gender expression, MARITAL STATUS, religion, age, national origin, or  
20 ancestry. ~~but,~~

21 (II) With regard to a disability, it is not a discriminatory or an  
22 unfair employment practice for an employment agency to refuse to list  
23 and properly classify for employment or to refuse to refer an individual  
24 for employment in a known available job for which the individual is  
25 otherwise qualified if there is no reasonable accommodation that the  
26 employer can make with regard to the disability THAT WOULD ALLOW THE  
27 INDIVIDUAL TO SATISFY THE ESSENTIAL FUNCTIONS OF THE JOB AND the

1 disability actually disqualifies the applicant from the job. ~~and the~~  
2 ~~disability has a significant impact on the job;~~

3 (c) For a labor organization to exclude any individual otherwise  
4 qualified from full membership rights in the labor organization, to expel  
5 an individual from membership in the labor organization, or to otherwise  
6 discriminate against any of its members in the full enjoyment of work  
7 opportunity because of disability, race, creed, color, sex, sexual  
8 orientation, gender identity, gender expression, MARITAL STATUS,  
9 religion, age, national origin, or ancestry;

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

21 (f) For any employer, labor organization, joint apprenticeship  
22 committee, SPONSOR OF AN APPRENTICESHIP PROGRAM REGISTERED  
23 PURSUANT TO ARTICLE 15.7 OF TITLE 8, or vocational school providing,  
24 coordinating, or controlling apprenticeship programs or providing,  
25 coordinating, or controlling on-the-job training programs or other  
26 instruction, training, or retraining programs:

27 (I) (A) To deny to or withhold from any qualified individual

1 because of disability, race, creed, color, sex, sexual orientation, gender  
2 identity, gender expression, MARITAL STATUS, religion, age, national  
3 origin, or ancestry the right to be admitted to or participate in an  
4 apprenticeship training program, an on-the-job training program, or any  
5 other occupational instruction, training, or retraining program. ~~but,~~

6 (B) With regard to a disability, it is not a discriminatory or an  
7 unfair employment practice to deny or withhold the right to be admitted  
8 to or participate in any such program if there is no reasonable  
9 accommodation that can be made with regard to the disability THAT  
10 WOULD ALLOW THE INDIVIDUAL TO SATISFY THE ESSENTIAL FUNCTIONS OF  
11 THE PROGRAM AND the disability actually disqualifies the individual from  
12 the program. ~~and the disability has a significant impact on participation~~  
13 ~~in the program;~~

14 (II) To discriminate against any qualified individual in pursuit of  
15 such programs or to discriminate against ~~such an~~ THE individual in the  
16 terms, conditions, or privileges of such programs because of disability,  
17 race, creed, color, sex, sexual orientation, gender identity, gender  
18 expression, MARITAL STATUS, religion, age, national origin, or ancestry;  
19 OR

20 (III) To print or circulate or cause to be printed or circulated any  
21 statement, advertisement, or publication, or to use any form of application  
22 for such programs, or to make any inquiry in connection with such  
23 programs that expresses, directly or indirectly, any limitation,  
24 specification, or discrimination as to disability, race, creed, color, sex,  
25 sexual orientation, gender identity, gender expression, MARITAL STATUS,  
26 religion, age, national origin, or ancestry or any intent to make any such  
27 limitation, specification, or discrimination, unless based on a bona fide



1 occupational qualification;

2 (h) (I) For any employer to discharge an employee or to refuse to  
3 hire OR PROMOTE a person solely on the basis that such employee or  
4 person is married to or plans to marry another employee of the employer;  
5 but this subparagraph (f) shall SUBSECTION (1)(h)(I) DOES not apply to  
6 employers with twenty-five or fewer employees.

7 (II) It shall IS not be unfair or discriminatory for an employer to  
8 discharge an employee or to refuse to hire OR PROMOTE a person for the  
9 reasons stated in subparagraph (f) of this paragraph (h) SUBSECTION  
10 (1)(h)(I) OF THIS SECTION under circumstances where:

11

12 (1.3) (a) AS USED IN SUBSECTIONS (1)(a) AND (1.5) OF THIS  
13 SECTION AND IN THIS SUBSECTION (1.3), "HARASS" OR "HARASSMENT"  
14 MEANS TO ENGAGE IN, OR THE ACT OF ENGAGING IN, ANY UNWELCOME  
15 PHYSICAL OR VERBAL CONDUCT OR ANY WRITTEN, PICTORIAL, OR VISUAL  
16 COMMUNICATION DIRECTED AT AN INDIVIDUAL OR GROUP OF INDIVIDUALS  
17 BECAUSE OF THAT INDIVIDUAL'S OR GROUP'S MEMBERSHIP IN, OR  
18 PERCEIVED MEMBERSHIP IN, A PROTECTED CLASS, AS DESCRIBED IN  
19 SUBSECTION (1)(a) OF THIS SECTION, WHICH CONDUCT OR  
20 COMMUNICATION IS SUBJECTIVELY OFFENSIVE TO THE INDIVIDUAL  
21 ALLEGING HARASSMENT AND IS OBJECTIVELY OFFENSIVE TO A  
22 REASONABLE INDIVIDUAL WHO IS A MEMBER OF THE SAME PROTECTED  
23 CLASS. THE CONDUCT OR COMMUNICATION NEED NOT BE SEVERE OR  
24 PERVASIVE TO CONSTITUTE A DISCRIMINATORY OR AN UNFAIR  
25 EMPLOYMENT PRACTICE UNDER SUBSECTION (1)(a) OF THIS SECTION AND  
26 IS A VIOLATION OF SUBSECTION (1)(a) OF THIS SECTION IF:

27 (I) SUBMISSION TO THE CONDUCT OR COMMUNICATION IS

1 EXPLICITLY OR IMPLICITLY MADE A TERM OR CONDITION OF THE  
2 INDIVIDUAL'S EMPLOYMENT;

3 (II) SUBMISSION TO, OBJECTION TO, OR REJECTION OF THE  
4 CONDUCT OR COMMUNICATION IS USED AS A BASIS FOR EMPLOYMENT  
5 DECISIONS AFFECTING THE INDIVIDUAL; OR

6 (III) THE CONDUCT OR COMMUNICATION HAS THE PURPOSE OR  
7 EFFECT OF UNREASONABLY INTERFERING WITH THE INDIVIDUAL'S WORK  
8 PERFORMANCE OR CREATING AN INTIMIDATING, HOSTILE, OR OFFENSIVE  
9 WORKING ENVIRONMENT.

10 (b) THE NATURE OF THE WORK OR THE FREQUENCY WITH WHICH  
11 HARASSMENT IN THE WORKPLACE OCCURRED IN THE PAST IS NOT  
12 RELEVANT TO WHETHER THE CONDUCT OR COMMUNICATION IS A  
13 DISCRIMINATORY OR AN UNFAIR EMPLOYMENT PRACTICE UNDER  
14 SUBSECTION (1)(a) OF THIS SECTION.

15 (c) (I) NOTWITHSTANDING SUBSECTION (1)(a) OF THIS SECTION,  
16 PETTY SLIGHTS, MINOR ANNOYANCES, AND LACK OF GOOD MANNERS DO  
17 NOT CONSTITUTE HARASSMENT UNLESS THE SLIGHTS, ANNOYANCES, OR  
18 LACK OF MANNERS, WHEN TAKEN INDIVIDUALLY OR IN COMBINATION AND  
19 UNDER THE TOTALITY OF THE CIRCUMSTANCES, MEET THE STANDARDS SET  
20 FORTH IN SUBSECTION (1.3)(a) OF THIS SECTION.

21 (II) FACTORS TO CONSIDER UNDER THE TOTALITY OF THE  
22 CIRCUMSTANCES INCLUDE:

23 (A) THE FREQUENCY OF THE CONDUCT OR COMMUNICATION,  
24 RECOGNIZING THAT A SINGLE INCIDENT MAY RISE TO THE LEVEL OF  
25 HARASSMENT;

26 (B) THE NUMBER OF INDIVIDUALS ENGAGED IN THE CONDUCT OR  
27 COMMUNICATION;

1           (C) THE TYPE OR NATURE OF THE CONDUCT OR COMMUNICATION,  
2           RECOGNIZING THAT CONDUCT OR COMMUNICATION THAT, AT ONE TIME,  
3           WAS OR IS WELCOME BETWEEN TWO OR MORE INDIVIDUALS MAY BECOME  
4           UNWELCOME TO ONE OR MORE OF THOSE INDIVIDUALS;

5           (D) THE DURATION OF THE CONDUCT OR COMMUNICATION;

6           (E) THE LOCATION WHERE THE CONDUCT OR COMMUNICATION  
7           OCCURRED;

8           (F) WHETHER THE CONDUCT OR COMMUNICATION IS  
9           THREATENING;

10           (G) WHETHER ANY POWER DIFFERENTIAL EXISTS BETWEEN THE  
11           INDIVIDUAL ALLEGED TO HAVE ENGAGED IN HARASSMENT AND THE  
12           INDIVIDUAL ALLEGING THE HARASSMENT;

13           (H) ANY USE OF EPITHETS, SLURS, OR OTHER CONDUCT OR  
14           COMMUNICATION THAT IS HUMILIATING OR DEGRADING; AND

15           (I) WHETHER THE CONDUCT OR COMMUNICATION REFLECTS  
16           STEREOTYPES ABOUT AN INDIVIDUAL OR GROUP OF INDIVIDUALS IN A  
17           PROTECTED CLASS.

18           (1.5) (a) WHEN AN EMPLOYEE PROVES THAT A SUPERVISOR  
19           UNLAWFULLY HARASSED THAT EMPLOYEE, AS DESCRIBED IN SUBSECTION  
20           (1.3)(a)(III) OF THIS SECTION, THE EMPLOYER MAY ASSERT AN  
21           AFFIRMATIVE DEFENSE TO THE HARASSMENT CLAIM ONLY IF THE  
22           EMPLOYER ESTABLISHES THAT:

23           (I) THE EMPLOYER HAS ESTABLISHED A PROGRAM THAT IS  
24           REASONABLY DESIGNED TO PREVENT HARASSMENT, DETER FUTURE  
25           HARASSERS, AND PROTECT EMPLOYEES FROM HARASSMENT. AN  
26           EMPLOYER'S PROGRAM SATISFIES THIS SUBSECTION (1.5)(a)(I) IF THE  
27           EMPLOYER CAN DEMONSTRATE THAT:

1           (A) THE EMPLOYER TAKES PROMPT, REASONABLE ACTION TO  
2 INVESTIGATE OR ADDRESS ALLEGED DISCRIMINATORY OR UNFAIR  
3 EMPLOYMENT PRACTICES, AS DESCRIBED IN SUBSECTION (1)(a) OF THIS  
4 SECTION; AND

5           (B) THE EMPLOYER TAKES PROMPT, REASONABLE REMEDIAL  
6 ACTIONS, WHEN WARRANTED, IN RESPONSE TO COMPLAINTS OF  
7 DISCRIMINATORY OR UNFAIR EMPLOYMENT PRACTICES, AS DESCRIBED IN  
8 SUBSECTION (1)(a) OF THIS SECTION.

9                   
10           (II) THE EMPLOYER HAS COMMUNICATED THE EXISTENCE AND  
11 DETAILS OF THE PROGRAM SPECIFIED IN SUBSECTION (1.5)(a)(I) OF THIS  
12 SECTION TO BOTH ITS SUPERVISORY AND NONSUPERVISORY EMPLOYEES;  
13 AND

14                   
15           (III) THE EMPLOYEE HAS UNREASONABLY FAILED TO TAKE  
16 ADVANTAGE OF THE EMPLOYER'S PROGRAM SPECIFIED IN SUBSECTION  
17 (1.5)(a)(I) OF THIS SECTION.

18           (b) NOTHING IN THIS SUBSECTION (1.5) SUPERSEDES OR  
19 ELIMINATES ANY OTHER ANALYSES, EVALUATIONS, OR STANDARDS OF  
20 LIABILITY FOR HARASSMENT ESTABLISHED IN THIS SECTION AND THROUGH  
21 JUDICIAL INTERPRETATION OF TITLE VII OF THE FEDERAL "CIVIL RIGHTS  
22 ACT OF 1964", AS AMENDED, 42 U.S.C. SEC. 2000e ET SEQ.; THE FEDERAL  
23 "AGE DISCRIMINATION IN EMPLOYMENT ACT OF 1967", AS AMENDED, 29  
24 U.S.C. SEC. 621 ET SEQ.; TITLES I AND V OF THE FEDERAL "AMERICANS  
25 WITH DISABILITIES ACT OF 1990", AS AMENDED, 42 U.S.C. SEC. 12111 ET  
26 SEQ.; THE FEDERAL "CIVIL RIGHTS ACT OF 1991", AS AMENDED, 42  
27 U.S.C. SEC. 1981a; AND THE UNITED STATES CONSTITUTION AND

1 AMENDMENTS TO THE CONSTITUTION.

2

3 SECTION 5. In Colorado Revised Statutes, **add** 24-34-407 and  
4 24-34-408 as follows:

5 **24-34-407. Nondisclosure agreements - requirements for**  
6 **enforcement - penalties for noncompliance.** (1) A PROVISION IN AN  
7 AGREEMENT ENTERED INTO OR RENEWED ON OR AFTER THE EFFECTIVE  
8 DATE OF THIS SECTION BETWEEN AN EMPLOYER AND AN EMPLOYEE OR A  
9 PROSPECTIVE EMPLOYEE THAT LIMITS THE ABILITY OF THE EMPLOYEE OR  
10 PROSPECTIVE EMPLOYEE TO DISCLOSE OR DISCUSS, EITHER ORALLY OR IN  
11 WRITING, ANY ALLEGED DISCRIMINATORY OR UNFAIR EMPLOYMENT  
12 PRACTICE, WHICH PROVISION IS REFERRED TO IN THIS SECTION AS A  
13 "NONDISCLOSURE PROVISION", IS VOID UNLESS:

14 (a) THE NONDISCLOSURE PROVISION APPLIES EQUALLY TO ALL  
15 PARTIES TO THE AGREEMENT;

16 (b) THE NONDISCLOSURE PROVISION EXPRESSLY STATES THAT IT  
17 DOES NOT RESTRAIN THE EMPLOYEE OR PROSPECTIVE EMPLOYEE FROM  
18 DISCLOSING THE UNDERLYING FACTS OF ANY ALLEGED DISCRIMINATORY  
19 OR UNFAIR EMPLOYMENT PRACTICE:

20 (I) INCLUDING DISCLOSING THE EXISTENCE AND TERMS OF A  
21 SETTLEMENT AGREEMENT, TO THE EMPLOYEE'S OR PROSPECTIVE  
22 EMPLOYEE'S IMMEDIATE FAMILY MEMBERS, RELIGIOUS ADVISOR, MEDICAL  
23 OR MENTAL HEALTH PROVIDER, MENTAL OR BEHAVIORAL HEALTH  
24 THERAPEUTIC SUPPORT GROUP, LEGAL COUNSEL, FINANCIAL ADVISOR, OR  
25 TAX PREPARER;

26 (II) TO ANY LOCAL, STATE, OR FEDERAL GOVERNMENT AGENCY  
27 FOR ANY REASON, INCLUDING DISCLOSING THE EXISTENCE AND TERMS OF

1 A SETTLEMENT AGREEMENT, WITHOUT FIRST NOTIFYING THE EMPLOYER;

2 (III) IN RESPONSE TO LEGAL PROCESS, SUCH AS A SUBPOENA TO  
3 TESTIFY AT A DEPOSITION OR IN A COURT, INCLUDING DISCLOSING THE  
4 EXISTENCE AND TERMS OF A SETTLEMENT AGREEMENT, WITHOUT FIRST  
5 NOTIFYING THE EMPLOYER; AND

6 (IV) FOR ALL OTHER PURPOSES AS REQUIRED BY LAW;

7 (c) THE NONDISCLOSURE PROVISION EXPRESSLY STATES THAT  
8 DISCLOSURE OF THE UNDERLYING FACTS OF ANY ALLEGED  
9 DISCRIMINATORY OR UNFAIR EMPLOYMENT PRACTICE WITHIN THE  
10 PARAMETERS SPECIFIED IN SUBSECTION (1)(b) OF THIS SECTION DOES NOT  
11 CONSTITUTE DISPARAGEMENT;

12 (d) THE AGREEMENT INCLUDES A CONDITION THAT IF A  
13 NONDISPARAGEMENT PROVISION IS INCLUDED IN THE AGREEMENT AND THE  
14 EMPLOYER DISPARAGES THE EMPLOYEE OR PROSPECTIVE EMPLOYEE TO A  
15 THIRD PARTY, THE EMPLOYER MAY NOT SEEK TO ENFORCE THE  
16 NONDISPARAGEMENT OR NONDISCLOSURE PROVISIONS OF THE AGREEMENT  
17 OR SEEK DAMAGES AGAINST THE EMPLOYEE OR ANY OTHER PARTY TO THE  
18 AGREEMENT FOR VIOLATING THOSE PROVISIONS, BUT ALL OTHER  
19 REMAINING TERMS OF THE AGREEMENT REMAIN ENFORCEABLE;

20 (e) ANY LIQUIDATED DAMAGES PROVISION IN THE AGREEMENT  
21 DOES NOT CONSTITUTE A PENALTY OR PUNISHMENT, AND, TO BE  
22 ENFORCED, A LIQUIDATED DAMAGES PROVISION MUST PROVIDE FOR AN  
23 AMOUNT OF LIQUIDATED DAMAGES THAT IS:

24 (I) REASONABLE AND PROPORTIONATE IN LIGHT OF THE  
25 ANTICIPATED ACTUAL ECONOMIC LOSS THAT A BREACH OF THE  
26 AGREEMENT WOULD CAUSE;     

27 (II) VARIED BASED ON THE NATURE OR SEVERITY OF THE BREACH;

1     AND

2             (III) NOT PUNITIVE; AND

3             (f) AN ADDENDUM, SIGNED BY ALL PARTIES TO THE AGREEMENT  
4     AND ATTESTING TO COMPLIANCE WITH THIS SUBSECTION (1), IS ATTACHED  
5     TO THE AGREEMENT.

6             (2) (a) EACH INSTANCE WHEN AN EMPLOYER INCLUDES IN AN  
7     AGREEMENT A NONDISCLOSURE PROVISION THAT VIOLATES SUBSECTION  
8     (1) OF THIS SECTION CONSTITUTES A VIOLATION OF THIS SECTION. AN  
9     EMPLOYER IS LIABLE FOR ACTUAL DAMAGES AND A PENALTY OF FIVE  
10    THOUSAND DOLLARS PER VIOLATION.

11            (b) THE COMMISSION AND ANY EMPLOYEE OR PROSPECTIVE  
12    EMPLOYEE WHO IS PRESENTED WITH AN AGREEMENT THAT INCLUDES A  
13    NONDISCLOSURE PROVISION THAT VIOLATES SUBSECTION (1) OF THIS  
14    SECTION MAY IMMEDIATELY BRING AN ACTION    TO RECOVER PENALTIES.  
15    IN ADDITION TO PENALTIES, AN EMPLOYEE OR A PROSPECTIVE EMPLOYEE  
16    MAY RECOVER ACTUAL DAMAGES, REASONABLE COSTS, AND ATTORNEY  
17    FEES IN ANY PRIVATE ACTION BROUGHT PURSUANT TO THIS SECTION.

18            (3) IN ANY CIVIL ACTION INVOLVING A CLAIM OF A  
19    DISCRIMINATORY OR AN UNFAIR EMPLOYMENT PRACTICE, A PLAINTIFF MAY  
20    PRESENT EVIDENCE THAT THE EMPLOYER AGAINST WHOM THE ACTION WAS  
21    FILED ENTERED INTO ONE OR MORE AGREEMENTS THAT INCLUDED A  
22    NONDISCLOSURE PROVISION INVOLVING THE CONDUCT OF THE SAME  
23    INDIVIDUAL OR INDIVIDUALS WHO ARE ALLEGED IN THE ACTION TO HAVE  
24    ENGAGED IN THE DISCRIMINATORY OR UNFAIR EMPLOYMENT PRACTICE. IF  
25    SUCH EVIDENCE IS PRESENTED, THE EVIDENCE SHALL BE CONSIDERED  
26    EVIDENCE IN SUPPORT OF AN AWARD OF PUNITIVE DAMAGES.

27            (4) IN ANY ACTION BROUGHT UNDER THIS SECTION, IF THE

1 EMPLOYER SHOWS THAT THE ACT OR OMISSION GIVING RISE TO THE ACTION  
2 WAS COMMITTED IN GOOD FAITH AND THAT THE EMPLOYER HAS  
3 REASONABLE GROUNDS FOR BELIEVING THAT THE EMPLOYER'S ACT OR  
4 OMISSION DID NOT VIOLATE THIS SECTION, THE COURT MAY, IN ITS  
5 DISCRETION, DECLINE TO AWARD A PENALTY OR REDUCE THE AMOUNT OF  
6 THE PENALTY SPECIFIED IN SUBSECTION (2)(a) OF THIS SECTION.

7 **24-34-408. Employer record keeping - repository of**  
8 **discrimination complaints - definition.** (1) AN EMPLOYER SHALL  
9 PRESERVE ANY PERSONNEL OR EMPLOYMENT RECORD THE EMPLOYER  
10 MADE, RECEIVED, OR KEPT FOR AT LEAST FIVE YEARS AFTER THE LATER OF:

11 (a) THE DATE THE EMPLOYER MADE OR RECEIVED THE RECORD; OR

12 (b) THE DATE OF THE PERSONNEL ACTION ABOUT WHICH THE  
13 RECORD PERTAINS OR OF THE FINAL DISPOSITION OF A CHARGE OF  
14 DISCRIMINATION OR RELATED ACTION, AS APPLICABLE.

15 (2) (a) AN EMPLOYER SHALL MAINTAIN AN ACCURATE,  
16 DESIGNATED REPOSITORY OF ALL WRITTEN OR ORAL COMPLAINTS OF  
17 DISCRIMINATORY OR UNFAIR EMPLOYMENT PRACTICES, AS DESCRIBED IN  
18 SECTION 24-34-402 (1)(a), THAT INCLUDES THE DATE OF THE COMPLAINT,  
19 THE IDENTITY OF THE COMPLAINING PARTY, IF THE COMPLAINT WAS NOT  
20 MADE ANONYMOUSLY, THE IDENTITY OF THE ALLEGED PERPETRATOR, AND  
21 THE SUBSTANCE OF THE COMPLAINT.

22 (b) RECORDS OF COMPLAINTS IN AN EMPLOYER'S DESIGNATED  
23 REPOSITORY MAINTAINED IN ACCORDANCE WITH THIS SUBSECTION (2) ARE  
24 NOT PUBLIC RECORDS, AS DEFINED IN SECTION 24-72-202 (6), AND, FOR  
25 PURPOSES OF AN EMPLOYER THAT IS SUBJECT TO PART 2 OF ARTICLE 72 OF  
26 TITLE 24, RECORDS IN A DESIGNATED REPOSITORY ARE CONSIDERED  
27 PERSONNEL RECORDS, AS DEFINED IN SECTION 24-72-202 (4.5), AND ARE



1 NOT OPEN TO PUBLIC INSPECTION PURSUANT TO SECTION 24-72-204  
2 (3)(a)(II)(A). ADDITIONALLY, IN ACCORDANCE WITH SECTION 24-72-204  
3 (3)(a)(X), ANY RECORD OF A SEXUAL HARASSMENT COMPLAINT OR  
4 INVESTIGATION IS NOT OPEN TO PUBLIC INSPECTION EXCEPT AS SPECIFIED  
5 IN SAID SECTION 24-72-204 (3)(a)(X).

6 (3) AS USED IN THIS SECTION, "PERSONNEL OR EMPLOYMENT  
7 RECORD" INCLUDES REQUESTS FOR ACCOMMODATION; EMPLOYEE  
8 COMPLAINTS OF DISCRIMINATORY OR UNFAIR EMPLOYMENT PRACTICES,  
9 WHETHER WRITTEN OR ORAL; APPLICATION FORMS SUBMITTED BY  
10 APPLICANTS FOR EMPLOYMENT; OTHER RECORDS RELATED TO HIRING,  
11 PROMOTION, DEMOTION, TRANSFER, LAYOFF, TERMINATION, RATES OF PAY  
12 OR OTHER TERMS OF COMPENSATION, AND SELECTION FOR TRAINING OR  
13 APPRENTICESHIP; AND RECORDS OF TRAINING PROVIDED TO OR  
14 FACILITATED FOR EMPLOYEES.

15 **SECTION 6. Appropriation.** (1) For the 2023-24 state fiscal  
16 year, \$152,866 is appropriated to the department of corrections. This  
17 appropriation is from the general fund. To implement this act, the  
18 department may use this appropriation as follows:

19 (a) \$123,478 for use by support services for personal services  
20 related to the personnel subprogram, which amount is based on an  
21 assumption that the subprogram will require an additional 2.6 FTE;

22 (b) \$20,823 for use by support services for operating expenses  
23 related to the personnel subprogram; and

24 (c) \$8,565 for use by management for the purchase of legal  
25 services.

26 (2) For the 2023-24 state fiscal year, \$23,469 is appropriated to  
27 the department of education. This appropriation is from the general fund.

1 To implement this act, the department may use this appropriation as  
2 follows:

3 (a) \$22,200 for use by management and administration for general  
4 department and program administration, which amount is based on an  
5 assumption that the division will require an additional 0.4 FTE; and

6 (b) \$1,269 for use by management and administration for the  
7 purchase of legal services.

8 (3) For the 2023-24 state fiscal year, \$35,415 is appropriated to  
9 the office of the governor. This appropriation is from the general fund. To  
10 implement this act, the office may use this appropriation as follows:

11 (a) \$6,660 for use by the office of the governor for administration  
12 of governor's office and residence, which amount is based on an  
13 assumption that the office will require an additional 0.1 FTE;

14 (b) \$423 for the purchase of legal services;

15 (c) \$26,640 for use by the office of information and technology  
16 for central administration, which amount is based on an assumption that  
17 the office will require an additional 0.5 FTE; and

18 (d) \$1,692 for use by the office of information and technology for  
19 the purchase of legal services.

20 (4) For the 2023-24 state fiscal year, \$23,363 is appropriated to  
21 the department of health care policy and financing for use by the  
22 executive director's office. This appropriation is from the general fund.

23 To implement this act, the office may use this appropriation as follows:

24 (a) \$18,997 for personal services, which amount is based on an  
25 assumption that the office will require an additional 0.4 FTE;

26 (b) \$3,203 for operating expenses; and

27 (c) \$1,163 for the purchase of legal services.

1           (5) For the 2023-24 state fiscal year, \$129,081 is appropriated to  
2 the department of human services. This appropriation is from the general  
3 fund. To implement this act, the department may use this appropriation  
4 as follows:

5           (a) \$104,483 for use by administration and finance for personal  
6 services, which amount is based on an assumption that the division will  
7 require an additional 2.2 FTE;

8           (b) \$17,619 for use by administration and finance for operating  
9 expenses; and

10           (c) \$6,979 for the purchase of legal services.

11           (6) For the 2023-24 state fiscal year, \$146,894 is appropriated to  
12 the judicial department for courts administration. This appropriation is  
13 from the general fund. To implement this act, the department may use this  
14 appropriation as follows:

15           (a) \$138,752 for general courts administration, which amount is  
16 based on an assumption that the department will require an additional 2.5  
17 FTE; and

18           (b) \$8,142 for the purchase of legal services.

19           (7) For the 2023-24 state fiscal year, \$46,833 is appropriated to  
20 the department of labor and employment for use by the executive  
21 director's office. This appropriation is from the general fund. To  
22 implement this act, the office may use this appropriation as follows:

23           (a) \$37,994 for personal services, which amount is based on an  
24 assumption that the office will require an additional 0.8 FTE;

25           (b) \$6,407 for operating expenses; and

26           (c) \$2,432 for the purchase of legal services.

27           (8) For the 2023-24 state fiscal year, \$17,708 is appropriated to

1 the department of law for use by the administration division. This  
2 appropriation is from the general fund. To implement this act, the division  
3 may use this appropriation as follows:

4 (a) \$16,651 for personal services, which amount is based on an  
5 assumption that the department will require an additional 0.3 FTE; and

6 (b) \$1,057 for the purchase of legal services.

7 (9) For the 2023-24 state fiscal year, \$76,276 is appropriated to  
8 the department of natural resources for use by the executive director's  
9 office. This appropriation is from the general fund. To implement this act,  
10 the office may use this appropriation as follows:

11 (a) \$61,740 for personal services, which amount is based on an  
12 assumption that the office will require an additional 1.3 FTE;

13 (b) \$10,412 for operating expenses; and

14 (c) \$4,124 for the purchase of legal services.

15 (10) For the 2023-24 state fiscal year, \$89,090 is appropriated to  
16 the department of personnel. This appropriation is from the general fund.  
17 To implement this act, the department may use this appropriation as  
18 follows:

19 (a) \$57,725 for use by the division of human resources for  
20 personal services related to risk management services, which amount is  
21 based on an assumption that the division will require an additional 0.8  
22 FTE;

23 (b) \$6,350 for use by the division of human resources for  
24 operating expenses related to risk management services;

25 (c) \$23,210 for use by the state personnel board for personal  
26 services, which amount is based on an assumption that the board will  
27 require an additional 0.2 FTE; and

1           (d) \$1,805 for use by the state personnel board for operating  
2 expenses.

3           (11) For the 2023-24 state fiscal year, \$52,912 is appropriated to  
4 the department of public health and environment for use by  
5 administration and support. This appropriation is from the general fund.  
6 To implement this act, the department may use this appropriation as  
7 follows:

8           (a) \$42,743 for personal services, which amount is based on an  
9 assumption that the office will require an additional 0.9 FTE;

10           (b) \$7,208 for operating expenses; and

11           (c) \$2,961 for the purchase of legal services.

12           (12) For the 2023-24 state fiscal year, \$52,912 is appropriated to  
13 the department of public safety for use by the executive director's office.  
14 This appropriation is from the general fund. To implement this act, the  
15 office may use this appropriation as follows:

16           (a) \$42,743 for personal services, which amount is based on an  
17 assumption that the office will require an additional 0.9 FTE;

18           (b) \$7,208 for operating expenses; and

19           (c) \$2,961 for the purchase of legal services.

20           (13) For the 2023-24 state fiscal year, \$266,298 is appropriated to  
21 the department of regulatory agencies. This appropriation is from the  
22 general fund. To implement this act, the department may use this  
23 appropriation as follows:

24           (a) \$205,631 for use by the civil rights division for personal  
25 services, which amount is based on an assumption that the division will  
26 require an additional 2.3 FTE;

27           (b) \$27,888 for use by the civil rights division for operating

1 expenses; and

2 (c) \$32,779 for the purchase of legal services.

3 (14) For the 2023-24 state fiscal year, \$14,248 is appropriated to  
4 the department of regulatory agencies for use by the executive director's  
5 office and administrative services. This appropriation is from  
6 reappropriated funds received from the department of regulatory agencies  
7 under subsection (13)(a) and of this section. To implement this act, the  
8 office may use the appropriation for personal services, which amount is  
9 based on an assumption that the office will require an additional 0.3 FTE.

10 (15) For the 2023-24 state fiscal year, \$2,403 is appropriated to  
11 the department of regulatory agencies for use by the executive director's  
12 office and administrative services. This appropriation is from  
13 reappropriated funds received from the department of regulatory agencies  
14 under subsection (13)(b) and of this section. To implement this act, the  
15 office may use the appropriation for operating expenses.

16 (16) For the 2023-24 state fiscal year, \$47,045 is appropriated to  
17 the department of revenue for use by the executive director's office. This  
18 appropriation is from the general fund. To implement this act, the office  
19 may use this appropriation as follows:

20 (a) \$37,994 for personal services related to administration and  
21 support, which amount is based on an assumption that the division will  
22 require an additional 0.8 FTE;

23 (b) \$6,407 for operating expenses related to administration and  
24 support; and

25 (c) \$2,644 for the purchase of legal services.

26 (17) For the 2023-24 state fiscal year, \$88,008 is appropriated to  
27 the department of transportation. This appropriation is from the general

1 fund and is based on an assumption that the department will require an  
2 additional 1.5 FTE. To implement this act, the department may use this  
3 appropriation for administration.

4 (18) For the 2023-24 state fiscal year, \$81,949 is appropriated to  
5 the department of law. This appropriation is from reappropriated funds  
6 received from the departments of corrections, education, office of the  
7 governor, health care policy and financing, human services, judicial, labor  
8 and employment, law, natural resources, public health and environment,  
9 public safety, regulatory agencies, revenue, and transportation under  
10 subsections (1)(c), (2)(b), (3)(b), (3)(d), (4)(c), (5)(c), (6)(b), (7)(c),  
11 (8)(b), (9)(c), (11)(c), (12)(c), (13)(c), (16)(c), and (17) of this section and  
12 is based on the assumption that the department will require an additional  
13 0.5 FTE. To implement this act, the department of law may use this  
14 appropriation to provide legal services for the departments of corrections,  
15 education, office of the governor, health care policy and financing, human  
16 services, judicial, labor and employment, law, natural resources, public  
17 health and environment, public safety, regulatory agencies, revenue, and  
18 transportation.

19 **SECTION 7. Act subject to petition - effective date -**  
20 **applicability.** (1) This act takes effect at 12:01 a.m. on the day following  
21 the expiration of the ninety-day period after final adjournment of the  
22 general assembly; except that, if a referendum petition is filed pursuant  
23 to section 1 (3) of article V of the state constitution against this act or an  
24 item, section, or part of this act within such period, then the act, item,  
25 section, or part will not take effect unless approved by the people at the  
26 general election to be held in November 2024 and, in such case, will take  
27 effect on the date of the official declaration of the vote thereon by the

1 governor.

2 (2) This act applies to employment practices occurring on or after

3 the applicable effective date of this act.