

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

INTRODUCED

LLS NO. 19-0045.02 Christy Chase x2008

HOUSE BILL 19-1081

HOUSE SPONSORSHIP

Williams D., Humphrey, Buck, Saine, Beckman, Baisley, Geitner, Lewis, Sandridge, Soper, Larson, Neville, Ransom, Van Winkle

SENATE SPONSORSHIP

(None),

House Committees

State, Veterans, & Military Affairs

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING THE RIGHTS OF A RESPONDENT AGAINST WHOM A**
102 **DISCRIMINATION COMPLAINT HAS BEEN FILED.**

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>.)

With regard to employment, housing, public accommodations, and advertising discrimination complaints investigated by the civil rights division in the department of regulatory agencies and, in some cases, heard or pursued by the Colorado civil rights commission, the bill specifies that:

! The respondent has a right to request representation by a

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.

public defender, regardless of indigent status or the lack of an arrest for or charge of a crime, at any point in the administrative process when the respondent is requested or required to participate;

! The respondent may request to move the matter to a court of competent jurisdiction if the respondent asserts that the respondent engaged in the alleged discriminatory conduct on the basis of first amendment rights; and

! If the respondent obtains a favorable decision after all appeals are exhausted or if the United States supreme court rules in favor of the respondent, the commission must pay the respondent's attorney fees and costs and lost business income, retroactive to appeals or actions for judicial review filed on or after December 1, 2013.

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 "Justice
3 for Jack Act".

4 **SECTION 2. Legislative declaration.** The general assembly
5 finds that procedural due process is a constitutional right that must be
6 afforded to both complainants and respondents in cases of alleged
7 discrimination. Current Colorado laws do not treat respondents in an
8 action before the Colorado civil rights commission in an equal or
9 constitutional manner and, therefore, have opened the door to harassment.
10 This act is necessary to ensure that the procedural due process rights
11 guaranteed to all Colorado citizens are not at constant risk of violation.

12 **SECTION 3.** In Colorado Revised Statutes, 24-34-306, **amend**
13 (1)(c), (2)(b)(II), (4), and (13) as follows:

14 **24-34-306. Charge - complaint - hearing - procedure -**
15 **exhaustion of administrative remedies.** (1) (c) Prior to any other action
16 by the division regarding the charge, the division shall notify the
17 respondent of the charges filed against ~~him or her~~ THE RESPONDENT AND

1 OF THE RESPONDENT'S RIGHT TO REQUEST REPRESENTATION BY A PUBLIC
2 DEFENDER IN ACCORDANCE WITH SECTION 21-1-103, REGARDLESS OF
3 WHETHER THE RESPONDENT IS DETERMINED INDIGENT PURSUANT TO
4 SECTION 21-1-103 (3) AND NOTWITHSTANDING THE FACT THAT THE
5 RESPONDENT HAS NOT BEEN ARRESTED FOR OR CHARGED WITH A FELONY
6 OR A MISDEMEANOR THAT INCLUDES A POSSIBLE SENTENCE OF
7 INCARCERATION AS SPECIFIED IN SECTION 21-1-103 (1) AND (2).

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

12 (II) If the director or the director's designee determines that
13 probable cause exists, the director or the director's designee shall serve
14 the respondent with written notice stating with specificity the legal
15 authority and jurisdiction of the commission, ~~and~~ the matters of fact and
16 law asserted, AND THE RESPONDENT'S RIGHT TO REQUEST
17 REPRESENTATION BY A PUBLIC DEFENDER IN ACCORDANCE WITH SECTION
18 21-1-103, REGARDLESS OF WHETHER THE RESPONDENT IS DETERMINED
19 INDIGENT PURSUANT TO SECTION 21-1-103 (3) AND NOTWITHSTANDING
20 THE FACT THAT THE RESPONDENT HAS NOT BEEN ARRESTED FOR OR
21 CHARGED WITH A FELONY OR A MISDEMEANOR THAT INCLUDES A POSSIBLE
22 SENTENCE OF INCARCERATION AS SPECIFIED IN SECTION 21-1-103 (1) AND
23 (2). In addition, the director or the director's designee shall order the
24 charging party and the respondent to participate in compulsory mediation.
25 Immediately after the director or the director's designee serves notice on
26 the respondent, the director or the director's designee shall endeavor to
27 eliminate the discriminatory or unfair practice by conference, conciliation,

1 and persuasion and by means of the compulsory mediation required by
2 this ~~subparagraph (H)~~ SUBSECTION (2)(b)(II).

3 (4) (a) (I) When the director is satisfied that further efforts to
4 settle the matter by conference, conciliation, and persuasion will be futile,
5 ~~he~~ THE DIRECTOR shall so report to the commission. EXCEPT AS SPECIFIED
6 IN SUBSECTION (4)(b) OF THIS SECTION, if the commission determines that
7 the circumstances warrant, ~~it~~ THE COMMISSION shall issue and cause to be
8 served, in the manner provided by section 24-4-105 (2), a written notice
9 and complaint requiring the respondent to answer the charges at a formal
10 hearing before the commission, a commissioner, or an administrative law
11 judge. ~~Such~~ THE NOTICE MUST INCLUDE A STATEMENT INFORMING THE
12 RESPONDENT OF THE RESPONDENT'S RIGHT TO REQUEST REPRESENTATION
13 BY A PUBLIC DEFENDER IN ACCORDANCE WITH SECTION 21-1-103,
14 REGARDLESS OF WHETHER THE RESPONDENT IS DETERMINED INDIGENT
15 PURSUANT TO SECTION 21-1-103 (3) AND NOTWITHSTANDING THE FACT
16 THAT THE RESPONDENT HAS NOT BEEN ARRESTED FOR OR CHARGED WITH
17 A FELONY OR A MISDEMEANOR THAT INCLUDES A POSSIBLE SENTENCE OF
18 INCARCERATION AS SPECIFIED IN SECTION 21-1-103 (1) AND (2).

19 (II) THE COMMISSION, COMMISSIONER, OR ADMINISTRATIVE LAW
20 JUDGE, AS APPLICABLE, SHALL COMMENCE THE hearing ~~shall be~~
21 ~~commenced~~ within one hundred twenty days after the service of ~~such~~ THE
22 written notice and complaint. ~~Such~~ THE notice and complaint ~~shall~~ MUST
23 state the time, place, and nature of the hearing, the legal authority and
24 jurisdiction under which ~~it~~ THE HEARING is to be held, and the matters of
25 fact and law asserted.

26 (b) NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE
27 CONTRARY, IF A RESPONDENT ASSERTS THAT THE RESPONDENT ENGAGED

1 IN CONDUCT ALLEGED TO BE A DISCRIMINATORY OR UNFAIR PRACTICE AS
2 DEFINED BY PARTS 4 TO 7 OF THIS ARTICLE 34 ON THE BASIS OF THE
3 RESPONDENT'S FIRST AMENDMENT RIGHTS UNDER THE UNITED STATES
4 CONSTITUTION, THE RESPONDENT MAY FILE A WRITTEN REQUEST TO MOVE
5 THE CASE TO A COURT OF COMPETENT JURISDICTION. UPON RECEIPT OF THE
6 REQUEST FROM THE RESPONDENT, THE JURISDICTION OF THE COMMISSION
7 CEASES, AND THE COMPLAINANT IS DEEMED TO HAVE EXHAUSTED THE
8 ADMINISTRATIVE PROCEEDINGS AND REMEDIES AVAILABLE UNDER THIS
9 PART 3 FOR PURPOSES OF SUBSECTION (14) OF THIS SECTION AND MAY
10 REQUEST A NOTICE OF RIGHT TO SUE IN ACCORDANCE WITH SUBSECTION
11 (15) OF THIS SECTION.

12 (13) (a) EXCEPT AS SPECIFIED IN SUBSECTION (13)(b) OF THIS
13 SECTION, any member of the commission and any person participating in
14 good faith in the making of a complaint or a report or in any investigative
15 or administrative proceeding authorized by THIS PART 3 AND parts 3 4 to
16 7 of this ~~article shall be~~ ARTICLE 34 IS immune from liability in any civil
17 action brought against ~~him~~ THE MEMBER OR PERSON for acts occurring
18 while acting in ~~his~~ THE capacity as a commission member or participant,
19 respectively, if ~~such~~ THE individual was acting in good faith within the
20 scope of ~~his~~ THE INDIVIDUAL'S respective capacity, made a reasonable
21 effort to obtain the facts of the matter as to which ~~he~~ THE INDIVIDUAL
22 acted, and acted in the reasonable belief that the action taken by ~~him~~ THE
23 INDIVIDUAL was warranted by the facts.

24 (b) IF THE UNITED STATES SUPREME COURT RULES IN FAVOR OF A
25 RESPONDENT, OR IF ALL OTHER APPEALS OF THE CASE ARE EXHAUSTED
26 AND RESULT IN A RULING IN FAVOR OF THE RESPONDENT, THE COMMISSION
27 SHALL PAY THE RESPONDENT'S ATTORNEY FEES AND COSTS INCURRED

1 FROM THE DATE CHARGES WERE FILED AGAINST THE RESPONDENT AND
2 LOSS OF BUSINESS INCOME RESULTING FROM THE COMMISSION'S ACTION IN
3 PURSUING CHARGES AGAINST THE RESPONDENT.

4 **SECTION 4. Applicability.** (1) Except as otherwise specified
5 in subsection (2) of this section, this act applies to conduct occurring on
6 or after the effective date of this act.

7 (2) Section 24-34-306 (13), as amended in section 3 of this act,
8 applies to any appeals or actions for judicial review of a final agency
9 order filed on or after December 1, 2013.

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