

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

INTRODUCED

LLS NO. 21-0558.01 Christy Chase x2008

SENATE BILL 21-176

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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, 24-34-306, **amend**
5 (2)(b) introductory portion, (2)(b)(I) introductory portion, (2)(b)(I)(B),
6 (2)(b)(I)(C), (11), and (14) as follows:

1 **24-34-306. Charge - complaint - hearing - procedure -**
2 **exhaustion of administrative remedies - special procedures for**
3 **employment discrimination claims.** (2) (b) The director or the director's
4 designee, who ~~shall~~ MUST be an employee of the division, shall determine
5 as promptly as possible whether probable cause exists for crediting the
6 allegations of the charge and shall follow one of the following courses of
7 action:

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

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

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

1 time limits specified in ~~sub-subparagraph (B) of this subparagraph (F)~~
2 SUBSECTION (2)(b)(I)(B) OF THIS SECTION, the action will be barred, and
3 no ~~district court shall have~~ HAS jurisdiction to hear the action.

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

26 (14) (a) ~~No~~ EXCEPT AS PROVIDED IN SUBSECTION (14)(b) OF THIS
27 SECTION, A person may NOT file a civil action in a district court in this

1 state based on an alleged discriminatory or unfair practice prohibited by
2 ~~parts 4 to 7 of this article~~ PARTS 5 TO 7 OF THIS ARTICLE 34 OR, IN CASES
3 ALLEGING A DISCRIMINATORY OR UNFAIR EMPLOYMENT PRACTICE
4 PROHIBITED BY PART 4 OF THIS ARTICLE 34, IN A COURT OF COMPETENT
5 JURISDICTION IN THE DISTRICT OR COUNTY IN WHICH THE ALLEGED
6 DISCRIMINATORY OR UNFAIR EMPLOYMENT PRACTICE OCCURRED without
7 first exhausting the proceedings and remedies available to ~~him~~ THE
8 PERSON under this part 3 unless ~~he~~ THE PERSON shows, in an action filed
9 in the appropriate ~~district~~ court, by clear and convincing evidence, ~~his~~ THE
10 PERSON'S ill health, which is of such a nature that pursuing administrative
11 remedies would not provide timely and reasonable relief and would cause
12 irreparable harm.

13 (b) (I) BEFORE FILING A CIVIL ACTION IN A COURT OF COMPETENT
14 JURISDICTION IN A COUNTY OR DISTRICT IN WHICH THE ALLEGED
15 DISCRIMINATORY OR UNFAIR EMPLOYMENT PRACTICE OCCURRED, AN
16 INDIVIDUAL ALLEGING A DISCRIMINATORY OR UNFAIR EMPLOYMENT
17 PRACTICE UNDER PART 4 OF THIS ARTICLE 34 MUST:

18 (A) SUBMIT A VERIFIED WRITTEN CHARGE TO THE DIVISION WITHIN
19 THREE HUNDRED DAYS AFTER THE ALLEGED DISCRIMINATORY OR UNFAIR
20 EMPLOYMENT PRACTICE OCCURRED; OR

21 (B) MAKE A WRITTEN DEMAND FOR COMPENSATION OR OTHER
22 RELIEF TO THE INDIVIDUAL'S EMPLOYER.

23 (II) IF AN INDIVIDUAL MAKES A WRITTEN DEMAND PURSUANT TO
24 SUBSECTION (14)(b)(I)(B) OF THIS SECTION:

25 (A) NO SOONER THAN FOURTEEN DAYS AFTER DELIVERING THE
26 WRITTEN DEMAND TO THE INDIVIDUAL'S EMPLOYER AND NO LATER THAN
27 THREE HUNDRED DAYS AFTER THE ALLEGED DISCRIMINATORY OR UNFAIR

1 EMPLOYMENT PRACTICE OCCURRED, THE AGGRIEVED INDIVIDUAL MAY
2 FILE A CIVIL ACTION IN A COURT OF COMPETENT JURISDICTION IN THE
3 COUNTY OR DISTRICT IN WHICH THE ALLEGED DISCRIMINATORY OR UNFAIR
4 EMPLOYMENT PRACTICE OCCURRED AND IS NOT REQUIRED TO EXHAUST
5 ANY OTHER ADMINISTRATIVE PROCEEDINGS OR REMEDIES AVAILABLE
6 UNDER THIS PART 3; AND

7 (B) THE INDIVIDUAL IS NOT PRECLUDED FROM SUBMITTING A
8 TIMELY VERIFIED WRITTEN CHARGE TO THE DIVISION PURSUANT TO
9 SUBSECTION (14)(b)(I)(A) OF THIS SECTION OR PROCEEDING IN
10 ACCORDANCE WITH SUBSECTION (2)(b)(I)(B) OF THIS SECTION, IF
11 APPLICABLE.

12 (III) THIS SUBSECTION (14)(b) DOES NOT APPLY TO ALLEGATIONS
13 OF DISCRIMINATORY OR UNFAIR EMPLOYMENT PRACTICES MADE BY AN
14 APPLICANT FOR A POSITION IN OR AN EMPLOYEE IN THE STATE PERSONNEL
15 SYSTEM.

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

18 **24-34-400.2. Legislative declaration.** (1) (a) THE GENERAL
19 ASSEMBLY FINDS THAT:

20 (I) ALL COLORADANS SHOULD HAVE AN EQUAL OPPORTUNITY TO
21 SUCCEED IN THE WORKPLACE. EMPLOYERS MUST ENGAGE IN PREVENTIVE
22 AND CORRECTIVE ACTIONS TO ELIMINATE WORKPLACE DISCRIMINATION,
23 AND COURTS SHOULD APPLY THE LAW CONSISTENTLY TO ALL
24 WORKPLACES.

25 (II) IT IS IN SOCIETY'S INTEREST TO ENSURE THAT EQUALITY OF
26 OPPORTUNITY IN THE WORKPLACE IS NOT UNDERMINED BY UNLAWFUL
27 DISCRIMINATION. EVEN SMALL VICTORIES ADVANCE THAT INTEREST.

1 (III) CONCERNING HARASSMENT IN THE WORKPLACE, VICTIMS OF
2 HARASSMENT HAVE A VARIETY OF LEGITIMATE REASONS FOR FAILING TO
3 REPORT HARASSMENT TO THEIR EMPLOYERS, AND SOCIETY BENEFITS WHEN
4 VICTIMS OF HARASSMENT ARE GIVEN MORE TIME TO CONSIDER THOSE
5 REASONS AND ASSERT THEIR RIGHTS UNDER THE LAWS THAT PROTECT
6 THEM.

7 (IV) OLDER EMPLOYEES ARE OFTEN FORCED TO LEAVE POSITIONS
8 BEFORE THEY WOULD VOLUNTARILY CHOOSE TO DO SO. ONCE THIS
9 HAPPENS, VERY FEW OLDER EMPLOYEES EVER REGAIN THEIR PREVIOUS
10 ECONOMIC STATUS. THIS OUTCOME IS DEVASTATING TO COLORADO'S
11 RAPIDLY AGING WORKFORCE.

12 (V) THE COVID-19 PANDEMIC THAT BEGAN IN 2020 HAS:

13 (A) SHOWN THAT VULNERABLE CITIZENS' ACCESS TO JUSTICE IS
14 IMPORTANT TO THE SUCCESS OF THE STATE. RECENT EVENTS HAVE SHOWN
15 THAT MINORITY, FEMALE, AND OLDER WORKERS HAVE BEEN
16 DISPROPORTIONATELY NEGATIVELY AFFECTED BY ECONOMIC DOWNTURNS,
17 AND THUS ARE SUSCEPTIBLE TO WORKPLACE HARASSMENT AND
18 DISCRIMINATION.

19 (B) HIGHLIGHTED THE NEED FOR AND VALUE OF CAREGIVERS AND
20 ESSENTIAL WORKERS, THE VAST MAJORITY OF WHOM ARE FEMALE AND
21 MEMBERS OF A RACIAL MINORITY GROUP.

22 (b) THE GENERAL ASSEMBLY THEREFORE DECLARES THAT IT IS THE
23 STATE'S SOCIAL RESPONSIBILITY TO MODERNIZE ANTI-DISCRIMINATION
24 LAWS TO EXPAND ACCESS TO JUSTICE AND PROTECT COLORADO WORKERS.

25 (2) THE GENERAL ASSEMBLY FURTHER FINDS THAT WHETHER AN
26 EMPLOYER HAS BEEN CHARGED WITH A VIOLATION OF THIS PART 4 IS A
27 MATTER OF PUBLIC INTEREST, AND THOSE EMPLOYERS SHOULD NOT ENJOY

1 THE PROTECTIONS OF ANONYMITY THAT ARE OFTEN ACHIEVED THROUGH
2 CONFIDENTIALITY AND NONDISCLOSURE AGREEMENTS.

3 **SECTION 4.** In Colorado Revised Statutes, 24-34-401, **amend**
4 (2); and **add** (1.3), (1.5), (1.7), (4.5), (4.7), (4.9), and (6.3) as follows:

5 **24-34-401. Definitions.** As used in this part 4, unless otherwise
6 defined in section 24-34-301 or unless the context otherwise requires:

7 (1.3) "CAREGIVER" MEANS AN INDIVIDUAL WHO PROVIDES DIRECT
8 AND ONGOING CARE TO A MINOR CHILD OR CARE RECIPIENT.

9 (1.5) "CARE RECIPIENT" MEANS AN INDIVIDUAL WHO:

10 (a) (I) HAS A MENTAL OR PHYSICAL ILLNESS, INJURY, OR HEALTH
11 CONDITION;

12 (II) NEEDS TO OBTAIN A MEDICAL DIAGNOSIS, CARE, OR
13 TREATMENT FOR A MENTAL OR PHYSICAL ILLNESS, INJURY, OR HEALTH
14 CONDITION; OR

15 (III) NEEDS TO OBTAIN PREVENTIVE MEDICAL CARE;

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

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

20 (1.7) "CHILD" MEANS A BIOLOGICAL, ADOPTED, OR FOSTER CHILD;
21 A STEPCHILD; A LEGAL WARD; A CHILD OF A DOMESTIC PARTNER; OR A
22 CHILD TO WHOM THE CAREGIVER STANDS IN LOCO PARENTIS.

23 (2) (a) "Employee" means any ~~person~~ INDIVIDUAL:

24 (I) Employed by an employer; ~~except a person in the domestic~~
25 ~~service of any person.~~

26 (II) WHO PERFORMS SERVICES FOR MONETARY COMPENSATION,
27 INCLUDING INDEPENDENT CONTRACTORS AND SUBCONTRACTORS; OR

1 (III) WHO PERFORMS SERVICES IN EXCHANGE FOR VALUE OTHER
2 THAN MONETARY CONSIDERATION, INCLUDING UNPAID INTERNS.

3 (b) "EMPLOYEE" DOES NOT MEAN AN INDIVIDUAL WHO MEETS THE
4 DEFINITION OF "INMATE" IN SECTION 17-1-102 (6.5), EXCEPT FOR
5 INDIVIDUALS UNDER THE SUPERVISION OF THE DIVISION OF ADULT PAROLE
6 PURSUANT TO SECTION 17-2-102.

7 (4.5) "HARASS" OR "HARASSMENT" MEANS TO SUBJECT AN
8 INDIVIDUAL TO INFERIOR TERMS, CONDITIONS, OR PRIVILEGES OF
9 EMPLOYMENT, OR TO SUBJECT AN INDIVIDUAL TO A HOSTILE WORK
10 ENVIRONMENT, BECAUSE OF THAT INDIVIDUAL'S DISABILITY, RACE, CREED,
11 COLOR, SEX, SEXUAL ORIENTATION, MARITAL STATUS, CAREGIVER STATUS,
12 RELIGION, AGE, NATIONAL ORIGIN, OR ANCESTRY.

13 (4.7) (a) "HOSTILE WORK ENVIRONMENT" MEANS A HOSTILE,
14 OFFENSIVE, OPPRESSIVE, OR INTIMIDATING WORK ENVIRONMENT THAT
15 DEPRIVES AN INDIVIDUAL OF THE INDIVIDUAL'S RIGHT TO WORK IN A PLACE
16 FREE OF DISCRIMINATION WHEN A REASONABLE PERSON WOULD FIND THAT
17 THE OFFENSIVE CONDUCT:

18 (I) OFFENDS, HUMILIATES, DISTRESSES, OR INTRUDES UPON THE
19 INDIVIDUAL OR OTHERWISE INTERFERES WITH AND UNDERMINES THE
20 INDIVIDUAL'S PERSONAL SENSE OF WELL-BEING OR SAFETY; OR

21 (II) AFFECTS THE INDIVIDUAL'S ABILITY TO PERFORM THE
22 INDIVIDUAL'S JOB AS USUAL.

23 (b) IN DETERMINING THE EXISTENCE OF A HOSTILE WORK
24 ENVIRONMENT:

25 (I) THE NATURE OF THE WORKPLACE SHOULD BE CONSIDERED
26 ONLY WHEN ENGAGING IN OR WITNESSING PRURIENT CONDUCT AND
27 COMMENTARY IS INTEGRAL TO THE PERFORMANCE OF JOB DUTIES; AND

1 (II) A SINGLE INCIDENT OF HARASSING CONDUCT CAN BE
2 SUFFICIENT TO CREATE A HOSTILE WORK ENVIRONMENT, REGARDLESS OF
3 WHETHER THE HARASSING CONDUCT IS SEVERE OR PERVASIVE.

4 (4.9) "INDEPENDENT CONTRACTOR" MEANS AN INDIVIDUAL
5 PRIMARILY FREE FROM CONTROL AND DIRECTION IN THE PERFORMANCE OF
6 A SERVICE, BOTH UNDER THE INDIVIDUAL'S CONTRACT FOR THE
7 PERFORMANCE OF THE SERVICE AND IN FACT, AND WHO IS CUSTOMARILY
8 ENGAGED IN AN INDEPENDENT TRADE, OCCUPATION, PROFESSION, OR
9 BUSINESS RELATED TO THE SERVICE PERFORMED.

10 (6.3) "MINOR CHILD" MEANS A CHILD WHO IS UNDER EIGHTEEN
11 YEARS OF AGE.

12 **SECTION 5.** In Colorado Revised Statutes, 24-34-402, **amend**
13 (1) introductory portion, (1)(a), (1)(b), (1)(c), (1)(d), and (1)(f); and **add**
14 (1)(j) and (1.5) as follows:

15 **24-34-402. Discriminatory or unfair employment practices.**

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

17 (a) (I) For an employer to refuse to hire, to discharge, to promote
18 or demote, to harass during the course of employment, or to discriminate
19 in matters of compensation, terms, conditions, or privileges of
20 employment against any ~~person~~ INDIVIDUAL otherwise qualified because
21 of disability, race, creed, color, sex, sexual orientation, MARITAL STATUS,
22 CAREGIVER STATUS, religion, age, national origin, or ancestry; but, with
23 regard to a disability, it is not a discriminatory or an unfair employment
24 practice for an employer to act as provided in this ~~paragraph (a)~~
25 SUBSECTION (1)(a) if there is no reasonable accommodation that the
26 employer can make with regard to the disability, the disability actually
27 disqualifies the ~~person~~ INDIVIDUAL from the job, and the disability has a

1 significant impact on the job. For purposes of this paragraph (a), "harass"
2 means to create a hostile work environment based upon an individual's
3 race, national origin, sex, sexual orientation, disability, age, or religion.
4 Notwithstanding the provisions of this paragraph (a), harassment is not
5 an illegal act unless a complaint is filed with the appropriate authority at
6 the complainant's workplace and such authority fails to initiate a
7 reasonable investigation of a complaint and take prompt remedial action
8 if appropriate.

9 (II) A DISCRIMINATORY REMARK, EVEN IF IT IS NOT MADE
10 DIRECTLY IN THE CONTEXT OF AN EMPLOYMENT DECISION OR IF IT IS
11 UTTERED BY A PERSON WHO IS NOT A DECISION MAKER, MAY BE
12 RELEVANT, CIRCUMSTANTIAL EVIDENCE OF DISCRIMINATION;

13 (III) FOR A HARASSMENT CLAIM UNDER THIS SUBSECTION (1)(a):

14 (A) AN EMPLOYEE NEED NOT PROVE THAT THE EMPLOYEE'S
15 TANGIBLE PRODUCTIVITY HAS DECLINED AS A RESULT OF THE
16 HARASSMENT. IT IS SUFFICIENT TO PROVE THAT A REASONABLE PERSON
17 SUBJECTED TO THE HARASSMENT WOULD FIND, AS THE EMPLOYEE DID,
18 THAT THE HARASSMENT SO ALTERED WORKING CONDITIONS AS TO MAKE
19 IT MORE DIFFICULT FOR THE EMPLOYEE TO DO THE JOB.

20 (B) THE LEGAL STANDARD FOR HARASSMENT DOES NOT VARY BY
21 TYPE OF WORKPLACE. IT IS IRRELEVANT THAT A PARTICULAR OCCUPATION
22 MAY HAVE BEEN CHARACTERIZED BY A GREATER FREQUENCY OF
23 DISCRIMINATORY COMMENTS OR CONDUCT IN THE PAST.

24 (C) THE CLAIM NEARLY ALWAYS RAISES QUESTIONS OF FACT.

25 (IV) FOR A HARASSMENT CLAIM UNDER THIS SUBSECTION (1)(a)
26 AGAINST AN INDEPENDENT CONTRACTOR, IF THE INDEPENDENT
27 CONTRACTOR'S CONDUCT IS BEYOND THE CONTROL OF THE EMPLOYER, THE

1 INDEPENDENT CONTRACTOR IS NOT AN EMPLOYEE OF THE EMPLOYER, AND
2 THE EMPLOYER IS NOT LIABLE FOR THE INDEPENDENT CONTRACTOR'S
3 CONDUCT THAT IS BEYOND THE EMPLOYER'S CONTROL. THIS SUBSECTION
4 (1)(a)(IV) DOES NOT ALTER AN EMPLOYER'S LIABILITY FOR HARASSMENT
5 COMMITTED BY AN EMPLOYEE WHO IS NOT AN INDEPENDENT CONTRACTOR
6 AND WHO HARASSES ANOTHER EMPLOYEE, INCLUDING AN INDEPENDENT
7 CONTRACTOR.

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

26 (c) For a labor organization to exclude any individual otherwise
27 qualified from full membership rights in ~~such~~ THE labor organization, ~~or~~

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

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

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

22 (I) To deny to or withhold from any qualified ~~person~~ INDIVIDUAL,
23 because of disability, race, creed, color, sex, sexual orientation, MARITAL
24 STATUS, CAREGIVER STATUS, religion, age, national origin, or ancestry, the
25 right to be admitted to or participate in an apprenticeship training
26 program, an on-the-job training program, or any other occupational
27 instruction, training, or retraining program; but, with regard to a

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

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

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

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

26 (1.5) WHEN AN EMPLOYEE CLAIMS THAT A SUPERVISOR HAS
27 UNLAWFULLY HARASSED THAT EMPLOYEE BY MEANS THAT DO NOT

1 INVOLVE THE SUPERVISOR'S USE OF THE POWER OR AUTHORITY GRANTED
2 BY THE EMPLOYER TO THAT SUPERVISOR, THE EMPLOYER CAN AVOID
3 LIABILITY ONLY IF IT ESTABLISHES THAT:

4 (a) THE EMPLOYER HAS ESTABLISHED A PROGRAM THAT HAS HAD
5 DOCUMENTED SUCCESS IN PREVENTING HARASSMENT AND PUNISHING
6 SUPERVISORS WHO HAVE UNLAWFULLY HARASSED EMPLOYEES; EXCEPT
7 THAT THE REQUIREMENT OF ESTABLISHING DOCUMENTED SUCCESS DOES
8 NOT APPLY TO THE FIRST COMPLAINT OF UNLAWFUL HARASSMENT
9 INVESTIGATED OR OTHERWISE CONSIDERED UNDER THAT PROGRAM;

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

13 (c) NO EMPLOYEE HAS SUBMITTED A COMPLAINT TO THE
14 EMPLOYER, WITHIN THE PRIOR SIX YEARS, OF RETALIATION FOR A
15 COMPLAINT OF ALLEGED UNLAWFUL HARASSMENT; AND

16 (d) THE EMPLOYEE HAS UNREASONABLY FAILED TO TAKE
17 ADVANTAGE OF THE EMPLOYER'S PROGRAM SPECIFIED IN SUBSECTION
18 (1.5)(a) OF THIS SECTION, AS ESTABLISHED BY THE TOTALITY OF THE
19 CIRCUMSTANCES.

20 **SECTION 6.** In Colorado Revised Statutes, **add** 24-34-402.9 as
21 follows:

22 **24-34-402.9. Medical examinations and inquiries -**
23 **prohibitions - limits. (1) Preemployment examinations or inquiries.**
24 EXCEPT AS PROVIDED IN SUBSECTION (2) OF THIS SECTION, AN EMPLOYER,
25 EMPLOYMENT AGENCY, LABOR ORGANIZATION, OR JOINT APPRENTICESHIP
26 COMMITTEE:

27 (a) SHALL NOT CONDUCT A MEDICAL EXAMINATION OR MAKE

1 INQUIRIES OF A JOB APPLICANT AS TO WHETHER THE APPLICANT IS AN
2 INDIVIDUAL WITH A DISABILITY OR AS TO THE NATURE OR SEVERITY OF A
3 DISABILITY; AND

4 (b) MAY MAKE PREEMPLOYMENT INQUIRIES INTO THE ABILITY OF
5 AN APPLICANT TO PERFORM JOB-RELATED FUNCTIONS.

6 (2) **Employment entrance examinations.** (a) AN EMPLOYER,
7 EMPLOYMENT AGENCY, LABOR ORGANIZATION, OR JOINT APPRENTICESHIP
8 COMMITTEE MAY REQUIRE A MEDICAL EXAMINATION AFTER MAKING AN
9 OFFER OF EMPLOYMENT TO A JOB APPLICANT AND BEFORE THE START OF
10 THE APPLICANT'S EMPLOYMENT DUTIES AND MAY CONDITION AN OFFER OF
11 EMPLOYMENT ON THE RESULTS OF THE EXAMINATION IF:

12 (I) ALL ENTERING EMPLOYEES IN THE SAME JOB CATEGORY ARE
13 SUBJECTED TO A MEDICAL EXAMINATION REGARDLESS OF DISABILITY;

14 (II) EXCEPT AS PROVIDED IN SUBSECTION (2)(b) OF THIS SECTION,
15 INFORMATION OBTAINED REGARDING THE MEDICAL CONDITION OR
16 HISTORY OF THE APPLICANT IS COLLECTED AND MAINTAINED ON SEPARATE
17 FORMS AND IN SEPARATE MEDICAL FILES AND IS TREATED AS A
18 CONFIDENTIAL MEDICAL RECORD; AND

19 (III) THE RESULTS OF THE MEDICAL EXAMINATION ARE USED ONLY
20 IN ACCORDANCE WITH THIS PART 4.

21 (b) AN EMPLOYER, EMPLOYMENT AGENCY, LABOR ORGANIZATION,
22 OR JOINT APPRENTICESHIP COMMITTEE MAY SHARE INFORMATION
23 OBTAINED REGARDING THE MEDICAL CONDITION OR HISTORY OF AN
24 APPLICANT AS FOLLOWS:

25 (I) WITH SUPERVISORS AND MANAGERS, TO THE EXTENT THE
26 INFORMATION PERTAINS TO NECESSARY RESTRICTIONS ON THE WORK OR
27 DUTIES OF THE EMPLOYEE AND NECESSARY ACCOMMODATIONS;

1 (II) WITH FIRST AID AND SAFETY PERSONNEL, WHEN APPROPRIATE,
2 IF THE INDIVIDUAL'S DISABILITY MIGHT REQUIRE EMERGENCY TREATMENT;
3 AND

4 (III) WITH GOVERNMENT OFFICIALS INVESTIGATING COMPLIANCE
5 WITH THIS PART 4, UPON REQUEST.

6 (3) **Examinations and inquiries of employees.** (a) **Prohibited**
7 **examinations and inquiries.** AN EMPLOYER, EMPLOYMENT AGENCY,
8 LABOR ORGANIZATION, OR JOINT APPRENTICESHIP COMMITTEE SHALL NOT
9 REQUIRE A MEDICAL EXAMINATION, AND SHALL NOT MAKE INQUIRIES OF
10 AN EMPLOYEE AS TO WHETHER THE EMPLOYEE IS AN INDIVIDUAL WITH A
11 DISABILITY OR AS TO THE NATURE OR SEVERITY OF THE INDIVIDUAL'S
12 DISABILITY, UNLESS THE EXAMINATION OR INQUIRY IS SHOWN TO BE
13 JOB-RELATED AND CONSISTENT WITH BUSINESS NECESSITY.

14 (b) **Acceptable examinations and inquiries.** AN EMPLOYER,
15 EMPLOYMENT AGENCY, LABOR ORGANIZATION, OR JOINT APPRENTICESHIP
16 COMMITTEE MAY:

17 (I) CONDUCT VOLUNTARY MEDICAL EXAMINATIONS, INCLUDING
18 COMPILING VOLUNTARY MEDICAL HISTORIES, THAT ARE PART OF AN
19 EMPLOYEE HEALTH PROGRAM AVAILABLE TO EMPLOYEES AT THAT WORK
20 SITE; AND

21 (II) MAKE INQUIRIES INTO THE ABILITY OF AN EMPLOYEE TO
22 PERFORM JOB-RELATED FUNCTIONS.

23 (c) **Requirements regarding information.** INFORMATION
24 OBTAINED UNDER SUBSECTION (3)(b) OF THIS SECTION REGARDING THE
25 MEDICAL CONDITION OR HISTORY OF ANY EMPLOYEE MAY BE DISCLOSED
26 ONLY PURSUANT TO SUBSECTIONS (2)(a)(II) AND (2)(a)(III) OF THIS
27 SECTION.

1 (4) **Discriminatory or unfair employment practice.** AN
2 EMPLOYER, EMPLOYMENT AGENCY, LABOR ORGANIZATION, OR JOINT
3 APPRENTICESHIP COMMITTEE THAT VIOLATES THIS SECTION ENGAGES IN A
4 DISCRIMINATORY OR UNFAIR EMPLOYMENT PRACTICE.

5 **SECTION 7.** In Colorado Revised Statutes, **amend** 24-34-403 as
6 follows:

7 **24-34-403. Time limits on filing of charges.** Any charge alleging
8 a violation of this part 4 ~~shall~~ MUST be filed with the commission
9 pursuant to section 24-34-306 within ~~six months~~ THREE HUNDRED DAYS
10 after the alleged discriminatory or unfair employment practice occurred,
11 and if IT IS not so filed, it ~~shall be~~ IS barred.

12 **SECTION 8.** In Colorado Revised Statutes, 24-34-405, **repeal**
13 (3)(g) as follows:

14 **24-34-405. Relief authorized - short title.** (3) (g) ~~In a civil~~
15 ~~action involving a claim of discrimination based on age, the plaintiff is~~
16 ~~entitled only to the relief authorized in subsection (2) of this section and~~
17 ~~in 29 U.S.C. sec. 626 (b) and 29 U.S.C. sec. 216 (b) if the court finds that~~
18 ~~the defendant engaged in a discriminatory or unfair employment practice~~
19 ~~based on age. If, in addition to alleging discrimination based on age, the~~
20 ~~plaintiff alleges discrimination based on any other factor specified in~~
21 ~~section 24-34-402 (1), this paragraph (g) does not preclude a plaintiff~~
22 ~~from recovering the relief authorized by this section for that~~
23 ~~discrimination claim.~~

24 **SECTION 9.** In Colorado Revised Statutes, **add** 24-34-407 as
25 follows:

26 **24-34-407. Confidentiality.** (1) BEFORE A CHARGE IS FILED OR A
27 DEMAND IS MADE PURSUANT TO SECTION 24-34-306 (14)(b)(I) BASED ON

1 AN ALLEGED DISCRIMINATORY OR UNFAIR EMPLOYMENT PRACTICE UNDER
2 THIS PART 4, AN EMPLOYER AND EMPLOYEE MAY REACH AN AGREEMENT
3 CONCERNING THE CONFIDENTIALITY OF ANY RESOLUTION OF A CLAIM
4 RAISED PURSUANT TO THIS PART 4 AGAINST THE EMPLOYER.

5 (2) (a) EXCEPT AS SPECIFIED IN SUBSECTIONS (2)(b) AND (2)(c) OF
6 THIS SECTION:

7 (I) AFTER A CHARGE IS FILED OR A DEMAND IS MADE PURSUANT TO
8 SECTION 24-34-306 (14)(b)(I) BASED ON AN ALLEGED DISCRIMINATORY OR
9 UNFAIR EMPLOYMENT PRACTICE UNDER THIS PART 4, ANY
10 NONDISPARAGEMENT, NONDISCLOSURE, OR CONFIDENTIALITY PROVISION
11 OR AGREEMENT THAT PROTECTS THE IDENTITY OF THE EMPLOYER OR
12 PROHIBITS THE EMPLOYEE FROM DISCLOSING INFORMATION REGARDING
13 HARASSMENT, DISCRIMINATION, OR RETALIATION IS UNENFORCEABLE; AND

14 (II) A CIVIL COURT SHALL NOT ENTER AN ORDER BY STIPULATION
15 OR OTHERWISE THAT RESTRICTS THE DISCLOSURE OF AN EMPLOYER'S
16 IDENTITY OR PROHIBITS AN EMPLOYEE'S DISCLOSURE OF INFORMATION IN
17 A MANNER THAT CONFLICTS WITH SUBSECTION (2)(a)(I) OF THIS SECTION.

18 (b) NOTWITHSTANDING SUBSECTION (2)(a) OF THIS SECTION, A
19 SETTLEMENT AGREEMENT RELATED TO A CHARGE FILED OR A DEMAND
20 MADE PURSUANT TO THIS PART 4 MAY, AT THE REQUEST OF THE
21 EMPLOYEE, INCLUDE A PROVISION THAT SHIELDS THE IDENTITY OF AN
22 EMPLOYEE AND ALL FACTS THAT MIGHT LEAD TO THE DISCOVERY OF THE
23 EMPLOYEE'S IDENTITY, INCLUDING PLEADINGS FILED IN COURT.

24 (c) NOTHING IN THIS SECTION PROHIBITS THE ENTRY OR
25 ENFORCEMENT OF A PROVISION OF AN AGREEMENT THAT PROHIBITS THE
26 DISCLOSURE OF THE AMOUNT PAID IN SETTLEMENT OF A CHARGE FILED OR
27 DEMAND MADE PURSUANT TO THIS PART 4.

1 (d) EXCEPT AS AUTHORIZED PURSUANT TO SUBSECTION (2)(b) OR
2 (2)(c) OF THIS SECTION, A PROVISION OF AN AGREEMENT THAT PROHIBITS
3 THE DISCLOSURE OF INFORMATION BY THE EMPLOYEE RELATED TO A
4 CHARGE FILED OR DEMAND MADE PURSUANT TO THIS PART 4 THAT IS
5 ENTERED INTO ON OR AFTER THE EFFECTIVE DATE OF THIS SECTION IS VOID
6 AS A MATTER OF LAW AND AGAINST PUBLIC POLICY.

7 **SECTION 10.** In Colorado Revised Statutes, 24-10-106, **amend**
8 (1) introductory portion; and **add** (1)(j) as follows:

9 **24-10-106. Immunity and partial waiver.** (1) A public entity
10 ~~shall be~~ IS immune from liability in all claims for injury ~~which~~ THAT lie
11 in tort or could lie in tort regardless of whether that may be the type of
12 action or the form of relief chosen by the claimant except as provided
13 otherwise in this section. Sovereign immunity is waived by a public entity
14 in an action for injuries resulting from:

15 (j) A CHARGE INVOLVING A DISCRIMINATORY OR UNFAIR
16 EMPLOYMENT PRACTICE BROUGHT PURSUANT TO PART 4 OF ARTICLE 34 OF
17 THIS TITLE 24.

18 **SECTION 11.** In Colorado Revised Statutes, 24-34-303, **amend**
19 (1)(b)(II)(A) as follows:

20 **24-34-303. Civil rights commission - membership.**
21 (1) (b) (II) In addition to the qualifications specified in subsection
22 (1)(b)(I) of this section, the members of the commission must at all times
23 include:

24 (A) At least four members who are members of groups of people
25 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, CAREGIVER STATUS, religion, or age; and

1 **SECTION 12. Act subject to petition - effective date -**
2 **applicability.** (1) This act takes effect at 12:01 a.m. on the day following
3 the expiration of the ninety-day period after final adjournment of the
4 general assembly; except that, if a referendum petition is filed pursuant
5 to section 1 (3) of article V of the state constitution against this act or an
6 item, section, or part of this act within such period, then the act, item,
7 section, or part will not take effect unless approved by the people at the
8 general election to be held in November 2022 and, in such case, will take
9 effect on the date of the official declaration of the vote thereon by the
10 governor.
11 (2) This act applies to employment practices occurring on or after
12 the applicable effective date of this act.