

**First Regular Session
Sixty-ninth General Assembly
STATE OF COLORADO**

PREAMENDED

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

LLS NO. 13-0713.01 Christy Chase x2008

HOUSE BILL 13-1136

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House Committees

Judiciary
Appropriations

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING THE CREATION OF REMEDIES IN EMPLOYMENT**
102 **DISCRIMINATION CASES BROUGHT UNDER STATE LAW.**

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://www.leg.state.co.us/billsummaries>.)

Current law does not permit an award of compensatory or punitive damages or attorney fees and costs to a plaintiff who prevails in a complaint before the Colorado civil rights commission (commission) or in a lawsuit alleging a discriminatory or unfair employment practice under state law, even in cases of intentional discrimination. While federal

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

employment antidiscrimination laws allow such damages in cases where intentional discrimination is found, and allows an award of reasonable attorney fees and costs, only employers who employ 15 or more employees are subject to federal law. Moreover, victims of employment discrimination on the basis of sexual orientation are not afforded protections under federal law. Thus, employees who work for employers with fewer than 15 employees or who claim employment discrimination on the basis of sexual orientation are not allowed compensatory or punitive damages and cannot recover reasonable attorney fees and costs when they prove a case of intentional employment discrimination.

Additionally, current law precludes a claim of age discrimination by persons 70 years of age or older.

Section 1 of the bill establishes the "Job Protection and Civil Rights Enforcement Act of 2013", which would allow the additional remedies of compensatory and punitive damages in employment discrimination cases brought under state law against employers where intentional discrimination is proven. These damages would be in addition to the remedies allowed under current law, namely, front pay, back pay, interest on back pay, reinstatement or hiring, and other equitable relief that may be awarded. Compensatory damages are to compensate a plaintiff for other pecuniary losses, emotional pain and suffering, inconvenience, mental anguish, loss of enjoyment of life, and other nonpecuniary losses. If the plaintiff shows by a preponderance of the evidence that the defendant engaged in a discriminatory or unfair employment practice with malice or reckless indifference to the rights of the plaintiff, the plaintiff may recover punitive damages.

The bill limits the amount of compensatory and punitive damages to the amounts specified in the federal "Civil Rights Act of 1991" and directs the commission or court to consider the size and assets of the defendant and the egregiousness of the intentional discriminatory or unfair employment practice when determining the amount of damages to award the victim.

When a plaintiff claims compensatory or punitive damages in a civil lawsuit, either party to the action is entitled to demand a jury trial. Additionally, the court may award the prevailing plaintiff reasonable attorney fees and costs and, if the court finds that the action was frivolous, groundless, or vexatious, the court may award attorney fees and costs to the defendant.

Section 2 of the bill removes the maximum age limit for purposes of age discrimination claims, thereby permitting persons 70 years of age or older to pursue a claim based on age discrimination.

Section 3 of the bill authorizes the commission to appoint a working group of employers and employees to assist in education and outreach efforts to foster compliance with laws prohibiting discriminatory or unfair employment practices.

The remedies available under the bill would apply to causes of action alleging discriminatory or unfair employment practices accruing on or after January 1, 2015.

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

SECTION 1. In Colorado Revised Statutes, **repeal and reenact, with amendments,** 24-34-405 as follows:

24-34-405. Relief authorized - short title. (1) THIS SECTION SHALL BE KNOWN AND MAY BE CITED AS THE "JOB PROTECTION AND CIVIL RIGHTS ENFORCEMENT ACT OF 2013".

(2) (a) IN ADDITION TO THE RELIEF AUTHORIZED BY SECTION 24-34-306(9), THE COMMISSION OR THE COURT MAY ORDER AFFIRMATIVE RELIEF THAT THE COMMISSION OR COURT DETERMINES TO BE APPROPRIATE, INCLUDING, WITHOUT LIMITATION, THE FOLLOWING:

(I) REINSTATEMENT OR HIRING OF EMPLOYEES, WITH OR WITHOUT BACK PAY. IF THE COMMISSION OR COURT ORDERS BACK PAY, THE EMPLOYER, EMPLOYMENT AGENCY, OR LABOR ORGANIZATION RESPONSIBLE FOR THE DISCRIMINATORY OR UNFAIR EMPLOYMENT PRACTICE SHALL PAY THE BACK PAY TO THE PERSON WHO WAS THE VICTIM OF THE PRACTICE.

(II) FRONT PAY; OR

(III) ANY OTHER EQUITABLE RELIEF THE COMMISSION OR COURT DEEMS APPROPRIATE.

(b) IF THE COMMISSION OR COURT ORDERS BACK PAY, THE LIABILITY FOR BACK PAY ACCRUES FROM A DATE NOT MORE THAN TWO YEARS PRIOR TO THE FILING OF A CHARGE WITH THE DIVISION. THE COMMISSION OR COURT SHALL REDUCE AN AWARD OF BACK PAY BY ANY AMOUNT OF ACTUAL EARNINGS OF, OR AMOUNTS THAT COULD HAVE BEEN

1 EARNED WITH REASONABLE DILIGENCE BY, THE PERSON WHO WAS THE
2 VICTIM OF THE DISCRIMINATORY OR UNFAIR EMPLOYMENT PRACTICE.

3 (3) (a) IN ADDITION TO THE RELIEF AVAILABLE PURSUANT TO
4 SUBSECTION (2) OF THIS SECTION, AND EXCEPT AS PROVIDED IN
5 PARAGRAPH (g) OF THIS SUBSECTION (3), IN A PROCEEDING OR CIVIL
6 ACTION BROUGHT BY A COMPLAINING PARTY OR PLAINTIFF UNDER THIS
7 PART 4 AGAINST A RESPONDENT OR DEFENDANT WHO IS FOUND TO HAVE
8 ENGAGED IN AN INTENTIONAL DISCRIMINATORY OR UNFAIR EMPLOYMENT
9 PRACTICE, THE COMPLAINING PARTY OR PLAINTIFF MAY RECOVER
10 COMPENSATORY AND PUNITIVE DAMAGES AS SPECIFIED IN THIS
11 SUBSECTION (3). A COMPLAINING PARTY OR PLAINTIFF SHALL NOT BE
12 AWARDED COMPENSATORY OR PUNITIVE DAMAGES WHEN THE
13 RESPONDENT OR DEFENDANT IS FOUND TO HAVE ENGAGED IN AN
14 EMPLOYMENT PRACTICE THAT IS UNLAWFUL SOLELY BECAUSE OF ITS
15 DISPARATE IMPACT.

16 (b) (I) EXCEPT AS LIMITED BY THE "COLORADO GOVERNMENTAL
17 IMMUNITY ACT", ARTICLE 10 OF THIS TITLE, AND EXCEPT AS PROVIDED IN
18 SUBPARAGRAPH (II) OF THIS PARAGRAPH (b), A COMPLAINING PARTY OR
19 PLAINTIFF MAY RECOVER PUNITIVE DAMAGES AGAINST A RESPONDENT OR
20 DEFENDANT IF THE COMPLAINING PARTY OR PLAINTIFF DEMONSTRATES BY
21 A PREPONDERANCE OF THE EVIDENCE THAT THE RESPONDENT OR
22 DEFENDANT ENGAGED IN A DISCRIMINATORY OR UNFAIR EMPLOYMENT
23 PRACTICE WITH MALICE OR RECKLESS INDIFFERENCE TO THE RIGHTS OF
24 THE COMPLAINING PARTY OR PLAINTIFF. HOWEVER, IF THE RESPONDENT
25 OR DEFENDANT DEMONSTRATES GOOD-FAITH EFFORTS TO COMPLY WITH
26 THIS PART 4 AND TO PREVENT DISCRIMINATORY AND UNFAIR EMPLOYMENT
27 PRACTICES IN THE WORKPLACE, THE COMMISSION OR COURT SHALL NOT

1 AWARD PUNITIVE DAMAGES AGAINST THE RESPONDENT OR DEFENDANT.

2 (II) THE COMMISSION OR COURT SHALL NOT AWARD PUNITIVE
3 DAMAGES IN A PROCEEDING OR CIVIL ACTION INVOLVING A CLAIM OF
4 FAILURE TO MAKE A REASONABLE ACCOMMODATION FOR A PERSON WITH
5 A DISABILITY IF THE RESPONDENT OR DEFENDANT DEMONSTRATES GOOD
6 FAITH EFFORTS TO IDENTIFY AND MAKE A REASONABLE ACCOMMODATION
7 THAT WOULD PROVIDE THE PERSON WITH A DISABILITY AN EQUALLY
8 EFFECTIVE OPPORTUNITY AND WOULD NOT CAUSE AN UNDUE HARDSHIP ON
9 THE OPERATION OF THE RESPONDENT'S OR DEFENDANT'S BUSINESS.

10 (c) A COMPLAINING PARTY OR PLAINTIFF MAY RECOVER
11 COMPENSATORY DAMAGES AGAINST A RESPONDENT OR DEFENDANT FOR
12 OTHER PECUNIARY LOSSES, EMOTIONAL PAIN AND SUFFERING,
13 INCONVENIENCE, MENTAL ANGUISH, LOSS OF ENJOYMENT OF LIFE, AND
14 OTHER NONPECUNIARY LOSSES.

15 (d) THE TOTAL AMOUNT OF COMPENSATORY AND PUNITIVE
16 DAMAGES AWARDED PURSUANT TO THIS SUBSECTION (3) SHALL NOT
17 EXCEED THE AMOUNTS SPECIFIED IN 42 U.S.C. SEC. 1981a (b) (3); EXCEPT
18 THAT, FOR EMPLOYERS THAT EMPLOY FEWER EMPLOYEES THAN THE
19 NUMBER SPECIFIED IN 42 U.S.C. SEC. 1981a (b) (3) (A), THE TOTAL
20 AMOUNT OF COMPENSATORY AND PUNITIVE DAMAGES AWARDED
21 PURSUANT TO THIS SUBSECTION (3) SHALL NOT EXCEED THE AMOUNT
22 SPECIFIED IN 42 U.S.C. SEC. 1981a (b) (3) (A). IN DETERMINING THE
23 APPROPRIATE LEVEL OF DAMAGES TO AWARD A COMPLAINING PARTY OR
24 PLAINTIFF WHO HAS BEEN THE VICTIM OF AN INTENTIONAL
25 DISCRIMINATORY OR UNFAIR EMPLOYMENT PRACTICE, THE COMMISSION OR
26 COURT SHALL CONSIDER THE SIZE AND ASSETS OF THE RESPONDENT OR
27 DEFENDANT AND THE EGREGIOUSNESS OF THE INTENTIONAL

1 DISCRIMINATORY OR UNFAIR EMPLOYMENT PRACTICE.

2 (e) COMPENSATORY OR PUNITIVE DAMAGES AWARDED PURSUANT
3 TO THIS SUBSECTION (3) ARE IN ADDITION TO, AND DO NOT INCLUDE,
4 FRONT PAY, BACK PAY, INTEREST ON BACK PAY, OR ANY OTHER TYPE OF
5 RELIEF AWARDED PURSUANT TO SUBSECTION (2) OF THIS SECTION.

6 (f) THE REMEDIES SPECIFIED IN THIS SUBSECTION (3) APPLY TO
7 CAUSES OF ACTION ALLEGING DISCRIMINATORY OR UNFAIR EMPLOYMENT
8 PRACTICES ACCRUING ON OR AFTER JANUARY 1, 2015.

9 (g) IN A PROCEEDING OR CIVIL ACTION INVOLVING A CLAIM OF
10 DISCRIMINATION BASED ON AGE, THE COMPLAINING PARTY OR PLAINTIFF
11 IS ENTITLED ONLY TO THE RELIEF AUTHORIZED IN SUBSECTION (2) OF THIS
12 SECTION AND IN 29 U.S.C. SEC. 626 (b) AND 29 U.S.C. SEC. 216 (b) IF THE
13 COMMISSION OR COURT FINDS THAT THE RESPONDENT OR DEFENDANT
14 ENGAGED IN A DISCRIMINATORY OR UNFAIR EMPLOYMENT PRACTICE
15 BASED ON AGE. IF, IN ADDITION TO ALLEGING DISCRIMINATION BASED ON
16 AGE, THE COMPLAINING PARTY OR PLAINTIFF ALLEGES DISCRIMINATION
17 BASED ON ANY OTHER FACTOR SPECIFIED IN SECTION 24-34-402 (1), THIS
18 PARAGRAPH (g) DOES NOT PRECLUDE A COMPLAINING PARTY OR PLAINTIFF
19 FROM RECOVERING THE RELIEF AUTHORIZED BY THIS SECTION FOR THAT
20 DISCRIMINATION CLAIM.

21 (4) IF A COMPLAINING PARTY OR PLAINTIFF IN A CIVIL ACTION
22 FILED UNDER THIS PART 4 SEEKS COMPENSATORY OR PUNITIVE DAMAGES
23 PURSUANT TO SUBSECTION (3) OF THIS SECTION, ANY PARTY TO THE CIVIL
24 ACTION MAY DEMAND A TRIAL BY JURY.

25 (5) IN ANY PROCEEDING OR CIVIL ACTION UNDER THIS PART 4, THE
26 COMMISSION OR COURT MAY AWARD REASONABLE ATTORNEY FEES AND
27 COSTS TO THE PREVAILING PLAINTIFF. IF THE COURT FINDS THAT AN

1 ACTION OR DEFENSE BROUGHT PURSUANT TO THIS PART 4 WAS FRIVOLOUS,
2 GROUNDLESS, OR VEXATIOUS AS PROVIDED IN ARTICLE 17 OF TITLE 13,
3 C.R.S., THE COURT MAY AWARD COSTS AND ATTORNEY FEES TO THE
4 DEFENDANT IN THE ACTION.

5 (6) THIS SECTION SHALL BE CONSTRUED, INTERPRETED, AND
6 APPLIED IN A MANNER THAT IS CONSISTENT WITH STANDARDS
7 ESTABLISHED THROUGH JUDICIAL INTERPRETATION OF 42 U.S.C. SEC.
8 1981a AND 42 U.S.C. SEC. 2000e-5 (k).

9 **SECTION 2.** In Colorado Revised Statutes, 24-34-301, **amend**
10 (1) as follows:

11 **24-34-301. Definitions.** As used in parts 3 to 7 of this article,
12 unless the context otherwise requires:

13 (1) "Age" means a chronological age of at least forty years. ~~but~~
14 ~~less than seventy years.~~

15 **SECTION 3.** In Colorado Revised Statutes, 24-34-305, **amend**
16 (1) (c) as follows:

17 **24-34-305. Powers and duties of commission.** (1) The
18 commission has the following powers and duties:

19 (c) (I) To investigate and study the existence, character, causes,
20 and extent of unfair or discriminatory practices as defined in parts 4 to 7
21 of this article and to formulate plans for the elimination ~~thereof~~ OF THOSE
22 PRACTICES by educational or other means.

23 (II) (A) IN FURTHERANCE OF ITS EDUCATIONAL EFFORTS TO
24 REDUCE INSTANCES OF DISCRIMINATORY OR UNFAIR EMPLOYMENT
25 PRACTICES, THE COMMISSION SHALL CREATE A VOLUNTEER WORKING
26 GROUP REPRESENTING BOTH EMPLOYER AND EMPLOYEE INTERESTS,
27 INCLUDING HUMAN RESOURCE PROFESSIONALS, TO ASSIST IN EDUCATION

1 AND OUTREACH EFFORTS TO FOSTER UNDERSTANDING OF AND
2 COMPLIANCE WITH PART 4 OF THIS ARTICLE. THE COMMISSION MAY
3 ACCEPT AND EXPEND GIFTS, GRANTS, AND DONATIONS TO ASSIST IN ITS
4 DUTIES PURSUANT TO THIS SUBPARAGRAPH (II).

5 (B) THE COMMISSION SHALL CREATE THE VOLUNTEER WORKING
6 GROUP BY SEPTEMBER 1, 2013. THE WORKING GROUP SHALL DEVELOP AND
7 SUBMIT TO THE COMMISSION, BY JANUARY 1, 2014, AN EDUCATION AND
8 OUTREACH PLAN FOR THE COMMISSION TO IMPLEMENT FOR PURPOSES OF
9 EDUCATING EMPLOYERS AND PROVIDING OUTREACH REGARDING PART 4
10 OF THE ARTICLE.

11 (C) IN ADDITION TO THE OUTREACH PLAN REQUIRED BY
12 SUB-SUBPARAGRAPH (B) OF THIS SUBPARAGRAPH (II), THE WORKING
13 GROUP SHALL COMPILE AND PROVIDE TO THE COMMISSION INFORMATION
14 ON EDUCATIONAL RESOURCES AVAILABLE TO EMPLOYERS REGARDING THE
15 REQUIREMENTS OF AND COMPLIANCE WITH PART 4 OF THIS ARTICLE,
16 INCLUDING RESOURCES FOR EMPLOYERS ON PREVENTION OF
17 DISCRIMINATORY EMPLOYMENT PRACTICES. THE COMMISSION SHALL POST
18 THE INFORMATION ON ITS WEB SITE AND SHALL MAKE THE INFORMATION
19 AVAILABLE IN AN ELECTRONIC FORMAT TO ALL STATE DEPARTMENTS AND
20 AGENCIES THAT INTERACT WITH PRIVATE BUSINESSES IN THE STATE,
21 INCLUDING THE DEPARTMENTS OF LABOR AND EMPLOYMENT,
22 REGULATORY AGENCIES, REVENUE, AND STATE AND THE GOVERNOR'S
23 OFFICE OF ECONOMIC DEVELOPMENT. THOSE DEPARTMENTS AND
24 AGENCIES, WITHIN EXISTING RESOURCES, SHALL POST THE INFORMATION
25 PROVIDED BY THE COMMISSION, OR LINKS TO THAT INFORMATION, ON
26 THEIR WEB SITES.

27 **SECTION 4. Act subject to petition - effective date -**

1 **applicability.** (1) This act takes effect at 12:01 a.m. on the day following
2 the expiration of the ninety-day period after final adjournment of the
3 general assembly; except that, if a referendum petition is filed pursuant
4 to section 1 (3) of article V of the state constitution against this act or an
5 item, section, or part of this act within such period, then the act, item,
6 section, or part will not take effect unless approved by the people at the
7 general election to be held in November 2014 and, in such case, will take
8 effect on the date of the official declaration of the vote thereon by the
9 governor.

10 (2) This act applies to causes of action alleging discriminatory or
11 unfair employment practices accruing on or after January 1, 2015.