

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

**PREAMENDED**

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

LLS NO. 11-0170.01 Christy Chase

**SENATE BILL 11-072**

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**SENATE SPONSORSHIP**

**Carroll,** Bacon, Boyd, Giron, Hodge, Hudak, Morse, Steadman, Tochtrop, Aguilar,  
Guzman, Johnston

**HOUSE SPONSORSHIP**

**Levy,** Court, Fields, Tyler

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**Senate Committees**

Judiciary  
Appropriations

**House Committees**

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**A BILL FOR AN ACT**

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

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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://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 or to recover reasonable attorney fees and costs when they prove a case of intentional employment discrimination.

**Section 1** of the bill establishes the "Job Protection and Civil Rights Enforcement Act of 2011", 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, 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 instructs the commission or court to consider the size and assets of the defendant and the egregiousness of the 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 party reasonable attorney fees and costs.

**Section 2** 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, 2013.

1           SECTION 1. 24-34-405, Colorado Revised Statutes, is  
2 REPEALED AND REENACTED, WITH AMENDMENTS, to read:

3           24-34-405. Relief authorized - short title. (1) THIS SECTION  
4 SHALL BE KNOWN AND MAY BE CITED AS THE "JOB PROTECTION AND CIVIL  
5 RIGHTS ENFORCEMENT ACT OF 2011".

6           (2) (a) IN ADDITION TO THE RELIEF AUTHORIZED BY SECTION  
7 24-34-306 (9), THE COMMISSION OR THE COURT MAY ORDER AFFIRMATIVE  
8 RELIEF THAT THE COMMISSION OR COURT DETERMINES TO BE  
9 APPROPRIATE, INCLUDING, WITHOUT LIMITATION, THE FOLLOWING:

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

16           (II) FRONT PAY; OR

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

19           (b) IF THE COMMISSION OR COURT ORDERS BACK PAY, THE  
20 LIABILITY FOR BACK PAY ACCRUES FROM A DATE NOT MORE THAN TWO  
21 YEARS PRIOR TO THE FILING OF A CHARGE WITH THE DIVISION. THE  
22 COMMISSION OR COURT SHALL REDUCE AN AWARD OF BACK PAY BY ANY  
23 AMOUNT OF ACTUAL EARNINGS OF, OR AMOUNTS THAT COULD HAVE BEEN  
24 EARNED WITH REASONABLE DILIGENCE BY, THE PERSON WHO WAS THE  
25 VICTIM OF THE DISCRIMINATORY OR UNFAIR EMPLOYMENT PRACTICE.

26           (3) (a) IN ADDITION TO THE RELIEF AVAILABLE PURSUANT TO  
27 SUBSECTION (2) OF THIS SECTION, IN A PROCEEDING OR CIVIL ACTION

1 BROUGHT BY A COMPLAINING PARTY OR PLAINTIFF UNDER THIS PART 4  
2 AGAINST A RESPONDENT OR DEFENDANT WHO IS FOUND TO HAVE ENGAGED  
3 IN AN INTENTIONAL DISCRIMINATORY OR UNFAIR EMPLOYMENT PRACTICE,  
4 THE COMPLAINING PARTY OR PLAINTIFF MAY RECOVER COMPENSATORY  
5 AND PUNITIVE DAMAGES AS SPECIFIED IN THIS SUBSECTION (3). A  
6 COMPLAINING PARTY OR PLAINTIFF SHALL NOT BE AWARDED  
7 COMPENSATORY OR PUNITIVE DAMAGES WHEN THE RESPONDENT OR  
8 DEFENDANT IS FOUND TO HAVE ENGAGED IN AN EMPLOYMENT PRACTICE  
9 THAT IS UNLAWFUL SOLELY BECAUSE OF ITS DISPARATE IMPACT.

10 (b) EXCEPT AS LIMITED BY THE "COLORADO GOVERNMENTAL  
11 IMMUNITY ACT", ARTICLE 10 OF TITLE 24, C.R.S., A COMPLAINING PARTY  
12 OR PLAINTIFF MAY RECOVER PUNITIVE DAMAGES AGAINST A RESPONDENT  
13 OR DEFENDANT IF THE COMPLAINING PARTY OR PLAINTIFF DEMONSTRATES  
14 BY A PREPONDERANCE OF THE EVIDENCE THAT THE RESPONDENT OR  
15 DEFENDANT ENGAGED IN A DISCRIMINATORY OR UNFAIR EMPLOYMENT  
16 PRACTICE WITH MALICE OR RECKLESS INDIFFERENCE TO THE RIGHTS OF  
17 THE COMPLAINING PARTY OR PLAINTIFF.

18 (c) A COMPLAINING PARTY OR PLAINTIFF MAY RECOVER  
19 COMPENSATORY DAMAGES AGAINST A RESPONDENT OR DEFENDANT FOR  
20 OTHER PECUNIARY LOSSES, EMOTIONAL PAIN, SUFFERING, INCONVENIENCE,  
21 MENTAL ANGUISH, LOSS OF ENJOYMENT OF LIFE, AND OTHER  
22 NONPECUNIARY LOSSES.

23 (d) THE TOTAL AMOUNT OF COMPENSATORY AND PUNITIVE  
24 DAMAGES AWARDED PURSUANT TO THIS SUBSECTION (3) SHALL NOT  
25 EXCEED THE AMOUNTS SPECIFIED IN 42 U.S.C. SEC. 1981a (b) (3); EXCEPT  
26 THAT, FOR EMPLOYERS THAT EMPLOY FEWER EMPLOYEES THAN THE  
27 NUMBER SPECIFIED IN 42 U.S.C. SEC. 1981a (b) (3) (A), THE TOTAL

1 AMOUNT OF COMPENSATORY AND PUNITIVE DAMAGES AWARDED  
2 PURSUANT TO THIS SUBSECTION (3) SHALL NOT EXCEED THE AMOUNT  
3 SPECIFIED IN 42 U.S.C. SEC. 1981a (b) (3) (A). IN DETERMINING THE  
4 APPROPRIATE LEVEL OF DAMAGES TO AWARD A COMPLAINING PARTY OR  
5 PLAINTIFF WHO HAS BEEN THE VICTIM OF AN INTENTIONAL  
6 DISCRIMINATORY OR UNFAIR EMPLOYMENT PRACTICE, THE COMMISSION OR  
7 COURT SHALL CONSIDER THE SIZE AND ASSETS OF THE RESPONDENT OR  
8 DEFENDANT AND THE EGREGIOUSNESS OF THE INTENTIONAL  
9 DISCRIMINATORY OR UNFAIR EMPLOYMENT PRACTICE.

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

14 (f) THE REMEDIES SPECIFIED IN THIS SUBSECTION (3) APPLY TO  
15 CAUSES OF ACTION ALLEGING DISCRIMINATORY OR UNFAIR EMPLOYMENT  
16 PRACTICES ACCRUING ON OR AFTER JANUARY 1, 2014.

17 (4) IF A COMPLAINING PARTY OR PLAINTIFF IN A PROCEEDING  
18 BEFORE THE COMMISSION OR IN A CIVIL ACTION FILED UNDER THIS PART 4  
19 SEEKS COMPENSATORY OR PUNITIVE DAMAGES PURSUANT TO SUBSECTION  
20 (3) OF THIS SECTION, ANY PARTY IN THE CIVIL ACTION MAY DEMAND A  
21 TRIAL BY JURY.

22 (5) (a) IN ANY PROCEEDING OR CIVIL ACTION UNDER THIS PART 4,  
23 THE COMMISSION OR COURT MAY AWARD REASONABLE ATTORNEY FEES  
24 AND COSTS TO THE PREVAILING PARTY.

25 (b) IT IS THE INTENT OF THE GENERAL ASSEMBLY THAT THE  
26 COMMISSION'S OR COURT'S DISCRETION TO AWARD REASONABLE  
27 ATTORNEY FEES AND COSTS SHALL BE GUIDED BY STANDARDS

1 ESTABLISHED THROUGH JUDICIAL INTERPRETATION OF THE DISCRETION  
2 GIVEN TO COURTS TO MAKE SUCH AWARDS IN CASES BROUGHT UNDER  
3 TITLE VII OF THE FEDERAL "CIVIL RIGHTS ACT OF 1964", 42 U.S.C. SEC.  
4 2000e, AS AMENDED.

5 (6) IF THE COURT FINDS THAT AN ACTION BROUGHT PURSUANT TO  
6 THIS PART 4 WAS FRIVOLOUS, GROUNDLESS, OR VEXATIOUS AS PROVIDED  
7 IN ARTICLE 17 OF TITLE 13, C.R.S., THE COURT SHALL AWARD COSTS AND  
8 ATTORNEY FEES TO THE DEFENDANT IN THE ACTION.

9 SECTION 2. 24-34-305 (1) (c), Colorado Revised Statutes, is  
10 amended to read:

11 **24-34-305. Powers and duties of commission.** (1) The  
12 commission has the following powers and duties:

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

17 (II) (A) IN FURTHERANCE OF ITS EDUCATIONAL EFFORTS TO  
18 REDUCE INSTANCES OF DISCRIMINATORY OR UNFAIR EMPLOYMENT  
19 PRACTICES, THE COMMISSION SHALL CREATE A VOLUNTEER WORKING  
20 GROUP REPRESENTING BOTH EMPLOYER AND EMPLOYEE INTERESTS,  
21 INCLUDING HUMAN RESOURCE PROFESSIONALS, TO ASSIST IN EDUCATION  
22 AND OUTREACH EFFORTS TO FOSTER UNDERSTANDING OF AND  
23 COMPLIANCE WITH PART 4 OF THIS ARTICLE. THE COMMISSION MAY  
24 ACCEPT AND EXPEND GIFTS, GRANTS, AND DONATIONS TO ASSIST IN ITS  
25 DUTIES PURSUANT TO THIS SUBPARAGRAPH (II).

26 (B) THE COMMISSION SHALL CREATE THE VOLUNTEER WORKING  
27 GROUP BY SEPTEMBER 1, 2011. THE WORKING GROUP SHALL DEVELOP

1 AND SUBMIT TO THE COMMISSION, BY JANUARY 1, 2012, AN EDUCATION  
2 AND OUTREACH PLAN FOR THE COMMISSION TO IMPLEMENT FOR PURPOSES  
3 OF EDUCATING EMPLOYERS AND PROVIDING OUTREACH REGARDING THIS  
4 PART 4.

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

21 **SECTION 3. Act subject to petition - effective date -**  
22 **applicability.** (1) This act shall take effect at 12:01 a.m. on the day  
23 following the expiration of the ninety-day period after final adjournment  
24 of the general assembly (August 10, 2011, if adjournment sine die is on  
25 May 11, 2011); except that, if a referendum petition is filed pursuant to  
26 section 1 (3) of article V of the state constitution against this act or an  
27 item, section, or part of this act within such period, then the act, item,

1 section, or part shall not take effect unless approved by the people at the  
2 general election to be held in November 2012 and shall take effect on the  
3 date of the official declaration of the vote thereon by the governor.

4 (2) The provisions of this act shall apply to causes of action  
5 alleging discriminatory or unfair employment practices accruing on or  
6 after January 1, 2014.