

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

ENGROSSED

*This Version Includes All Amendments Adopted
on Second Reading in the House of Introduction*

LLS NO. 11-0170.01 Christy Chase

SENATE BILL 11-072

SENATE SPONSORSHIP

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

HOUSE SPONSORSHIP

Levy, Court, Fields, Tyler

Senate Committees

Judiciary
Appropriations

House 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.

SENATE
Amended 2nd Reading
March 18, 2011

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) ___ 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 PLAINTIFF. IF THE COURT FINDS THAT AN
25 ACTION BROUGHT PURSUANT TO ___ THIS PART 4 WAS FRIVOLOUS,
26 GROUNDLESS, OR VEXATIOUS AS PROVIDED IN ARTICLE 17 OF TITLE 13,
27 C.R.S., THE COURT SHALL AWARD COSTS AND ATTORNEY FEES TO THE

1 DEFENDANT IN THE ACTION.

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

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

8 24-34-305. Powers and duties of commission. (1) The
9 commission has the following powers and duties:

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

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

23 (B) THE COMMISSION SHALL CREATE THE VOLUNTEER WORKING
24 GROUP BY SEPTEMBER 1, 2011. THE WORKING GROUP SHALL DEVELOP
25 AND SUBMIT TO THE COMMISSION, BY JANUARY 1, 2012, AN EDUCATION
26 AND OUTREACH PLAN FOR THE COMMISSION TO IMPLEMENT FOR PURPOSES
27 OF EDUCATING EMPLOYERS AND PROVIDING OUTREACH REGARDING THIS

1 PART 4.

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

18 **SECTION 3. Act subject to petition - effective date -**
19 **applicability.** (1) This act shall take effect at 12:01 a.m. on the day
20 following the expiration of the ninety-day period after final adjournment
21 of the general assembly (August 10, 2011, if adjournment sine die is on
22 May 11, 2011); except that, if a referendum petition is filed pursuant to
23 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 shall not take effect unless approved by the people at the
26 general election to be held in November 2012 and shall take effect on the
27 date of the official declaration of the vote thereon by the governor.

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