

SENATE COMMITTEE OF REFERENCE REPORT

Chairman of Committee

April 18, 2018
Date

Committee on Judiciary.

After consideration on the merits, the Committee recommends the following:

HB18-1256 be amended as follows, and as so amended, be referred to the Committee on Appropriations with favorable recommendation:

1 Amend reengrossed bill, page 2, after line 21 insert:

2 "SECTION 3. In Colorado Revised Statutes, add 2-3-125 as
3 follows:

4 **2-3-125. Periodic performance audits of Colorado civil rights**
5 **division and commission - reports.** BY DECEMBER 15, 2019, AND BY
6 DECEMBER 15, 2024, THE STATE AUDITOR SHALL COMPLETE OR CAUSE TO
7 BE CONDUCTED AND COMPLETED A PERFORMANCE AUDIT OF THE
8 COLORADO CIVIL RIGHTS DIVISION CREATED IN SECTION 24-34-302 AND
9 THE COLORADO CIVIL RIGHTS COMMISSION CREATED IN SECTION
10 24-34-303. THE STATE AUDITOR SHALL PREPARE A REPORT AND
11 RECOMMENDATIONS ON EACH AUDIT CONDUCTED AND SHALL PRESENT THE
12 REPORT AND RECOMMENDATIONS TO THE COMMITTEE.

13 **SECTION 4.** In Colorado Revised Statutes, 24-34-303, amend
14 (1), (2), and (3) as follows:

15 **24-34-303. Civil rights commission - membership - repeal.**
16 (1) (a) There is hereby created, within the division, the Colorado civil
17 rights commission.

18 (b) (I) The commission shall consist of seven members, who shall
19 be appointed by the governor, with the consent of the senate, for terms of
20 four years. The governor shall make appointments in such a manner that
21 there are at all times two members of the commission representing the
22 business community, at least one of whom shall be a representative of
23 small business, two members of the commission representing state or

1 local government entities, and three members of the commission from the
2 community at large. The membership of the commission shall at all times
3 be comprised of at least four members who are members of groups of
4 people who have been or who might be discriminated against because of
5 disability, race, creed, color, sex, sexual orientation, national origin,
6 ancestry, marital status, religion, or age. Appointments shall be made to
7 provide geographical area representation insofar as may be practicable,
8 and no more than four members shall belong to the same political party.

9 (II) THIS SUBSECTION (1)(b) IS REPEALED, EFFECTIVE MARCH 15,
10 2019.

11 (c) (I) STARTING MARCH 15, 2019, THE COMMISSION CONSISTS OF
12 EIGHT MEMBERS AS FOLLOWS:

13 (A) FOUR MEMBERS APPOINTED BY THE GOVERNOR WITH THE
14 CONSENT OF THE SENATE;

15 (B) TWO MEMBERS APPOINTED BY THE SPEAKER OF THE HOUSE OF
16 REPRESENTATIVES; EXCEPT THAT, IF THE SPEAKER SHARES THE SAME
17 POLITICAL PARTY REGISTRATION AS THE GOVERNOR, THE MINORITY
18 LEADER OF THE HOUSE OF REPRESENTATIVES SHALL APPOINT TWO
19 MEMBERS; AND

20 (C) TWO MEMBERS APPOINTED BY THE PRESIDENT OF THE SENATE;
21 EXCEPT THAT, IF THE PRESIDENT SHARES THE SAME POLITICAL PARTY
22 REGISTRATION AS THE GOVERNOR, THE MINORITY LEADER OF THE SENATE
23 SHALL APPOINT TWO MEMBERS.

24 (II) THE MEMBERSHIP OF THE COMMISSION MUST AT ALL TIMES BE
25 COMPRISED OF AT LEAST:

26 (A) ONE MEMBER FROM OR REPRESENTING A LABOR UNION OR
27 SIMILAR EMPLOYEE ASSOCIATION THAT REPRESENTS MEMBERS IN
28 COLORADO;

29 (B) ONE MEMBER WHO IS A MAJORITY OWNER OF A SMALL
30 BUSINESS THAT EMPLOYS AT LEAST FIVE EMPLOYEES;

31 (C) ONE MEMBER WHO IS A MAJORITY OWNER OF A SMALL
32 BUSINESS THAT EMPLOYS MORE THAN TWENTY-FIVE EMPLOYEES;

33 (D) TWO MEMBERS REPRESENTING STATE OR LOCAL GOVERNMENT
34 ENTITIES; AND

35 (E) THREE MEMBERS FROM THE COMMUNITY AT LARGE.

36 (III) FROM THE MEMBERS DESCRIBED IN SUBSECTIONS (1)(c)(II)(A)
37 TO (1)(c)(II)(E) OF THIS SECTION, AT LEAST FOUR MEMBERS MUST BE FROM
38 GROUPS OF PEOPLE WHO HAVE BEEN OR WHO MIGHT BE DISCRIMINATED
39 AGAINST BECAUSE OF DISABILITY, RACE, CREED, COLOR, SEX, SEXUAL
40 ORIENTATION, NATIONAL ORIGIN, ANCESTRY, MARITAL STATUS, RELIGION,
41 OR AGE.

1 (IV) APPOINTMENTS SHALL BE MADE TO PROVIDE GEOGRAPHICAL
2 AREA REPRESENTATION IN SO FAR AS MAY BE PRACTICABLE. NO MORE THAN
3 THREE MEMBERS MAY BELONG TO THE SAME POLITICAL PARTY, AND NO
4 MORE THAN SIX MEMBERS MAY BE AFFILIATED WITH ANY POLITICAL
5 PARTY. A MEMBER MUST HAVE BEEN REGISTERED WITH THE SAME
6 POLITICAL PARTY OR UNAFFILIATED WITH ANY POLITICAL PARTY FOR AT
7 LEAST FOUR YEARS PRIOR TO THE MEMBER'S APPOINTMENT TO THE
8 COMMISSION.

9 (V) MEMBERS OF THE COMMISSION SERVE FOUR-YEAR TERMS;
10 EXCEPT THAT, FOR PURPOSES OF ENSURING STAGGERED TERMS OF OFFICE,
11 TWO MEMBERS APPOINTED BY THE GOVERNOR, ONE MEMBER APPOINTED
12 BY THE SPEAKER OR MINORITY LEADER OF THE HOUSE OF
13 REPRESENTATIVES, AS APPLICABLE, AND ONE MEMBER APPOINTED BY THE
14 PRESIDENT OR MINORITY LEADER OF THE SENATE, AS APPLICABLE, SERVE
15 INITIAL TWO-YEAR TERMS.

16 (2) Vacancies on the commission shall be filled by the governor
17 by appointment with the consent of the senate, and BY THE APPOINTING
18 AUTHORITY OF THAT COMMISSIONER, WITH GOVERNOR APPOINTMENTS
19 SUBJECT TO CONSENT OF THE SENATE. The term of a commissioner so
20 appointed shall be TO FILL A VACANCY IS for the unexpired part of the
21 term for which the commissioner is appointed.

22 (3) Any commissioner may be removed from office by the
23 ~~governor~~ APPOINTING AUTHORITY OF THAT COMMISSIONER for
24 misconduct, incompetence, or neglect of duty.

25 **SECTION 5.** In Colorado Revised Statutes, 24-34-306, amend
26 (4), (11), (12), (14), and (15) as follows:

27 **24-34-306. Charge - complaint - hearing - procedure -**
28 **exhaustion of administrative remedies - option to choose**
29 **administrative or district court proceeding.** (4) (a) (I) When the
30 director is satisfied that further efforts to settle the matter by conference,
31 conciliation, and persuasion will be futile, ~~he~~ THE DIRECTOR shall ~~so~~
32 report THAT AND REFER THE MATTER to the commission. UPON RECEIPT
33 OF THE MATTER, THE COMMISSION SHALL NOTIFY BOTH PARTIES OF THEIR
34 RIGHT TO CHOOSE TO CONTINUE WITH AN ADMINISTRATIVE PROCEEDING
35 BEFORE THE COMMISSION OR ADMINISTRATIVE LAW JUDGE OR TO PURSUE
36 THE MATTER IN THE APPROPRIATE DISTRICT COURT. THE NOTICE MUST
37 SPECIFY THAT:

38 (A) IF THE MATTER REMAINS IN THE COMMISSION'S JURISDICTION,
39 NEITHER PARTY MAY FILE A CLAIM IN DISTRICT COURT AND THE
40 COMMISSION RETAINS JURISDICTION OF THE MATTER UNTIL FINAL
41 RESOLUTION OF THE MATTER; AND

1 (B) IF EITHER PARTY OPTS TO PURSUE THE MATTER IN DISTRICT
2 COURT, THE COMMISSION'S JURISDICTION OVER THE MATTER CEASES, AND
3 ALL REMEDIES THAT MAY BE GRANTED BY THE COMMISSION ARE
4 AVAILABLE IN THE DISTRICT COURT PROCEEDING TO EITHER PARTY.

5 (II) THE PARTIES SHALL NOTIFY THE COMMISSION OF THEIR
6 SELECTION WITHIN TWENTY-ONE DAYS AFTER RECEIVING THE NOTICE
7 FROM THE COMMISSION. IF BOTH PARTIES CHOOSE TO CONTINUE WITH AN
8 ADMINISTRATIVE PROCEEDING, OR IF THE PARTIES DO NOT TIMELY
9 RESPOND, THE MATTER SHALL REMAIN IN THE COMMISSION'S JURISDICTION,
10 AND NEITHER PARTY MAY FILE THE MATTER IN DISTRICT COURT. IF EITHER
11 PARTY NOTIFIES THE COMMISSION THAT THE PARTY OPTS TO PURSUE THE
12 MATTER IN DISTRICT COURT, THE COMMISSION SHALL STAY THE MATTER
13 AND FILE THE MATTER IN THE APPROPRIATE DISTRICT COURT WITHIN
14 THIRTY DAYS AFTER RECEIPT OF THE NOTICE FROM EITHER PARTY.

15 (b) If the commission RETAINS JURISDICTION OF THE MATTER AND
16 determines that the circumstances warrant, ~~it~~ THE COMMISSION shall issue
17 and cause to be served, in the manner provided by section 24-4-105 (2),
18 a written notice and complaint requiring the respondent to answer the
19 charges at a formal hearing before the commission, a commissioner, or an
20 administrative law judge. ~~Such~~ THE hearing shall be commenced within
21 one hundred twenty days after the service of ~~such~~ THE written notice and
22 complaint. ~~Such~~ THE notice and complaint shall state the time, place, and
23 nature of the hearing, the legal authority and jurisdiction under which it
24 is to be held, and the matters of fact and law asserted.

25 (11) IF THE MATTER REMAINS IN THE JURISDICTION OF THE
26 COMMISSION PURSUANT TO SUBSECTION (4)(a) OF THIS SECTION, AND if
27 written notice that a formal hearing will be held is not served within two
28 hundred seventy days after the filing of the charge, ~~if the complainant has~~
29 ~~requested and received a notice of right to sue pursuant to subsection (15)~~
30 ~~of this section~~, or if the hearing is not commenced within the
31 one-hundred-twenty-day period prescribed by subsection ~~(4)~~ **(4)(b)** of this
32 section, the jurisdiction of the commission over the complaint ~~shall cease~~
33 CEASES, and the complainant may seek the relief authorized under this
34 part 3 and parts 4 to 7 of this article **34** against the respondent by filing a
35 civil action in the district court for the district in which the alleged
36 discriminatory or unfair practice occurred. ~~Such~~ THE COMPLAINANT MUST
37 FILE THE action ~~must be filed~~ within ninety days ~~of~~ AFTER the date upon
38 which the jurisdiction of the commission ceased, and if ~~not so filed~~, it
39 ~~shall be~~ THE COMPLAINANT FAILS TO TIMELY FILE THE ACTION IN THE
40 APPROPRIATE DISTRICT COURT, THE COMPLAINANT IS ~~barred~~ FROM FILING
41 THE ACTION IN THE COURT, and the district court ~~shall~~ DOES NOT have ~~no~~

1 jurisdiction to hear ~~such~~ THE action. If any party requests the extension of
2 any time period prescribed by this subsection (11), ~~such~~ THE COMMISSION,
3 A COMMISSIONER, OR THE ADMINISTRATIVE LAW JUDGE, AS THE CASE MAY
4 BE, MAY GRANT THE extension ~~may be granted~~ for good cause, ~~by the~~
5 ~~commission, a commissioner, or the administrative law judge, as the case~~
6 ~~may be~~, but the total period of all ~~such~~ extensions to either the respondent
7 or the complainant ~~shall~~ MUST not exceed ninety days each, and, in the
8 case of multiple parties, the total period of all extensions ~~shall~~ MUST not
9 exceed one hundred eighty days.

10 (12) (a) The division shall maintain a central file of decisions
11 rendered under parts 3 to 7 of this article ~~and such 34~~. THE DIVISION
12 SHALL MAKE THE file ~~shall be open~~ AVAILABLE to the public for
13 inspection during regular business hours AND SHALL POST THE FILE ON ITS
14 WEBSITE. THE DIVISION SHALL INCLUDE IN THE FILE A QUARTERLY
15 SUMMARY OF ALL CHARGES FILED WITH THE DIVISION DURING EACH
16 CALENDAR QUARTER, INCLUDING THE TYPES OF CHARGES FILED,
17 SPECIFYING WHETHER THE CHARGES ALLEGED VIOLATIONS OF PART 4, 5,
18 OR 6 OF THIS ARTICLE 34, AND THE OUTCOMES OF THE MATTERS,
19 SPECIFYING WHETHER:

20 (I) THE MATTER WAS RESOLVED BY THE DIVISION, AND IF SO,
21 WHETHER THE DIVISION DISMISSED THE CHARGES;

22 (II) THE DIVISION FOUND PROBABLE CAUSE;

23 (III) THE DIVISION REFERRED THE MATTER TO THE COMMISSION;

24 (IV) A CIVIL ACTION WAS FILED REGARDING THE MATTER; AND

25 (V) WHETHER THE COMMISSION OR DISTRICT COURT FOUND THAT
26 THE RESPONDENT ENGAGED IN A DISCRIMINATORY OR UNFAIR PRACTICE,
27 AND IF SO, WHETHER ANY REMEDIES WERE GRANTED.

28 (b) THE DIVISION SHALL NOT DISCLOSE THE NAMES OF THE PARTIES
29 OR THE SPECIFIC DETAILS OF ANY CASE OR CHARGE IN THE QUARTERLY
30 SUMMARY.

31 (14) ~~No~~ A person may NOT file a civil action in a district court in
32 this state based on an alleged discriminatory or unfair practice prohibited
33 by parts 4 to 7 of this article ~~34~~ without first exhausting the proceedings
34 and remedies available to him OR HER under this part 3 unless:

35 (a) ~~he~~ THE PERSON shows, in an action filed in the appropriate
36 district court, by clear and convincing evidence, THAT his OR HER ill
37 health ~~which~~ is of such a nature that pursuing administrative remedies
38 would not provide timely and reasonable relief and would cause
39 irreparable harm; OR

40 (b) THE PERSON HAS OPTED TO PURSUE THE MATTER IN DISTRICT
41 COURT IN ACCORDANCE WITH SUBSECTION (4)(a) OF THIS SECTION.

1 (15) The charging party in any action may request the division to
2 issue a written notice of right to sue at any time DURING THE
3 INVESTIGATION AND prior to REFERRAL OF THE MATTER BY THE DIVISION
4 TO THE COMMISSIONER PURSUANT TO SUBSECTION (4)(a) OF THIS SECTION
5 OR TO service of a notice and complaint pursuant to subsection ~~(4)~~ (4)(b)
6 of this section. The charging party shall make the request for notice of
7 right to sue in writing. The division shall promptly grant a claimant's
8 request for notice of right to sue made after the expiration of one hundred
9 eighty days following the filing of the charge IF THE MATTER HAS NOT
10 BEEN REFERRED TO THE COMMISSION PURSUANT TO SUBSECTION (4)(a) OF
11 THIS SECTION. If a claimant makes a request for a notice of right to sue
12 prior to the expiration of one hundred eighty days following the filing of
13 the charge, the division shall grant the request upon a determination that
14 the investigation of the charge will not be completed within one hundred
15 eighty days following the filing of the charge. A notice of right to sue
16 shall constitute final agency action and exhaustion of administrative
17 remedies and proceedings pursuant to this part 3.

18 **SECTION 6.** In Colorado Revised Statutes, 24-34-602, **amend**
19 (1)(a) as follows:

20 **24-34-602. Penalty and civil liability.** (1) (a) (I) Any person who
21 violates section 24-34-601 shall be fined ~~not less than fifty dollars nor~~
22 ~~more than five hundred dollars~~ for each violation:

23 (A) UP TO FIVE HUNDRED DOLLARS FOR THE FIRST VIOLATION;

24 (B) UP TO FIVE THOUSAND DOLLARS FOR THE SECOND VIOLATION;

25 AND

26 (C) UP TO TEN THOUSAND DOLLARS FOR THE THIRD OR ANY
27 SUBSEQUENT VIOLATION.

28 (II) FINES AUTHORIZED BY THIS SECTION ARE NOT ASSESSED ON A
29 PER-DAY BASIS.

30 (III) A person aggrieved by the violation of section 24-34-601
31 shall bring an action in any court of competent jurisdiction in the county
32 where the violation occurred. Upon finding a violation, the court shall
33 order the defendant to pay the fine to the aggrieved party."

34 Renumber succeeding sections accordingly.

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