

COLORADO REVISED STATUTES

TITLE 24, ARTICLE 34

PART 3

COLORADO CIVIL RIGHTS DIVISION - COMMISSION - PROCEDURES

Editor's note: Parts 3 through 8 of this article were repealed and reenacted in 1979. Subject matter of the parts was relocated. This part 3 was contained in parts 3 and 7 prior to 1979. Parts 3 and 7 were originally enacted as article 21 of chapter 80 and article 3 of chapter 25 in C.R.S. 1963. For amendments to parts 3 and 7 prior to 1979, consult the red book table distributed with the session laws; the original volume of C.R.S. 1973, and annual supplements to that volume prior to 1979; the comparative table located in the back of the index; and C.R.S. 1963.

Law reviews: For article, "Civil Rights", which discusses recent Tenth Circuit decisions dealing with civil rights, see 61 Den. L. J. 163 (1984); for article, "Civil Rights", which discusses a recent Tenth Circuit decision dealing with employment discrimination, see 63 Den. U. L. Rev. 197 (1986); for article, "Civil Rights", which discusses recent Tenth Circuit decisions dealing with civil rights, see 64 Den. U. L. Rev. 141 (1987); for article, "An ADR Forum for the Disabled", see 18 Colo. Law. 915 (1989); for a discussion of recent Tenth Circuit decisions involving civil rights, see 66 Den. U. L. Rev. 687 (1989) and 67 Den. U. L. Rev. 639 (1990).

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

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

(1.5) "Commission" means the Colorado civil rights commission created by section 24-34-303.

(1.6) "Commissioner" means a member of the Colorado civil rights commission.

(2) "Director" means the director of the Colorado civil rights division, which office is created by section 24-34-302.

(2.5) (a) "Disability" means a physical impairment which substantially limits one or more of a person's major life activities and includes a record of such an impairment and being regarded as having such an impairment.

(b) (i) On and after July 1, 1990, as to part 5 of this article, "disability" shall also include such a person who has a mental impairment, but such term does not include any person currently involved in the illegal use of or addiction to a controlled substance.

(ii) On and after July 1, 1992, as to parts 4, 6, and 7 of this article, "disability" shall also include such a person who has a mental impairment.

(iii) The term "mental impairment" as used in subparagraphs (i) and (ii) of this paragraph (b)

shall mean any mental or psychological disorder such as developmental disability, organic brain syndrome, mental illness, or specific learning disabilities.

(3) "Division" means the Colorado civil rights division, created by section 24-34-302.

(4) (Deleted by amendment, L. 93, p. 1655, § 59, effective July 1, 1993.)

(5) "Person" means one or more individuals, limited liability companies, partnerships, associations, corporations, legal representatives, trustees, receivers, or the state of Colorado, and all political subdivisions and agencies thereof.

(6) "Respondent" means any person, agency, organization, or other entity against whom a charge is filed pursuant to any of the provisions of parts 3 to 7 of this article.

Source: L. 79: Entire part R&RE, p. 923, § 3, effective July 1. L. 86: (1) R&RE and (1.5) and (1.6) added, p. 930, § 1, 2, effective May 8. L. 89: (4) amended, p. 1037, § 1, effective July 1. L. 90: (5) amended, p. 447, § 13, effective April 18. L. 92: (4)(b)(i) amended, p. 1121, § 1, effective July 1. L. 93: (2.5) added and (4) amended, p. 1655, § 59, effective July 1.

The object to be obtained by subsection (4) and § 24-34-402 (1) is to eliminate discrimination in employment on account of physical handicaps. *Gamble v. Levitz Furniture Co.*, 759 P.2d 761 (Colo. App. 1988), cert. denied, 782 P.2d 1197 (Colo. 1989).

Definition of "handicap", as it appears in subsection (4), creates an ambiguity which requires consideration of extrinsic sources to interpret the term properly. *Gamble v. Levitz Furniture Co.*, 759 P.2d 761 (Colo. App. 1988), cert. denied, 782 P.2d 1197 (Colo. 1989).

In defining "handicap", the general assembly meant to protect three types of handicapped individuals: Those with present impairments; those with past impairments, and those perceived as having impairments. *Gamble v. Levitz Furniture Co.*, 759 P.2d 761 (Colo. App. 1988), cert. denied, 782 P.2d 1197 (Colo. 1989).

Applicant for employment was handicapped within the meaning of this section where he was treated as being substantially limited in one or more major life activities, even though he possessed no such substantial limitation. *Civil Rights Com'n v. Fire Protection D.*, 772 P.2d 70 (Colo. 1989).

In order to demonstrate status as a handicapped person, it is necessary for a plaintiff to establish only one of the disjunctive propositions in subsection (4). *Gamble v. Levitz Furniture Co.*, 759 P.2d 761 (Colo. App. 1988), cert. denied, 782 P.2d 1197 (Colo. 1989).

However, not all persons with physical impairments are entitled to relief; the impairment must be substantial and should be

evaluated on a case-by-case basis. *Civil Rights Com'n v. Fire Protection D.*, 772 P.2d 70 (Colo. 1989).

Having AIDS or being HIV-positive is a handicap within the definition of this section. *Phelps v. Field Real Estate Co.*, 793 F. Supp. 1535 (D. Colo. 1991).

24-34-302. Civil rights division - director. There is hereby created within the department of regulatory agencies a division of state government to be known and designated as the Colorado civil rights division, the head of which shall be the director of the Colorado civil rights division, which office is hereby created. The director shall be appointed by the executive director of the department of regulatory agencies pursuant to section 13 of article XII of the state constitution, and the executive director shall give good faith consideration to the recommendations of the commission prior to making such appointment. The director shall appoint such investigators and other personnel as may be necessary to carry out the functions and duties of the division.

Source: L. 79: Entire part R&RE, p. 923, § 3, effective July 1.

Am. Jur.2d. See 15 Am. Jur.2d, Civil Rights, § 4.

C.J.S. See 14 C.J.S., Civil Rights, § 8-10.

Law reviews. For note, "Investigative Procedures of the Colorado Civil Rights Commission", see 40 U. Colo. L. Rev. 97 (1967). For article, "Civil Rights in Colorado", see 46 Den. L.J. 181 (1969). For note, "Rural Poverty and the Law in Southern Colorado", see 47 Den. L.J. 82 (1970). For note, "Equal Employment Opportunity Legislation: A Study of a Response to a Social Need", see 47 Den. L.J. 521 (1970). For article, "Practicing Before the Colorado Civil Rights Commission", see 17 Colo. Law. 259 (1988).

Civil rights provisions held not to place unconstitutional burden on interstate commerce. *Colorado Anti-Discrimination Comm'n v. Continental Air Lines*, 372 U.S. 714, 83 S. Ct. 1022, 10 L. Ed.2d 84 (1963).

24-34-303. Civil rights commission - membership. There is hereby created, within the division, the Colorado civil rights commission. The commission shall consist of seven members, who shall be appointed by the governor, with the consent of the senate, for terms of four years; except that, of the first members appointed, two shall be appointed for terms of two years and two shall be appointed for terms of three years. In making the first two appointments to the commission on or after July 1, 1981, whether such appointments are for a full term or to fill a vacancy, the governor shall appoint one member to represent the business community and one member to represent state or local government entities. In making the next

two appointments to the commission, whether such appointments are for a full term or to fill a vacancy, the governor shall appoint one member to represent small business and one member to represent state or local government entities. The governor shall make all subsequent appointments in such a manner that there are at all times two members of the commission representing the business community, at least one of which shall be a representative of small business, two members of the commission representing state or local government entities, and three members of the commission from the community at large. The membership of the commission shall at all times be comprised of at least four members who are members of groups of people who have been or who might be discriminated against because of disability, race, creed, color, sex, national origin, or ancestry as defined in section 24-34-402 or because of marital status, religion, or age. Appointments shall be made to provide geographical area representation insofar as may be practicable, and no more than four members shall belong to the same political party. Vacancies shall be filled by the governor by appointment, with the consent of the senate, and the term of a commissioner so appointed shall be for the unexpired part of the term for which the commissioner is appointed. Any commissioner may be removed from office by the governor for misconduct, incompetence, or neglect of duty. Commissioners shall receive a per diem allowance and shall be reimbursed for actual and necessary expenses incurred by them while on official commission business, as provided in section 24-34-102 (13). The commission may adopt, amend, or rescind rules for governing its meetings, and four commissioners shall constitute a quorum.

Source: L. 79: Entire part R&RE, p. 923, § 3, effective July 1. L. 81: Entire section amended, p. 1084, § 1, effective May 27. L. 82: Entire section amended, p. 625, § 28, effective April 2. L. 89: Entire section amended, p. 1038, § 2, effective July 1. L. 93: Entire section amended, p. 1656, § 60, effective July 1.

Anti-discrimination provisions were enacted for beneficent purpose and should be liberally construed in favor of the legal remedies which they provide. Under such a rule of construction, however, the courts cannot confer a power upon the civil rights commission which was denied it by the general assembly. *State ex rel. Colorado Civil Rights Comm'n v. Adolph Coors Corp.*, 29 Colo. App. 240, 486 P.2d 43 (1971).

24-34-304. Division and commission subject to termination - repeal of part. (1) The provisions of section 24-34-104, concerning the termination schedule for regulatory bodies of the state unless extended as provided in that

section, are applicable to the division and the commission created by this part 3.

(2) This part 3 is repealed, effective July 1, 2009. Prior to such repeal, the functions of the division and commission shall be reviewed as provided for in section 24-34-104.

Source: L. 79: Entire part R&RE, p. 924, § 3, effective July 1. L. 91: Entire section amended, p. 687, § 52, effective April 20. L. 99: (2) amended, p. 150, § 3, effective March 25.

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

(a) To adopt, publish, amend, and rescind rules and regulations, in accordance with the provisions of section 24-4-103, which are consistent with and for the implementation of parts 3 to 7 of this article. All such rules adopted or amended on or after July 1, 1979, shall be subject to sections 24-4-103 (8) (c) and (8) (d) and 24-34-104 (9) (b) (II).

(b) To receive, investigate, and pass upon charges alleging unfair or discriminatory practices in violation of parts 4 to 7 of this article;

(c) To investigate and study the existence, character, causes, and extent of unfair or discriminatory practices as defined in parts 4 to 7 of this article and to formulate plans for the elimination thereof by educational or other means;

(d) (I) To hold hearings upon any complaint issued against a respondent pursuant to section 24-34-306; to subpoena witnesses and compel their attendance; to administer oaths and take the testimony of any person under oath; and to compel such respondent to produce for examination any books and papers relating to any matter involved in such complaint. Such hearings may be held by the commission itself, or by any commissioner, or by any administrative law judge appointed by the commission pursuant to part 10 of article 30 of this title, subject to appropriations for such administrative law judges made to the department of personnel; except that, if no administrative law judge is made available within the time limitations set forth in section 24-34-306 (11), the governor shall appoint an administrative law judge at the request of the commission, and such administrative law judge shall be paid out of moneys appropriated to the division. If a witness either fails or refuses to obey a subpoena issued by the commission, the commission may petition the district court having jurisdiction for issuance of a subpoena in the premises, and the court shall in a proper case issue its subpoena. Refusal to obey such subpoena shall be punishable as contempt.

(II) No person may be excused from attending and testifying or from producing records, correspondence, documents, or other evidence

in obedience to a subpoena in any such matter on the ground that the evidence or the testimony required of him may tend to incriminate him or subject him to any penalty or forfeiture. However, no testimony or other information compelled under order from the commission, or other information directly or indirectly derived from such testimony or other information, may be used against the witness in any criminal case, except a prosecution and punishment for perjury or false statement committed in so testifying.

(e) To issue such publications and reports of investigations and research as in its judgment will tend to promote goodwill among the various racial, religious, age, and ethnic groups of the state and which will tend to minimize or eliminate discriminatory or unfair practices as specified by parts 3 to 7 of this article. Publications of the commission circulated in quantity outside the executive branch shall be issued in accordance with the provisions of section 24-1-136.

(f) To prepare and transmit annually, in the form and manner prescribed by the heads of the principal departments pursuant to the provisions of section 24-1-136, a report accounting to the governor and the general assembly for the efficient discharge of all responsibilities assigned by law or directive to the commission;

(g) To recommend policies to the governor and to submit recommendations to persons, agencies, organizations, and other entities in the private sector to effectuate such policies;

(h) To make recommendations to the general assembly for such further legislation concerning discrimination as it may deem necessary and desirable;

(i) To cooperate, within the limits of any appropriations made for its operation, with other agencies or organizations, both public and private, whose purposes are consistent with those of parts 3 to 7 of this article, in the planning and conducting of educational programs designed to eliminate racial, religious, cultural, age, and intergroup tensions;

(i.5) To intervene in racial, religious, cultural, age, and intergroup tensions or conflicts for the purpose of informal mediation using alternative dispute resolution techniques. Such intervention may be made in cooperation with other agencies or organizations, both public and private, whose purposes are consistent with those of parts 3 to 7 of this article.

(j) To adopt an official seal.

(2) Any provision of this article to the contrary notwithstanding, no person shall be required to alter, modify, or purchase any building, structure, or equipment or incur any additional expense which would not otherwise be incurred in order to comply with parts 3, 4, 6, and 7 of this article.

(3) In exercising the powers and performing the duties and functions under parts 3 to 7 of this article, the commission, the division, and the director shall presume that the conduct of any respondent is not unfair or discriminatory until proven otherwise.

(4) Whether by rule, regulation, or other action or whether as a remedy for violation of any provision of parts 3 to 7 of this article or otherwise, the commission shall not prescribe or require the implementation of a quota system.

Source: L. 79: Entire part R&E, p. 924, § 3, effective July 1. L. 80: (1) amended, p. 787, § 21, effective June 5. L. 81: (1)(a) amended, p. 1178, § 9, effective June 10. L. 83: (1)(e) and (1)(f) amended, p. 836, § 48, effective July 1. L. 86: (1)(e) and (1)(i) amended, p. 930, § 3, effective May 8. L. 87: (1)(d)(l) amended, p. 964, § 69, effective March 13. L. 89: Entire section amended, p. 1039, § 3, effective July 1. L. 92: (2) amended, p. 1121, § 2, effective July 1. L. 95: (1)(d)(l) amended, p. 654, § 70, effective July 1. L. 99: (1)(i.5) added, p. 152, § 1, effective August 4.

Editor's note: Subsection (1)(i.5) was contained in a 1999 act that was passed without a safety clause. For further explanation concerning the effective date, see page vii of this volume.

Cross references: For the legislative declaration contained in the 1995 act amending this section, see section 112 of chapter 167, Session Laws of Colorado 1995.

Am. Jur.2d. See 15 Am. Jur.2d, Civil Rights, § 261.

C.J.S. See 14A C.J.S., Civil Rights, § § 450-462.

For the jurisdiction of commission to consider complaint regarding discriminatory employment practice, see Dept. of Institutions v. Colorado Civil Rights Comm'n ex rel. McAllister, 185 Colo. 42, 521 P.2d 908, appeal dismissed, 419 U.S. 1084, 95 S. Ct. 672, 42 L. Ed.2d 677 (1974) (decided under former law).

Power of subpoena is limited to those situations in which the commission, or its delegated hearing representative, is in fact holding a hearing upon a specific complaint made against a specific entity or person. It is further limited by the mandate that the subpoena must have relevancy to matters involved in the complaint. State ex rel. Colorado Civil Rights Comm'n v. Adolph Coors Corp., 29 Colo. App. 240, 486 P.2d 43 (1971).

Trial court cannot issue subpoena where the commission has no statutory authority to issue or to seek a subpoena. State ex rel. Colorado Civil Rights Comm'n v. Adolph Coors Corp., 29 Colo. App. 240, 486 P.2d 43 (1971).

Civil rights commission's sole function is to make a finding of fact as to whether a statutory employer has acted to discriminate

against an employee because of race, creed, color, sex, national origin, or ancestry. *Umberfield v. School Dist. No. 11*, 185 Colo. 165, 522 P.2d 730 (1974).

A district court on review is bound by this finding of fact if it is supported by substantial evidence in the record. *Umberfield v. School Dist. No. 11*, 185 Colo. 165, 522 P.2d 730 (1974).

Agency is unauthorized to change final order while judicial review pending. An administrative agency is without authority to change, alter, or vacate a final order entered in proceedings before it while review thereof is pending in the district court. *Colorado Anti-Discrimination Comm'n v. Continental Air Lines*, 143 Colo. 590, 355 P.2d 83 (1960).

And, upon remand, it is without jurisdiction to do other than as directed by court. An attempt by the anti-discrimination commission (now civil rights commission) to vacate its original order is void where a party to the proceedings seeks review by the district court and the district court remands the cause to the commission with directions to make specific findings on specific issues; the commission has no jurisdiction to do other than as directed by the trial court. *Colorado Anti-Discrimination Comm'n v. Continental Air Lines*, 143 Colo. 590, 355 P.2d 83 (1960).

Industrial commission decision bars subsequent civil rights proceeding. A decision of the industrial commission on the cause of termination of employment bars a subsequent proceeding before the civil rights commission. *Colorado Springs Coach Co. v. State Civil Rights Comm'n*, 35 Colo. App. 378, 536 P.2d 837 (1975), cert. denied, 424 U.S. 948, 96 S. Ct. 1420, 47 L. Ed.2d 355 (1976) (decided prior to the 1986 abolition of the industrial commission).

24-34-306. Charge - complaint - hearing - procedure - exhaustion of administrative remedies - repeal. (1) Any person claiming to be aggrieved by a discriminatory or unfair practice as defined by parts 4 to 7 of this article may, by himself or his attorney-at-law, make, sign, and file with the commission a verified written charge in duplicate which shall state the name and address of the respondent alleged to have committed the discriminatory or unfair practice and which shall set forth the particulars thereof and contain such other information as may be required by the commission. The commission, a commissioner, or the attorney general may in like manner make, sign, and file such charge. Prior to any other action by the commission, the respondent shall be notified of the charges filed against him.

(2) (a) After the filing of a charge, the director, with the assistance of the staff, shall make a prompt investigation thereof. If such charge

alleges an unfair employment practice as defined in part 4 of this article or an unfair housing practice as defined in part 5 of this article, the director may subpoena witnesses and compel the testimony of witnesses and the production of books, papers, and records, if the testimony, books, papers, and records sought are limited to matters directly related to the charge. Any subpoena issued pursuant to this paragraph (a) shall be enforceable in the district court for the district in which the alleged discriminatory or unfair practice occurred and shall be issued only if the person or entity to be subpoenaed has refused or failed, after a proper request from the director, to provide voluntarily to the director the information sought by the subpoena.

(b) The director shall determine as promptly as possible whether probable cause exists for crediting the allegations of the charge, and shall follow one of the following courses of action:

(I) If the director determines that probable cause does not exist, he shall dismiss the charge and shall notify the person filing the charge and the respondent of such dismissal. In addition, in such notice the director shall advise both parties:

(A) That the charging party has the right to file an appeal of such dismissal with the commission within ten days of the date of mailing of the notification of such dismissal;

(B) That if the charging party wishes to file a civil action in a district court in this state, which action is based on the alleged discriminatory or unfair practice that was the subject of the charge he filed with the commission, he must do so: Within ninety days of the date of mailing of the notice specified in this subparagraph (I) if he does not file an appeal with the commission pursuant to sub-subparagraph (A) of this subparagraph (I); or within ninety days of the date of mailing of notice that the commission has dismissed the appeal specified in sub-subparagraph (A) of this subparagraph (I);

(C) That, if the charging party does not file an action within the time limits specified in sub-subparagraph (B) of this subparagraph (I), such action will be barred and no district court shall have jurisdiction to hear such action.

(II) If the director determines that probable cause exists, the respondent shall be served with written notice which states with specificity the legal authority and jurisdiction of the commission and the matters of fact and law asserted and the director shall order the charging party and the respondent to participate in compulsory mediation. Immediately after such notice has been given, the director shall endeavor to eliminate such discriminatory or unfair practice by conference, conciliation, and persuasion and by means of the compulsory mediation required by this subparagraph (II).

(c) The director's subpoena powers in cases relating to allegations of unfair employment practices are repealed on July 1, 2002. Prior to such repeal, the director's subpoena powers in such cases shall be reviewed as provided for in section 24-34-104, C.R.S.

(3) The members of the commission and its staff shall not disclose the filing of a charge, the information gathered during the investigation, or the efforts to eliminate such discriminatory or unfair practice by conference, conciliation, and persuasion unless such disclosure is made in connection with the conduct of the investigation, in connection with the filing of a petition seeking appropriate injunctive relief against the respondent under section 24-34-507, or at a public hearing or unless the complainant and the respondent agree to such disclosure. Nothing in this subsection (3) shall be construed to prevent the commission from disclosing its final action on a charge, including the reasons for dismissing such charge, the terms of a conciliation agreement, or the contents of an order issued after hearing.

(4) When the director is satisfied that further efforts to settle the matter by conference, conciliation, and persuasion will be futile, he shall so report to the commission. If the commission determines that the circumstances warrant, it shall issue and cause to be served, in the manner provided by section 24-4-105 (2), a written notice and complaint requiring the respondent to answer the charges at a formal hearing before the commission, a commissioner, or an administrative law judge. Such hearing shall be commenced within one hundred twenty days after the service of such written notice and complaint. Such notice and complaint shall state the time, place, and nature of the hearing, the legal authority and jurisdiction under which it is to be held, and the matters of fact and law asserted.

(5) In accordance with rules adopted by the commission, discovery procedures may be used by the commission and the parties under the same circumstances and in the same manner as is provided by the Colorado rules of civil procedure after the notice of hearing under subsection (4) of this section has been given.

(6) The respondent may file a written answer prior to the date of the hearing. When a respondent has failed to answer at a hearing, the commission, a commissioner, or the administrative law judge, as the case may be, may enter his default. For good cause shown, the entry of default may be set aside within ten days after the date of such entry. If the respondent is in default, testimony may be heard on behalf of the complainant. After hearing such testimony, the commission, a commissioner, or the administrative law judge,

as the case may be, may enter such order as the evidence warrants.

(7) The commission or the complainant shall have the power to reasonably and fairly amend any complaint, and the respondent shall have like power to amend his answer.

(8) The hearing shall be conducted and decisions rendered in accordance with section 24-4-105; except that the decision shall also include a statement of the reasons why the findings of fact lead to the conclusions. The case in support of the complaint shall be presented at the hearing by one of the commission's attorneys or agents, but no one presenting the case in support of the complaint shall counsel or advise the commission, commissioner, or administrative law judge who hears the case. The director and the staff shall not participate in the hearing except as a witness, nor shall they participate in the deliberations of, or counsel or advise, the commission, commissioner, or administrative law judge in such case. At any such hearing, the person presenting the case in support of the complaint shall have the burden of showing that the respondent has engaged or is engaging in an unfair or discriminatory practice, and the respondent's conduct shall be presumed not to be unfair or discriminatory until proven otherwise.

(9) If, upon all the evidence at a hearing, there is a statement of findings and conclusions in accordance with section 24-4-105, together with a statement of reasons for such conclusions, showing that a respondent has engaged in or is engaging in any discriminatory or unfair practice as defined in parts 4 to 7 of this article, the commission shall issue and cause to be served upon the respondent an order requiring such respondent to cease and desist from such discriminatory or unfair practice and to take such action as it may order in accordance with the provisions of parts 4 to 7 of this article.

(10) If, upon all of the evidence at a hearing, there is a statement of findings and conclusions in accordance with section 24-4-105, together with a statement of reasons for such conclusions, showing that a respondent has not engaged in any such discriminatory or unfair practice, the commission shall issue and cause to be served an order dismissing the complaint on the person alleging such discriminatory or unfair practice.

(11) If written notice that a formal hearing will be held is not served within two hundred seventy days after the filing of the charge, if the complainant has requested and received a notice of right to sue pursuant to subsection (15) of this section, or if the hearing is not commenced within the one-hundred-twenty-day period prescribed by subsection (4) of this section, the jurisdiction of the commission over

the complaint shall cease, and the complainant may seek the relief authorized under this part 3 and parts 4 to 7 of this article against the respondent by filing a civil action in the district court for the district in which the alleged discriminatory or unfair practice occurred. Such action must be filed within ninety days of the date upon which the jurisdiction of the commission ceased, and if not so filed, it shall be barred and the district court shall have no jurisdiction to hear such action. If any party requests the extension of any time period prescribed by this subsection (11), such extension may be granted for good cause by the commission, a commissioner, or the administrative law judge, as the case may be, but the total period of all such extensions to either the respondent or the complainant shall not exceed ninety days each, and, in the case of multiple parties, the total period of all extensions shall not exceed one hundred eighty days.

(12) The division shall maintain a central file of decisions rendered under parts 3 to 7 of this article, and such file shall be open to the public for inspection during regular business hours.

(13) Any member of the commission and any person participating in good faith in the making of a complaint or a report or in any investigative or administrative proceeding authorized by parts 3 to 7 of this article shall be immune from liability in any civil action brought against him for acts occurring while acting in his capacity as a commission member or participant, respectively, if such individual was acting in good faith within the scope of his respective capacity, made a reasonable effort to obtain the facts of the matter as to which he acted, and acted in the reasonable belief that the action taken by him was warranted by the facts.

(14) No person may file a civil action in a district court in this state based on an alleged discriminatory or unfair practice prohibited by parts 4 to 7 of this article without first exhausting the proceedings and remedies available to him under this part 3 unless he shows, in an action filed in the appropriate district court, by clear and convincing evidence, his ill health which is of such a nature that pursuing administrative remedies would not provide timely and reasonable relief and would cause irreparable harm.

(15) The charging party in any action may request a written notice of right to sue at any time prior to service of a notice and complaint pursuant to subsection (4) of this section. Any request for notice of right to sue shall be in writing. A claimant's request for notice of right to sue made after the expiration of one hundred eighty days following the filing of the charge shall be granted promptly. If a claimant makes a request for a notice of right to sue prior to the

expiration of one hundred eighty days following the filing of the charge, said request shall be granted upon a determination by the commission, a commissioner, or the administrative law judge that the investigation of the charge will not be completed within one hundred eighty days following the filing of the charge. A notice of right to sue shall constitute final agency action and exhaustion of administrative remedies and proceedings pursuant to this part 3.

Source: L. 79: Entire part R&RE, p. 925, § 3, effective July 1. L. 87: (4), (6), (8), and (11) amended, p. 965, § 70, effective March 13. L. 89: (2), (6), and (11) amended and (13) and (14) added, pp. 1039, 1041, § § 4, 5, effective July 1. L. 91: (2)(a) amended and (2)(c) added, p. 1373, § 1, effective June 4. L. 93: (11) amended and (15) added, p. 554, § 1, effective April 29. L. 96: (2)(a) and (2)(c) amended, p. 343, § 3, effective April 16.

Am. Jur.2d. See 15 Am. Jur.2d, Civil Rights, § 261.

C.J.S. See 14A C.J.S., Civil Rights, § § 450-475.

Law reviews. For article, "Fair Housing in Colorado", see 42 Den. L. Ctr. J. 1 (1965). For note, "Investigative Procedures of the Colorado Civil Rights Commission", see 40 U. Colo. L. Rev. 97 (1967). For comment on the application of res judicata to agencies with parallel jurisdiction in light of *Umberfield v. School Dist. No. 11*, 185 Colo. 165, 522 P.2d 730 (1974), see 52 Den. L. J. 595 (1975). For article, "Practicing Before the Colorado Civil Rights Commission", see 17 Colo. Law. 259 (1988). For article, "An ADR Forum for the Disabled", see 18 Colo. Law. 915 (1989).

Commission charge premised on claim of aggrieved person. This section authorizes a commission complaint (now charge) only in those instances where a specific person or persons have been aggrieved by the alleged discriminatory practices charged. *Sisneros v. Woodward Governor Co.*, 192 Colo. 454, 560 P.2d 97 (1977).

Charge must be drawn with sufficient particularity. Before the commission may issue a subpoena on a specific discriminatory or unfair employment practice, the practice must have occurred in fact and not in theory, and the wrongful practice must then be complained of in writing with enough particularity to satisfy the following needs: (1) It must provide the commission with enough information as to the alleged unfair practice that the commission may intelligently investigate and evaluate the unfair practice in order to determine whether a creditable violation of this article may have occurred; and (2) it must afford to the party alleged to have committed the unfair practice enough notice and knowledge of the unfair

practice with which it is charged to permit that party to make a written answer to the charges and to refute or defend against the charges at the time it answers or at the time of a hearing on the complaint (now charge). *State ex rel. Colorado Civil Rights Comm'n v. Adolph Coors Corp.*, 29 Colo. App. 240, 486 P.2d 43 (1971). Commission empowered to strike irrelevant testimony. Although the commission is not bound by strict rules of evidence, it has inherent power as a fact-finding body to strike testimony which has no bearing on any question at issue. *Texas Southland Corp. v. Hogue*, 30 Colo. App. 560, 497 P.2d 1275 (1972).

Direct evidence is not a prerequisite to a finding of discrimination; a finding may be based on legitimate inferences from the evidence. *Texas Southland Corp. v. Hogue*, 30 Colo. App. 560, 497 P.2d 1275 (1972).

Commission's finding of discrimination is legitimate inference from evidence where it is established, among other things, that the employee is black, that he has been a good worker, and that the employer's stated reasons for the discharge of the employee are false. *Texas Southland Corp. v. Hogue*, 30 Colo. App. 560, 497 P.2d 1275 (1972).

Exhaustion of administrative procedures, as set forth in this section, is not a condition precedent to asserting an "unlawful prohibition" claim under § 24-34-402.5. *Galiati v. State Farm Mut. Auto. Ins. Co.*, 840 F. Supp. 104 (D. Colo. 1993).

This section clearly requires plaintiffs to exhaust administrative remedies prior to filing a complaint in district court. Where plaintiff did not assert in her complaint that she had filed an administrative claim and she did not receive a right to sue letter until after the complaint was filed, her claim for tortious interference with employment was barred. *Brooke v. Restaurant Servs., Inc.*, 881 P.2d 409 (Colo. App. 1994).

Exhaustion of state remedies not required prior to federal proceedings. Congress has evidenced its intent to provide parallel or overlapping remedies against discrimination. Thus, the exhaustion of state administrative or judicial remedies is not required prior to proceedings in the federal court. *Silverman v. University of Colo.*, 36 Colo. App. 269, 541 P.2d 93 (1975), rev'd on other grounds, 192 Colo. 75, 555 P.2d 1155 (1976).

Administrative remedies under this section need be exhausted only for claims filed pursuant to § 24-34-402, not for common-law sex discrimination claims. *Brooke v. Restaurant Servs., Inc.*, 906 P.2d 66 (Colo. 1995).

Federal court may defer proceedings pending commission's determination. A federal trial court should have discretion, if it so determines, to defer proceedings on a claim

pending the determination of the claim by the commission. *Silverman v. University of Colo.*, 36 Colo. App. 269, 541 P.2d 93 (1975), rev'd on other grounds, 192 Colo. 75, 555 P.2d 1155 (1976) (decided under former law).

Purpose of subsection (11) is to avoid duplicative efforts toward relief. The apparent purpose of the subsection (11) provision in relation to the cessation of jurisdiction is to avoid duplicative and possibly conflicting attempts to pursue relief both in the district court and before the commission. *Continental Title Co. v. District Court*, 645 P.2d 1310 (Colo. 1982); *Agnello v. Adolph Coors Co.*, 695 P.2d 311 (Colo. App. 1984).

The effect of subsection (11) is only to provide an alternative remedy for vindication of the alleged discriminatory and unfair employment practice suffered by an employee, and does not remove an affirmative defense that might otherwise be asserted by the employer, nor does it create substantive rights by retroactively changing what was formerly a lawful employment practice into a discriminatory practice. *Continental Title Co. v. District Court*, 645 P.2d 1310 (Colo. 1982); *Agnello v. Adolph Coors Co.*, 695 P.2d 311 (Colo. App. 1984).

Decision of civil rights commission upholding the dismissal of a claim by the director of the civil rights division upon finding that no probable cause existed to support a claim of discrimination based on existence of a handicap does not constitute a final agency action subject to appellate review. *Demetry v. Colorado Civil Rights Comm'n*, 752 P.2d 1070 (Colo. App. 1988).

After director determines that no probable cause exists and dismisses a charge, there is no requirement to appeal this dismissal to the commission prior to the institution of a judicial action on the claim. *Montoya v. City of Colorado Springs*, 770 P.2d 1358 (Colo. App. 1989), cert. denied, 783 P.2d 838 (Colo. 1989).

Section provides alternative remedy and does not require exhaustion of administrative remedy. *Wing v. JMB Property Management Corp.*, 714 P.2d 916 (Colo. App. 1985).

24-34-307. Judicial review and enforcement.

(1) Any complainant or respondent claiming to be aggrieved by a final order of the commission, including a refusal to issue an order, may obtain judicial review thereof, and the commission may obtain an order of court for its enforcement in a proceeding as provided in this section.

(2) Such proceeding shall be brought in the court of appeals by appropriate proceedings under section 24-4-106 (11).

(3) Such proceeding shall be initiated by the filing of a petition in the court of appeals and the service of a copy thereof upon the commission and upon all parties who appeared before the

commission, and thereafter such proceeding shall be processed under the Colorado appellate rules. The court of appeals shall have jurisdiction of the proceeding and the questions determined therein and shall have power to grant such temporary relief or restraining order as it deems just and proper and to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript an order enforcing, modifying, and enforcing as so modified or setting aside the order of the commission in whole or in part.

(4) An objection that has not been urged before the commission shall not be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances.

(5) Any party may move the court to remit the case to the commission in the interests of justice for the purpose of adducing additional specified and material evidence and seeking findings thereof, if such party shows reasonable grounds for the failure to adduce such evidence before the commission.

(6) The findings of the commission as to the facts shall be conclusive if supported by substantial evidence.

(7) The jurisdiction of the court shall be exclusive and its judgment and order shall be final, subject to review as provided by law and the Colorado appellate rules.

(8) The commission's copy of the testimony shall be available to all parties for examination at all reasonable times, without cost, and for the purpose of judicial review of the commission's orders.

(9) The commission may appear in court by its own attorney.

(9.5) Upon application by a person alleging a discriminatory housing practice under section 24-34-502 or a person against whom such a practice is alleged, the court may appoint an attorney for such person or may authorize the commencement or continuation of a civil action without the payment of fees, costs, or security, if in the opinion of the court such person is financially unable to bear the costs of such action.

(10) The commission or court upon motion may grant a stay of the commission order pending appeal.

(11) Appeals filed under this section shall be heard expeditiously and determined upon the transcript filed, without requirement for printing. Hearings in the court of appeals under this part 3 shall take precedence over all other matters, except matters of the same character.

(12) If no proceeding to obtain judicial review is instituted by a complainant or respondent within forty-five days from the service of an order of the commission pursuant to section 24-34-306, the commission may obtain a decree of the

district court for the enforcement of such order upon showing that such respondent is subject to the jurisdiction of the commission and resides or transacts business within the county in which the petition for enforcement is brought.

Source: L. 79: Entire part R&RE, p. 927, § 3, effective July 1. L. 81: (2) and (12) amended, p. 1144, § 7, effective April 30. L. 90: (9.5) added, p. 1224, § 1, effective April 16.

Am. Jur.2d. See 15 Am. Jur.2d, Civil Rights, § 461.

C.J.S. See 14A C.J.S., Civil Rights, § 214.

Law reviews. For article, "One Year Review of Constitutional Law", see 40 Den. L. Ctr. J. 134 (1963). For article, "Fair Housing in Colorado", see 42 Den. L. Ctr. J. 1 (1965).

Civil rights provisions were intended to provide mechanism to eradicate causes of discrimination and to halt discriminatory practices. Red Seal Potato Chip Co. v. Colorado Civil Rights Comm'n, 44 Colo. App. 381, 618 P.2d 697 (1980).

They were not intended to provide relief to individual claimants. Red Seal Potato Chip Co. v. Colorado Civil Rights Comm'n, 44 Colo. App. 381, 618 P.2d 697 (1980); Agnello v. Adolph Coors Co., 695 P.2d 311 (Colo. App. 1984).

Claimant's benefits can be only enforced through commission action. Any benefits which may inure to a claimant as a result of a Colorado civil rights commission's action can only be enforced by the commission. Red Seal Potato Chip Co. v. Colorado Civil Rights Comm'n, 44 Colo. App. 381, 618 P.2d 697 (1980); Agnello v. Adolph Coors Co., 689 P.2d 1162 (Colo. App. 1984).

Although as part of the remedial orders in a Colorado civil rights commission proceeding, a respondent may be directed to rehire or compensate a claimant, that fact does not vest the claimant with any rights which the claimant can enforce by judicial decree. Red Seal Potato Chip Co. v. Colorado Civil Rights Comm'n, 44 Colo. App. 381, 618 P.2d 697 (1980).

Civil rights commission's sole function is to make a finding of fact as to whether a statutory employer has acted to discriminate against an employee because of race, creed, color, sex, national origin, or ancestry. Umberfield v. School Dist. No. 11, 185 Colo. 165, 522 P.2d 730 (1974) (decided under former law).

Direct evidence is not a prerequisite to a finding of discrimination; such a finding may be based on legitimate inferences from the evidence. Texas Southland Corp. v. Hogue, 30 Colo. App. 560, 497 P.2d 1275 (1972).

Commission's finding of discrimination is legitimate inference from evidence where it is established, among other things, that the employee is black, that he has been a good

worker, and the employer's stated reasons for the discharge of the employee are false. Texas Southland Corp. v. Hogue, 30 Colo. App. 560, 497 P.2d 1275 (1972).

Reviewing court is bound by commission's findings supported by substantial evidence. A district court on review is bound by the commission's findings of fact if they are supported by substantial evidence in the record. Umberfield v. School Dist. No. 11, 185 Colo. 165, 522 P.2d 730 (1974).

Review is limited to whether existence of fact inferred by evidence. The judicial review of findings made by an administrative body such as the civil rights commission is limited to the question of whether, based upon the entire record, the findings are supported by evidence so substantial that an inference of the existence of a fact may be reasonably drawn. Colorado Civil Rights Comm'n v. State, 30 Colo. App. 10, 488 P.2d 83 (1971); Texas Southland Corp. v. Hogue, 30 Colo. App. 560, 497 P.2d 1275 (1972).

Commission may sift evidence, rejecting false and accepting true. In applying the "substantial evidence" rule, a commission such as the civil rights commission has the right to sift evidence, accepting the true, rejecting the false, and basing inferences on what it accepts as true. Colorado Civil Rights Comm'n v. State, 30 Colo. App. 10, 488 P.2d 83 (1971).

Reviewing court cannot substitute its decisions for tribunal's. In determining whether the commission's order should stand, the question is not whether the court would come to an identical conclusion upon the evidence certified to it. A court cannot, upon the record of the proceedings before the hearing tribunal, substitute its own discretion for that reposed by statute in the tribunal. Due consideration must be accorded the presumption that an administrative body has acted fairly with proper motives, upon valid reasons, and not arbitrarily. Colorado Civil Rights Comm'n v. State, 30 Colo. App. 10, 488 P.2d 83 (1971); Agnello v. Adolph Coors Co., 689 P.2d 1162 (Colo. App. 1984).

Agency is unauthorized to change final order while judicial review pending. An administrative agency is without authority to change, alter, or vacate a final order while review proceedings are pending in the district court. Colorado Anti-Discrimination Comm'n v. Continental Air Lines, 143 Colo. 590, 355 P.2d 83 (1960).

And, upon remand, it is without jurisdiction to do other than as directed by court. An attempt by the anti-discrimination commission (now civil rights commission) to vacate its original order is void where a party to the proceedings seeks review by the district court and the district court remands the cause to the

commission with directions to make specific findings on specific issues; the commission has no jurisdiction to do other than as directed by the trial court. *Colorado Anti-Discrimination Comm'n v. Continental Air Lines*, 143 Colo. 590, 355 P.2d 83 (1960).

Appeal to civil rights commission prerequisite to court action. The exhaustion of the administrative remedy of appeal to the Colorado civil rights commission from an adverse ruling of a hearing officer is a prerequisite to the maintenance of a court action challenging the hearing officer's ruling. *North Washington St. Water & San. Dist. v. Emerson*, 626 P.2d 1152 (Colo. App. 1980).

Exhaustion of state remedies is not required prior to federal proceedings. Congress has evidenced its intent to provide parallel or overlapping remedies against discrimination. Thus, the exhaustion of state administrative or judicial remedies is not required prior to proceedings in the federal court. *Silverman v. University of Colo.*, 36 Colo. App. 269, 541 P.2d 93 (1975), rev'd on other grounds, 192 Colo. 75, 555 P.2d 1155 (1976).

Federal court may defer proceedings pending commission's determination. A federal trial court should have discretion, if it so determines, to defer proceedings on a claim pending the determination of the claim by the commission. *Silverman v. University of Colo.*, 36 Colo. App. 269, 541 P.2d 93 (1975), rev'd on other grounds, 192 Colo. 75, 555 P.2d 1155 (1976) (decided under former law).

Doctrine of res judicata bars relitigation of issues raised before prior administrative body. Where a teacher has a full adversary hearing before the teacher tenure panel, which has the power to determine all his claims of religious discrimination, the doctrine of res judicata operates as a bar to the relitigation of issues before the civil rights commission which the teacher raises or could raise in the hearing before the prior panel and on judicial review. To hold otherwise could result in an anomalous situation where the same reviewing court would be compelled to affirm opposite results of two administrative bodies. *Umberfield v. School Dist. No. 11*, 185 Colo. 165, 522 P.2d 730 (1974).

Applied in *Continental Title Co. v. District Court*, 645 P.2d 1310 (Colo. 1982).

24-34-308. Enforcement of federal law prohibited. Nothing in parts 3 to 8 of this article shall be construed to authorize the commission, the director, or the division to enforce any provision of federal law. Nothing in this section shall prevent the commission from accepting federal grants for the enforcement of parts 3 to 7.

Source: L. 79: Entire part R&RE, p. 928, § 3, effective July 1.

COLORADO REVISED STATUTES

TITLE 24, ARTICLE 34

PART 4

EMPLOYMENT PRACTICES

Editor's note: Parts 3 through 8 of this article were repealed and reenacted in 1979. Subject matter of the parts was relocated. This part 4 was contained in part 3 prior to 1979. Part 3 was originally enacted as article 21 of chapter 80 in C.R.S. 1963. For amendments to part 3 prior to 1979, consult the red book table distributed with the session laws; the original volume of C.R.S. 1973, and annual supplements to that volume prior to 1979; the comparative table located in the back of the index; and C.R.S. 1963.

Law reviews: For article, "Civil Rights", which discusses a recent Tenth Circuit decision dealing with employment discrimination, see 61 Den. L. J. 170 (1984); for article, "Punitive Damages in Wrongful Discharge Cases", see 15 Colo. Law. 658 (1986); for article, "Civil Rights" which discusses recent Tenth Circuit decisions dealing with employment discrimination, see 64 Den. U. L. Rev. 141 (1987); for article, "Legal Trends and the Lie Detector", see 17 Colo. Law. 2147 (1988); for article, "Civil Rights In Employment: The New Generation", see 67 Den. U. L. Rev. 1 (1990); for note, "Testing Government Employees for Drug Use: The United States Supreme Court Approves", see 67 Den. U. L. Rev. 91 (1990); for article, "Drug Testing in Colorado: Problems and Advice for Private Employers", see 19 Colo. Law. 413 (1990); for article, "1989 Developments in Colorado Employment Law", see 19 Colo. Law. 455 (1990); for article, "Colorado Law of Retaliatory Discharge and Handicap Discrimination", see 21 Colo. Law. 2227 (1992); for article, "Employee E-Mail: Creating Employer Liability?", see 24 Colo. Law. 753 (1995).

24-34-401. Definitions. As used in this part 4, unless the context otherwise requires:

(1) "Apprenticeship" means any program for the training of apprentices.

(2) "Employee" means any person employed by an employer, except a person in the domestic service of any person.

(3) "Employer" means the state of Colorado or any political subdivision, commission, department, institution, or school district thereof, and every other person employing persons within the state; but it does not mean religious organizations or associations, except such organizations or associations supported in whole or in part by money raised by taxation or public borrowing.

(4) "Employment agency" means any person undertaking to procure employees or opportunities to work for any other person or holding itself out to be equipped to do so.

(5) "Joint apprenticeship committee" means any association of representatives of a labor organization and an employer providing, coordinating, or controlling an apprentice training program.

(6) "Labor organization" means any organization which exists for the purpose in whole or in part of collective bargaining, or of dealing with employers concerning grievances, terms, or conditions of employment, or of other mutual aid or protection in connection with employment.

(7) "On-the-job training" means any program designed to instruct a person who, while learning the particular job for which he is receiving instruction, is also employed at that job or who may be employed by the employer conducting the program during the course of the program or when the program is completed.

(8) "Unfair employment practice" means those practices specified as discriminatory or unfair in section 24-34-402.

(9) "Vocational school" means any school or institution conducting a course of instruction, training, or retraining to prepare individuals to follow an occupation or trade or to pursue a manual, mechanical, technical, industrial, business, commercial, office, personal service, or other nonprofessional occupation.

Source: L. 79: Entire part R&RE, p. 929, § 3, effective July 1. L. 87: Entire section amended, p. 377, § 3, effective May 20.

Definition of employer includes the board of regents of the university of Colorado. *Civil Rights Comm'n v. Univ. of Colorado*, 759 P.2d 726 (Colo. 1988).

24-34-402. Discriminatory or unfair employment practices. (1) It shall be a discriminatory or unfair employment practice:

(a) For an employer to refuse to hire, to discharge, to promote or demote, to harass during the course of employment, or to discriminate in matters of compensation against any person otherwise qualified because of disability, race, creed, color, sex, age, national origin, or ancestry; but, with regard to a disability, it is not a discriminatory or an unfair employment practice for an employer to act as provided in this paragraph (a) if there is no reasonable accommodation that the employer can make with regard to the disability, the disability actually disqualifies the person from the job, and the disability has a significant impact on the job. For purposes of this paragraph (a), "harass" means to create a hostile work environment based upon an individual's race, national origin, sex, disability, age, or religion. Notwithstanding the provisions of this paragraph (a), harassment is not an illegal act unless a complaint is filed with the appropriate authority at the complainant's workplace and such authority fails to initiate a

reasonable investigation of a complaint and take prompt remedial action if appropriate.

(b) For an employment agency to refuse to list and properly classify for employment or to refer an individual for employment in a known available job for which such individual is otherwise qualified because of disability, race, creed, color, sex, age, national origin, or ancestry or for an employment agency to comply with a request from an employer for referral of applicants for employment if the request indicates either directly or indirectly that the employer discriminates in employment on account of disability, race, creed, color, sex, age, national origin, or ancestry; but, with regard to a disability, it is not a discriminatory or an unfair employment practice for an employment agency to refuse to list and properly classify for employment or to refuse to refer an individual for employment in a known available job for which such individual is otherwise qualified if there is no reasonable accommodation that the employer can make with regard to the disability, the disability actually disqualifies the applicant from the job, and the disability has a significant impact on the job;

(c) For a labor organization to exclude any individual otherwise qualified from full membership rights in such labor organization, or to expel any such individual from membership in such labor organization, or to otherwise discriminate against any of its members in the full enjoyment of work opportunity because of disability, race, creed, color, sex, age, national origin, or ancestry;

(d) For any employer, employment agency, or labor organization to print or circulate or cause to be printed or circulated any statement, advertisement, or publication, or to use any form of application for employment or membership, or to make any inquiry in connection with prospective employment or membership which expresses, either directly or indirectly, any limitation, specification, or discrimination as to disability, race, creed, color, sex, age, national origin, or ancestry or intent to make any such limitation, specification, or discrimination, unless based upon a bona fide occupational qualification or required by and given to an agency of government for security reasons;

(e) For any person, whether or not an employer, an employment agency, a labor organization, or the employees or members thereof:

(I) To aid, abet, incite, compel, or coerce the doing of any act defined in this section to be a discriminatory or unfair employment practice;

(II) To obstruct or prevent any person from complying with the provisions of this part 4 or any order issued with respect thereto;

(III) To attempt, either directly or indirectly, to commit any act defined in this section to be a discriminatory or unfair employment practice;

(IV) To discriminate against any person because such person has opposed any practice made a discriminatory or an unfair employment practice by this part 4, because he has filed a charge with the commission, or because he has testified, assisted, or participated in any manner in an investigation, proceeding, or hearing conducted pursuant to parts 3 and 4 of this article;

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

(I) To deny to or withhold from any qualified person because of disability, race, creed, color, sex, age, national origin, or ancestry the right to be admitted to or participate in an apprenticeship training program, an on-the-job training program, or any other occupational instruction, training, or retraining program; but, with regard to a disability, it is not a discriminatory or an unfair employment practice to deny or withhold the right to be admitted to or participate in any such program if there is no reasonable accommodation that can be made with regard to the disability, the disability actually disqualifies the applicant from the program, and the disability has a significant impact on participation in the program;

(II) To discriminate against any qualified person in pursuit of such programs or to discriminate against such a person in the terms, conditions, or privileges of such programs because of disability, race, creed, color, sex, age, national origin, or ancestry;

(III) To print or circulate or cause to be printed or circulated any statement, advertisement, or publication, or to use any form of application for such programs, or to make any inquiry in connection with such programs which expresses, directly or indirectly, any limitation, specification, or discrimination as to disability, race, creed, color, sex, age, national origin, or ancestry or any intent to make any such limitation, specification, or discrimination, unless based on a bona fide occupational qualification;

(g) For any private employer to refuse to hire, or to discriminate against, any person, whether directly or indirectly, who is otherwise qualified for employment solely because the person did not apply for employment through a private employment agency; but an employer shall not be deemed to have violated the provisions of this section if such employer retains one or more employment agencies as exclusive suppliers of personnel and no employment fees

are charged to an employee who is hired as a result of having to utilize the services of any such employment agency;

(h) (I) For any employer to discharge an employee or to refuse to hire a person solely on the basis that such employee or person is married to or plans to marry another employee of the employer; but this subparagraph (I) shall not apply to employers with twenty-five or fewer employees.

(II) It shall not be unfair or discriminatory for an employer to discharge an employee or to refuse to hire a person for the reasons stated in subparagraph (I) of this paragraph (h) under circumstances where:

(A) One spouse directly or indirectly would exercise supervisory, appointment, or dismissal authority or disciplinary action over the other spouse;

(B) One spouse would audit, verify, receive, or be entrusted with moneys received or handled by the other spouse; or

(C) One spouse has access to the employer's confidential information, including payroll and personnel records.

(2) Notwithstanding any provisions of this section to the contrary, it is not a discriminatory or an unfair employment practice for the division of employment and training of the department of labor and employment to ascertain and record the disability, sex, age, race, creed, color, or national origin of any individual for the purpose of making such reports as may be required by law to agencies of the federal or state government only. Said records may be made and kept in the manner required by the federal or state law, but no such information shall be divulged by said division or department to prospective employers as a basis for employment, except as provided in this subsection (2).

(3) Nothing in this section shall prohibit any employer from making individualized agreements with respect to compensation or the terms, conditions, or privileges of employment for persons suffering a disability if such individualized agreement is part of a therapeutic or job-training program of no more than twenty hours per week and lasting no more than eighteen months.

(4) Notwithstanding any other provision of this section to the contrary, it shall not be a discriminatory or an unfair employment practice with respect to age:

(a) To take any action otherwise prohibited by this section if age is a bona fide occupational qualification reasonably necessary to the normal operation of the particular employer or where the differentiation is based on reasonable factors other than age; or

(b) To observe the terms of a bona fide seniority system or any bona fide employee benefit plan,

such as a retirement, pension, or insurance plan, which is not a subterfuge to evade the purposes of this section; except that, unless authorized in paragraph (a) of this subsection (4), no such employee benefit plan shall require or permit the involuntary retirement of any individual because of the age of such individual; or

(c) To compel the retirement of any employee who is sixty-five years of age or older and under seventy years of age and who, for the two-year period immediately before retirement, is employed in a bona fide executive or a high policy-making position if such employee is entitled to an immediate nonforfeitable annual retirement benefit from a pension, profit-sharing, savings, or deferred compensation plan, or any combination of such plans, of the employer of such employee and if such plan equals, in the aggregate, at least forty-four thousand dollars; or

(d) To discharge or otherwise discipline an individual for reasons other than age.

Source: L. 79: Entire part R&RE, p. 929, § 3, effective July 1. L. 86: (1)(a) to (1)(d), (1)(f)(I), (1)(f)(II), (1)(f)(III), and (2) amended and (4) added, p. 931, § 4, effective May 8. L. 89: (1)(h) added, p. 1163, § 1, effective April 17; (1)(e) amended, p. 1041, § 6, effective July 1. L. 93: (1)(a) to (1)(d), (1)(f), (2), and (3) amended, p. 1657, § 61, effective July 1. L. 99: (1)(a) amended, p. 354, § 1, effective July 1.

Editor's note: Section 2 of chapter 122, Session Laws of Colorado 1999, provides that the act amending subsection (1)(a) applies to acts occurring on or after July 1, 1999.

Am. Jur.2d. See 15 Am. Jur.2d, Civil Rights, § 103, 233.

C.J.S. See 51 C.J.S., Labor Relations, § 7.

Law reviews. For article, "One Year Review of Constitutional Law", see 40 Den. L. Ctr. J. 134 (1963). For article, "Civil Rights in Colorado", see 46 Den. L. J. 181 (1969). For article, "Sex-based Wage Discrimination: A Management View", see 62 Den. U. L. Rev. 393 (1985). For note, "Comparable Worth: The Next Step Toward Pay Equity Under Title VII", see 62 Den. U. L. Rev. 417 (1985). For article, "The Public Policies Against Public Policy Wrongful Discharge Claims Premised on State and Federal Fair Employment Statutes", see 62 Den. U. L. Rev. 447 (1985). For article, "Remedies Under the Federal Age Discrimination in Employment Act", see 62 Den. U. L. Rev. 469 (1985). For article, "Hishon v. King & Spaulding: Discrimination In Professional Partnerships", see 62 Den. U. L. Rev. 485 (1985). For note, "Firefighters Local Union No. 1984 v. Stotts: Are Seniority Systems Approaching Inviolability In Title VII Actions?", see 62 Den. U. L. Rev. 503 (1985). For article, "Punitive Damages in Wrongful Discharge

Cases", see 15 Colo. Law. 658 (1986). For article, "Hostile Environment Sexual Harassment", see 15 Colo. Law. 1651 (1986). For article, "Practicing Before the Colorado Civil Rights Commission", see 17 Colo. Law. 259 (1988). For article, "Civil Rights", which discusses recent Tenth Circuit decisions dealing with employment discrimination, see 65 Den. U. L. Rev. 389 (1988). For article, "Recent Developments in the Law of Sexual Harassment", see 18 Colo. Law. 263 (1989). For article, "Watson v. Ft. Worth Bank and Trust: The Changing Face of Disparate Impact", see 66 Den. U. L. Rev. 179 (1989). For a discussion of recent Tenth Circuit decisions dealing with employment discrimination, see 66 Den. U. L. Rev. 759 (1989). For note, "In the Wake of Pullerson v. McLean Credit Union: The Treacherous and Shifting Shoals of Employment Discrimination Law", see 67 Den. U. L. Rev. 557 (1990). For comment, "Employer Liability and Sexual Harrassment Under Section 1983: A Comment on Starrett v. Wadley", see 67 Den. U. L. Rev. 571 (1990). For article, "Civil Rights", which discusses recent Tenth Circuit decisions dealing with employment discrimination, see 67 Den. U. L. Rev. 639 (1990). For a discussion of recent Tenth Circuit decisions dealing with employment discrimination, see 67 Den. U. L. Rev. 733 (1990). For article, "Employees, Privacy Rights and AIDS", see 19 Colo. Law. 1839 (1990). For article, "Colorado Law of Retaliatory Discharge and Handicap Discrimination", see 21 Colo. Law. 2227 (1992). For article, "Sexual Harassment: Issues of Compensability and Exclusivity", see 24 Colo. Law 825 (1995). For comment, "Colorado's Lifestyle Discrimination Statute: A Vast and Muddled Expansion of Traditional Employment Law", see 67 U. Colo. L. Rev. 143 (1996). For a discussion of recent Tenth Circuit decisions dealing with employment discrimination involving sexual harassment, see 73 Den. U. L. Rev. 731 (1996). Annotator's note. Prior to the 1986 amendment to this section, provisions relating to age of an employee as a ground for discharge were found in § 8-2-116 and 8-2-117. Whether a private right of action was created pursuant to § 8-2-116 was discussed in Brenimer v. Great W. Sugar Co., 567 F. Supp. 218 (D. Colo. 1983); Rawson v. Sears, Roebuck & Co., 530 F. Supp. 776 (D. Colo. 1982); Rawson v. Sears, Roebuck & Co., 554 F. Supp. 327 (D. Colo. 1982); Rawson v. Sears, Roebuck & Co., 585 F. Supp. 1393 (D. Colo. 1984); Borumka v. Rocky Mountain Hosp., 599 F. Supp. 857 (D. Colo. 1984); Rawson v. Sears, Roebuck & Co., 615 F. Supp. 1546 (D. Colo. 1985); Dirito v. Ideal Basic Industries, Inc., 617 F. Supp. 79 (D. Colo. 1985); Brezinski v. F.W. Woolworth, 626 F. Supp. 240 (D. Colo. 1986);

Spulak v. K Mart, 664 F. Supp. 1395 (D. Colo. 1985); and Rawson v. Sears, Roebuck & Co., 822 F.2d 908 (10th Cir. 1987), cert. denied, 484 U.S. 1006, 108 S. Ct. 699, 98 L. Ed.2d 651 (1988).

Section does not impose a constitutionally prohibited burden upon interstate commerce. Colorado Anti-Discrimination Comm'n v. Continental Air Lines, 372 U.S. 714, 83 S. Ct. 1022, 10 L. Ed.2d 84 (1963).

Primary purpose of commission is to determine whether a discriminatory practice has occurred and, if so, to take such action as will assure that such practice is satisfactorily eliminated and prevented in the future. While the commission may grant specific relief to a claimant, it is not required to do so. Agnello v. Adolph Coors Co., 689 P.2d 1162 (Colo. App. 1984).

The legislature did not intend to preclude common law harassment claims by enacting this section. This section does not provide an exclusive remedy for sex discrimination claims. Brooke v. Restaurant Servs., Inc., 906 P.2d 66 (Colo. 1995).

The object of this section and § 24-34-301 (4) is to eliminate discrimination in employment on account of physical handicap. Gamble v. Levitz Furniture Co., 759 P.2d 761 (Colo. App. 1988), cert. denied, 782 P.2d 1197 (Colo. 1989).

An action for negligent infliction of emotional distress cannot be premised solely on a violation of this statute. The purpose of the statute is to protect disabled workers' jobs, not to protect them from emotional distress. Bigby v. Big 3 Supply Co., 937 P.2d 794 (Colo. App. 1996).

State regulation of interstate racial discrimination is allowed. The field of racial discrimination by an interstate carrier does not have to be free from diverse state regulation and governed uniformly, if at all, by congress. Colorado Anti-Discrimination Comm'n v. Continental Air Lines, 372 U.S. 714, 83 S. Ct. 1022, 10 L. Ed.2d 84 (1963).

Federal legislation prevents enforcement of Colorado's physical handicap discrimination law against airlines. Federal law prohibits any state law that effects services provided by an air carrier. Any restriction on an airline's selection of employees affects the services provided by the airline. Belgard v. United Airlines, 857 P.2d 467 (Colo. App. 1992), cert. denied, 510 U.S. 117, 114 S. Ct. 1066, 127 L.Ed.2d 386 (1994).

Neither federal aviation nor federal railway labor provisions bar this section. Colorado Anti-Discrimination Comm'n v. Continental Air Lines, 372 U.S. 714, 83 S. Ct. 1022, 10 L. Ed.2d 84 (1963).

Consequently, government agencies may be required to include anti-discrimination clauses in contracts. Executive orders may

require government contracting agencies to include in their contracts clauses by which the contractors agree not to discriminate against employees or applicants because of their race, religion, color, or national origin. *Colorado Anti-Discrimination Comm'n v. Continental Air Lines*, 372 U.S. 714, 83 S. Ct. 1022, 10 L. Ed.2d 84 (1963).

Intentional discrimination may be presumed by the establishment of a prima facie case which shows that: (1) The complainant belongs to a protected class; (2) the complainant was qualified for the job at issue; (3) despite the complainant's other qualifications, the complainant suffered an adverse employment decision; and (4) the circumstances give rise to an inference of unlawful discrimination. *George v. Ute Water Conservancy Dist.*, 950 P.2d 1195 (Colo. App. 1997).

Once plaintiff establishes at trial that he has a handicap within the statutory definition of § 24-34-301 (4), he must additionally establish that his employer violated the provisions of subsection (1)(a) and (1)(f)(I) in discharging the plaintiff from employment. *Gamble v. Levitz Furniture Co.*, 759 P.2d 761 (Colo. App. 1988), cert. denied, 782 P.2d 1197 (Colo. 1989).

Public policy exception to general rule that an indefinite general hiring is terminable at will by either party does not exist when subsection (1)(f)(I) provides the employee with a wrongful discharge remedy. *Gamble v. Levitz Furniture Co.*, 759 P.2d 761 (Colo. App. 1988), cert. denied, 782 P.2d 1197 (Colo. 1989).

A handicapped person is "otherwise qualified" if, with reasonable accommodations, he can perform the reasonable, legitimate, and necessary functions of his job. *AT&T Technologies, Inc. v. Royston*, 772 P.2d 1182 (Colo. App. 1989).

Finding by commission that defendant suffered a physical handicap within meaning of subsection (1)(a) when assigned job which aggravated defendant's symptoms from previous injury to the point that he could not perform said assignment full-time was supported by substantial evidence and is binding on review. *AT&T Technologies, Inc. v. Royston*, 772 P.2d 1182 (Colo. App. 1989).

Once employee makes facial showing that his handicap can be accommodated, the burden shifts to employer to prove that handicap could not be reasonably accommodated, that the handicap actually disqualified the individual from the job, and that the handicap had a significant impact on the job. *AT&T Technologies, Inc. v. Royston*, 772 P.2d 1182 (Colo. App. 1989).

Insurance policy provision excluding disability coverage for normal pregnancies is discrimination on the basis of sex and violates § 29 of art. II, Colo. Const., and this

section. *Civil Rights Comm'n v. Travelers Ins.*, 759 P.2d 1358 (Colo. 1988) (decided prior to enactment of §§ 10-8-122.2, 10-16-114.6, and 10-17-131.6).

Provision of group health insurance in conjunction with employment constitutes a matter of compensation. *Civil Rights Comm'n v. Travelers Ins.*, 759 P.2d 1358 (Colo. 1988).

The following procedure applies in claims of employment discrimination: First the complainant must initially establish a prima facie case of discrimination. If the complainant establishes a prima facie case of discrimination, the burden of production shifts to the employer to articulate some legitimate, nondiscriminatory reason for the employment decision. Once the employer meets its burden, the complainant must then be given a full and fair opportunity to demonstrate by competent evidence that the presumptively valid reasons for the employment decision were in fact a pretext for discrimination. *Colorado Civil Rights Comm'n v. Big O Tires, Inc.*, 940 P.2d 397 (Colo. 1997).

Where a prima facie case of discrimination is proven and the reasons given for discharge are found to be a pretext for discrimination, no additional evidence is required to infer intentional discrimination. *Colorado Civil Rights Comm'n v. Big O Tires, Inc.*, 940 P.2d 397 (Colo. 1997).

If the plaintiff establishes a prima facie case of discrimination, a presumption arises that the employer unlawfully discriminated against the plaintiff. The presumption places upon the defendant the burden of producing an explanation to rebut the prima facie case. *Bodaghi v. Department of Natural Resources*, 943 P.2d 1 (Colo. App. 1996).

However, the presumption created shifts only the burden of production. The ultimate burden of persuading the trier of fact that the defendant intentionally discriminated against the plaintiff remains on the plaintiff. *Bodaghi v. Department of Natural Resources*, 943 P.2d 1 (Colo. App. 1996).

Intentional discrimination under this section may be proven either directly or indirectly. *George v. Ute Water Conservancy Dist.*, 950 P.2d 1195 (Colo. App. 1997).

Direct evidence of overt discrimination is not a prerequisite to finding of discrimination. *Colorado Civil Rights Comm'n v. State*, 30 Colo. App. 10, 488 P.2d 83 (1971).

Racial discrimination may not be inferred where surrounding facts supporting inference are absent. While the commission may contend that the discharge of a complainant was not based upon her inadequacies as a teacher and, in the absence of any other legitimate explanation for such a discharge, the commission is entitled to infer that the motivation for the discharge was racial

discrimination, racial discrimination may not be inferred as a basis for a discharge where the surrounding facts supporting such an inference are absent. Even though the commission chooses to disbelieve or disregard material evidence indicating that a proper basis for discharge does exist, the necessary inference of discrimination must be in evidence in the record. *Colorado Civil Rights Comm'n v. State*, 30 Colo. App. 10, 488 P.2d 83 (1971).

No intent necessary for liability as an aider and abetter. The conduct prescribed is simply conduct that assists others in their performance of prohibited acts and when conduct being assisted is patently discriminatory, one need not have an intent to be considered an aider and abetter. *Civil Rights Comm'n v. Travelers Ins.*, 759 P.2d 1358 (Colo. 1988).

When an insurance company offers and underwrites a discriminatory policy, it aids and abets an employer in a discriminatory act. *Civil Rights Comm'n v. Travelers Ins.*, 759 P.2d 1358 (Colo. 1988).

To prove a claim under this section that plaintiff was discharged for having AIDS, plaintiff must show that the employer knew or should have known of the physical condition and need for accommodation. *Phelps v. Field Real Estate Co.*, 793 F. Supp. 1535 (D. Colo. 1991); *Phelps v. Field Real Estate Co.*, 991 F.2d 645 (10th cir. 1993).

Even if plaintiff is unable to prove that she has an impairment which substantially limits a major life function, she can succeed on her claim if she can demonstrate that defendant regarded her as having such an impairment. *Healion v. Great - West Life Assur.*, 830 F. Supp. 1372 (D. Colo. 1993).

The imposition of a "bona fide occupational qualification" is not a valid defense to an employment discrimination suit brought under this section. *Civil Rights Comm'n v. Conagra Flour Mill Co.*, 736 P.2d 842 (Colo. App. 1987). Defense of "business necessity", in case involving alleged employment discrimination due to handicap, is available to employers. *Civil Rights Comm'n v. Fire Protection Dist.*, 772 P.2d 70 (Colo. 1989).

Where the complainant is demoted because of a handicap, the employer, to avoid liability in a suit brought pursuant to this section, must show that the complainant is actually unable to perform the job. *Civil Rights Comm'n v. Conagra Flour Mill Co.*, 736 P.2d 842 (Colo. App. 1987).

A two year and nine month age difference between plaintiff and his replacement worker, without more than just plaintiff's subjective view that age was a relevant factor, was insufficient to establish a prima facie case of age discrimination. *George v.*

Ute Water Conservancy Dist., 950 P.2d 1195 (Colo. App. 1997).

"Constructive discharge" concept applicable. The concept of "constructive discharge" developed in unfair labor practice cases is applicable to discrimination cases. Colorado Civil Rights Comm'n v. State, 30 Colo. App. 10, 488 P.2d 83 (1971).

Therefore, formal words of firing unnecessary. The fact of a discharge does not depend upon the use of formal words of firing. The test is whether sufficient words or actions by the employer would logically lead a prudent person to believe his tenure has been terminated. Colorado Civil Rights Comm'n v. State, 30 Colo. App. 10, 488 P.2d 83 (1971).

Mere signed statement that resignation is voluntary does not relieve employer of consequences of an act amounting to constructive discharge. Colorado Civil Rights Comm'n v. State, 30 Colo. App. 10, 488 P.2d 83 (1971).

The fact that a teacher submits her resignation subsequent to a conference with a principal, at which time he had told her that he would not recommend her for rehiring, does not make her separation from employment by the school district a "voluntary" resignation. Colorado Civil Rights Comm'n v. State, 30 Colo. App. 10, 488 P.2d 83 (1971).

The federal district court presumed the McDonnell Douglas (v. Green, 411 U.S. 792 (1973)) analysis would apply to a wage claim under this section, even though no Colorado court has directly endorsed it. Noel v. Medtronic Electromedics, Inc., 973 F. Supp. 1206 (D. Colo. 1997).

Nexus between discriminatory acts and discharge must be shown. To establish a claim that a discharge is a result of racial discrimination, a nexus must be shown between the allegedly discriminatory acts and the subsequent discharge. Adolph Coors Co. v. Colorado Civil Rights Comm'n, 31 Colo. App. 417, 502 P.2d 1113 (1972).

Evidence held insufficient to establish discrimination in discharge of black employee. Adolph Coors Co. v. Colorado Civil Rights Comm'n, 31 Colo. App. 417, 502 P.2d 1113 (1972).

Evidence of appointing authority's intent to hand-pick the person for the position may be improper under some personnel rules, but such evidence alone is not sufficient to imply national origin discrimination. Bodaghi v. Department of Natural Resources, 943 P.2d 1 (Colo. App. 1996).

Applied in City & County of Denver v. Colorado Civil Rights Comm'n, 638 P.2d 837 (Colo. App. 1981).

24-34-402.5. Unlawful prohibition of legal activities as a condition of employment. (1) It

shall be a discriminatory or unfair employment practice for an employer to terminate the employment of any employee due to that employee's engaging in any lawful activity off the premises of the employer during nonworking hours unless such a restriction:

(a) Relates to a bona fide occupational requirement or is reasonably and rationally related to the employment activities and responsibilities of a particular employee or a particular group of employees, rather than to all employees of the employer; or

(b) Is necessary to avoid a conflict of interest with any responsibilities to the employer or the appearance of such a conflict of interest.

(2) (a) Notwithstanding any other provisions of this article, the sole remedy for any person claiming to be aggrieved by a discriminatory or unfair employment practice as defined in this section shall be as follows: He may bring a civil suit for damages in any district court of competent jurisdiction and may sue for all wages and benefits which would have been due him up to and including the date of the judgment had the discriminatory or unfair employment practice not occurred; except that nothing in this section shall be construed to relieve such person from the obligation to mitigate his damages.

(b) The court shall award the prevailing party in such action court costs and a reasonable attorney fee.

Source: L. 90: Entire section added, p. 1222, § 1, effective July 1.

Law reviews. For article, "State Laws: A Growing Minefield for Employers", see 23 Colo. Law. 1089 (1994). For comment, "Colorado's Lifestyle Discrimination Statute: A Vast and Muddled Expansion of Traditional Employment Law", see 67 U. Colo. L. Rev. 143 (1996).

This section is read to contain two parts. First part prohibits employers from terminating employees for the reasons enumerated. Second part provides a defense to employer if employer has a restriction on an employee's lawful activities which satisfies one or both of the enumerated exceptions. Thus, issue of restrictions of an employee's activities arises only as part on an employer's defense to an action for violation of the section, and no specific restriction must be adopted by an employer as a predicate to violating the prohibition. Gwin v. Chesrown Chevrolet, Inc., 931 P.2d 466 (Colo. App. 1996).

There is a two-pronged analysis under this section: (1) Did the employer terminate an employee for participation in a lawful activity; and (2) was there a statutory exception to justify that termination. Marsh v. Delta Air Lines, Inc., 952 F. Supp. 1458 (D. Colo. 1997).

This section does not require an employer to adopt specific written restrictions for which

it can terminate an employee, but merely requires that any restriction an employer is attempting to enforce must fall under the purview of the statute's exceptions. Marsh v. Delta Air Lines, Inc., 952 F. Supp. 1458 (D. Colo. 1997).

One of the bona fide occupational requirements encompassed within the scope of subsection (1)(a) is an implied duty of loyalty, with regard to public communications, that employees owe to their employers. Marsh v. Delta Air Lines, Inc., 952 F. Supp. 1458 (D. Colo. 1997).

The term "conflict of interest" should be given its generally understood meaning, that is, that it relates to fiduciaries and their relationship to matters of private interest or gain to them or a situation in which regard for one duty tends to lead to disregard of another. Marsh v. Delta Air Lines, Inc., 952 F. Supp. 1458 (D. Colo. 1997).

Exhaustion of administrative procedures, as set forth in § 24-34-306, is not a condition precedent to asserting an "unlawful prohibition" claim under this section. Galieti v. State Farm Mut. Auto. Ins. Co., 840 F. Supp. 104 (D. Colo. 1993).

The six-month statute of limitations set forth in § 24-34-403 governs all actions under part 4, including actions brought pursuant to this section. Galieti v. State Farm Mut. Auto. Ins. Co., 840 F. Supp. 104 (D. Colo. 1993).

The defendant county was entitled to attorney fees after prevailing under this section even though plaintiff prevailed in her due process claim because the two claims were sufficiently distinct to allow a finding that there was a different prevailing party as to each. Langseth v. County of Elbert, 916 P.2d 655 (Colo. App. 1996).

Jury verdict based only upon an instruction that plaintiff would not have been dismissed but for his sexual orientation did not support a violation of this section. Robert C. Ozer, P.C. v. Borquez, 970 P.2d 371 (Colo. 1997).

24-34-403. Time limits on filing of charges. Any charge alleging a violation of this part 4 shall be filed with the commission pursuant to section 24-34-306 within six months after the alleged discriminatory or unfair employment practice occurred, and if not so filed, it shall be barred.

Source: L. 79: Entire part R&RE, p. 931, § 3, effective July 1. L. 89: Entire section amended, p. 1041, § 7, effective July 1.

The six-month statute of limitations set forth in this section governs all actions under part 4, including actions brought pursuant to § 24-34-402.5. Galieti v. State Farm Mut. Auto. Ins. Co., 840 F. Supp. 104 (D. Colo. 1993).

Six-month statute of limitations begins running when notification of discharge is

given. *Quicker v. Colorado Civil Rights Comm'n*, 747 P.2d 682 (Colo. App. 1987).

Consulting with an attorney is not grounds for denying equitable tolling, but constitutes circumstances sufficient to begin running of limitations period. *Quicker v. Colorado Civil Rights Comm'n*, 747 P.2d 682 (Colo. App. 1987).

Employer's failure to give employee notice of his statutory rights equitably tolls the running of the statute of limitations. *Quicker v. Colorado Civil Rights Comm'n*, 747 P.2d 682 (Colo. App. 1987).

24-34-404. Charges by employers and others. Any employer, labor organization, joint apprenticeship committee, or vocational school whose employees or members, or some of them, refuse or threaten to refuse to comply with the provisions of this part 4 may file with the commission a verified written charge in duplicate asking the commission for assistance to obtain their compliance by conciliation or other remedial action.

Source: L. 79: Entire part R&RE, p. 932, § 3, effective July 1.

24-34-405. Relief authorized. In addition to the relief authorized by section 24-34-306 (9), the commission may order a respondent who has been found to have engaged in an unfair or discriminatory employment practice to take affirmative action regarding: Back pay; hiring, reinstatement, or upgrading of employees, with or without back pay; the referring of applicants for employment by any respondent employment agency; the restoration to membership by any respondent labor organization; the admission to or continuation in enrollment in an apprenticeship program, on-the-job training program, or a vocational school; the posting of notices; and the making of reports as to the manner of compliance. The commission, in its discretion, may order such remedies singly or in any combination.

Source: L. 79: Entire part R&RE, p. 932, § 3, effective July 1. L. 89: Entire section amended, p. 1042, § 8, effective July 1.

Law reviews. For note, "Front Pay Under the Age Discrimination in Employment Act", see 63 *Den. U.L. Rev.* 149 (1986). For comment, "Colorado's Lifestyle Discrimination Statute: A Vast and Muddled Expansion of Traditional Employment Law", see 67 *U. Colo. L. Rev.* 143 (1996).

Section is equitable in nature. This section was intended to invoke only the equitable powers of the court, and not to create a legal claim for damages. *Continental Title Co. v. District Court*, 645 P.2d 1310 (Colo. 1982).

And does not give rise to jury trial. The award of back pay is an integral part of the equitable remedy provided by this section and is not intended to create a legal remedy invoking

the right to a jury trial. *Continental Title Co. v. District Court*, 645 P.2d 1310 (Colo. 1982).

Cease and desist order may be commission's affirmative action, and the commission, in conjunction with such affirmative action, may award medical expenses associated with pregnancy as back pay. Further, the remedy of reinstatement is not a precondition to reimbursement of discriminatorily withheld employment compensation. *Civil Rights Comm'n v. Travelers Ins.*, 759 P.2d 1358 (Colo. 1988).

Victim of discrimination entitled only to back pay which makes her "whole". A victim of discriminatory employment practices is entitled only to the amount of back pay which will make her "whole", i.e., that which she would have received in the absence of the discriminatory conduct. *City & County of Denver v. Colorado Civil Rights Comm'n*, 638 P.2d 837 (Colo. App. 1981).

Monetary award for accrued annual leave or secondary training authorized where unfair termination. This section does not authorize a monetary award for accrued annual leave or for the value of secondary training unless the loss of such benefits results from a termination in violation of § 24-34-402. *City & County of Denver v. Colorado Civil Rights Comm'n*, 638 P.2d 837 (Colo. App. 1981).

Award of back pay independent of an order requiring affirmative action not permitted. The commission does not have authority to award back pay in the absence of an affirmative action such as reinstatement. *World Wide Const. Services v. Chapman*, 683 P.2d 1198 (Colo. 1984).

24-34-406. Ruling on unemployment benefits not a bar. No findings, conclusions, or orders made pursuant to the provisions of articles 70 to 82 of title 8, C.R.S., shall be binding upon the commission in the exercise of its powers pursuant to parts 3 and 4 of this article; except that the commission may consider any explicit findings or conclusions on the issue of discrimination. If the decision under parts 3 and 4 of this article is in favor of the complainant, the respondent may present evidence of any unemployment benefits pursuant to articles 70 to 82 of title 8, C.R.S., which were received by the complainant based on the same occurrence. The relief granted to the complainant shall be reduced by the amount of such benefits, as provided in section 8-2-119, C.R.S.

Source: L. 79: Entire part R&RE, p. 932, § 3, effective July 1. L. 94: Entire section amended, p. 645, § 1, effective July 1.

Law reviews. For article, "Claim and Issue Preclusion Arising From Unemployment Compensation Decisions", see 13 *Colo. Law.* 815 (1984).

COLORADO REVISED STATUTES

TITLE 24, ARTICLE 34

PART 5

HOUSING PRACTICES

Editor's note: Parts 3 through 8 of this article were repealed and reenacted in 1979. Subject matter of the parts was relocated. This part 5 was contained in part 4 prior to 1979. Part 4 was originally enacted as article 7 of chapter 69 in C.R.S. 1963. For amendments to part 4 prior to 1979, consult the red book table distributed with the session laws; the original volume of C.R.S. 1973, and annual supplements to that volume prior to 1979; the comparative table located in the back of the index; and C.R.S. 1963.

24-34-501. Definitions. As used in this part 5, unless the context otherwise requires:

(1) "Aggrieved person" means any person who claims to have been injured by a discriminatory housing practice or believes that he will be injured by a discriminatory housing practice that is about to occur.

(1.5) "Discriminate" includes both segregate and separate.

(1.6) "Familial status" means one or more individuals, who have not attained eighteen years of age, being domiciled with a parent or another person having legal custody of or parental responsibilities for such individual or individuals or the designee of such parent or other persons having such custody or parental responsibilities with the written permission of such parent or other person. Familial status shall apply to any person who is pregnant or is in the process of securing legal custody or parental responsibilities of any individual who has not attained eighteen years of age.

(2) "Housing" means any building, structure, vacant land, or part thereof offered for sale, lease, rent, or transfer of ownership; except that "housing" does not include any room offered for rent or lease in a single-family dwelling maintained and occupied in part by the owner or lessee of said dwelling as his household.

(3) "Person" has the meaning ascribed to such term in section 24-34-301 (5) and includes any owner, lessee, proprietor, manager, employee, or any agent of a person; but, for purposes of this part 5, "person" does not include any private club not open to the public, which as an incident to its primary purpose or purposes provides lodgings which it owns or operates for other than a commercial purpose unless such club has the purpose of promoting discrimination in the matter of housing against any person because of disability, race, creed, color, marital status, familial status, national origin, or ancestry.

(4) "Restrictive covenant" means any specification limiting the transfer, rental, or lease of any housing because of disability, race,

creed, color, sex, marital status, familial status, national origin, or ancestry.

(5) "Transfer", as used in this part 5, shall not apply to transfer of property by will or by gift.

(6) "Unfair housing practices" means those practices specified in section 24-34-502.

Source: L. 79: Entire part R&RE, p. 932, § 3, effective July 1. L. 90: (1) R&RE, (1.5) and (1.6) added, and (3) and (4) amended, pp. 1224, 1225, § 2, 4, effective April 16. L. 92: (2) and (3) amended, p. 1121, § 3, effective July 1. L. 93: (3) and (4) amended, p. 1658, § 62, effective July 1. L. 98: (1.6) amended, p. 1411, § 77, effective February 1, 1999.

24-34-502. Unfair housing practices prohibited. (1) It shall be an unfair housing practice and unlawful and hereby prohibited:

(a) For any person to refuse to show, sell, transfer, rent, or lease, or to refuse to receive and transmit any bona fide offer to buy, sell, rent, or lease, or otherwise make unavailable or deny or withhold from any person such housing because of disability, race, creed, color, sex, marital status, familial status, religion, national origin, or ancestry; to discriminate against any person because of disability, race, creed, color, sex, marital status, familial status, religion, national origin, or ancestry in the terms, conditions, or privileges pertaining to any housing or the transfer, sale, rental, or lease thereof or in the furnishing of facilities or services in connection therewith; or to cause to be made any written or oral inquiry or record concerning the disability, race, creed, color, sex, marital status, familial status, religion, national origin, or ancestry of a person seeking to purchase, rent, or lease any housing; however, nothing in this paragraph (a) shall be construed to require a dwelling to be made available to an individual whose tenancy would constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others;

(b) For any person to whom application is made for financial assistance for the acquisition, construction, rehabilitation, repair, or maintenance of any housing to make or cause to be made any written or oral inquiry concerning the disability, race, creed, color, sex, marital status, familial status, religion, national origin, or ancestry of a person seeking such financial assistance or concerning the disability, race, creed, color, sex, marital status, familial status, religion, national origin, or ancestry of prospective occupants to tenants of such housing, or to discriminate against any person because of the disability, race, creed, color, sex, marital status, familial status, religion, national origin, or ancestry of such person or prospective occupants or tenants in the terms, conditions, or

privileges relating to the obtaining or use of any such financial assistance;

(c) (I) For any person to include in any transfer, sale, rental, or lease of housing any restrictive covenants, but shall not include any person who, in good faith and in the usual course of business, delivers any document or copy of a document regarding the transfer, sale, rental, or lease of housing which includes any restrictive covenants which are based upon race or religion, or reference thereto; or

(II) For any person to honor or exercise or attempt to honor or exercise any restrictive covenant pertaining to housing;

(d) For any person to make, print, or publish or cause to be made, printed, or published any notice or advertisement relating to the sale, transfer, rental, or lease of any housing which indicates any preference, limitation, specification, or discrimination based on disability, race, creed, color, sex, marital status, familial status, national origin, or ancestry;

(e) For any person: To aid, abet, incite, compel, or coerce the doing of any act defined in this section as an unfair housing practice; to obstruct or prevent any person from complying with the provisions of this part 5 or any order issued with respect thereto; to attempt either directly or indirectly to commit any act defined in this section to be an unfair housing practice; to discriminate against any person because such person has opposed any practice made an unfair housing practice by this part 5, because he has filed a charge with the commission, or because he has testified, assisted, or participated in any manner in an investigation, proceeding, or hearing conducted pursuant to parts 3 and 5 of this article; or to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of his having exercised or enjoyed, or on account of his having aided or encouraged, any other person in the exercise of any right granted or protected by parts 3 and 5 of this article;

(f) For any person to discharge, demote, or discriminate in matters of compensation against any employee or agent because of said employee's or agent's obedience to the provisions of this part 5;

(g) For any person whose business includes residential real estate-related transactions, which transactions involve the making or purchasing of loans secured by residential real estate or the provisions of other financial assistance for purchasing, constructing, improving, repairing, or maintaining a dwelling or the selling, brokering, or appraising of residential real property, to discriminate against any person in making available such a transaction or in fixing the terms or conditions of such a transaction because of race, creed,

color, religion, sex, marital status, disability, familial status, or national origin or ancestry;

(h) For any person to deny another person access to or membership or participation in any multiple-listing service, real estate brokers' organization or other service, organization, or facility related to the business of selling or renting dwellings or to discriminate against such person in the terms or conditions of such access, membership, or participation on account of race, creed, color, religion, sex, disability, marital status, familial status, or national origin or ancestry;

(i) For any person, for profit, to induce or attempt to induce any person to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, religion, sex, disability, familial status, creed, national origin, or ancestry;

(j) For any person to represent to any other person that any dwelling is not available for inspection, sale, or rental, when such dwelling is in fact available, for the purpose of discriminating against another person on the basis of race, color, religion, sex, disability, familial status, creed, national origin, or ancestry.

(2) The provisions of this section shall not apply to or prohibit compliance with local zoning ordinance provisions concerning residential restrictions on marital status.

(3) Nothing contained in this part 5 shall be construed to bar any religious or denominational institution or organization which is operated or supervised or controlled by or is operated in connection with a religious or denominational organization from limiting the sale, rental, or occupancy of dwellings which it owns or operates for other than a commercial purpose to persons of the same religion, or from giving preference to such persons, unless membership in such religion is restricted on account of race, color, or national origin, nor shall anything in this part 5 prohibit a private club not in fact open to the public which, as an incident to its primary purpose or purposes provides lodgings which it owns or operates for other than a commercial purpose, from limiting the rental or occupancy of such lodgings to its members or from giving preference to its members.

(4) (Deleted by amendment, L. 92, p. 1122, § 4, effective July 1, 1992.)

(5) Nothing in this section shall be construed to prevent or restrict the sale, lease, rental, transfer, or development of housing designed or intended for the use of persons with disabilities.

(6) Nothing in this part 5 shall prohibit a person engaged in the business of furnishing appraisals of real property from taking into consideration factors other than race, creed, color, religion, sex, marital status, familial

status, disability, religion, national origin, or ancestry.

(7) (a) Nothing in this section shall limit the applicability of any reasonable local, state, or federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling. Nor shall any provision in this section regarding familial status apply with respect to housing for older persons.

(b) As used in this subsection (7), "housing for older persons" means housing provided under any state or federal program that the division determines is specifically designed and operated to assist older persons, or is intended for, and solely occupied by, persons sixty-two years of age or older, or is intended and operated for occupancy by at least one person fifty-five years of age or older per unit. In determining whether housing intended and operated for occupancy by one person fifty-five years of age or older per unit qualifies as housing for older persons under this subsection (7), the division shall require the following:

(I) That the housing facility or community publish and adhere to policies and procedures that demonstrate the intent required under this paragraph (b);

(II) That at least eighty percent of the occupied units be occupied by at least one person who is fifty-five years of age or older; and

(III) That the housing facility or community comply with rules promulgated by the commission for verification of occupancy. Such rules shall:

(A) Provide for verification by reliable surveys and affidavits; and

(B) Include examples of the types of policies and procedures relevant to a determination of such compliance with the requirements of subparagraph (II) of this paragraph (b). Such surveys and affidavits shall be admissible in administrative and judicial proceedings for the purposes of verification of occupancy in accordance with this section.

(c) Housing shall not fail to meet the requirements for housing for older persons by reason of persons residing in such housing as of March 12, 1989, who do not meet the age requirements of paragraph (b) of this subsection (7) if the new occupants of such housing meet the age requirements of paragraph (b) of this subsection (7) or, by reason of unoccupied units, if such units are reserved for occupancy by persons who meet the age requirements of paragraph (b) of this subsection (7).

(d) (I) A person shall not be held personally liable for monetary damages for a violation of this part 5 if such person reasonably relied, in good faith, on the application of the exemption available under this part 5 relating to housing for older persons.

(II) For purposes of this paragraph (d), a person may only show good faith reliance on the application of an exemption by showing that:

(A) Such person has no actual knowledge that the facility or community is not or will not be eligible for the exemption claimed; and

(B) The owner, operator, or other official representative of the facility or community has stated, formally, in writing, that the facility or community complies with the requirements of the exemption claimed.

(8) (a) With respect to "familial status", nothing in this part 5 shall apply to the following:

(I) Any single-family house sold or rented by an owner if such private individual owner does not own more than three such single-family houses at any one time. In the case of the sale of any such single-family house by a private individual owner not residing in such house at the time of such sale or who was not the most recent resident of such house prior to such sale, the exemption granted by this subsection (8) shall apply only with respect to one such sale within any twenty-four-month period. Such bona fide private individual owner shall not own any interest in, nor shall there be owned or reserved on his behalf, under any express or voluntary agreement, title to or any right to all or a portion of the proceeds from the sale or rental of more than three such single-family houses at any one time. The sale or rental of any such single-family house shall be excepted from the application of this subsection (8) only if such house is sold or rented:

(A) Without the use in any manner of the sales or rental facilities or the sales or rental services of any real estate broker, agent, or salesman, or of such facilities or services of any person in the business of selling or renting dwellings, or of any employee or agent of any such broker, agent, salesman, or person; and

(B) Without the publication, posting, or mailing, after notice, of any advertisement or written notice in violation of this section; but nothing in this section shall prohibit the use of attorneys, escrow agents, abstractors, title companies, and other such professional assistance as necessary to perfect or transfer the title.

(II) Rooms or units in dwellings containing living quarters occupied or intended to be occupied by no more than four families living independently of each other, if the owner actually maintains and occupies one of such living quarters as his residence.

(b) For the purposes of paragraph (a) of this subsection (8), a person shall be deemed to be in the business of selling or renting dwellings if:

(I) He has, within the preceding twelve months, participated as principal in three or more transactions involving the sale or rental of any dwelling or any interest therein;

(II) He has, within the preceding twelve months, participated as agent, other than in the sale of his own personal residence in providing sales or rental facilities or sales or rental services in two or more transactions involving the sale or rental of any dwelling or any interest therein; or

(III) He is the owner of any dwelling designed or intended for occupancy by, or occupied by, five or more families.

(9) Repealed.

Source: L. 79: Entire part R&RE, p. 933, § 3, effective July 1. L. 89: (1)(e) amended, p. 1042, § 9, effective July 1. L. 90: (1)(a) to (1)(e) amended and (1)(g), (1)(h), and (6) to (8) added, pp. 1225, 1647, 1226, § 5, 2, 6, 7, effective April 16; repeal provision in (9) added by revision, see p. 1232, § 12. L. 92: (1)(a), (1)(d), (1)(g), (3), (4), (7)(b), and (8)(a)(II) amended and (1)(i) and (1)(j) added, p. 1122, § 4, effective July 1. L. 93: (9) repealed, p. 1784, § 57, effective June 6; (1)(a), (1)(b), (1)(d), (1)(g) to (1)(j), and (5) amended, p. 1659, § 63, effective July 1. L. 94: (6) amended, p. 1637, § 50, effective May 31. L. 99: (7)(b) amended and (7)(d) added, p. 152, § 2, effective August 4.

Editor's note: Subsections (7)(b) and (7)(d) were contained in a 1999 act that was passed without a safety clause. For further explanation concerning the effective date, see page vii of this volume.

Am. Jur.2d. See 15 Am. Jur.2d, Civil Rights, § 249-256; 20 Am. Jur.2d, Covenants, Conditions, and Restrictions, § 139.

C.J.S. See 14 C.J.S., Civil Rights, § 74-87; 16A C.J.S., Constitutional Law, § 483.

Law reviews. For comment on Colorado Anti-Discrimination Comm'n v. Case, appearing below, see 35 U. Colo. L. Rev. 603 (1963). For article, "One Year Review of Constitutional Law", see 40 Den. L. Ctr. J. 134 (1963). For article, "Fair Housing in Colorado", see 42 Den. L. Ctr. J. 1 (1965). For note, "Housing the Poor: A Study of the Landlord-Tenant Relationship", see 41 U. Colo. L. Rev. 541 (1969). For article, "Civil Rights in Colorado", see 46 Den. L.J. 181 (1969). For note, "Rural Poverty and the Law in Southern Colorado", see 47 Den. L.J. 82 (1970).

Housing provisions have substantial relation to legitimate object for exercise of police power, and they are appropriate for the promotion of that object. Colorado Anti-Discrimination Comm'n v. Case, 151 Colo. 235, 380 P.2d 34 (1962).

Such provisions are fully justified constitutionally by § 28 of art. II, Colo. Const., and the amendment IX, U.S. Const. Colorado Anti-Discrimination Comm'n v. Case, 151 Colo. 235, 380 P.2d 34 (1962).

Claim that property taken for private use without owner's consent is without validity. A claim that this part authorizes the taking of

private property for private use without the consent of the owner is without validity where the owner of real estate announces of his own free will that he desires to dispose of his private property for the private use of a purchaser who meets the terms upon which the real estate is placed on the market. Colorado Anti-Discrimination Comm'n v. Case, 151 Colo. 235, 380 P.2d 34 (1962).

Man has the unenumerated inalienable right to acquire a home for himself and those dependent upon him, unfettered by discrimination against him on account of his race, creed, or color. Colorado Anti-Discrimination Comm'n v. Case, 151 Colo. 235, 380 P.2d 34 (1962).

This right is upheld against action by any person or government department which would destroy such a right to fair housing or which would result in discrimination in the manner in which the enjoyment thereof is to be permitted as between persons of different races, creeds, or colors. Colorado Anti-Discrimination Comm'n v. Case, 151 Colo. 235, 380 P.2d 34 (1962).

24-34-502.2. Unfair or discriminatory housing practices against persons with disabilities prohibited. (1) It shall be an unfair or discriminatory housing practice and unlawful and hereby prohibited:

(a) For any person to discriminate in the sale or rental of, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a disability of the buyer or renter, or of any person who will reside in the dwelling after it is sold, rented, or made available, or of any person associated with such buyer or renter;

(b) For any person to discriminate against another person in the terms, conditions, or privileges of sale or rental of a dwelling or in the provision of services or facilities in connection with such dwelling because of a disability of that person, of any person residing in or intending to reside in that dwelling after it is so sold, rented, or made available, or of any person associated with that person.

(2) For purposes of this section, "discrimination" includes, but is not limited to:

(a) A refusal to permit, at the expense of the person with a disability, reasonable modifications of existing premises occupied or to be occupied by such person if such modifications are necessary to afford such person full enjoyment of the premises; except that, in the case of a rental, the landlord may, where it is reasonable to do so, condition permission for a modification on the renter agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted;

(b) A refusal to make reasonable accommodations in rules, policies, practices, or services when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling; and

(c) In connection with the design and construction of covered multifamily dwellings for first occupancy after the date that is thirty months after the date of enactment of the federal "Fair Housing Amendments Act of 1988", a failure to design and construct those dwellings in such a manner that the public use and common use portions of such dwellings are readily accessible to and usable by persons with disabilities. At least one building entrance shall be on an accessible route unless it is impractical to do so because of the terrain or the unusual characteristics of the site. All doors designed to allow passage into and within all premises within such dwellings shall be sufficiently wide to allow passage by persons with disabilities in wheelchairs, and all premises within such dwellings shall contain the following features of adaptive design:

(I) Accessible routes into and through the dwellings;

(II) Light switches, electrical outlets, thermostats, and other environmental controls in accessible locations;

(III) Reinforcements in bathroom walls to allow later installation of grab bars; and

(IV) Usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space.

(3) Compliance with the appropriate requirements of the American national standard for buildings and facilities providing accessibility and usability for persons with physical disabilities (commonly cited as ANSI A117.1) suffices to satisfy the requirements of paragraph (c) of subsection (2) of this section.

(4) As used in this section, "covered multifamily dwellings" means:

(a) Buildings consisting of four or more units if such buildings have one or more elevators; and

(b) Ground floor units in other buildings consisting of four or more units.

Source: L. 90: Entire section added, p. 1228, § 8, effective April 16. L. 92: IP(2)(c) amended, p. 1124, § 5, effective July 1. L. 93: (1), (2)(a), IP(2)(c), and (3) amended, p. 1660, § 64, effective July 1.

"Reasonable accommodation" as that term is used in subsection (2) (b) may be defined as changing a rule that may be otherwise generally applicable so as to make its burden less onerous on a disabled individual. Weinstein v. Cherry Oaks Retirement Community, 917 P.2d 336 (Colo. App. 1996).

Commission did not err in determining personal care boarding home was in violation of the Colorado Fair Housing Act

by requiring, without a legitimate reason for such policy, its residents who used walkers or wheelchairs to transfer to ordinary chairs in the dining room. Weinstein v. Cherry Oaks Retirement Community, 917 P.2d 336 (Colo. App. 1996).

24-34-503. Refusal to show housing. If the charge alleging an unfair housing practice relates to the refusal to show the housing involved, the commission, after proper investigations as set forth in section 24-34-306, may issue its order that the housing involved be shown to the person filing such charge, and, if the respondent refuses without good reason to comply therewith within three days, then the commission or any commissioner may file a petition pursuant to section 24-34-509. The district court shall hear such matters at the earliest possible time, and the court may waive the requirement of security for a petition filed under this section. If the district court finds that the denial to show is based upon an unfair housing practice, it shall order the respondent to immediately show said housing involved and also to make full disclosure concerning the sale, lease, or rental price and any other information being then given to the public.

Source: L. 79: Entire part R&RE, p. 934, § 3, effective July 1.

Am. Jur.2d. See 15 Am. Jur.2d, Civil Rights, § 261.

Annotator's note. The following cases were decided under former § 24-34-406, which dealt with the hearing procedure for unfair housing practice claims.

For the constitutionality of section, see Colorado Anti-Discrimination Comm'n v. Case, 151 Colo. 235, 380 P.2d 34 (1962).

The requirement that aggrieved person should furnish security is to protect landlords from the filing of unmeritorious claims by persons without probable cause; it is not designed to protect them from procedural errors of the commission over which the complainant has no control. People ex rel. Colorado Civil Rights Comm'n v. Forrester, 29 Colo. App. 158, 480 P.2d 600 (1971).

Requirements for issuance of injunction found complied with. Where the order for the preliminary injunction states that proper notice has been given, that there has been a hearing, that a determination of probable cause has been made by the commission, and that security has been ordered and provided by the complainant, the statutory requirements for the issuance of the injunction are complied with. People ex rel. Colorado Civil Rights Comm'n v. Forrester, 29 Colo. App. 158, 480 P.2d 600 (1971).

24-34-504. Time limits on filing of charges. (1) Any charge alleging a violation of this part 5 shall be filed with the commission pursuant to

section 24-34-306 within one year after the alleged unfair housing practice occurred, or it shall be barred.

(2) A civil action filed by the attorney general under this section shall be commenced not later than eighteen months after the date of the occurrence or the termination of the alleged discriminatory housing practice.

(3) The director, not later than ten days after filing or identifying additional respondents, shall serve on the respondent a notice identifying the alleged discriminatory housing practice and advising such respondent of the procedural rights and obligations of respondents under this part 5, together with a copy of the original charge.

(4) The director shall commence an investigation of any charge filed pursuant to subsection (1) of this section within thirty days of such filing. Within one hundred days after the filing of the charge, the director shall determine, based on the facts, whether probable cause exists to believe that a discriminatory housing practice has occurred or is about to occur, unless it is impracticable to do so or the director has approved a conciliation agreement with respect to the charge. If the director is unable to complete the investigation within one hundred days after the filing of the charge, the director shall notify the parties of the reasons for not doing so.

(4.1) After a determination by the director that probable cause exists to believe that a discriminatory housing practice has occurred or is about to occur, the commission shall issue a notice and complaint as provided in section 24-34-306 (4). After such notice and complaint is issued by the commission, the complainant, respondent, or any aggrieved person on whose behalf the charge was filed may elect to have the claims asserted in the charge decided in a civil action in lieu of an administrative hearing. Such election shall be made in writing within twenty days after receipt of the notice and complaint issued by the commission. The commission shall provide notice of the election to all other parties to whom the notice and complaint relates.

(4.2) If all parties agree to have the charges decided in an administrative hearing, the commission shall hold a hearing as provided in section 24-34-306. If any party elects a civil action, the commission shall authorize the attorney general to commence and maintain a civil action in the appropriate state district court to obtain relief with respect to the discriminatory housing practice or practices alleged in the notice and complaint.

(4.3) Final administrative disposition of a charge filed pursuant to this section shall be made within one year of the date the charge was filed, unless it is impractical to do so. If the

commission is unable to do so, the commission shall notify the complainant and the respondent, in writing, of the reasons that such disposition is impractical.

(5) Repealed.

Source: L. 79: Entire part R&RE, p. 934, § 3, effective July 1. L. 90: Entire section amended, p. 1229, § 9, effective April 16; repeal provision in (5) added by revision, see p. 1232, § 12, effective April 16. L. 92: (4) amended and (4.1), (4.2), and (4.3) added, p. 1124, § 6, effective July 1. L. 93: (5) repealed, p. 1785, § 58, effective June 6.

24-34-505. Charges by other persons. Any person whose employees, agents, employers, or principals, or some of them, refuse or threaten to refuse to comply with the provisions of this part 5 may make, sign, and file with the commission a verified written charge in duplicate asking the commission for assistance to obtain their compliance by conciliation or other remedial action.

Source: L. 79: Entire part R&RE, p. 934, § 3, effective July 1.

24-34-505.5. Enforcement by the attorney general. (1) Upon timely application, the attorney general may intervene in any civil action filed as provided in section 24-34-505.6 if the attorney general certifies that the case is of general public importance. Upon such intervention, the attorney general may obtain such relief as would be available to the director under section 24-34-306 in a civil action to which such section applies.

(2) Whenever the attorney general has probable cause to believe that any person or group of persons is engaged in a pattern or practice of resistance to the full enjoyment of any of the rights granted by this title or that any group of persons has been denied any of the rights granted by this title and such denial raises an issue of general public importance, the attorney general may commence a civil action in any appropriate district court.

(3) The attorney general may commence a civil action in any appropriate district court for appropriate relief with respect to:

(a) A discriminatory housing practice referred to the attorney general by the commission under section 24-34-306; or

(b) Breach of a conciliation agreement referred to the attorney general by the director under section 24-34-506.5.

(4) The attorney general, on behalf of the commission, division, or other party at whose request a subpoena is issued under this section, may enforce such subpoena in appropriate proceedings in the district court for the district in which the person to whom the subpoena was addressed resides, was served, or transacts business.

(5) Repealed.

Source: L. 90: Entire section added, p. 1230, § 10, effective April 16; repeal provision in (5) added by revision, see p. 1232, § 12. L. 92: (2) amended, p. 1125, § 7, effective July 1. L. 93: (5) repealed, p. 1785, § 59, effective June 6.

24-34-505.6. Enforcement by private persons. (1) Notwithstanding any provision of this article to the contrary, an aggrieved person may commence a civil action in an appropriate United States district court or state district court not later than two years after the occurrence or the termination of an alleged discriminatory housing practice or the breach of a conciliation agreement entered into under this title, whichever occurs last, to obtain appropriate relief with respect to such discriminatory housing practice or breach.

(2) The computation of such two-year period shall not include any time during which an administrative proceeding under this title was pending with respect to a complaint or charge under this title based upon such discriminatory housing practice. This subsection (2) does not apply to actions arising from a breach of a conciliation agreement.

(3) Notwithstanding any provision of this article to the contrary, an aggrieved person may commence a civil action under this section whether or not a charge has been filed under section 24-34-306 and without regard to the status of any such charge, but if the director or local agency has obtained a conciliation agreement with the consent of an aggrieved person, no action may be filed under this section by such aggrieved person with respect to the alleged discriminatory housing practice which forms the basis for such charge except for the purpose of enforcing the terms of such an agreement.

(4) An aggrieved person may not commence a civil action under this section with respect to an alleged discriminatory housing practice which forms the basis of a complaint issued by the commission if an administrative law judge has commenced a hearing on the record under this title with respect to such complaint.

(5) At the request of the aggrieved person, the court may appoint an attorney in accordance with section 24-34-307 (9.5).

(6) In addition to the relief which may be granted in accordance with section 24-34-508, the following relief is available:

(a) If the court finds that a discriminatory housing practice has occurred or is about to occur, the court may award to the plaintiff actual and punitive damages or may grant as relief, as the court deems appropriate, any permanent or temporary injunction, temporary restraining order, or other order, including an order enjoining the defendant from engaging in such practice or ordering such affirmative action as may be appropriate.

(b) The court, in its discretion, may allow the prevailing party reasonable attorney fees and costs.

(c) Relief granted under this section shall not affect any contract, sale, encumbrance, or lease consummated before the granting of such relief and involving a bona fide purchaser, encumbrancer, or tenant, without actual notice of the filing of a charge with the commission or a civil action under this section.

(7) Repealed.

Source: L. 90: Entire section added, p. 1230, § 10, effective April 16; repeal provision in (7) added by revision, see p. 1232, § 12. L. 92: (1), (3), and (4) amended, p. 1127, § 10, effective July 1. L. 93: (7) repealed, p. 1785, § 60, effective June 6. L. 95: IP(6) amended, p. 1104, § 39, effective May 31.

24-34-506. Probable cause. In making his determination on probable cause under the provisions of section 24-34-306 (2), the director shall find that probable cause exists if upon all the facts and circumstances a person of reasonable prudence and caution would be warranted in a belief that an unfair housing practice has been committed.

Source: L. 79: Entire part R&RE, p. 934, § 3, effective July 1. L. 92: Entire section amended, p. 1125, § 8, effective July 1.

24-34-506.5. Conciliation agreements. (1) A conciliation agreement arising out of a conciliation shall be an agreement between the respondent and the charging party, and shall be subject to approval by the director.

(2) A conciliation agreement may provide for binding arbitration of the dispute arising from the charge. Any such arbitration that results from a conciliation agreement may award appropriate relief, including monetary relief.

(3) Each conciliation agreement shall be made public unless the charging party and respondent otherwise agree and the director determines that disclosure is not required to further the purposes of this section.

(4) Whenever the director has reasonable cause to believe that a respondent has breached a conciliation agreement, the director shall refer the matter to the attorney general with a recommendation that a civil action be filed under section 24-34-505.5 for the enforcement of such agreement.

(5) Repealed.

Source: L. 90: Entire section added, p. 1230, § 10, effective April 16; repeal provision in (5) added by revision, see p. 1232, § 12. L. 93: (5) repealed, p. 1785, § 61, effective June 6.

24-34-507. Injunctive relief. (1) After the filing of a charge pursuant to section 24-34-306 (1), the commission or a commissioner designated by the commission for that purpose may file in the name of the people of the state of Colorado through the attorney general of the state a

petition in the district court of the county in which the alleged unfair housing practice occurred, or of any county in which a respondent resides, seeking appropriate injunctive relief against such respondent, including orders or decrees restraining and enjoining him from selling, renting, or otherwise making unavailable to the complainant any housing with respect to which the complaint is made, pending the final determination of proceedings before the commission under this part 5.

(2) Any injunctive relief granted pursuant to this section shall expire by its terms within such time after entry, not to exceed sixty days, as the court fixes, unless within the time so fixed the order, for good cause shown, is extended for a like period or unless the party against whom the order is directed consents that it may be extended for a longer period. An affidavit of notice of hearing shall forthwith be filed in the office of the clerk of the district court wherein said petition is filed. The procedure for seeking and granting said injunctive relief, including temporary restraining orders and preliminary injunctions, shall be the procedure provided in the rules of civil procedure for courts of record in Colorado pertaining to injunctions, and the district court has power to grant such temporary relief or restraining orders as it deems just and proper.

(3) The district court shall hear matters on the request for an injunction at the earliest possible time.

(4) If, upon all the evidence at a hearing, the commission finds that a respondent has not engaged in any such unfair housing practice, the district court which has granted temporary relief or restraining orders pursuant to the petition filed by the commission or commissioner shall dismiss such temporary relief or restraining orders. Any person filing a charge alleging an unfair housing practice with the commission, a commissioner, or the attorney general may not thereafter apply, by himself or herself or by his or her attorney-at-law, directly to the district court for any further relief under this part 5, except as provided in section 24-34-307.

Source: L. 79: Entire part R&RE, p. 935, § 3, effective July 1. L. 87: (2) amended, p. 966, § 71, effective March 13. L. 92: (1) to (3) amended, p. 1126, § 9, effective July 1. L. 98: (4) amended, p. 825, § 37, effective August 5.

Editor's note: Subsection (4) was contained in an act that was passed without a safety clause. For further explanation concerning the effective date, see page vii of this volume.

24-34-508. Relief authorized. (1) In addition to the relief authorized by section 24-34-306 (9), the commission may order a respondent who

has been found to have engaged in an unfair housing practice:

(a) To rehire, reinstate, and provide back pay to any employee or agent discriminated against because of his obedience to this part 5;

(b) To take affirmative action regarding the granting of financial assistance as provided in section 24-34-502 (1) (b) or the showing, sale, transfer, rental, or lease of housing;

(c) To make reports as to the manner of compliance with the order of the commission;

(d) To reimburse any person who was discriminated against for any fee charged in violation of this part 5 and for any actual expenses incurred in obtaining comparable alternate housing, as well as any storage or moving charges associated with obtaining such housing;

(e) To award actual damages suffered by the aggrieved person and injunctive or other equitable relief;

(f) To assess a civil penalty against the respondent in the following amounts:

(I) Not to exceed ten thousand dollars if the respondent has not been adjudged to have committed any prior discriminatory housing practice;

(II) Not to exceed twenty-five thousand dollars if the respondent has been adjudged to have committed any other discriminatory housing practice during the five-year period ending on the date of the filing of the charge;

(III) Not to exceed fifty thousand dollars if the respondent has been adjudged to have committed two or more discriminatory housing practices during the seven-year period ending on the date of the filing of the charge.

Source: L. 79: Entire part R&RE, p. 936, § 3, effective July 1. L. 89: Entire section amended, p. 1042, § 10, effective July 1. L. 90: (1)(e) and (1)(f) added, p. 1231, § 11, effective April 16.

24-34-509. Enforcement sought by commission. Upon refusal by a person to comply with any order, order pursuant to section 24-34-503, or regulation of the commission, the commission has authority to immediately seek an order in the district court enforcing the order or regulation of the commission. Such proceedings shall be brought in the district court in the county in which the respondent resides or transacts business.

Source: L. 79: Entire part R&RE, p. 936, § 3, effective July 1.

24-34-510. Remedy. (Repealed)

Source: L. 79: Entire part R&RE, p. 936, § 3, effective July 1. L. 86: (1)(a) amended, p. 1219, § 23, effective May 30. L. 92: Entire section repealed, p. 1127, § 11, effective July 1.

COLORADO REVISED STATUTES

TITLE 24, ARTICLE 34

PART 6

DISCRIMINATION IN PLACES OF PUBLIC ACCOMMODATION

Editor's note: Parts 3 through 8 of this article were repealed and reenacted in 1979. Subject matter of the parts was relocated. This part 6 was contained in part 5 prior to 1979. Part 5 was originally enacted as article 1 of chapter 25 in C.R.S. 1963. For amendments to part 5 prior to 1979, consult the red book table distributed with the session laws; the original volume of C.R.S. 1973, and annual supplements to that volume prior to 1979; the comparative table located in the back of the index; and C.R.S. 1963.

24-34-601. Discrimination in places of public accommodation. (1) As used in this part 6, "place of public accommodation" means any place of business engaged in any sales to the public and any place offering services, facilities, privileges, advantages, or accommodations to the public, including but not limited to any business offering wholesale or retail sales to the public; any place to eat, drink, sleep, or rest, or any combination thereof; any sporting or recreational area and facility; any public transportation facility; a barber shop, bathhouse, swimming pool, bath, steam or massage parlor, gymnasium, or other establishment conducted to serve the health, appearance, or physical condition of a person; a campsite or trailer camp; a dispensary, clinic, hospital, convalescent home, or other institution for the sick, ailing, aged, or infirm; a mortuary, undertaking parlor, or cemetery; an educational institution; or any public building, park, arena, theatre, hall, auditorium, museum, library, exhibit, or public facility of any kind whether indoor or outdoor.

(2) It is a discriminatory practice and unlawful for a person, directly or indirectly, to refuse, withhold from, or deny to an individual or a group, because of disability, race, creed, color, sex, marital status, national origin, or ancestry, the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of a place of public accommodation or, directly or indirectly, to publish, circulate, issue, display, post, or mail any written or printed communication, notice, or advertisement which indicates that the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of a place of public accommodation will be refused, withheld from, or denied an individual or that an individual's patronage or presence at a place of public accommodation is unwelcome, objectionable, unacceptable, or undesirable because of disability, race, creed, color, sex, marital status, national origin, or ancestry.

(2.5) It is a discriminatory practice and unlawful for any person to discriminate against any

individual or group because such person or group has opposed any practice made a discriminatory practice by this part 6 or because such person or group has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing conducted pursuant to this part 6.

(3) Notwithstanding any other provisions of this section, it is not a discriminatory practice for a person to restrict admission to a place of public accommodation to individuals of one sex if such restriction has a bona fide relationship to the goods, services, facilities, privileges, advantages, or accommodations of such place of public accommodation.

Source: L. 79: Entire part R&RE, p. 937, § 3, effective July 1. L. 89: (2.5) added, p. 1043, § 11, effective July 1. L. 93: (2) amended, p. 1661, § 65, effective July 1.

Am. Jur.2d. See 15 Am. Jur.2d, Civil Rights, § § 28-34.

C.J.S. See 14 C.J.S., Civil Rights, § § 53-67; 16A C.J.S., Constitutional Law, § 463.

Law reviews. For comment on Crosswaith v. Bergin, appearing below, see 7 Rocky Mt. L. Rev. 78 (1934). For article, "Civil Rights in Colorado", see 46 Den. L.J. 181 (1969). For article, "Practicing Before the Colorado Civil Rights Commission", see 17 Colo. Law. 259 (1988). For comment, "New York State Club Association, Inc. v. City of New York: As 'Distinctly Private' is Defined, Women Gain Access", see 66 Den. U. L. Rev. 109 (1988).

Section is constitutional. Darius v. Apostolos, 68 Colo. 323, 190 P. 510 (1920); Crosswaith v. Bergin, 95 Colo. 241, 35 P.2d 848 (1934).

Right of women to frequent saloons taken away by Denver city charter. If this section, when enacted, gave to women the right equally with men to frequent saloons, and if this right depended solely upon the underlying statutory provision, it was taken away by the general assembly when, at a later date, it adopted a charter for the city of Denver, whereby the authority was conferred upon the city to deprive women of the enjoyment of this so-called right. Adams v. Cronin, 29 Colo. 488, 69 P. 590 (1902), aff'd, 192 U.S. 108, 24 S. Ct. 219, 48 L. Ed. 365 (1904) (decided under former law).

Bootblacking stand is a place of public accommodation. Darius v. Apostolos, 68 Colo. 323, 190 P. 510 (1920).

Refusal to serve black in restaurant is discrimination against which section is aimed. Crosswaith v. Bergin, 95 Colo. 241, 35 P.2d 848 (1934).

Determination that regulation violates student's right to exercise religion outside section's scope. A determination by the Colorado civil rights commission that a school hair regulation violates an Indian student's constitutional right to freely exercise his religion

is outside the scope of subsection (2) and is an issue appropriately resolved in a court of law. School Dist. No. 11-J v. Howell, 33 Colo. App. 57, 517 P.2d 422 (1973).

Disparity in the procedure for verifying students' religious beliefs constitutes discriminatory practice prohibited by this section. School Dist. No. 11-J v. Howell, 33 Colo. App. 57, 517 P.2d 422 (1973).

24-34-602. Penalty and civil liability. Any person who violates any of the provisions of section 24-34-601 by denying to any citizen, except for reasons applicable alike to all citizens of every disability, race, creed, color, sex, marital status, national origin, or ancestry, the full enjoyment of any of the accommodations, advantages, facilities, or privileges in said section enumerated or by aiding or inciting such denial, for every such offense, shall forfeit and pay a sum of not less than fifty dollars nor more than five hundred dollars to the person aggrieved thereby to be recovered in any court of competent jurisdiction in the county where said offense was committed; and also for every such offense such person is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than ten dollars nor more than three hundred dollars, or by imprisonment in the county jail for not more than one year, or by both such fine and imprisonment. A judgment in favor of the party aggrieved or punishment upon an indictment or information shall be a bar to either prosecution, respectively; but the relief provided by this section shall be an alternative to that authorized by section 24-34-306 (9), and a person who seeks redress under this section shall not be permitted to seek relief from the commission.

Source: L. 79: Entire part R&RE, p. 937, § 3, effective July 1. L. 93: Entire section amended, p. 1662, § 66, effective July 1.

Am. Jur.2d. See 15 Am. Jur.2d, Civil Rights, § § 261, 262.

C.J.S. See 14A C.J.S., Civil Rights, § § 463-475.

Law reviews. For comment on Crosswaith v. Bergin appearing below, see 7 Rocky Mt. L. Rev. 78 (1934). For comment on Crosswaith v. Thomason appearing below, see 7 Rocky Mt. L. Rev. 78 (1934).

Section is constitutional. Crosswaith v. Bergin, 95 Colo. 241, 35 P.2d 848 (1934).

Section must be strictly construed. Considering the penal character of this section, the rule of strict construction must be applied. Darius v. Apostolos, 68 Colo. 323, 190 P. 150, 10 A.L.R. 986 (1920).

No proof of pecuniary damage is necessary in an action by a black, under this and the preceding section, for the refusal to serve him in

a restaurant. *Crosswaith v. Bergin*, 95 Colo. 241, 35 P.2d 848 (1934).

Burden on proprietor to show employee's discriminatory action not within scope of authority. Where a cashier refuses to serve a person on account of his color, the burden is on the proprietor to show that the refusal is not committed in the course of the proprietor's business or that it is not within the scope of the cashier's authority. *Crosswaith v. Thomason*, 95 Colo. 240, 35 P.2d 849 (1934).

24-34-603. Jurisdiction of county court - trial. The county court in the county where the offense is committed shall have jurisdiction in all civil actions brought under this part 6 to recover damages to the extent of the jurisdiction of the county court to recover a money demand in other actions. Either party shall have the right to have the cause tried by jury and to appeal from the judgment of the court in the same manner as in other civil suits.

Source: L. 79: Entire part R&RE, p. 938, § 3, effective July 1.

Applied in *Continental Title Co. v. District Court*, 645 P.2d 1310 (Colo. 1982).

24-34-604. Time limits on filing of charges. Any charge filed with the commission alleging a violation of this part 6 shall be filed pursuant to section 24-34-306 within sixty days after the alleged discriminatory act occurred, and if not so filed, it shall be barred.

Source: L. 79: Entire part R&RE, p. 938, § 3, effective July 1.

24-34-605. Relief authorized. In addition to the relief authorized by section 24-34-306 (9), the commission may order a respondent who has been found to have engaged in a discriminatory practice as defined in this part 6 to rehire, reinstate, and provide back pay to any employee or agent discriminated against because of his obedience to this part 6; to make reports as to the manner of compliance with the order of the commission; and to take affirmative action, including the posting of notices setting forth the substantive rights of the public under this part 6.

Source: L. 79: Entire part R&RE, p. 938, § 3, effective July 1.

COLORADO REVISED STATUTES

TITLE 24, ARTICLE 34

PART 7

DISCRIMINATORY ADVERTISING

Editor's note: Parts 3 through 8 of this article were repealed and reenacted in 1979. Subject matter of the parts was relocated. This part 7 was contained in parts 3 and 7 prior to 1979. Parts 3 and 7 were originally enacted as article 21 of chapter 80 and article 3 of chapter 25 in C.R.S. 1963. For amendments to parts 3 and 7 prior to 1979, consult the red book table distributed with the session laws; the original volume of C.R.S. 1973, and annual

supplements to that volume prior to 1979; the comparative table located in the back of the index; and C.R.S. 1963.

24-34-701. Publishing of discriminative matter forbidden. No person, being the owner, lessee, proprietor, manager, superintendent, agent, or employee of any place of public accommodation, resort, or amusement, directly or indirectly, by himself or herself or through another person shall publish, issue, circulate, send, distribute, give away, or display in any way, manner, or shape or by any means or method, except as provided in this section, any communication, paper, poster, folder, manuscript, book, pamphlet, writing, print, letter, notice, or advertisement of any kind, nature, or description which is intended or calculated to discriminate or actually discriminates against any disability, race, creed, color, sex, marital status, national origin, or ancestry or against any of the members thereof in the matter of furnishing or neglecting or refusing to furnish to them or any one of them any lodging, housing, schooling, or tuition or any accommodation, right, privilege, advantage, or convenience offered to or enjoyed by the general public or which states that any of the accommodations, rights, privileges, advantages, or conveniences of any such place of public accommodation, resort, or amusement shall or will be refused, withheld from, or denied to any person or class of persons on account of disability, race, creed, color, sex, marital status, national origin, or ancestry or that the patronage, custom, presence, frequenting, dwelling, staying, or lodging at such place by any person or class of persons belonging to or purporting to be of any particular disability, race, creed, color, sex, marital status, national origin, or ancestry is unwelcome or objectionable or not acceptable, desired, or solicited.

Source: L. 79: Entire part R&RE, p. 938, § 3, effective July 1. L. 93: Entire section amended, p. 1662, § 67, effective July 1.

Am. Jur.2d. See 15 Am. Jur.2d, Civil Rights, § 230.

Section neither repeals, amends, nor refers to former § 24-34-501 (now § 24-34-601); there is nothing to suggest that the general assembly had the one in mind when the other was passed. *Darius v. Apostolos*, 68 Colo. 323, 190 P. 510 (1920).

Dismissal of contempt citation proper where no evidence linking advertisement with city official. Where the only evidence of a city official's violation of an anti-segregation order is an advertisement by unknown persons designating the use of a public pool on definite days by whites and blacks and the testimony of several blacks that they have not been permitted to swim on certain days, the dismissal of a contempt citation is proper. *State ex rel.*

McKinney v. Lowry, 100 Colo. 144, 66 P.2d 334 (1937).

24-34-702. Presumptive evidence. The production of any such communication, paper, poster, folder, manuscript, book, pamphlet, writing, print, letter, notice, or advertisement, purporting to relate to any such place and to be made by any person being the owner, lessee, proprietor, agent, superintendent, manager, or employee thereof, shall be presumptive evidence in any civil or criminal action or prosecution that the same was authorized by such person.

Source: L. 79: Entire part R&RE, p. 939, § 3, effective July 1.

24-34-703. Places of public accommodation, resort, or amusement. A place of public accommodation, resort, or amusement, within the meaning of this part 7, shall be deemed to include any inn, tavern, or hotel, whether conducted for the entertainment, housing, or lodging of transient guests or for the benefit, use, or accommodation of those seeking health, recreation, or rest, and any restaurant, eating house, public conveyance on land or water, bathhouse, barber shop, theatre, and music hall.

Source: L. 79: Entire part R&RE, p. 939, § 3, effective July 1.

24-34-704. Exceptions. Nothing in this part 7 shall be construed to prohibit the mailing of a private communication in writing sent in response to specific written inquiry.

Source: L. 79: Entire part R&RE, p. 939, § 3, effective July 1.

24-34-705. Penalty. Any person who violates any of the provisions of this part 7 or who aids in, incites, causes, or brings about in whole or in part the violation of any of such provisions, for each and every violation thereof, is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, or by imprisonment in the county jail for not less than thirty days nor more than ninety days, or by both such fine and imprisonment. The penalty provided by this section shall be an alternative to the relief authorized by section 24-34-306 (9), and a person who seeks redress under this section shall not be permitted to seek relief from the commission.

Source: L. 79: Entire part R&RE, p. 939, § 3, effective July 1.

24-34-706. Time limits on filing of charges. Any charge filed with the commission alleging a violation of this part 7 shall be filed pursuant to section 24-34-306 within sixty days after the alleged discriminatory act occurred, and, if not so filed, it shall be barred.

Source: L. 79: Entire part R&RE, p. 939, § 3, effective July 1.

24-34-707. Relief authorized. In addition to the relief authorized by section 24-34-306 (9), the commission may order a respondent who has been found to have violated any of the provisions of this part 7 to rehire, reinstate, and provide back pay to any employee or agent discriminated against because of his obedience to this part 7; to make reports as to the manner of compliance with the order of the commission; and to take affirmative action, including the posting of notices setting forth the substantive rights of the public under this part 7.

Source: L. 79: Entire part R&RE, p. 939, § 3, effective July 1.

COLORADO REVISED STATUTES

TITLE 24, ARTICLE 34

PART 8

PERSONS WITH DISABILITIES - CIVIL RIGHTS

Editor's note: Parts 3 through 8 of this article were repealed and reenacted in 1979. This part 8 was originally enacted as article 4 of chapter 25 in C.R.S. 1963. For amendments to part 8 prior to 1979, consult the red book table distributed with the session laws; the original volume of C.R.S. 1973, and annual supplements to that volume prior to 1979; the comparative table located in the back of the index; and C.R.S. 1963.

24-34-801. Legislative declaration. (1) The general assembly hereby declares that it is the policy of the state:

(a) To encourage and enable the blind, the visually impaired, the deaf, the partially deaf, and the otherwise physically disabled to participate fully in the social and economic life of the state and to engage in remunerative employment;

(b) That the blind, the visually impaired, the deaf, the partially deaf, and the otherwise physically disabled shall be employed in the state service, the service of the political subdivisions of the state, the public schools, and in all other employment supported in whole or in part by public funds on the same terms and conditions as the able-bodied unless it is shown that the particular disability prevents the performance of the work involved;

(c) That the blind, the visually impaired, the deaf, the partially deaf, and the otherwise physically disabled have the same rights as the able-bodied to the full and free use of the streets, highways, sidewalks, walkways, public buildings, public facilities, and other public places;

(d) That the blind, the visually impaired, the deaf, the partially deaf, and the otherwise physically disabled are entitled to full and equal housing and full and equal accommodations, advantages, facilities, and privileges of all common carriers, airplanes, motor vehicles, railroad trains, motor buses, streetcars, boats,

or any other public conveyances or modes of transportation, hotels, motels, lodging places, places of public accommodation, amusement, or resort, and other places to which the general public is invited, including restaurants and grocery stores; and that the blind, the visually impaired, the deaf, the partially deaf, or the otherwise physically disabled person assume the liability for any injury that he or she might sustain which is attributable solely to causes originating with the nature of the particular disability involved and otherwise subject only to the conditions and limitations established by law and applicable alike to all persons.

(e) and (f) Repealed.

(2) Repealed.

Source: L. 79: Entire part R&RE, p. 939, § 3, effective July 1. L. 86: (1)(e) and (1)(f) amended and (2) added, p. 934, § 1, effective March 20. L. 89: (1)(e) amended, p. 1045, § 1, effective April 19. L. 93: (1)(a) to (1)(d) amended, p. 1663, § 68, effective July 1. L. 95: (1)(e), (1)(f), and (2) repealed, p. 321, § 1, effective (See Editor's note).

Editor's note: Subsections (1)(e), (1)(f), and (2) were repealed in an act that was passed without a safety clause. Since a referendum petition was not filed pursuant to section 1 (3) of article V of the state constitution, it took effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly in 1995.

Cross references: For provisions that a blind or physically disabled person accompanied by a guide dog or service dog not be denied the facilities of a common carrier, see § 40-9-109; for provision that drivers and pedestrians yield to handicapped person, see § 42-4-808.

Law reviews. For article, "School Board of Nassau County v. Arline: An Extension Within Manageable Bounds Protecting the Handicapped", see 65 Den. U. L. Rev. 319 (1988).

Legislative intent in enacting this section and § 24-34-802 was to provide penalties for those employers who exclude handicapped persons from employment solely because of their disability. *Silverstein v. Sisters of Charity of Leavenworth Health Servs. Corp.*, 43 Colo. App. 446, 614 P.2d 891 (1979).

Portions of this section confer new rights and duties, unknown at common law, and § 24-34-802 provides criminal penalties for violations thereof. *Silverstein v. Sisters of Charity*, 38 Colo. App. 286, 559 P.2d 716 (1976).

There is no civil action for damages for a violation of this section. *Silverstein v. Sisters of Charity*, 38 Colo. App. 286, 559 P.2d 716 (1976).

Subsection (1)(b) requires an individual consideration of each employment

application to determine whether a particular person is prevented from performing the work by his particular disability. *Silverstein v. Sisters of Charity of Leavenworth Health Servs. Corp.*, 43 Colo. App. 446, 614 P.2d 891 (1979).

A group hiring exclusion based on nature of handicap is prohibited. A hiring policy is prohibited which excludes from consideration a group whose members are determined by the nature of their handicap. *Silverstein v. Sisters of Charity of Leavenworth Health Servs. Corp.*, 43 Colo. App. 446, 614 P.2d 891 (1979).

Exclusion of epileptics from positions in hospitals is violative of this section. A hospital's policy of excluding persons with a history of epilepsy from positions involving direct patient care is violative of this section. *Silverstein v. Sisters of Charity of Leavenworth Health Servs. Corp.*, 43 Colo. App. 446, 614 P.2d 891 (1979).

24-34-802. Violation - penalty. Any person, firm, or corporation or the agent of any person, firm, or corporation that denies or interferes with the rights and the admittance to or enjoyment of the public facilities enumerated in section 24-34-801 (1) (b) to (1) (d) is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than one hundred dollars, or by imprisonment in the county jail for not more than sixty days, or by both such fine and imprisonment.

Source: L. 79: Entire part R&RE, p. 940, § 3, effective July 1. L. 95: Entire section amended, p. 321, § 2, effective (See Editor's note).

Editor's note: This section was amended in an act that was passed without a safety clause. Since a referendum petition was not filed pursuant to section 1 (3) of article V of the state constitution, it took effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly in 1995.

Legislative intent in enacting this section and § 24-34-801 was to provide penalties for those employers who exclude handicapped persons from employment solely because of their disability. *Silverstein v. Sisters of Charity of Leavenworth Health Servs. Corp.*, 43 Colo. App. 446, 614 P.2d 891 (1979).

Portions of § 24-34-801 confer new rights and duties, unknown at common law, and this section provides criminal penalties for violations thereof. *Silverstein v. Sisters of Charity*, 38 Colo. App. 286, 559 P.2d 716 (1976).

There is no civil action for damages for a violation of § 24-34-801. *Silverstein v. Sisters of Charity*, 38 Colo. App. 286, 559 P.2d 716 (1976).

Section 24-34-801 (1)(b) requires an individual consideration of each employment application to determine whether

a particular person is prevented from performing the work by his particular disability. *Silverstein v. Sisters of Charity of Leavenworth Health Servs. Corp.*, 43 Colo. App. 446, 614 P.2d 891 (1979).

A group hiring exclusion based on nature of handicap is prohibited. A hiring policy is prohibited which excludes from consideration a group whose members are determined by the nature of their handicap. *Silverstein v. Sisters of Charity of Leavenworth Health Servs. Corp.*, 43 Colo. App. 446, 614 P.2d 891 (1979).

Exclusion of epileptics from positions in hospitals deemed violation. A hospital's policy of excluding persons with a history of epilepsy from positions involving direct patient care is violative of section 24-34-801. *Silverstein v. Sisters of Charity of Leavenworth Health Servs. Corp.*, 43 Colo. App. 446, 614 P.2d 891 (1979).

24-34-803. Rights of persons with assistance dogs. (1) A person with a disability, including but not limited to a blind, visually impaired, deaf, hard of hearing, or otherwise physically disabled person, has the right to be accompanied by an assistance dog specially trained for that person without being required to pay an extra charge for the assistance dog in or on the following places and subject to the conditions and limitations established by law and applicable alike to all persons:

(a) Public streets, highways, walkways, public buildings, public facilities and services, and other public places;

(b) Any place of public accommodation or on public transportation services; and

(c) Any housing accommodation offered for rent, lease, or other compensation in the state.

(2) A trainer of an assistance dog has the right to be accompanied by an assistance dog that the trainer is in the process of training without being required to pay an extra charge for the assistance dog in or on the following places:

(a) Public streets, highways, walkways, public buildings, public facilities and services, and other public places; and

(b) Any place of public accommodation or on public transportation services.

(3) (a) An employer shall not refuse to permit an employee with a disability who is accompanied by an assistance dog to keep the employee's assistance dog with the employee at all times in the place of employment. An employer shall not fail or refuse to hire or discharge any person with a disability, or otherwise discriminate against any person with a disability, with respect to compensation, terms, conditions, or privileges of employment because that person with a disability is accompanied by an assistance dog specially trained for that person.

(b) An employer shall make reasonable accommodation to make the workplace accessible for an otherwise qualified person

with a disability who is an applicant or employee and who is accompanied by an assistance dog specially trained for that person unless the employer can show that the accommodation would impose an undue hardship on the employer's business. For purposes of this paragraph (b), "undue hardship" means an action requiring significant difficulty or expense.

(4) The owner or the person having control or custody of an assistance dog or an assistance dog in training is liable for any damage to persons, premises, or facilities, including places of housing accommodation and places of employment, caused by that person's assistance dog or assistance dog in training. The person having control or custody of an assistance dog or an assistance dog in training shall be subject to the provisions of section 18-9-204.5, C.R.S.

(5) A person with a disability is exempt from any state or local licensing fees or charges that might otherwise apply in connection with owning an assistance dog.

(6) The mere presence of an assistance dog in a place of public accommodation shall not be grounds for any violation of a sanitary standard, rule, or regulation promulgated pursuant to section 25-4-1604, C.R.S.

(7) As used in this section, unless the context otherwise requires:

(a) "Assistance dog" means a dog that has been or is being trained as a guide dog, hearing dog, or service dog. Such terms are further defined as follows:

(i) "Guide dog" means a dog that has been or is being specially trained to aid a particular blind or visually impaired person.

(ii) "Hearing dog" means a dog that has been or is being specially trained to aid a particular deaf or hearing impaired person.

(iii) "Service dog" means a dog that has been or is being specially trained to aid a particular physically disabled person with a physical disability other than sight or hearing impairment.

(b) "Disability" has the same meaning as set forth in the federal "Americans with Disabilities Act of 1990", 42 U.S.C. sec. 12102 (2), as amended.

(c) "Employer" has the same meaning as set forth in the federal "Americans with Disabilities Act of 1990", 42 U.S.C. sec. 12111 (5), as amended.

(d) "Housing accommodations" means any real property or portion thereof that is used or occupied, or intended, arranged, or designed to be used or occupied, as the home, residence, or sleeping place of one or more persons but does not include any single family residence, the occupants of which rent, lease, or furnish for compensation not more than one room in that residence.

(e) "Places of public accommodation" means the following categories of private entities:

(I) Inns, hotels, motels, or other places of lodging, except establishments located within buildings actually occupied by the proprietor as the proprietor's residence containing five or fewer rooms for rent or hire;

(II) Restaurants, bars, cafeterias, lunchrooms, lunch counters, soda fountains, casinos, or other establishments serving food or drink, including any such facility located on the premises of any retail establishment;

(III) Gasoline stations or garages;

(IV) Motion picture theaters, theaters, billiard or pool halls, concert halls, stadiums, sports arenas, amusement or recreation parks, or other places of exhibition or entertainment;

(V) Auditoriums, convention centers, lecture halls, or other places of public gathering;

(VI) Bakeries, grocery stores, clothing stores, hardware stores, shopping centers, or other sales or retail establishments;

(VII) Laundromats, dry cleaners, banks, barber shops, beauty shops, travel services, shoe repair services, funeral parlors, offices of accountants or attorneys-at-law, pharmacies, insurance offices, professional offices of health care providers, hospitals, or other service establishments;

(VIII) Terminals, depots, or other stations used for specified purposes;

(IX) Museums, libraries, galleries, or other places of public display or collection;

(X) Parks, zoos, or other places of recreation;

(XI) Nursery, elementary, secondary, undergraduate, or graduate schools or other places of education;

(XII) Day care centers, senior citizen centers, homeless shelters, food banks, adoption agencies, or other social service center establishments;

(XIII) Gymnasiums, health spas, bowling alleys, golf courses, or other places of exercise or recreation;

(XIV) Any other establishment or place to which the public is invited; or

(XV) Any establishment physically containing or contained within any of the establishments described in this paragraph (e) that holds itself out as serving patrons of the described establishment.

(f) "Public transportation services" means common carriers of passengers or any other means of public conveyance or modes of transportation, including but not limited to airplanes, motor vehicles, railroad trains, motor buses, streetcars, boats, or taxis.

(g) "Trainer of an assistance dog" means a person who is qualified to train dogs to serve as assistance dogs.

Source: L. 95: Entire section added, p. 321, § 3, effective (See Editor's note).

Editor's note: This section was enacted in an act that was passed without a safety clause. Since a referendum petition was not filed pursuant to section 1 (3) of article V of the state constitution, it took effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly in 1995.

24-34-804. Violations - penalties. (1) It is unlawful for any person, firm, corporation, or agent of any person, firm, or corporation to:

(a) Withhold, deny, deprive, or attempt to withhold, deny, or deprive any person with a disability or trainer of any of the rights or privileges secured in section 24-34-803;

(b) Threaten to interfere with any of the rights of persons with disabilities or trainers secured in section 24-34-803;

(c) Punish or attempt to punish any person with a disability or trainer for exercising or attempting to exercise any right or privilege secured by section 24-34-803; or

(d) Interfere with, injure, or harm, or cause another dog to interfere with, injure, or harm, an assistance dog.

(2) Any person who violates any provision of subsection (1) of this section commits a class 3 misdemeanor and shall be punished as provided in section 18-1-106, C.R.S.

(3) (a) Any person who violates any provision of subsection (1) of this section shall be liable to the person with a disability or trainer whose rights were affected for actual damages for economic loss, to be recovered in a civil action in a court in the county where the infringement of rights occurred or where the defendant resides.

(b) In any action commenced pursuant to this subsection (3), a court may award costs and reasonable attorney fees.

(4) Nothing in this section is intended to interfere with remedies or relief that any person might be entitled to pursuant to parts 3 to 7 of this article.

Source: L. 95: Entire section added, p. 321, § 3, effective (See Editor's note).

Editor's note: This section was enacted in an act that was passed without a safety clause. Since a referendum petition was not filed pursuant to section 1 (3) of article V of the state constitution, it took effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly in 1995.

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