



COLORADO

**Department of
Regulatory Agencies**

Colorado Office of Policy, Research &
Regulatory Reform

**2017 Sunset Review:
Colorado Civil Rights Division &
Colorado Civil Rights Commission**

October 13, 2017



COLORADO

**Department of
Regulatory Agencies**

Executive Director's Office

October 13, 2017

Members of the Colorado General Assembly
c/o the Office of Legislative Legal Services
State Capitol Building
Denver, Colorado 80203

Dear Members of the General Assembly:

The Colorado General Assembly established the sunset review process in 1976 as a way to analyze and evaluate regulatory programs and determine the least restrictive regulation consistent with the public interest. Since that time, Colorado's sunset process has gained national recognition and is routinely highlighted as a best practice as governments seek to streamline regulation and increase efficiencies.

Section 24-34-104(5)(a), Colorado Revised Statutes (C.R.S.), directs the Department of Regulatory Agencies to:

- Conduct an analysis of the performance of each division, board or agency or each function scheduled for termination; and
- Submit a report and supporting materials to the office of legislative legal services no later than October 15 of the year preceding the date established for termination.

The Colorado Office of Policy, Research and Regulatory Reform (COPRRR), located within my office, is responsible for fulfilling these statutory mandates. Accordingly, COPRRR has completed the evaluation of the Colorado Civil Rights Division (Division) and the Colorado Civil Rights Commission (Commission). I am pleased to submit this written report, which will be the basis for COPRRR's oral testimony before the 2018 legislative committee of reference.

The report discusses the question of whether there is a need for the program provided under Part 3 of Article 34 of Title 24, C.R.S. The report also discusses the effectiveness of the Director of the Division, the Division staff and the Commission in carrying out the intent of the statutes and makes recommendations for statutory changes in the event this regulatory program is continued by the General Assembly.

Sincerely,

Marguerite Salazar
Executive Director





COLORADO

Department of Regulatory Agencies

Colorado Office of Policy, Research &
Regulatory Reform

2017 Sunset Review Colorado Civil Rights Division & Colorado Civil Rights Commission

SUMMARY

What are the Division and the Commission?

The Colorado Civil Rights Division (Division) investigates and issues determinations regarding claims of discrimination in employment, housing and public accommodations. The Colorado Civil Rights Commission (Commission) promulgates rules, reviews appeals to cases dismissed by the Division, rules on whether to set a hearing for a case in which probable cause has been found, directs the Division to investigate cases of discrimination and advises the Governor and the General Assembly on civil rights issues.

Who does the Division serve?

The Division investigates claims of discrimination in employment, housing and public accommodations. In civil rights, discrimination refers to adverse treatment based on an individual's membership in a protected class, such as age, ancestry, color, creed, disability, national origin, race, religion, sex or sexual orientation.

How are civil rights enforced?

Anyone who has been discriminated against may file a complaint with the Division. The Division will investigate the case and issue a determination. A complainant may also file a private suit in civil court. In an employment case, however, a complainant must exhaust all administrative remedies prior to filing a private lawsuit.

What does it cost?

In fiscal year 15-16, the total funding for the Division and the Commission was \$2,530,722, of which \$2,092,661 were state General Funds and \$438,061 were federal funds.

What was the activity?

In fiscal year 15-16, the Division received a total of 989 civil rights complaints, mediated a total of 114 cases prior to issuing a determination, of which 69 cases were settled for a total of \$949,029; issued a total of 33 probable cause determinations; conciliated 28 of these cases, of which 17 cases were settled for a total of \$169,021; and conducted 66 training and outreach events to the public at no charge.

In fiscal year 15-16, the Commission reviewed 88 appeals of no probable cause determinations issued by the Division, of which it remanded one case back to the Division for further investigation. The Commission did not reverse any determinations issued by the Division.

KEY RECOMMENDATIONS

Continue the Division and the Commission for nine years, until 2027.

The Division and the Commission play an important role in ensuring everyone may benefit from the marketplace free of unfair treatment based on personal characteristics, such as age, disability, gender, race or religion, and they should be continued.

Update the civil penalty amounts authorized in public accommodations cases, and authorize the Commission to assess such penalties.

If a place of public accommodation violates the law, the Colorado Anti-Discrimination Act allows a court to issue a civil penalty payable to the charging party in the amount of \$50 to \$500. These civil penalty amounts were established in 1921, and they have not been changed since then. Today, \$500 in 1921 would be equivalent to \$6,914. While a \$500 civil penalty may have been a substantial deterrent in 1921, it does little to deter discrimination today. Therefore, the General Assembly should allow a court or the Commission to assess a civil penalty based on the following schedule: Up to \$5,000 for the first violation, up to \$10,000 for the second violation and up to \$25,000 for any subsequent violations.

METHODOLOGY

As part of this review, Colorado Office of Policy, Research and Regulatory Reform staff attended Commission meetings, interviewed Division staff and Commissioners, reviewed Division records, interviewed officials with state and national associations, interviewed other stakeholders, reviewed Colorado statutes and rules, and reviewed the laws of other states.

MAJOR CONTACTS MADE DURING THIS REVIEW

AARP

American Civil Liberties Union of Colorado
City and County of Denver
Colorado Association of Commerce & Industry
Colorado Apartment Association
Colorado Association of Realtors
Colorado Center on Law & Policy
Colorado Civil Justice League
Colorado Civil Rights Commission
Colorado Civil Rights Division
Colorado Commission for the Deaf & Hard of Hearing
Colorado Council of Churches
Colorado Cross-Disability Coalition
Colorado Defense Lawyers Association

Colorado Health Network
Colorado Hotel and Lodging Association
Colorado Office of the Colorado Attorney General
Colorado Plaintiff Employment Lawyers Association
Denver Metro Fair Housing Center
National Federation of Independent Businesses
9to5
ONE Colorado
Plaintiff Employment Lawyer's Association
Senior Lobby
U.S. Department of Justice
U.S. Equal Employment Opportunity Commission
Women's Lobby of Colorado

What is a Sunset Review?

A sunset review is a periodic assessment of state boards, programs, and functions to determine whether they should be continued by the legislature. Sunset reviews focus on creating the least restrictive form of regulation consistent with protecting the public. In formulating recommendations, sunset reviews consider the public's right to consistent, high quality professional or occupational services and the ability of businesses to exist and thrive in a competitive market, free from unnecessary regulation.

Sunset Reviews are prepared by:
Colorado Department of Regulatory Agencies
Colorado Office of Policy, Research and Regulatory Reform
1560 Broadway, Suite 1550, Denver, CO 80202
www.dora.colorado.gov/opr



Table of Contents

Background	1
Introduction	1
Types of Regulation	2
Licensure	2
Certification	3
Registration	3
Title Protection	3
Regulation of Businesses	4
Sunset Process	4
Methodology	4
Profile of Civil Rights.....	5
Legal Framework	6
History of the Colorado Anti-Discrimination Act	6
Legal Summary	7
Federal Laws.....	7
Colorado Law	7
Program Description and Administration.....	20
Discrimination Cases	23
Mediation.....	25
Probable Cause Findings	26
Right-to-Sue Letters	27
Commission Appeals	27
Conciliation	28
Education and Outreach	30
Collateral Consequences - Criminal Convictions	31
Analysis and Recommendations	32
Recommendation 1 - Continue the Colorado Civil Rights Division and the Colorado Civil Rights Commission for nine years, until 2027.	32
Recommendation 2 - Update the civil penalty amounts authorized in public accommodations cases, and authorize the Commission to assess such penalties. ...	35
Recommendation 3 - Make technical amendments to the Act.	37

Administrative Recommendation 1 - The Director should create two advisory committees, one for business groups and another for protected classes, for the purpose of recommending changes to Commission rules and the policies and procedures of the Division.....38

Background

Introduction

Enacted in 1976, Colorado's sunset law was the first of its kind in the United States. A sunset provision repeals all or part of a law after a specific date, unless the legislature affirmatively acts to extend it. During the sunset review process, the Colorado Office of Policy, Research and Regulatory Reform (COPRRR) within the Department of Regulatory Agencies (DORA) conducts a thorough evaluation of such programs based upon specific statutory criteria¹ and solicits diverse input from a broad spectrum of stakeholders including consumers, government agencies, public advocacy groups, and professional associations.

Sunset reviews are based on the following statutory criteria:

- Whether regulation by the agency is necessary to protect the public health, safety and welfare; whether the conditions which led to the initial regulation have changed; and whether other conditions have arisen which would warrant more, less or the same degree of regulation;
- If regulation is necessary, whether the existing statutes and regulations establish the least restrictive form of regulation consistent with the public interest, considering other available regulatory mechanisms and whether agency rules enhance the public interest and are within the scope of legislative intent;
- Whether the agency operates in the public interest and whether its operation is impeded or enhanced by existing statutes, rules, procedures and practices and any other circumstances, including budgetary, resource and personnel matters;
- Whether an analysis of agency operations indicates that the agency performs its statutory duties efficiently and effectively;
- Whether the composition of the agency's board or commission adequately represents the public interest and whether the agency encourages public participation in its decisions rather than participation only by the people it regulates;
- The economic impact of regulation and, if national economic information is not available, whether the agency stimulates or restricts competition;
- Whether complaint, investigation and disciplinary procedures adequately protect the public and whether final dispositions of complaints are in the public interest or self-serving to the profession;
- Whether the scope of practice of the regulated occupation contributes to the optimum utilization of personnel and whether entry requirements encourage affirmative action;

¹ Criteria may be found at § 24-34-104, C.R.S.

-
- Whether the agency through its licensing or certification process imposes any disqualifications on applicants based on past criminal history and, if so, whether the disqualifications serve public safety or commercial or consumer protection interests. To assist in considering this factor, the analysis prepared pursuant to subparagraph (i) of paragraph (a) of subsection (8) of this section shall include data on the number of licenses or certifications that were denied, revoked, or suspended based on a disqualification and the basis for the disqualification; and
 - Whether administrative and statutory changes are necessary to improve agency operations to enhance the public interest.

Types of Regulation

Consistent, flexible, and fair regulatory oversight assures consumers, professionals and businesses an equitable playing field. All Coloradans share a long-term, common interest in a fair marketplace where consumers are protected. Regulation, if done appropriately, should protect consumers. If consumers are not better protected and competition is hindered, then regulation may not be the answer.

As regulatory programs relate to individual professionals, such programs typically entail the establishment of minimum standards for initial entry and continued participation in a given profession or occupation. This serves to protect the public from incompetent practitioners. Similarly, such programs provide a vehicle for limiting or removing from practice those practitioners deemed to have harmed the public.

From a practitioner perspective, regulation can lead to increased prestige and higher income. Accordingly, regulatory programs are often championed by those who will be the subject of regulation.

On the other hand, by erecting barriers to entry into a given profession or occupation, even when justified, regulation can serve to restrict the supply of practitioners. This not only limits consumer choice, but can also lead to an increase in the cost of services.

There are also several levels of regulation.

Licensure

Licensure is the most restrictive form of regulation, yet it provides the greatest level of public protection. Licensing programs typically involve the completion of a prescribed educational program (usually college level or higher) and the passage of an examination that is designed to measure a minimal level of competency. These types of programs usually entail title protection - only those individuals who are properly licensed may use a particular title(s) - and practice exclusivity - only those individuals who are properly licensed may engage in the particular practice. While these requirements can be viewed as barriers to entry, they also afford the highest level of consumer protection in that they ensure that only those who are deemed competent may practice and the public is alerted to those who may practice by the title(s) used.

Certification

Certification programs offer a level of consumer protection similar to licensing programs, but the barriers to entry are generally lower. The required educational program may be more vocational in nature, but the required examination should still measure a minimal level of competency. Additionally, certification programs typically involve a non-governmental entity that establishes the training requirements and owns and administers the examination. State certification is made conditional upon the individual practitioner obtaining and maintaining the relevant private credential. These types of programs also usually entail title protection and practice exclusivity.

While the aforementioned requirements can still be viewed as barriers to entry, they afford a level of consumer protection that is lower than a licensing program. They ensure that only those who are deemed competent may practice and the public is alerted to those who may practice by the title(s) used.

Registration

Registration programs can serve to protect the public with minimal barriers to entry. A typical registration program involves an individual satisfying certain prescribed requirements - typically non-practice related items, such as insurance or the use of a disclosure form - and the state, in turn, placing that individual on the pertinent registry. These types of programs can entail title protection and practice exclusivity. Since the barriers to entry in registration programs are relatively low, registration programs are generally best suited to those professions and occupations where the risk of public harm is relatively low, but nevertheless present. In short, registration programs serve to notify the state of which individuals are engaging in the relevant practice and to notify the public of those who may practice by the title(s) used.

Title Protection

Finally, title protection programs represent one of the lowest levels of regulation. Only those who satisfy certain prescribed requirements may use the relevant prescribed title(s). Practitioners need not register or otherwise notify the state that they are engaging in the relevant practice, and practice exclusivity does not attach. In other words, anyone may engage in the particular practice, but only those who satisfy the prescribed requirements may use the enumerated title(s). This serves to indirectly ensure a minimal level of competency - depending upon the prescribed preconditions for use of the protected title(s) - and the public is alerted to the qualifications of those who may use the particular title(s).

Licensing, certification and registration programs also typically involve some kind of mechanism for removing individuals from practice when such individuals engage in enumerated proscribed activities. This is generally not the case with title protection programs.

Regulation of Businesses

Regulatory programs involving businesses are typically in place to enhance public safety, as with a salon or pharmacy. These programs also help to ensure financial solvency and reliability of continued service for consumers, such as with a public utility, a bank or an insurance company.

Activities can involve auditing of certain capital, bookkeeping and other recordkeeping requirements, such as filing quarterly financial statements with the regulator. Other programs may require onsite examinations of financial records, safety features or service records.

Although these programs are intended to enhance public protection and reliability of service for consumers, costs of compliance are a factor. These administrative costs, if too burdensome, may be passed on to consumers.

Sunset Process

Regulatory programs scheduled for sunset review receive a comprehensive analysis. The review includes a thorough dialogue with agency officials, representatives of the regulated profession and other stakeholders. Anyone can submit input on any upcoming sunrise or sunset review on COPRRR's website at: www.dora.colorado.gov/opr.

The functions of the Colorado Civil Rights Division (Division) and the Civil Rights Commission (Commission) as enumerated in the Colorado Anti-Discrimination Act, located in Part 3 of Article 24, Colorado Revised Statutes (C.R.S.), shall terminate on July 1, 2018, unless continued by the General Assembly. During the year prior to this date, it is the duty of COPRRR to conduct an analysis and evaluation of the Commission and the Division pursuant to section 24-34-104, C.R.S.

The purpose of this review is to determine whether the currently prescribed program to investigate charges of discriminatory practices in violation of the Colorado Anti-Discrimination Act should be continued and to evaluate the performance of the Director, the Division staff and the Commission. During this review, the Division and the Commission must demonstrate that the program serves the public interest. COPRRR's findings and recommendations are submitted via this report to the Office of Legislative Legal Services.

Methodology

As part of this review, COPRRR staff attended Commission meetings, interviewed Division staff and Commissioners, reviewed records, interviewed officials with state and national associations, interviewed other stakeholders, reviewed Colorado statutes and rules, and reviewed the laws of other states.

Profile of Civil Rights

Although the Declaration of Independence affirms that “all men are created equal,” the history of the United States is marred by racial segregation and discrimination against African Americans, women, minorities and other groups.

Civil rights are intended to guarantee equal opportunities and protections under the law to classes of people who have traditionally been discriminated against.² Discrimination, in this context, refers to unfair or unequal treatment.³ Civil rights laws prohibit discrimination in settings such as employment, housing and public accommodations, based on personal characteristics such as age, color, disability, gender, nationality, race and religion.⁴

Most civil rights laws originate at the federal level through federal legislation or U.S. Supreme Court decisions.⁵ However, state and local governments may extend civil rights protections to additional classes of people and settings.

Both the federal government and the states enforce civil rights laws. An individual whose civil rights have been violated may file a complaint with a government agency and allow the agency to investigate the case. Private lawsuits are also allowed. In some cases, a claim must be filed with a government agency before a private lawsuit may be filed in court.⁶

Each state has an agency that protects civil rights in the state by enforcing its civil rights laws.⁷

² Encyclopedia Britannica. *Civil Rights*. Retrieved on September 5, 2017, from <https://www.britannica.com/topic/civil-rights>

³ FindLaw. *What Is Discrimination?* Retrieved on September 5, 2017, from <http://civilrights.findlaw.com/civil-rights-overview/what-is-discrimination.html>

⁴ FindLaw. *What Are Your Rights?* Retrieved on September 5, 2017, from <http://civilrights.findlaw.com/civil-rights-overview/what-are-civil-rights.html>

⁵ FindLaw. *What Are Your Rights?* Retrieved on September 5, 2017, from <http://civilrights.findlaw.com/civil-rights-overview/what-are-civil-rights.html>

⁶ FindLaw. *The Government's Role in Civil Rights Enforcement*. Retrieved on September 5, 2017, from <http://civilrights.findlaw.com/enforcing-your-civil-rights/the-government-s-role-in-civil-rights-enforcement.html>

⁷ FindLaw. *States Civil Rights Offices*. Retrieved on September 5, 2017, from <http://civilrights.findlaw.com/enforcing-your-civil-rights/state-civil-rights-offices.html>

Legal Framework

History of the Colorado Anti-Discrimination Act

With passage of the Colorado Anti-Discrimination Act (Act) in 1951, Colorado became the third state to establish an agency to protect civil rights.

The agency, known as the Fair Trade Employment Practices Office (agency) in the Colorado Department of Labor, was charged with investigating cases of employment discrimination based on ancestry, color, creed, national origin and race. While the agency was authorized to file civil suits on behalf of public employees, it could only assist employees in the private sector through arbitration.

This changed in 1955 when the agency, renamed the Colorado Anti-Discrimination Commission, was granted the authority to file civil suits against private employers with six or more employees. The Act further expanded the agency's authority to issue cease and desist orders and to require employers to rehire, reinstate or promote an employee who was discriminated against.

Eventually, the jurisdiction of the agency was expanded to include housing and public accommodations, and additional protected classes, such as members of a particular religion and people with disabilities, were added.

In 1965, the agency was renamed the Colorado Civil Rights Commission (Commission), and in 1968, the Commission and the Civil Rights Division (Division) were moved to the Department of Regulatory Agencies (DORA).

Subsequently, the General Assembly amended the Act several times to prohibit discrimination in:

- Employment based on age;
- Housing based on familial status (i.e., having one or more individual under the age of 18 living with a parent or guardian);
- Employment based on sexual orientation;
- Employment, housing and public accommodation for people with disabilities who require assistance dogs;
- Employment based on gender identity; and
- Housing and public accommodations based on sexual orientation and gender identity.

More recently, in 2016, the Act was amended to require employers to provide reasonable accommodations to pregnant women in the workplace.

Legal Summary

Federal Laws

The following federal laws are provided for informational purposes only. The focus of this report is Colorado civil rights laws.

The 14th amendment to the U.S. Constitution guarantees all U.S. citizens equal protection under the law.

Title 42, Chapter 21 of the U.S. Code specifically protects individuals from discrimination in education, housing, public accommodations, federal services and other settings based on age, disability, gender, race, national origin, religion and other factors. Chapter 21 encompasses several federal civil rights acts including the Civil Rights Act of 1964.

Some federal laws that protect civil rights include:

- **The Age Discrimination in Employment Act**, which protects individuals aged 40 and over from discrimination based on age in hiring, promotion, discharge, compensation, and in the terms, conditions and privileges of employment.
- **The Americans with Disabilities Act**, which prohibits discrimination against people with disabilities in employment, education, public accommodations, state and local government services, telecommunications and transportation.
- **The Equal Credit Opportunity Act**, which prohibits discrimination in credit on the basis of age, color, race, religion, marital status, national origin and sex, and it also prohibits discrimination against someone in obtaining credit because they receive income from public assistance.
- **The Fair Housing Act of 1968**, which prohibits discrimination in the financing, rental or sale of housing based on race, religion, national origin and sex.

Colorado Law

Colorado's civil rights laws are codified in the State Constitution and in the Colorado Anti-Discrimination Act, located in section 24-34-301 to section 24-34-804, Colorado Revised Statutes (C.R.S.) (Act). The Colorado Constitution specifically prohibits the State or any of its political subdivisions from denying or abridging equal rights under the law on account of sex.

The Division is housed in DORA. The Director of the Division is appointed by the Executive Director of DORA, taking good faith consideration of recommendations from the Commission.⁸ The Division and the Commission are created in Part 3 of the Act.

The Director and the Division are charged with receiving, investigating and making determinations related to charges of discriminatory practices that violate the Act.⁹

The Commission is made up of seven members, appointed by the Governor with consent of the Senate to four-year terms. The membership includes:¹⁰

- Two members who represent the business community, one of whom must represent small business;
- Two members who represent state or local government entities; and
- Three members from the community at large.

At least four members of the Commission must be members of groups who have been or who might be discriminated against. Appointments should be made to provide representation from various geographical areas in the state, and no more than four members of the Commission may be from the same political party.¹¹ Commissioners are paid a per diem allowance and may be reimbursed for actual and necessary expenses for official business only.¹²

The Commission's powers and duties are to:¹³

- Adopt rules consistent with Parts 4 to 7 of the Act;
- Conduct hearings regarding discriminatory practices;
- Review appeals of cases dismissed by the Division;
- Investigate and study the existence, character, causes and extent of discriminatory practices;
- Formulate plans for the elimination of discriminatory practices;
- Issue publications to promote goodwill among the various age, ethnic, racial and religious groups of the state and to minimize or eliminate discriminatory practices;
- Submit to the Governor a report accounting for the fulfillment of any duties assigned to the Commission by law or directive;
- Recommend policies to the Governor;
- Submit any recommendations sent to the Governor to any person or entity in the private sector who may help to realize those policies;
- Submit recommendations to the General Assembly for any necessary and desirable legislation aimed at discrimination;

⁸ § 24-34-302(1), C.R.S.

⁹ § 24-34-302(2), C.R.S.

¹⁰ § 24-34-303(1), C.R.S.

¹¹ § 24-34-303(1), C.R.S.

¹² § 24-34-303(4), C.R.S.

¹³ § 24-34-305(1), C.R.S.

-
- Cooperate, within the fiscal constraints of the Division's appropriation, with other agencies or organizations to plan and conduct educational programs designed to eliminate age, cultural, racial, religious and intergroup tensions; and
 - Mediate using alternative dispute resolution techniques in age, cultural, racial, religious and intergroup tensions or conflicts.

Any person may file with the Division a verified written charge alleging a discriminatory practice. The Commission, a commissioner or the Attorney General may file upon its own motion a charge alleging a discriminatory practice that imposes a significant societal or community impact.¹⁴

When the Division receives charges alleging discrimination, it must first notify the respondent of the charges.¹⁵ Then the Director and the Division must promptly investigate the charges.¹⁶

During an investigation, the Director has subpoena authority, and this authority is enforceable in district court if the respondent does not comply with the Director's initial request to provide information sought in the subpoena.¹⁷

If probable cause exists, the Director must serve the respondent with written notice that provides the legal authority and jurisdiction of the Commission and the relevant matters of fact and law. The Director must order the complainant and the respondent to participate in mediation. Immediately after serving the respondent notice, the Director is also required to endeavor to eliminate the discriminatory practice through conference, conciliation, persuasion and by compulsory mediation.¹⁸

If the Director determines that efforts to settle the matter are futile, the Director must then report the findings to the Commission. If the Commission determines that further action should be taken, it must issue a written notice and complaint requiring a hearing before the Commission, a commissioner or an administrative law judge (ALJ) within 120 days.¹⁹

At a hearing, the burden of proof falls upon the complainant, and the respondent will be presumed not to be discriminatory until proven otherwise.²⁰

¹⁴ § 24-34-306(1), C.R.S.

¹⁵ § 24-34-306(1)(c), C.R.S.

¹⁶ § 24-34-306(2)(a), C.R.S.

¹⁷ § 24-34-306(2)(a), C.R.S.

¹⁸ § 24-34-306(2)(b)(II), C.R.S.

¹⁹ § 24-34-306(4), C.R.S.

²⁰ § 24-34-306(8), C.R.S.

If the respondent is found to have engaged in or to be engaging in discriminatory practices, the Commission must issue an order to cease and desist from the discriminatory practice. It may also order a respondent to take any appropriate action authorized by the Act.²¹ Otherwise, the complaint must be dismissed.²²

If any of the following occur, the Commission's jurisdiction ends and the complainant may seek relief in a district court where the alleged discrimination occurred:²³

- Written notice of a hearing is not served within 270 days of the initial filing of the charge,
- The complainant requests and receives a right-to-sue letter, or
- The hearing does not take place within the 120-day deadline.

Any party may request a 90-day extension from the Commission, a commissioner or an ALJ.²⁴

A lawsuit in district court must be filed within 90 days after the jurisdiction of the Commission ends. Otherwise, the case will be barred and the district court will no longer have jurisdiction.²⁵

No party may file a civil action based on a charge of discrimination according to the Act in a district court without first exhausting the proceedings and remedies available under Part 3, except when a party is in ill health and pursuing administrative remedies would take too long and would cause irreparable harm.²⁶ A right-to-sue letter constitutes the exhaustion of administrative remedies required under Part 3.²⁷

The complainant may request a right-to-sue letter at any time before the Commission issues a complaint and notice for a hearing. Upon request of the complainant, the Division must promptly issue a right-to-sue letter if 180 days have elapsed since the complaint was filed. If 180 days have not elapsed, the Division must grant the request if it determines that the investigation will not be completed within 180 days.²⁸

A complainant or respondent may appeal a final order of the Commission in the Court of Appeals.²⁹ Upon application, the court may appoint an attorney to represent an individual alleging discrimination in housing or a person against whom discrimination in housing is alleged or authorize civil action without payment of fees, costs or security if the person is financially unable to pay.³⁰

²¹ § 24-34-306(9), C.R.S.

²² § 24-34-306(10), C.R.S.

²³ § 24-34-306(11), C.R.S.

²⁴ § 24-34-306(11), C.R.S.

²⁵ § 24-34-306(11), C.R.S.

²⁶ § 24-34-306(14), C.R.S.

²⁷ § 24-34-306(15), C.R.S.

²⁸ § 24-34-306(15), C.R.S.

²⁹ §§ 24-34-307(1) and (2), C.R.S.

³⁰ § 24-34-307(9.5), C.R.S.

If neither the respondent nor the complainant appeals a final order of the Commission within 49 days, the Commission may obtain a decree from a district court to enforce an order by the Commission.³¹

The Act does not authorize the Division, the Director or the Commission to enforce federal law; however, the Commission may accept federal grants to enforce any part of the Act.³²

EMPLOYMENT PRACTICES

Part 4 of the Act (Part 4) addresses employment practices. Domestic workers are exempted as employees from this section of the law,³³ and religious organizations and associations, unless they are supported in whole or in part by public funds, are also exempted as employers from this section of the law.³⁴

A discriminatory employment practice occurs when an employer, employment agency or labor union bases employment decisions on membership in any of the following protected classes:³⁵

- Age,
- Ancestry,
- Color,
- Creed,
- Disability,
- National origin,
- Race,
- Religion,
- Sex, or
- Sexual orientation.

It is also considered a discriminatory employment practice to:

- Create a hostile work environment based on membership in a protected class;
- Refuse to lay off or refuse to hire someone who is married to or plans to marry an employee, except for employers with 25 or fewer employees and other specified reasons; and
- Prohibit an employee from discussing the employees' wages, except when permitted by federal law.

³¹ § 24-34-307(12), C.R.S.

³² § 24-34-308, C.R.S.

³³ § 24-34-401(2), C.R.S.

³⁴ § 24-34-401(3), C.R.S.

³⁵ §§ 24-34-402(1)(a), (h) and (i) , C.R.S.

However, it is not a discriminatory employment practice if an employer cannot make a reasonable accommodation for an individual with a disability, the disability truly disqualifies the person from the job and the disability has a significant impact on the job.³⁶

Similarly, it is not considered a discriminatory employment practice if age is a bona fide qualification necessary for the normal operation of the employer or when the differentiation is based on factors other than age.³⁷

An employer must provide, if requested, reasonable accommodation to an employee who is pregnant, or physically recovering from childbirth or a related condition, unless the accommodation would be an undue hardship on the business.³⁸

Employers must also allow an employee to take up to three days of paid or unpaid leave a year if the employee is a victim of domestic abuse, stalking or sexual assault and the leave is necessary to:³⁹

- Obtain a civil protection order,
- Obtain medical or mental health care,
- Secure safe housing, or
- Obtain legal assistance.

An employer is only required to do this if it has 50 or more employees and the employee has been employed for at least a year.⁴⁰ An employee may only request leave for this purpose when he or she has exhausted all other forms of leave.⁴¹

Any charge of a discriminatory employment practice must be filed with the Commission within six months of the occurrence.⁴²

In addition to other relief authorized by the Act, the Commission or a court may order the following against a respondent who has engaged in a discriminatory employment practice:⁴³

- Reinstating or hiring an employee,
- Compensating for lost earnings, or
- Providing other equitable relief.

³⁶ § 24-34-402(1)(a), C.R.S.

³⁷ § 24-34-402(4)(a), C.R.S.

³⁸ § 24-34-402.3(1)(a)(I), C.R.S.

³⁹ § 24-34-402.7(1)(a), C.R.S.

⁴⁰ § 24-34-402.7(1)(b), C.R.S.

⁴¹ § 24-34-402.7(2)(b), C.R.S.

⁴² § 24-34-403, C.R.S.

⁴³ § 24-34-405(2)(a), C.R.S.

Compensation for lost earnings must be reduced by any actual earnings or an amount that could have been earned with reasonable diligence.⁴⁴ Any damages awarded to an employee for discriminatory employment practices may be reduced by the amount of unemployment benefits received by the complainant.⁴⁵

In a civil action, anyone who has been unlawfully discriminated against in the workplace may additionally be awarded compensatory and punitive damages.⁴⁶ Punitive damages may only be awarded with clear and convincing evidence that the employer engaged in a discriminatory employment practice with malice or reckless indifference to the rights of the employee. If the employer demonstrates good faith efforts to comply with Part 4 and prevent discriminatory practices in the workplace, punitive damages may not be awarded.⁴⁷

A court may also award compensatory damages for other pecuniary losses and nonpecuniary losses, such as emotional pain and suffering, inconvenience, mental anguish and loss of enjoyment of life.⁴⁸ Except when specified by the Act, the total amount of compensatory and punitive damages awarded in an employment case may not exceed amounts set in federal law.⁴⁹

When awarding damages, the court must also consider the size and assets of an employer and the egregiousness of the intentional discriminatory employment practice.⁵⁰ Specifically, the Act limits awards for employers with fewer than 15 employees:⁵¹

- Up to \$25,000 for employers with fewer than 15 employees, and
- Up to \$10,000 for employers with fewer than five employees.

HOUSING PRACTICES

Part 5 of the Act (Part 5) concerns housing practices. Housing does not include a room offered to rent in a single-family home occupied by the owner or lessee.⁵²

The Act considers it an unfair housing practice to refuse to show, sell or rent, or to deny housing based on the following protected classes:⁵³

- Ancestry,
- Color,

⁴⁴ § 24-34-405(2)(b), C.R.S.

⁴⁵ § 24-34-406, C.R.S.

⁴⁶ § 24-34-405(3)(a), C.R.S.

⁴⁷ § 24-34-405(3)(b)(I), C.R.S.

⁴⁸ § 24-34-405(3)(c), C.R.S.

⁴⁹ § 24-34-405(3)(d)(I), C.R.S.

⁵⁰ § 24-34-405(3)(d)(III), C.R.S.

⁵¹ § 24-34-405(3)(d)(II), C.R.S.

⁵² § 24-34-501(2), C.R.S.

⁵³ § 24-34-501(6), C.R.S.

-
- Creed,
 - Disability,
 - Familial status,⁵⁴
 - Marital status,
 - National origin,
 - Race,
 - Religion,
 - Sex, and
 - Sexual orientation.

Housing specifically designed for people over the age of 55 is exempt from the familial status provisions in Part 5.⁵⁵

A private individual owner is also exempt from the familial status provisions in Part 5 if he or she is selling or renting a single-family home, and he or she does not own more than three single-family homes for rent or sale. If the private individual owner was not the most recent resident prior to a sale, the exemption only applies to one sale every 24 months.⁵⁶

Additionally, the sale or rental may not:⁵⁷

- Use the services or facilities of a real estate agent, broker, salesperson or anyone in the business of selling or renting homes; or
- Advertise or publish written materials that violate Part 5.

Similarly, an owner is exempt from the familial status provisions in Part 5 if the home contains living quarters intended to be occupied by no more than four families living independently of each other, and the owner lives in one of the living quarters.⁵⁸

It is unlawful to discriminate against someone in a sale or rental based on a disability.⁵⁹ It is considered discrimination to separate or segregate, or to refuse to allow reasonable modifications that are necessary. For rentals, a landlord may require the renter to restore the interior of the premises to the previous condition.⁶⁰

A charge of unfair housing practices must be filed within one year of the occurrence.⁶¹ Within 10 days of the filing, the Director must serve the respondent a notice of the

⁵⁴ Familial status: Having one or more individual under the age of 18 living with a parent or guardian. § 24-34-501(1.6), C.R.S.

⁵⁵ § 24-34-502(7)(a), C.R.S.

⁵⁶ § 24-34-502(8)(a)(I), C.R.S.

⁵⁷ § 24-34-502(8)(a)(I), C.R.S.

⁵⁸ § 24-34-502(8)(a)(II), C.R.S.

⁵⁹ § 24-34-502.2(1), C.R.S.

⁶⁰ § 24-34-502.2(2), C.R.S.

⁶¹ § 24-34-504(1), C.R.S.

charge,⁶² and the Director must begin an investigation within 30 days of the filing. Then, the Director must determine whether probable cause exists within 100 days of the filing unless it is impractical or the Director has approved a conciliation agreement.⁶³

If the Director determines probable cause of an unfair housing practice, the Commission must issue a notice and complaint. Any party in the action may choose, within 20 days, a civil hearing rather than an administrative one.⁶⁴

Unless it is impractical, a final administrative disposition regarding an unfair housing practice must be made within one year of the filing date. If it is impractical, the Commission must notify, in writing, the complainant and respondent of the reasons.⁶⁵

Anyone who has been discriminated against in housing according to Part 5 may enter into a civil action, regardless of whether a charge has been filed with the Division, within two years of the occurrence or a breach of a conciliation agreement.⁶⁶ The two-year period does not include any time in which an administrative proceeding was pending.⁶⁷ However, a person who has been discriminated against in housing may not file a civil suit if an ALJ has commenced a hearing on the record regarding the charge.⁶⁸

The Attorney General may intervene in a civil action alleging an unfair housing practice that was filed by a private person if the Attorney General determines that the case may be of general importance.⁶⁹ The Attorney General may also commence a civil action if he or she has probable cause to believe that a person is engaged in a pattern or practice of resistance to fair housing practices or that any group has been denied fair housing practices and the issue is of general public importance.⁷⁰

A civil action filed by the Attorney General must begin no later than 18 months after the discriminatory housing practice.⁷¹

The Commission or a commissioner may file a petition for injunctive relief or a restraining order.⁷² In addition to other relief authorized by Part 5, the Commission may order a respondent who is found to have engaged in an unfair housing practice to:⁷³

- Take affirmative action regarding the granting of financial assistance or the showing, sale, transfer, rental or lease of housing;

⁶² § 24-34-504(3), C.R.S.

⁶³ § 24-34-504(4), C.R.S.

⁶⁴ § 24-34-504(4.1), C.R.S.

⁶⁵ § 24-34-504(4.3), C.R.S.

⁶⁶ § 24-34-505.6(1), C.R.S.

⁶⁷ § 24-34-505.6(2), C.R.S.

⁶⁸ § 24-34-505.6(4), C.R.S.

⁶⁹ § 24-34-505.5(1), C.R.S.

⁷⁰ § 24-34-505.5(2), C.R.S.

⁷¹ § 24-34-504(2), C.R.S.

⁷² §§ 24-34-507(1), C.R.S.

⁷³ § 24-34-508(1), C.R.S.

-
- Report on compliance;
 - Reimburse any person who was discriminated against for any fee charged in violation of 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;
 - Award actual damages; and
 - Award other equitable relief.

The Commission also has the authority to assess a civil penalty:⁷⁴

- Up to \$10,000 if the respondent does not have any previous judgments,
- Up to \$25,000 if the respondent has any previous judgments, and
- Up to \$50,000 if the respondent has two or more previous judgments during the last seven years.

In addition to these remedies, the court may award additional remedies to a person who has filed a private civil suit, such as:⁷⁵

- Actual damages,
- Punitive damages,
- Permanent or temporary injunction,
- Temporary restraining order,
- Affirmative action, and
- Other appropriate orders.

In a private civil suit, the court may also award attorney fees and costs to the party who wins the case.⁷⁶

PUBLIC ACCOMMODATIONS

Part 6 of the Act (Part 6) concerns public accommodations. Part 6 defines a place of public accommodation as:⁷⁷

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

⁷⁴ § 24-34-508(1)(f), C.R.S.

⁷⁵ § 24-34-505.6(6)(a), C.R.S.

⁷⁶ § 24-34-505.6(6)(b), C.R.S.

⁷⁷ § 24-34-601(1), C.R.S.

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, theater, hall, auditorium, museum, library, exhibit or public facility of any kind whether indoor or outdoor.

A charge of discrimination in a place of public accommodation must be filed within 60 days of the occurrence.⁷⁸

It is considered an unlawful discriminatory practice to deny a person or group of people goods, services, facilities, privileges, advantages or accommodations based on:⁷⁹

- Ancestry,
- Color,
- Creed,
- Disability,
- Marital status,
- National origin,
- Race,
- Sex, or
- Sexual orientation.

However, it is not unlawful to restrict admission to a place of public accommodation to one sex if a bona fide relationship to the goods, services, facilities, privileges, advantages or accommodation exists.⁸⁰

In addition to other remedies under the Act, an individual who has been discriminated against in a place of public accommodation may file an action in court, and the court may fine the plaintiff between \$50 and \$500 for each violation.⁸¹

The Commission may order an employer to rehire and pay any lost wages to an individual who was unlawfully discriminated against for his or her compliance with Part 6.⁸²

ADVERTISING

Part 7 of the Act (Part 7) concerns advertising. It is a violation of the Act to publish material that denies or declares to deny housing, education, employment or public accommodations to any person based on their membership in a protected class, or by stating that membership in a protected class is unwelcome, objectionable, not acceptable, desired or solicited.⁸³

⁷⁸ § 24-34-604, C.R.S.

⁷⁹ § 24-34-601(2)(a), C.R.S.

⁸⁰ § 24-34-601(3), C.R.S.

⁸¹ §§ 24-34-602(1)(a) and (3), C.R.S.

⁸² § 24-34-605, C.R.S.

⁸³ § 24-34-701, C.R.S.

The production of any publication intended to discriminate against any protected class is presumptive evidence that the activity was authorized by that person.⁸⁴

Any person who engages in discriminatory advertising is guilty of a misdemeanor for each violation punishable by a fine or imprisonment, or both. The fine may be no less than \$100 and no more than \$500, and the imprisonment may be no less than 30 days and no more than 90 days. This penalty is only available in place of other remedies authorized under the Act, not in addition to them.⁸⁵

A charge of discriminatory advertising must be filed within 60 days, or it will not be permitted.⁸⁶

In addition to other remedies authorized by the Act, Commission may order an employer to rehire and pay any lost wages to an individual who was discriminated against for his or her compliance with Part 7.⁸⁷

PERSONS WITH DISABILITIES

A qualified person with a disability has the same meaning as it does in the federal Americans with Disabilities Act of 1990:⁸⁸

Any person who has a physical or mental impairment that substantially limits one or more major life activities; has a record of such impairment; or is regarded as having such an impairment.

According to Part 8 of the Act (Part 8), a qualified person with a disability may be accompanied by a service animal without any extra charge in:⁸⁹

- Employment;
- Housing;
- Public accommodations;
- Programs, services or activities of a public entity;
- Public transportation; and
- Other places open to the public.

⁸⁴ § 24-34-702, C.R.S.

⁸⁵ § 24-34-705, C.R.S.

⁸⁶ § 24-34-706, C.R.S.

⁸⁷ § 24-34-707, C.R.S.

⁸⁸ § 24-34-301(5.6), C.R.S. and 42 U.S.C. § 12181(7)

⁸⁹ § 24-34-803(1), C.R.S.

It is unlawful to deprive, threaten or punish a qualified person with a disability with a service animal or a trainer of a service animal any of the rights or privileges of Part 8, and it is unlawful to interfere with, injure or harm a service animal, and anyone who does commits a class 3 misdemeanor.⁹⁰ A person who willfully or wantonly harms a service animal may be required to pay three times the amount of actual damages.⁹¹

A qualified person with a disability who is subject to discrimination in housing, public accommodations based his or her disability may also file a civil suit,⁹² in which the following remedies are available:⁹³

- Compliance with the particular section of the Act,
- Actual damages, or
- A statutory fine not to exceed \$3,500.

The court may also award attorney fees and costs.⁹⁴

It is unlawful to discriminate against an individual or group for opposing discrimination based on disability in housing or public accommodations.⁹⁵

⁹⁰ § 24-34-804(2), C.R.S.

⁹¹ § 24-34-804(3)(a)(II), C.R.S.

⁹² § 24-34-802(2)(a), C.R.S.

⁹³ § 24-34-802(2)(a), C.R.S.

⁹⁴ § 24-34-802(3), C.R.S.

⁹⁵ § 24-34-802(1), C.R.S.

Program Description and Administration

The Director of the Colorado Civil Rights Division (Director and Division, respectively) and the Colorado Civil Rights Commission (Commission), located within the Department of Regulatory Agencies, are vested with the authority to enforce the Colorado Anti-Discrimination Act (Act).

Specifically, the Division investigates claims of discrimination in employment, housing and public accommodations. In civil rights, discrimination refers to adverse treatment based on an individual’s membership in a protected class. Under Colorado law, the classes that are protected vary depending on the setting.

Table 1 illustrates the specific classes that are protected in each setting.

**Table 1
Protected Classes by Setting**

Protected Classes	Employment	Housing	Public Accommodations
Age	X		
Ancestry	X	X	X
Color	X	X	X
Creed	X	X	X
Disability	X	X	X
Familial Status		X	
Marital Status	X	X	
National Origin	X	X	X
Race	X	X	X
Religion	X	X	
Sex	X	X	X
Sexual Orientation	X	X	X

While age is a protected class in employment, it is not protected in housing or public accommodations. Similarly, familial status is considered a protected class in housing, but it is not protected in other settings. Moreover, while religion is not a protected class in a public accommodation setting, creed is protected in all settings, including public accommodations.

The Division has a workshare agreement with the U.S. Equal Employment Opportunity Commission (EEOC) and the U.S. Department of Housing and Urban Development (HUD). If the Division investigates a case that is within the jurisdiction of the federal agencies, then the Division receives federal funds for the investigation. Cases may be referred by the federal agencies or they may originate with the Division.

The EEOC and HUD provide trainings to Division staff in order to help it meet the goals of the workshare agreements.

Table 2 demonstrates the funding sources of the Division and the staffing levels over the five-year period under review.

**Table 2
Division Funding**

Fiscal Year	State General Funds	Federal Funds*	Total Funding	FTE
11-12	\$1,824,629	\$640,372	\$2,465,001	31.4
12-13	\$1,861,793	\$595,961	\$2,457,754	27.0
13-14	\$1,905,723	\$507,935	\$2,413,658	27.0
14-15	\$1,989,152	\$467,118	\$2,456,270	27.2
15-16	\$2,092,661	\$438,061	\$2,530,722	27.2

*EEOC and HUD.

The increases in state general funds were modest and for the most part due to increases in annual salary and merit pay. The federal funds received by the Division depend on the number of discrimination cases that it works on for the EEOC and HUD. The staff was reduced by 4.4 full-time equivalent (FTE) employees in fiscal year 11-12. Since that time, the staffing levels have remained stable.

In fiscal year 16-17, 27.2 FTE were dedicated to the Division. The Director oversees the Division, which is divided into three sections:

Alternative Dispute Resolution Section - Includes staff members who mediate between parties in order to resolve cases without involving the courts. This section also includes staff members who assist the public with filing complaints and draft complaints into charges, and it also includes a staff person who assists with closing cases.

Investigations and Enforcement Section - Investigates cases and ensures that parties comply with the terms of settlement agreements.

Operations Section - Includes a receptionist, Commission staff, budget staff and an outreach and education coordinator.

The Division previously had offices in Pueblo and Grand Junction, but these were closed in 2015 since few people were utilizing them.

The Commission is made up of seven members, appointed by the Governor with consent of the Senate to four-year terms. The membership includes:⁹⁶

- Two members who represent the business community, one of whom must represent small business;
- Two members who represent state or local government entities; and
- Three members from the community at large.

At least four members of the Commission must be members of groups who have been or who might be discriminated against. Appointments should be made to provide representation from various geographical areas in the state, and no more than four members of the Commission may be from the same political party.⁹⁷

The Commission is primarily charged with:

- Promulgating rules,
- Reviewing appeals to cases dismissed by the Division,
- Ruling on whether to set a hearing for a case in which the Division has issued a probable cause determination,
- Directing the Division to investigate cases of discrimination, and
- Advising the Governor and the General Assembly on civil rights issues.

The Commission meets monthly in Denver at 10:00 a.m. on the fourth Friday of the month.

Each year, the Commission schedules a couple of meetings in locations around the state in order to provide an opportunity for members of the public from other areas to attend Commission meetings. Table 3 shows the Commission meetings held outside Denver in 2015 and 2016.

Table 3
Commission Meetings Outside Denver

Date	Location	Attendance
June 17, 2015	Trinidad	6
September 24, 2015	Grand Junction	6
February 26, 2016	Longmont	18
April 22, 2016	Colorado Springs	16

⁹⁶ § 24-34-303(1), C.R.S.

⁹⁷ § 24-34-303(1), C.R.S.

Discrimination Cases

Anyone may file a complaint with the Division. In 2016, the Division introduced an online complaint system, which allows individuals to electronically submit an intake form, check the status of a complaint or communicate with the Division. Anyone who does not have access to a computer may request a paper intake form, which may be mailed, faxed or emailed to the Division. An individual may also file a complaint in person on Tuesdays between 8:30 a.m. and 2:00 p.m.

A charge of discrimination must be filed according to the deadlines set in the Act:

- Within 60 days in a public accommodations case,
- Within six months in an employment case, and
- Within one year in a housing case.

Once the intake form has been completed, Division staff draft a complaint into a legal charge of discrimination and notify the respondent of the charge.

The respondent must provide a written response to the charges within 30 days in employment and public accommodations cases and within 10 days in housing cases. This response is then provided to the party who filed the complaint. Then, the complainant has 30 days to review the response and file a rebuttal.

Both parties may provide a list of witnesses and witness statements to the Division, which will conduct an investigation and may issue subpoenas.

According to the Division, it issues few subpoenas since respondents usually provide documentation when requested. For this reason, the Division has not tracked the number of subpoenas issued annually and was unable to provide this information to the Colorado Office of Policy, Research and Regulator Reform (COPRRR).

The Commission, a commissioner or the Attorney General also has the authority to file a charge alleging a discriminatory practice that imposes a significant societal or community impact.

According to the Division, the Commission has opened two investigations on its own motion over the five fiscal years under review. Both were housing cases. The Attorney General has not opened any investigations into discrimination over the fiscal years under review.

Table 4 provides the total number of discrimination charges filed with the Division over a five-year period.

**Table 4
Number of Cases**

Type	FY 11-12	FY 12-13	FY 13-14	FY 14-15	FY 15-16
Employment	516	601	689	766	737
Housing	130	149	140	112	154
Public Accommodations	41	58	76	85	98
Total	687	808	905	963	989

While there is some variation depending on the setting, the number of complaints of discrimination in all settings has steadily increased over the five fiscal years under review. The Division receives complaints of discrimination in employment at a much higher rate than it does in other settings.

Table 5 shows the number of Colorado cases investigated by the Division in which either the EEOC or HUD also had jurisdiction over the five fiscal years under review.

**Table 5
EEOC & HUD Cases with Joint Jurisdiction**

Jurisdiction	FY 11-12	FY 12-13	FY 13-14	FY 14-15	FY 15-16
EEOC & Division	444	375	417	576	639
HUD & Division	126	120	140	113	109

In fiscal year 11-12, the Division had joint jurisdiction with the EEOC in about 86 percent of its employment cases. However, in fiscal years 12-13 and 13-14, it only had joint jurisdiction with the EEOC in about 60 percent of its housing cases. Then, in fiscal years 14-15 and 15-16, the Division had joint jurisdiction with the EEOC in about 80 percent of its employment cases.

In several years, the Division had joint jurisdiction with HUD in most of the Division’s housing cases. However, in fiscal year 12-13 it only had joint jurisdiction with HUD in about 70 percent of its housing cases, and in 15-16, it only had joint jurisdiction with HUD in about 80 percent of its housing cases.

The EEOC reviews all determinations made by the Division. When the EEOC agrees with determinations made by the Division, it closes the files. However, if the EEOC does not agree with a determination, it will report the disagreement to the Division.

The EEOC may conduct its own investigation if it finds significant problems with an investigation conducted by the Division, and it may issue its own determination contrary to the Division’s determination if the results of the investigation warrant it.

If the EEOC uncovers significant problems with cases, it requires the Division to undergo additional training to bring it into compliance with EEOC standards. In states where the EEOC finds persistent problems with cases, it may reduce the number of cases it shares or it may not renew the workshare agreement with the state.

In the past 10 years, the Division has not had any cases denied credit by the EEOC.

The Division may refer cases to the EEOC when the Division does not have jurisdiction; such as, with cases that are over six months old.

HUD annually reviews cases to ensure the Division is compliant with HUD’s standards.

Mediation

Either party in a discrimination case may request mediation before a determination is issued by the Division. The investigative staff may also refer a case to mediation.

Table 6 illustrates the total number of mediations conducted prior to the Division issuing a determination and those that resulted in settling charges, including the total and average value of mediated settlements.

**Table 6
Mediations**

Type	FY 11-12	FY 12-13	FY 13-14	FY 14-15	FY 15-16
Mediations	103	116	70	92	114
Mediations Settling a Charge	76	80	27	44	69
Percentage of Mediations Settling a Charge	74%	69%	39%	48%	61%
Total Value of Mediated Settlements	\$979,769	\$578,045	\$367,163	\$542,685	\$949,029
Average Value of Mediated Settlements	\$12,892	\$7,226	\$13,599	\$12,334	\$13,754

While the number of discrimination complaints has steadily increased each year, the number of mediations varies widely from year to year and has not increased much over the five-year period under review. Similarly, the percentage of mediations that resulted in settlement agreements varies widely from year to year.

The total value of mediated settlements reported in Table 6 only represents the total value of payments resulting from settlements; it does not necessarily represent everything of value that may have been settled. For example, if a landlord agreed to waive any back rent that was owed, the Division did not report it in Table 6.

Probable Cause Findings

Table 7 demonstrates the number of cases in which the Division issued probable cause and no probable cause determinations over the five fiscal years under review.

**Table 7
Probable Cause Determinations**

Fiscal Year	Type	Probable Cause	No Probable Cause
11-12	Employment	23	394
	Housing	8	109
	Public Accommodations	1	30
	Total	32	533
12-13	Employment	15	291
	Housing	3	92
	Public Accommodations	5	21
	Total	23	404
13-14	Employment	17	292
	Housing	1	116
	Public Accommodations	2	32
	Total	20	440
14-15	Employment	18	449
	Housing	3	93
	Public Accommodations	1	55
	Total	22	597
15-16	Employment	16	271
	Housing	15	81
	Public Accommodations	2	55
	Total	33	407
All Years	Total	130	2,381

Although the number of complaints increased steadily over the five-year period, the number of probable cause determinations did not increase.

Right-to-Sue Letters

In order to file a civil suit alleging discrimination in employment, a party must first file a complaint with the Division and exhaust the administrative remedies provided by the Act. Complainants in housing and public accommodations cases are not required to exhaust the administrative remedies prior to filing a civil suit.

A right-to-sue letter issued to the complainant constitutes the exhaustion of administrative remedies.

A complainant may request a right-to-sue letter at any time before the Commission issues a complaint and notice for a hearing. The Division is required by statute to issue a right-to-sue letter if a request has been made and 180 days have passed since the complaint was filed. The Division is also required to grant the request if it determines that it cannot complete its investigation within 180 days.

When a complainant receives a determination from the Division in an employment case, it includes a right-to-sue letter.

The Division was unable to provide the number of right-to-sue letters it issued over a five-year period since it does not track this information.

Commission Appeals

If the Division issues a no probable cause determination, a complainant may file an appeal with the Commission.

A complainant must file an appeal within 10 days of the date the determination was mailed. The Commission will only hear appeals if:

- There is evidence that was previously not available, presented or considered during the Division's investigation; or
- The Division's decision was based on evidence that was misinterpreted or erroneous.

When a case is appealed, the Commission has three options:

- Uphold the findings,
- Reverse the findings, or
- Remand the case for further investigation.

Table 8 provides the number of cases appealed to the Commission, the number of times the Commission reversed the Division’s findings and the number of times it remanded a case for further investigation.

**Table 8
Commission Appeals**

Fiscal Year	Appeals	Reversals	Remanded
11-12	107	1	0
12-13	74	0	0
13-14	78	2	0
14-15	78	0	3
15-16	88	0	1
Total	425	3	4

On average between one-third to one-quarter of no probable cause findings are appealed to the Commission. It is rare for the Commission to reverse a decision or to remand a case back to the Division for further investigation. However, it does happen on occasion.

Conciliation

If the Division finds probable cause in a discrimination case, both parties must participate in conciliation. Conciliation is a form of alternative dispute resolution that is provided at no cost in order to reach a settlement agreement. If conciliation does not result in a settlement agreement, the Commission will consider whether the case should be set for a hearing before an administrative law judge.

Table 9 outlines the number of times the Division attempted conciliation, the number of times a conciliation attempt resulted in settling a charge and the total value of conciliated settlements.

**Table 9
Conciliations**

Type	FY 11-12	FY 12-13	FY 13-14	FY 14-15	FY 15-16
Conciliations	26	25	26	22	28
Conciliations Settling a Charge	8	5	5	10	17
Percentage of Conciliations Settling a Charge	31%	20%	19%	46%	61%
Total Value of Conciliated Settlements	\$73,487	\$21,510	\$98,954	\$262,250	\$169,021
Average Value of Conciliated Settlements	\$9,186	\$4,302	\$19,791	\$26,225	\$9,942

While the number of complaints of discrimination has increased, the number of conciliations has remained about the same, varying only slightly from year to year. This is consistent with the number of probable cause determinations issued by the Division.

The total value of conciliated settlements in the above table only represents the total value of payments resulting from settlements; it does not necessarily represent everything of value that may have been settled. For example, if a landlord agreed to waive any back rent that was owed, the Division did not report it in the table above.

If the Director issues a probable cause determination in an employment or a public accommodations case and it is not settled through conciliation, the Commission then votes on whether it should take the case to a hearing. However, when the Director issues a probable cause determination in a housing case, then a hearing is required.

The Division must serve a notice of hearing within 270 days of the charge of discrimination being filed or it loses jurisdiction over a case. Both parties may request a 90-day extension, which may increase the Division’s jurisdiction up to a total of 450 days. In practice, the investigator usually requests an extension, and the respondent or the complainant agrees to the request. The Commission must approve a request for an extension.

Table 10 demonstrates the percentage of cases that the Division closed within 270 days in fiscal years 14-15 and 15-16.

Table 10
Cases Closed Within 270 Days

Fiscal Year	Percentage
11-12	75%
12-13	97%
13-14	63%
14-15	84%
15-16	78%

The percentage of cases closed within 270 days varies widely depending on the year. Over this time period, the Division has been under the oversight of three different Directors, which may account for the variation from year to year.

Overall, the Division has been successful at closing most of its cases within 270 days, averaging about 79 percent over the five-year period.

Education and Outreach

The Division engages in education and community outreach throughout the state of Colorado in a variety of ways, including classes, seminars, public forums and resource tables at events.

The classes offered by the Division address civil rights in employment and housing to the public at no cost. These classes are voluntary and anyone may attend: employers, human resource professionals, employees, landlords, property managers and members of protected classes. For some, however, class attendance is mandated in settlement agreements.

Continuing education credit is also available for licensed professionals. The fair housing and the employment classes are each worth two continuing education hours for attorneys, and the fair housing class is worth two continuing education hours for real estate brokers and community association managers.

The Division also provides anti-discrimination seminars and outreach events at various locations throughout the state.

Table 11 provides the number of classes and outreach events in civil rights provided by the Division.

**Table 11
Training and Outreach**

Fiscal Year	Voluntary Classes	Mandatory Classes	Outreach Events	Total
11-12	49	8	50	108
12-13	52	8	80	140
13-14	23	3	36	62
14-15	45	2	21	68
15-16	42	5	19	66

The number of mandatory classes varies depending on settlement agreements. The voluntary classes and outreach events depend on the Director’s priorities and the availability of staff.

Additionally, the Division provides webinars in civil rights issues such as:

- Equal Access for Transgender Persons to Public Restrooms, and
- Pregnancy Discrimination in the Workplace and Public Accommodations.

Collateral Consequences – Criminal Convictions

Section 24-34-104(6)(b)(IX), C.R.S., requires COPRRR to determine whether the agency under review, through its licensing processes, imposes any disqualifications on applicants or registrants based on past criminal history, and if so, whether the disqualifications serve public safety or commercial or consumer protection interests.

This provision is not relevant to the enforcement of civil rights.

Analysis and Recommendations

Recommendation 1 – Continue the Colorado Civil Rights Division and the Colorado Civil Rights Commission for nine years, until 2027.

Colorado’s civil rights laws are codified in the State Constitution and in the Colorado Anti-Discrimination Act, located in sections 24-34-301 to 24-34-804, Colorado Revised Statutes (C.R.S.) (Act). The Director of the Colorado Civil Rights Division (Director and Division, respectively) in the Department of Regulatory Agencies and the Colorado Civil Rights Commission (Commission) enforce the Act.

Specifically, the Division investigates claims of discrimination in employment, housing and public accommodations.

Under Colorado law, the classes that are protected vary depending on the setting, and Table 12 illustrates the specific classes that are protected in each setting.

**Table 12
Protected Classes by Setting**

Protected Classes	Employment	Housing	Public Accommodations
Age	X		
Ancestry	X	X	X
Color	X	X	X
Creed	X	X	X
Disability	X	X	X
Familial Status		X	
Marital Status	X	X	
National Origin	X	X	X
Race	X	X	X
Religion	X	X	
Sex	X	X	X
Sexual Orientation	X	X	X

While age is a protected class in an employment setting, it is not protected in housing or public accommodations. Similarly, familial status is considered a protected class in housing, but it is not protected in any other setting. Moreover, while religion is not protected in public accommodations, creed is protected in all settings, including public accommodations.

The Commission is made up of seven members, appointed by the Governor with consent of the Senate to four-year terms. The membership includes:⁹⁸

- Two members who represent the business community, one of whom must represent small business;
- Two members who represent state or local government entities; and
- Three members from the community at large.

At least four members of the Commission must be members of groups who have been or who might be discriminated against. Appointments should be made to provide representation from various geographical areas in the state, and no more than four members of the Commission may be from the same political party.⁹⁹

The Commission is primarily charged with:

- Promulgating rules,
- Reviewing appeals to Division determinations,
- Ruling on whether to schedule cases for hearings,
- Directing the Division to investigate cases of discrimination, and
- Advising the Governor and the General Assembly on civil rights issues.

Sunset reviews are guided by statutory criteria found in section 24-34-104, C.R.S., and the first criterion questions whether regulation is necessary to protect the health, safety and welfare of the public.

The Act is intended to provide equal opportunities to people who are prone to unfair treatment based on membership in a particular group. The state has an interest in ensuring that everyone has equal access to employment, housing and public accommodations.

Discrimination exacerbates poverty and homelessness and increases demands on public assistance. In the United States, minorities, especially African Americans and Latinos, are concentrated in areas with substandard housing, limited employment opportunities, inadequate access to health-care facilities, under-resourced schools and high exposure

⁹⁸ § 24-34-303(1), C.R.S.

⁹⁹ § 24-34-303(1), C.R.S.

to crime and violence. Programs to alleviate poverty in these areas will be undermined without effective anti-discrimination laws.¹⁰⁰

Discrimination is also a public health concern. When people are treated poorly based on characteristics that they have no control over, it can cause mental health problems related to stress, such as low self-esteem, anxiety and depression. Discrimination is also associated with an increased risk of alcohol and drug abuse.¹⁰¹

When a group of people is treated unfairly based on personal characteristics, such as age, disability, gender, race or religion, it not only infringes on the rights of the individual, it may also fuel social unrest.

Without the Division, only those with the means to hire attorneys and pay court costs would have the ability to avail themselves of the protections of the Act. The Division allows the public to obtain relief outside the court system. Because alternative dispute resolution mechanisms are built into its structure, the Division provides a lower cost method for both parties to dispute civil rights cases.

When the Division determines that discrimination likely did not occur, a complainant may appeal the decision to the Commission. While some complainants have the means to file a private lawsuit in court regardless of the Division's determination, many do not. Allowing complainants an opportunity to appeal determinations creates a check on the Division's investigations and ensures that complainants are treated fairly. Otherwise, many complainants would run out of options.

The Commission may also file a charge of discrimination when it uncovers a case of discrimination, but no member of the public has filed a complaint. This authority is extremely important to vulnerable people who are unlikely to file complaints.

The sunset criteria in section 24-34-104, C.R.S., question whether the agency operates in the public interest.

The Division protects the public by investigating cases of discrimination and helping to resolve cases outside of the court system, which is beneficial to both parties since it is less costly and less adversarial than a private lawsuit. In fiscal year 15-16, the Division investigated 989 cases of discrimination. Of these, 69 were settled prior to the Division issuing a determination for a total of \$949,029. The Division issued 33 probable cause determinations. Of these, 17 cases settled for a total of \$169,021.

¹⁰⁰ Human Rights Watch. *Discrimination, Inequality, and Poverty—A Human Rights Perspective*. Retrieved on September 5, 2017 from <https://www.hrw.org/news/2013/01/11/discrimination-inequality-and-poverty-human-rights-perspective>

¹⁰¹ Gordon, Dan. "Discrimination can be harmful to your mental health," *UCLA Newsroom*, January 13, 2016. Retrieved from <http://newsroom.ucla.edu/stories/discrimination-can-be-harmful-to-your-mental-health>

The Division also provides education to the public regarding anti-discrimination laws. In fiscal year 15-16, it provided 66 outreach efforts, of which 42 were voluntary classes, 5 were mandatory classes and 19 were outreach events. Education and outreach helps businesses understand how to comply with civil rights laws, and it also provides information to protected classes about their rights.

The Commission also protects the public by reviewing appeals to Division determinations of no probable cause. In fiscal year 15-16, the Commission reviewed 88 appeals.

The Division and the Commission play an important role in ensuring that everyone may benefit from the marketplace free of unfair treatment based on personal characteristics, such as age, disability, gender, race or religion, and they should be continued.

The General Assembly may continue the Division and the Commission for anywhere from 1 to 15 years. While some provisions in the Act related to public accommodations are outdated, for the most part, the sunset review uncovered few issues with the Act. For this reason, it is reasonable to continue the Act for nine years.

Therefore, the Division and the Commission should be continued for nine years, until 2027.

Recommendation 2 – Update the civil penalty amounts authorized in public accommodations cases, and authorize the Commission to assess such penalties.

A place of public accommodation is:¹⁰²

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, theater, hall, auditorium, museum, library, exhibit or public facility of any kind whether indoor or outdoor.

¹⁰² § 24-34-601(1), C.R.S.

In Colorado, it is unlawful to deny a person or group of people goods, services, facilities, privileges, advantages or accommodations based on:¹⁰³

- Ancestry,
- Color,
- Creed,
- Disability,
- Marital status,
- National origin,
- Race,
- Sex, or
- Sexual orientation.

If a place of public accommodation violates the law, the Act allows a court to issue a civil penalty payable to the charging party in the amount of \$50 to \$500. These civil penalty amounts were established in 1921. Today, \$500 in 1921 dollars would be equivalent to \$6,914. While a \$500 civil penalty may have been a substantial deterrent in 1921, it likely does little to deter discrimination today.

It is the public policy of the state that no one should be denied services or goods based on their membership in a protected class. However, the current civil penalty does little to deter this form of discrimination.

The state has an interest in preventing discrimination in places of public accommodation. Unlawful discrimination is not only harmful and degrading to those who are discriminated against; it also intensifies problems, such as poverty and social unrest, in those communities that are affected by it.

In order to protect the public, civil penalties should be substantial enough to deter places of public accommodation from engaging in discrimination.

In a housing case, the Act authorizes the Commission or a court to assess a civil penalty according to the following schedule:

- Up to \$10,000 for the first violation,
- Up to \$25,000 for the second violation, and
- Up to \$50,000 for any subsequent violations.

It would be reasonable to create a similar schedule for public accommodations, so that the penalty increases if the discriminatory activity continues.

¹⁰³ § 24-34-601(2)(a), C.R.S.

In determining the appropriate amount for a civil penalty in a public accommodations setting, the State should seek to deter this conduct, but it should endeavor not to set the amount too high. To strike this balance, the following amounts are proposed:

- Up to \$5,000 for the first violation,
- Up to \$10,000 for the second violation, and
- Up to \$25,000 for any subsequent violations.

The first amount would be lower than the maximum amount authorized by the legislature in 1921 if it were updated to its current value of \$6,914,¹⁰⁴ but it would provide for increasing amounts in case the misconduct continues.

Moreover, in public accommodations, the civil penalty is only authorized in private lawsuits. This is inconsistent with the employment and housing settings in which the Commission may order payment of monetary damages or a civil penalty, or both. It is unclear why the Commission does not have the authority to order monetary damages or a civil penalty in a public accommodations setting while it does in other settings.

In order to deter discrimination in public accommodations, the General Assembly should amend section 24-34-602(1)(a), C.R.S., to allow the Commission or a court to order a civil penalty based on the following schedule:

- Up to \$5,000 for the first violation,
- Up to \$10,000 for the second violation, and
- Up to \$25,000 for any subsequent violations.

Recommendation 3 – Make technical amendments to the Act.

The Act has been in place since 1951, and several portions of the law are much older. As with any law, the Act contains instances of obsolete, duplicative and confusing language, and the Act should be revised to reflect current terminology and administrative practices. These changes are technical in nature, so they will have no substantive impact on the Division or the Commission.

The General Assembly should make the following technical changes:

- **Section 24-34-603, C.R.S.** Clarify that a party with a public accommodations complaint can file suit in district court since Part 3 provides the ability for parties in all settings to file suit in district court, and the jurisdiction conferred on county courts in section 24-34-603, C.R.S., is concurrent with the jurisdiction of district courts.

¹⁰⁴ According to the Bureau of Labor Statistics, *Consumer Price Index Inflation Calculator*, \$500 in July 1921 has the same buying power as \$6,914.86 in July 2017.

-
- **Section 24-34-306(14), C.R.S.** Clarify that a party with a public accommodations complaint may choose to go to court without filing a complaint with the Division and exhausting the administrative remedies since it contradicts sections 24-34-602(3) and 24-34-603, C.R.S., in which a lawsuit is offered as an alternative to an administrative complaint.
 - **Section 24-34-306(14), C.R.S.** Clarify that a party with a housing complaint is not required to exhaust the administrative remedies to file a case in court since it contradicts section 24-34-505.6(3), C.R.S., in which a lawsuit may be filed whether or not a charge has been filed with the Division.

Administrative Recommendation 1 – The Director should create two advisory committees, one for business groups and another for protected classes, for the purpose of recommending changes to Commission rules and the policies and procedures of the Division.

During this sunset review stakeholders brought forward numerous issues related to Commission rules and the policies and procedures of the Division. While the volume of administrative issues raised during the review may be indicative of the volatile nature of civil rights, it may also be attributed to the sheer number of stakeholders associated with civil rights. Because there are so many interested parties, it is difficult for the Director to hear from them all.

This is problematic because without input from a broad base of stakeholders, the Division runs the risk of becoming insular. When this happens, problems that could be addressed by simple changes to rules or procedures remain unchanged.

One way that this could be remedied is through regularly scheduled advisory committee meetings.

Two advisory committees, one representing protected classes and one representing business groups, would be advisable since an open exchange of ideas is more likely to take place in a friendly forum.

By creating advisory committees, the Director would be available to hear about problems that rules, policies or procedures may be causing in the various communities that the Division serves. The Director would also be more likely to hear about cases of discrimination in particular communities that may otherwise go unreported.

In addition to providing communication to the Director, the members of the advisory committees would also be able to communicate information reported by the Division to the communities they represent. Since advisory committees are made up of volunteers, they are an inexpensive way for the Director to conduct outreach.

The Director may also use advisory committees to consider the impact of potential legislative changes to the Act.

These committees may be able to promote positive changes in the Division and the Commission as well as in the communities they represent, and they would create a formal, organized forum in which communication can flow.

Therefore, the Director should create two advisory committees, one representing protected classes and one representing businesses, for the purpose of recommending changes to Commission rules and the policies and procedures of the Division.