

SENATE COMMITTEE OF REFERENCE AMENDMENT
Committee on Judiciary.

SB21-176 be amended as follows:

1 Amend printed bill, strike everything below the enacting clause and
2 substitute:

3 **"SECTION 1. Short title.** The short title of this act is the
4 "Protecting Opportunities and Workers' Rights (POWR) Act".

5 **SECTION 2.** In Colorado Revised Statutes, 24-34-303, **amend**
6 (1)(b)(II)(A) as follows:

7 **24-34-303. Civil rights commission - membership.**
8 (1) (b) (II) In addition to the qualifications specified in subsection
9 (1)(b)(I) of this section, the members of the commission must at all times
10 include:

11 (A) At least four members who are members of groups of people
12 who have been or who might be discriminated against because of
13 disability, race, creed, color, sex, sexual orientation, national origin,
14 ancestry, marital status, CAREGIVER STATUS, religion, or age; and

15 **SECTION 3.** In Colorado Revised Statutes, **repeal** 24-34-304 as
16 follows:

17 **24-34-304. Division and commission subject to termination -**
18 **repeal of part.** (1) The provisions of section 24-34-104, concerning the
19 termination schedule for regulatory bodies of the state unless extended as
20 provided in that section, are applicable to the division and the commission
21 created by this part 3.

22 (2) This part 3 is repealed, effective September 1, 2027. Before its
23 repeal, the functions of the division and commission are scheduled for
24 review in accordance with section 24-34-104.

25 **SECTION 4.** In Colorado Revised Statutes, 24-34-306, **amend**
26 (1)(a), (2)(b) introductory portion, (2)(b)(I) introductory portion,
27 (2)(b)(I)(B), (2)(b)(I)(C), (11), and (14) as follows:

28 **24-34-306. Charge - complaint - hearing - procedure -**
29 **exhaustion of administrative remedies.** (1) (a) (I) Any person claiming
30 to be aggrieved by a discriminatory or unfair practice as defined by parts
31 4 to 7 of this ~~article~~ ARTICLE 34 may, by himself or herself or through ~~his~~
32 ~~or her~~ THE PERSON'S attorney-at-law, make, sign, and file with the division
33 a verified written charge stating the name and address of the respondent
34 alleged to have committed the discriminatory or unfair practice, setting
35 forth the particulars of the alleged discriminatory or unfair practice, and
36 containing any other information required by the division.

37 (II) THE DIVISION SHALL INCLUDE ON ANY CHARGE FORM OR
38 CHARGE INTAKE MECHANISM AN OPTION TO SELECT "HARASSMENT" AS A
39 BASIS OR DESCRIPTION OF THE TYPE OF DISCRIMINATORY OR UNFAIR

1 EMPLOYMENT PRACTICE THAT IS THE SUBJECT OF THE CHARGE.

2 (2) (b) The director or the director's designee, who ~~shall~~ MUST be
3 an employee of the division, shall determine as promptly as possible
4 whether probable cause exists for crediting the allegations of the charge
5 and shall follow one of the following courses of action:

6 (I) If the director or the director's designee determines that
7 probable cause does not exist, ~~he or she~~ THE DIRECTOR OR THE DIRECTOR'S
8 DESIGNEE shall dismiss the charge and shall notify the person filing the
9 charge and the respondent of the dismissal. In addition, in the notice, the
10 director or the director's designee shall advise both parties:

11 (B) That, if the charging party wishes to file a civil action in a
12 ~~district~~ court OF COMPETENT JURISDICTION IN A DISTRICT in this state OR,
13 IF APPLICABLE IN CASES ALLEGING A VIOLATION OF PART 4 OF THIS
14 ARTICLE 34, IN A COURT OF COMPETENT JURISDICTION IN A COUNTY IN THIS
15 STATE based on the alleged discriminatory or unfair practice that was the
16 subject of the charge filed with the commission, ~~he or she must do so~~ THE
17 CHARGING PARTY MUST FILE THE ACTION: Within ninety days after the
18 date the notice specified in this ~~subparagraph (I)~~ SUBSECTION (2)(b)(I) is
19 mailed if ~~he or she~~ THE CHARGING PARTY does not file an appeal with the
20 commission pursuant to ~~sub-subparagraph (A) of this subparagraph (I)~~
21 SUBSECTION (2)(b)(I)(A) OF THIS SECTION; or within ninety days after the
22 date the notice that the commission has dismissed the appeal specified in
23 ~~sub-subparagraph (A) of this subparagraph (I)~~ SUBSECTION (2)(b)(I)(A)
24 OF THIS SECTION is mailed;

25 (C) That, if the charging party does not file an action within the
26 time limits specified in ~~sub-subparagraph (B) of this subparagraph (I)~~
27 SUBSECTION (2)(b)(I)(B) OF THIS SECTION, the action will be barred, and
28 no ~~district~~ court ~~shall have~~ HAS jurisdiction to hear the action.

29 (11) If written notice that a formal hearing will be held is not
30 served within two hundred seventy days after the filing of the charge, if
31 the complainant has requested and received a notice of right to sue
32 pursuant to subsection (15) of this section, or if the hearing is not
33 commenced within the one-hundred-twenty-day period prescribed by
34 subsection (4) of this section, the jurisdiction of the commission over the
35 complaint ~~shall cease~~ CEASES, and the complainant may seek the relief
36 authorized under this part 3 and parts 4 to 7 of this ~~article~~ ARTICLE 34
37 against the respondent by filing a civil action in the ~~district court for the~~
38 A COURT OF COMPETENT JURISDICTION IN THE district OR, IF APPLICABLE
39 IN COMPLAINTS ALLEGING A VIOLATION OF PART 4 OF THIS ARTICLE 34, IN
40 THE COUNTY in which the alleged discriminatory or unfair practice
41 occurred. ~~Such~~ THE action must be filed within ninety days ~~of~~ AFTER the
42 date upon which the jurisdiction of the commission ceased, and if not so
43 filed, it ~~shall be~~ IS barred and the ~~district~~ court ~~shall have~~ HAS no
44 jurisdiction to hear ~~such~~ THE action. If any party requests the extension of
45 any time period prescribed by this subsection (11), ~~such~~ THE extension

1 may be granted for good cause by the commission, a commissioner, or the
2 administrative law judge, as the case may be, but the total period of all
3 such extensions to either the respondent or the complainant ~~shall~~ MUST
4 not exceed ninety days each, and, in the case of multiple parties, the total
5 period of all extensions ~~shall~~ MUST not exceed one hundred eighty days.

6 (14) ~~No~~ A person may NOT file a civil action in a district court in
7 this state based on an alleged discriminatory or unfair practice prohibited
8 by ~~parts 4 to 7 of this article~~ PARTS 5 TO 7 OF THIS ARTICLE 34 OR, IN
9 CASES ALLEGING A DISCRIMINATORY OR UNFAIR EMPLOYMENT PRACTICE
10 PROHIBITED BY PART 4 OF THIS ARTICLE 34, IN A COURT OF COMPETENT
11 JURISDICTION IN THE DISTRICT OR COUNTY IN WHICH THE ALLEGED
12 DISCRIMINATORY OR UNFAIR EMPLOYMENT PRACTICE OCCURRED without
13 first exhausting the proceedings and remedies available to ~~him~~ THE PERSON
14 under this part 3 unless ~~he~~ THE PERSON shows, in an action filed
15 in the appropriate ~~district~~ court, by clear and convincing evidence, ~~his~~ THE
16 PERSON's ill health, which is of such a nature that pursuing administrative
17 remedies would not provide timely and reasonable relief and would cause
18 irreparable harm.

19 **SECTION 5.** In Colorado Revised Statutes, **add** 24-34-310 as
20 follows:

21 **24-34-310. Training and education programs for employers -**
22 **commission to develop.** IN ADDITION TO ANY EDUCATION AND OUTREACH
23 DUTIES SPECIFIED IN SECTION 24-34-305, THE COMMISSION SHALL
24 DEVELOP SAMPLE TRAINING AND EDUCATION PROGRAMS REGARDING THE
25 PREVENTION OF HARASSMENT AND DISCRIMINATION IN THE WORKPLACE,
26 BYSTANDER INTERVENTION, AND WORKPLACE CIVILITY. WITHIN SIX
27 MONTHS AFTER THE EFFECTIVE DATE OF THIS SECTION, THE COMMISSION
28 SHALL DEVELOP THE TRAINING AND EDUCATION PROGRAMS AND MAKE
29 THE PROGRAMS AVAILABLE TO EMPLOYERS, AT NO COST, ON THE
30 DIVISION'S WEBSITE AND IN OTHER MANNERS THAT ENABLE EMPLOYERS TO
31 ACCESS THE PROGRAMS.

32 **SECTION 6.** In Colorado Revised Statutes, **add** 24-34-400.2 as
33 follows:

34 **24-34-400.2. Legislative declaration.** (1) THE GENERAL
35 ASSEMBLY FINDS THAT:

36 (a) ALL COLORADANS SHOULD HAVE AN EQUAL OPPORTUNITY TO
37 SUCCEED IN THE WORKPLACE AND ARE ENTITLED TO A WORKPLACE THAT
38 IS FREE FROM DISCRIMINATION, HOSTILITY, OR HARASSMENT BASED ON
39 THEIR PROTECTED STATUS;

40 (b) WHEN EMPLOYEES HAVE A SAFE WORKPLACE THAT IS FREE
41 FROM HARASSMENT AND DISCRIMINATION, THOSE EMPLOYEES ARE MORE
42 PRODUCTIVE AND ARE MORE INCLINED TO REMAIN IN THEIR JOBS, AND
43 EMPLOYERS BENEFIT FROM INCREASED EMPLOYEE PRODUCTIVITY AND
44 RETENTION;

45 (c) WHILE MANY EMPLOYERS HAVE MADE GREAT STRIDES IN

1 IMPROVING WORKPLACE ENVIRONMENTS BY MAKING THEM FREE FROM
2 HARASSMENT AND DISCRIMINATION SINCE THE FIRST ITERATION OF THIS
3 PART 4 WAS ENACTED IN 1951, MANY EMPLOYEES IN THIS STATE STILL
4 EXPERIENCE HARASSMENT AND DISCRIMINATION IN THE WORKPLACE,
5 RESULTING IN MENTAL, PHYSICAL, AND ECONOMIC HARM;

6 (d) WITH REGARD TO SEXUAL HARASSMENT IN THE WORKPLACE,
7 RECENT STUDIES AND REPORTS, INCLUDING THE 2018 HISCOX WORKPLACE
8 HARASSMENT STUDY AND A 2020 ISSUE BRIEF FROM THE CENTER FOR
9 WOMEN AND WORK IN THE RUTGERS SCHOOL OF MANAGEMENT AND
10 LABOR RELATIONS ENTITLED "ECONOMIC IMPACTS OF SEXUAL
11 HARASSMENT: COMBATING SEXUAL HARASSMENT CAN FURTHER GENDER
12 EQUALITY", HAVE SHOWN THAT:

13 (I) BASED ON DATA FROM A STUDY ON HARASSMENT IN THE
14 WORKPLACE CONDUCTED BY A SPECIAL TASK FORCE OF THE UNITED
15 STATES EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, UP TO
16 EIGHTY-FIVE PERCENT OF ALL WOMEN HAVE EXPERIENCED SOME FORM OF
17 SEXUAL HARASSMENT WHILE AT WORK, AND, IN ABOUT TWELVE PERCENT
18 OF CASES, THE HARASSMENT OCCURRED ON A DAILY OR WEEKLY BASIS;

19 (II) UP TO THIRTY-ONE PERCENT OF PEOPLE SAY THAT NO ACTION
20 WAS TAKEN ON THEIR CLAIM OF SEXUAL HARASSMENT, EVEN THOUGH
21 INCIDENTS OCCURRED FREQUENTLY; AND

22 (III) FIFTY-THREE PERCENT OF EMPLOYEES WHO EXPERIENCED
23 SEXUAL HARASSMENT WERE TOO AFRAID TO REPORT THE UNWELCOME
24 BEHAVIOR;

25 (e) IT IS CRITICAL THAT EMPLOYERS ENGAGE IN PREVENTIVE AND
26 CORRECTIVE ACTIONS TO ELIMINATE WORKPLACE DISCRIMINATION AND
27 HARASSMENT AND ENSURE A SAFE WORKPLACE ENVIRONMENT FOR ALL
28 THEIR EMPLOYEES; AND

29 (f) COURTS SHOULD APPLY THE LAW CONSISTENTLY TO ALL
30 WORKPLACES.

31 (2) ADDITIONALLY, THE GENERAL ASSEMBLY:

32 (a) FINDS THAT THE "SEVERE OR PERVERSIVE" STANDARD CREATED
33 BY COURTS TO DETERMINE IF HARASSMENT AT WORK IS A DISCRIMINATORY
34 OR UNFAIR EMPLOYMENT PRACTICE DOES NOT TAKE INTO ACCOUNT THE
35 REALITIES OF THE WORKPLACE OR THE HARM THAT WORKPLACE
36 HARASSMENT CAUSES; AND

37 (b) REJECTS THE "SEVERE OR PERVERSIVE" STANDARD FOR PROOF
38 OF WORKPLACE HARASSMENT IN FAVOR OF A STANDARD THAT PROHIBITS
39 UNWELCOME HARASSMENT.

40 (3) THE GENERAL ASSEMBLY FURTHER FINDS AND DECLARES THAT:

41 (a) IT IS THE PUBLIC POLICY OF THE STATE TO ENCOURAGE:

42 (I) EMPLOYERS TO ADOPT EQUAL EMPLOYMENT OPPORTUNITY
43 POLICIES TO PREVENT AND DISINCENTIVIZE ILLEGAL DISCRIMINATION AND
44 HARASSMENT; AND

45 (II) THE FREE REPORTING, DISCUSSION, AND EXPOSURE OF

1 DISCRIMINATORY OR UNFAIR EMPLOYMENT PRACTICES IN ORDER TO
2 BETTER PROTECT EMPLOYEES AND DISCOURAGE DISCRIMINATORY OR
3 UNFAIR EMPLOYMENT PRACTICES; AND

4 (b) ATTEMPTS TO INTERFERE WITH EMPLOYEES' ABILITY TO
5 COMMUNICATE ABOUT AND REPORT ALLEGED DISCRIMINATORY OR UNFAIR
6 EMPLOYMENT PRACTICES ARE CONTRARY TO THE PUBLIC POLICY OF THE
7 STATE.

8 **SECTION 7.** In Colorado Revised Statutes, 24-34-401, **amend**
9 (2); and **add** (1.3), (1.5), (1.7), (4.5), and (6.3) as follows:

10 **24-34-401. Definitions.** As used in this part 4, unless otherwise
11 defined in section 24-34-301 or unless the context otherwise requires:

12 (1.3) "CAREGIVER" MEANS AN INDIVIDUAL WHO PROVIDES DIRECT
13 AND ONGOING CARE TO A MINOR CHILD OR CARE RECIPIENT.

14 (1.5) "CARE RECIPIENT" MEANS AN INDIVIDUAL WHO:

15 (a) (I) HAS A MENTAL OR PHYSICAL ILLNESS, INJURY, OR HEALTH
16 CONDITION;

17 (II) NEEDS TO OBTAIN A MEDICAL DIAGNOSIS, CARE, OR
18 TREATMENT FOR A MENTAL OR PHYSICAL ILLNESS, INJURY, OR HEALTH
19 CONDITION; OR

20 (III) NEEDS TO OBTAIN PREVENTIVE MEDICAL CARE;

21 (b) IS A FAMILY MEMBER, AS DEFINED IN SECTION 8-13.3-503 (11),
22 OF THE CAREGIVER OR RESIDES IN THE CAREGIVER'S HOUSEHOLD; AND

23 (c) RELIES ON THE CAREGIVER FOR MEDICAL CARE OR TO MEET THE
24 NEEDS OF DAILY LIVING.

25 (1.7) "CHILD" MEANS A BIOLOGICAL, ADOPTED, OR FOSTER CHILD;
26 A STEPCHILD; A LEGAL WARD; A CHILD OF A DOMESTIC PARTNER; OR A
27 CHILD TO WHOM THE CAREGIVER STANDS IN LOCO PARENTIS.

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

30 (b) (I) FOR PURPOSES OF THIS PART 4 ONLY, AN INDIVIDUAL WHO
31 PERFORMS SERVICES FOR PAY FOR ANOTHER IS DEEMED AN EMPLOYEE,
32 IRRESPECTIVE OF WHETHER THE COMMON-LAW RELATIONSHIP OF MASTER
33 AND SERVANT EXISTS, UNLESS IT IS PROVED BY A PREPONDERANCE OF THE
34 EVIDENCE THAT THE INDIVIDUAL IS:

35 (A) FREE FROM CONTROL AND DIRECTION IN THE PERFORMANCE OF
36 THE SERVICE, BOTH UNDER THE CONTRACT FOR PERFORMANCE OF THE
37 SERVICE AND IN FACT; AND

38 (B) CUSTOMARILY ENGAGED IN AN INDEPENDENT TRADE,
39 OCCUPATION, PROFESSION, OR BUSINESS RELATED TO THE SERVICE
40 PERFORMED.

41 (II) FOR PURPOSES OF THIS PART 4 ONLY, TO PROVE THAT AN
42 INDIVIDUAL IS NOT AN EMPLOYEE AND IS ENGAGED IN AN INDEPENDENT
43 TRADE, OCCUPATION, PROFESSION, OR BUSINESS AND IS FREE FROM
44 CONTROL AND DIRECTION IN THE PERFORMANCE OF THE SERVICE, THE
45 PERSON FOR WHOM THE SERVICES ARE PERFORMED MUST SHOW BY A

1 PREPONDERANCE OF THE EVIDENCE THAT:

2 (A) THE CONDITIONS SPECIFIED IN SECTION 8-70-115 (1)(c) AND
3 (1)(d) HAVE BEEN SATISFIED; AND

4 (B) THE INDIVIDUAL PERFORMING THE SERVICES AND THE PERSON
5 FOR WHOM THE SERVICES ARE PERFORMED EXECUTED A SIGNED, WRITTEN
6 AGREEMENT UNDER WHICH THE PERSON FOR WHOM THE SERVICES ARE
7 PERFORMED UNAMBIGUOUSLY AGREES THAT, DURING THE PERFORMANCE
8 OF THE AGREEMENT, THE PERSON FOR WHOM THE SERVICES ARE
9 PERFORMED WILL NOT DISCRIMINATE AGAINST OR HARASS THE INDIVIDUAL
10 BECAUSE OF DISABILITY, RACE, CREED, COLOR, SEX, SEXUAL ORIENTATION,
11 GENDER IDENTITY, GENDER EXPRESSION, MARITAL STATUS, CAREGIVER
12 STATUS, RELIGION, AGE, NATIONAL ORIGIN, OR ANCESTRY.

13 (III) IF THE PERSON FOR WHOM THE SERVICES ARE PERFORMED
14 SATISFIES THE REQUIREMENTS OF SUBSECTION (2)(b)(II) OF THIS SECTION,
15 THE INDIVIDUAL PERFORMING THE SERVICES FOR THE PERSON WILL NOT BE
16 DEEMED AN EMPLOYEE FOR PURPOSES OF THIS PART 4 ONLY. A
17 DETERMINATION PURSUANT TO THIS SUBSECTION (2)(b) THAT AN
18 INDIVIDUAL IS NOT AN EMPLOYEE FOR PURPOSES OF THIS PART 4 DOES NOT
19 AFFECT THE RIGHTS OR LIABILITIES OF THE INDIVIDUAL PERFORMING
20 SERVICES OR THE PERSON FOR WHOM THE SERVICES ARE PERFORMED
21 UNDER THE AGREEMENT OR ANY OTHER LAW.

22 (4.5) (a) "HARASS" OR "HARASSMENT" MEANS TO SUBJECT AN
23 INDIVIDUAL TO UNWELCOME VERBAL, WRITTEN, OR PHYSICAL CONDUCT,
24 WHERE THE FOLLOWING FACTORS ARE MET:

25 (I) THE CONDUCT IS RELATED TO THE INDIVIDUAL'S DISABILITY,
26 RACE, CREED, COLOR, SEX, SEXUAL ORIENTATION, GENDER IDENTITY,
27 GENDER EXPRESSION, MARITAL STATUS, CAREGIVER STATUS, RELIGION,
28 AGE, NATIONAL ORIGIN, OR ANCESTRY; AND

29 (II) (A) SUBMISSION TO THE CONDUCT IS MADE EITHER EXPLICITLY
30 OR IMPLICITLY A TERM OR CONDITION OF THE INDIVIDUAL'S EMPLOYMENT;

31 (B) SUBMISSION TO OR REJECTION OF THE CONDUCT IS USED AS A
32 BASIS FOR EMPLOYMENT DECISIONS AFFECTING THE INDIVIDUAL; OR

33 (C) WHEN TAKEN AS A WHOLE, THE CONDUCT WOULD BE
34 OFFENSIVE TO A REASONABLE PERSON WITH THE SAME OR SIMILAR
35 CHARACTERISTICS AS THE INDIVIDUAL SUBJECTED TO THE CONDUCT AND
36 WAS OFFENSIVE TO THE INDIVIDUAL.

37 (b) WHETHER THE CONDUCT WOULD BE OFFENSIVE TO A
38 REASONABLE PERSON WITH THE SAME OR SIMILAR CHARACTERISTICS AS
39 THE INDIVIDUAL SUBJECTED TO THE CONDUCT MUST BE DETERMINED BY
40 A REVIEW OF THE TOTALITY OF THE CIRCUMSTANCES OF THE CONDUCT,
41 INCLUDING:

42 (I) THE TYPE OF CONDUCT;

43 (II) THE NATURE OF THE CONDUCT; AND

44 (III) THE FREQUENCY OF THE CONDUCT, RECOGNIZING THAT A
45 SINGLE ACT OF HARASSMENT MAY BE OFFENSIVE TO A REASONABLE

1 PERSON IN THE TOTALITY OF THE CIRCUMSTANCES.

2 (c) WHETHER THE CONDUCT WAS OFFENSIVE TO THE INDIVIDUAL
3 MUST BE DETERMINED BY A REVIEW OF THE TOTALITY OF THE
4 CIRCUMSTANCES OF THE CONDUCT, INCLUDING:

5 (I) THE IDENTITY OF THE INDIVIDUAL ENGAGING IN THE CONDUCT;
6 AND

7 (II) WHETHER THE INDIVIDUAL WHO WAS SUBJECTED TO THE
8 CONDUCT FELT EXPLICIT OR IMPLICIT PRESSURE TO CONDONE, ENCOURAGE,
9 OR PARTICIPATE IN THE CONDUCT.

10 (6.3) "MINOR CHILD" MEANS A CHILD WHO IS UNDER EIGHTEEN
11 YEARS OF AGE.

12 **SECTION 8.** In Colorado Revised Statutes, 24-34-402, **amend**
13 (1) introductory portion, (1)(a), (1)(b), (1)(c), (1)(d), and (1)(f); and **add**
14 (1)(j) and (1.5) as follows:

15 **24-34-402. Discriminatory or unfair employment practices.**

16 (1) It ~~shall be~~ is a discriminatory or unfair employment practice:

17 (a) (I) For an employer to refuse to hire, to discharge, to promote
18 or demote, to harass during the course of employment, or to discriminate
19 in matters of compensation, terms, conditions, or privileges of
20 employment against any ~~person~~ INDIVIDUAL otherwise qualified because
21 of disability, race, creed, color, sex, sexual orientation, MARITAL STATUS,
22 CAREGIVER STATUS, religion, age, national origin, or ancestry; but, with
23 regard to a disability, it is not a discriminatory or an unfair employment
24 practice for an employer to act as provided in this ~~paragraph~~ (a)
25 SUBSECTION (1)(a) if there is no reasonable accommodation that the
26 employer can make with regard to the disability, the disability actually
27 disqualifies the ~~person~~ INDIVIDUAL from the job, and the disability has a
28 significant impact on the job. ~~For purposes of this paragraph (a), "harass"~~
29 ~~means to create a hostile work environment based upon an individual's~~
30 ~~race, national origin, sex, sexual orientation, disability, age, or religion.~~
31 ~~Notwithstanding the provisions of this paragraph (a), harassment is not~~
32 ~~an illegal act unless a complaint is filed with the appropriate authority at~~
33 ~~the complainant's workplace and such authority fails to initiate a~~
34 ~~reasonable investigation of a complaint and take prompt remedial action~~
35 ~~if appropriate.~~

36 (II) FOR A HARASSMENT CLAIM UNDER THIS SUBSECTION (1)(a):

37 (A) THE LEGAL STANDARD FOR HARASSMENT DOES NOT VARY BY
38 TYPE OF WORKPLACE. IT IS IRRELEVANT THAT A PARTICULAR OCCUPATION
39 MAY HAVE BEEN CHARACTERIZED BY A GREATER FREQUENCY OF
40 DISCRIMINATORY COMMENTS OR CONDUCT IN THE PAST.

41 (B) THE CONDUCT DOES NOT NEED TO BE SEVERE OR PervasivE TO
42 CONSTITUTE A DISCRIMINATORY OR UNFAIR EMPLOYMENT PRACTICE
43 UNDER THIS SUBSECTION (1)(a).

44 (C) IT SHALL BE AN AFFIRMATIVE DEFENSE IF AN EMPLOYER
45 DEMONSTRATES THAT WHEN THE EMPLOYER KNEW OR SHOULD HAVE

1 KNOWN OF THE HARASSMENT, THE EMPLOYER TOOK PROMPT,
2 REASONABLE, REMEDIAL ACTION TO END THE HARASSMENT, DETER
3 FUTURE HARASSERS, AND PROTECT EMPLOYEES.

4 (b) For an employment agency to refuse to list and properly
5 classify for employment or to REFUSE TO refer an individual for
6 employment in a known available job for which ~~such~~ THE individual is
7 otherwise qualified because of disability, race, creed, color, sex, sexual
8 orientation, MARITAL STATUS, CAREGIVER STATUS, religion, age, national
9 origin, or ancestry or for an employment agency to comply with a request
10 from an employer for referral of applicants for employment if the request
11 indicates either directly or indirectly that the employer discriminates in
12 employment on account of disability, race, creed, color, sex, sexual
13 orientation, MARITAL STATUS, CAREGIVER STATUS, religion, age, national
14 origin, or ancestry; but, with regard to a disability, it is not a
15 discriminatory or an unfair employment practice for an employment
16 agency to refuse to list and properly classify for employment or to refuse
17 to refer an individual for employment in a known available job for which
18 ~~such~~ THE individual is otherwise qualified if there is no reasonable
19 accommodation that the employer can make with regard to the disability,
20 the disability actually disqualifies the applicant from the job, and the
21 disability has a significant impact on the job;

22 (c) For a labor organization to exclude any individual otherwise
23 qualified from full membership rights in ~~such~~ THE labor organization, or
24 to expel any ~~such~~ individual from membership in ~~such~~ THE labor
25 organization, or to otherwise discriminate against any of its members in
26 the full enjoyment of work opportunity because of disability, race, creed,
27 color, sex, sexual orientation, MARITAL STATUS, CAREGIVER STATUS,
28 religion, age, national origin, or ancestry;

29 (d) For any employer, employment agency, or labor organization
30 to print or circulate or cause to be printed or circulated any statement,
31 advertisement, or publication, or to use any form of CONTRACT OR
32 application for employment, WORK, or membership, or to make any
33 inquiry in connection with A POTENTIAL CONTRACT OR prospective
34 employment, WORK, or membership that expresses, either directly or
35 indirectly, any limitation, specification, or discrimination as to disability,
36 race, creed, color, sex, sexual orientation, MARITAL STATUS, CAREGIVER
37 STATUS, religion, age, national origin, or ancestry or intent to make any
38 such limitation, specification, or discrimination, unless based ~~upon~~ ON a
39 bona fide occupational qualification or required by and given to an
40 agency of government for security reasons;

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

27 (j) FOR AN EMPLOYER TO FAIL TO CONDUCT A REASONABLE
28 INVESTIGATION OF AN EMPLOYEE'S COMPLAINT OF HARASSMENT,
29 DISCRIMINATION, RETALIATION, OR ANY COMBINATION OF HARASSMENT,
30 DISCRIMINATION, OR RETALIATION OR TO FAIL TO TAKE PROMPT,
31 REASONABLE, REMEDIAL ACTION IN RESPONSE TO A COMPLAINT.

32 (1.5) WHEN AN EMPLOYEE CLAIMS THAT A SUPERVISOR HAS
33 UNLAWFULLY HARASSED THAT EMPLOYEE, THE EMPLOYER CAN AVOID
34 LIABILITY ONLY IF IT ESTABLISHES THAT:

35 (a) THE EMPLOYER HAS ESTABLISHED A PROGRAM THAT IS
36 REASONABLY DESIGNED TO END THE HARASSMENT, DETER FUTURE
37 HARASSERS, AND PROTECT EMPLOYEES FROM HARASSMENT;

38 (b) THE EMPLOYER HAS COMMUNICATED THE EXISTENCE AND
39 DETAILS OF THE PROGRAM SPECIFIED IN SUBSECTION (1.5)(a) OF THIS
40 SECTION TO BOTH ITS SUPERVISORY AND NONSUPERVISORY EMPLOYEES;

41 (c) NO EMPLOYEE HAS SUBMITTED A CHARGE OF RETALIATION FOR
42 A COMPLAINT OF ALLEGED UNLAWFUL HARASSMENT WITH THE DIVISION
43 OR THE UNITED STATES EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
44 WITHIN THE PRIOR SIX YEARS; AND

45 (d) THE EMPLOYEE HAS UNREASONABLY FAILED TO TAKE

1 ADVANTAGE OF THE EMPLOYER'S PROGRAM SPECIFIED IN SUBSECTION
2 (1.5)(a) OF THIS SECTION, AS ESTABLISHED BY THE TOTALITY OF THE
3 CIRCUMSTANCES.

4 **SECTION 9.** In Colorado Revised Statutes, **amend** 24-34-403 as
5 follows:

6 **24-34-403. Time limits on filing of charges.** Any charge alleging
7 a violation of this part 4 ~~shall~~ MUST be filed with the commission
8 pursuant to section 24-34-306 within ~~six months~~ THREE HUNDRED DAYS
9 after the alleged discriminatory or unfair employment practice occurred,
10 and if ~~it~~ is not so filed, it ~~shall be~~ is barred.

11 **SECTION 10.** In Colorado Revised Statutes, 24-34-405, **amend**
12 (3)(a); and **repeal** (3)(g) as follows:

13 **24-34-405. Relief authorized - short title.** (3) (a) In addition to
14 the relief available pursuant to subsection (2) of this section, ~~and except~~
15 ~~as provided in paragraph (g) of this subsection (3),~~ in a civil action
16 brought by a plaintiff under this part 4 against a defendant who is found
17 to have engaged in an intentional discriminatory or unfair employment
18 practice, the plaintiff may recover compensatory and punitive damages as
19 specified in this subsection (3). The court shall not award a plaintiff
20 compensatory or punitive damages when the defendant is found to have
21 engaged in an employment practice that is unlawful solely because of its
22 disparate impact.

23 ~~(g) In a civil action involving a claim of discrimination based on~~
24 ~~age, the plaintiff is entitled only to the relief authorized in subsection (2)~~
25 ~~of this section and in 29 U.S.C. sec. 626 (b) and 29 U.S.C. sec. 216 (b) if~~
26 ~~the court finds that the defendant engaged in a discriminatory or unfair~~
27 ~~employment practice based on age. If, in addition to alleging~~
28 ~~discrimination based on age, the plaintiff alleges discrimination based on~~
29 ~~any other factor specified in section 24-34-402 (1), this paragraph (g)~~
30 ~~does not preclude a plaintiff from recovering the relief authorized by this~~
31 ~~section for that discrimination claim.~~

32 **SECTION 11.** In Colorado Revised Statutes, **add** 24-34-407 and
33 24-34-408 as follows:

34 **24-34-407. Nondisclosure agreements - requirements for**
35 **enforcement - prior charges against an employer - access.** (1) (a) ON
36 AND AFTER THE EFFECTIVE DATE OF THIS SECTION, A PROVISION IN AN
37 AGREEMENT BETWEEN AN EMPLOYER AND AN EMPLOYEE THAT LIMITS THE
38 ABILITY OF AN EMPLOYEE TO DISCLOSE OR DISCUSS, EITHER ORALLY OR IN
39 WRITING, ALLEGED DISCRIMINATORY OR UNFAIR EMPLOYMENT PRACTICES,
40 WHICH PROVISION IS REFERRED TO IN THIS SECTION AS A "NONDISCLOSURE
41 PROVISION", IS VOID UNLESS:

42 (I) THE NONDISCLOSURE PROVISION:
43 (A) WAS FIRST PROPOSED BY THE EMPLOYEE; AND
44 (B) APPLIES EQUALLY TO ALL PARTIES TO THE AGREEMENT;
45 (II) AN ADDENDUM, SIGNED BY ALL PARTIES TO THE AGREEMENT

1 AND ATTESTING TO COMPLIANCE WITH THIS SUBSECTION (1), IS ATTACHED
2 TO THE AGREEMENT;

3 (III) THE NONDISCLOSURE PROVISION DOES NOT RESTRAIN THE
4 EMPLOYEE FROM DISCLOSING THE UNDERLYING FACTS OF THE ALLEGED
5 DISCRIMINATORY OR UNFAIR EMPLOYMENT PRACTICE:

6 (A) TO THE EMPLOYEE'S IMMEDIATE FAMILY, RELIGIOUS ADVISOR,
7 MEDICAL OR MENTAL HEALTH PROVIDER, LEGAL COUNSEL, FINANCIAL
8 ADVISOR, OR TAX PREPARER; OR

9 (B) AS REQUIRED BY LAW; AND

10 (IV) THE AGREEMENT INCLUDES A CONDITION THAT ANY
11 MATERIAL MISREPRESENTATION BY THE EMPLOYER OR THE INDIVIDUAL OR
12 INDIVIDUALS WHO ENGAGED IN THE ALLEGED DISCRIMINATORY OR UNFAIR
13 EMPLOYMENT PRACTICE ABOUT THE COMPLAINING EMPLOYEE VOIDS THE
14 NONDISCLOSURE PROVISION AND ANY ASSOCIATED LIQUIDATED DAMAGES
15 FOR VIOLATIONS OF THE NONDISCLOSURE PROVISION, AS THE
16 NONDISCLOSURE PROVISION APPLIES TO THE EMPLOYEE, BUT THE
17 REMAINDER OF THE AGREEMENT REMAINS ENFORCEABLE.

18 (b) IN ANY CIVIL ACTION INVOLVING A CLAIM OF A
19 DISCRIMINATORY OR UNFAIR EMPLOYMENT PRACTICE, A PLAINTIFF MAY
20 PRESENT EVIDENCE THAT THE EMPLOYER AGAINST WHOM THE ACTION WAS
21 FILED ENTERED INTO ONE OR MORE AGREEMENTS THAT INCLUDED A
22 NONDISCLOSURE PROVISION INVOLVING THE CONDUCT OF THE SAME
23 INDIVIDUAL OR INDIVIDUALS WHO ARE ALLEGED IN THE ACTION TO HAVE
24 ENGAGED IN THE DISCRIMINATORY OR UNFAIR EMPLOYMENT PRACTICE. IF
25 SUCH EVIDENCE IS PRESENTED, THE COURT SHALL ALLOW THE JURY TO
26 CONSIDER THE EVIDENCE IN SUPPORT OF AN AWARD OF PUNITIVE
27 DAMAGES.

28 (2) (a) UPON THE FILING OF A CHARGE OF A DISCRIMINATORY OR
29 UNFAIR EMPLOYMENT PRACTICE PURSUANT TO SECTION 24-34-306(2), THE
30 DIVISION SHALL PROVIDE TO THE CHARGING PARTY ANY OTHER CHARGES
31 FILED WITH THE DIVISION AGAINST THE SAME RESPONDENT, INCLUDING
32 THE RESPONDENT'S POSITION STATEMENT PROVIDED TO THE DIVISION IN
33 RESPONSE TO A PREVIOUS CHARGE.

34 (b) BEFORE PROVIDING PRIOR CHARGES TO A CHARGING PARTY
35 PURSUANT TO THIS SECTION, THE DIVISION SHALL REDACT THE NAME OF
36 THE CHARGING PARTY IN ANY PREVIOUS CHARGE AGAINST THE SAME
37 RESPONDENT.

38 **24-34-408. Employer training requirements - records - notices**
39 **to employees - rules - enforcement.** (1) (a) (I) STARTING ONE YEAR
40 AFTER THE EFFECTIVE DATE OF THIS SECTION, AN EMPLOYER WITH TWENTY
41 OR MORE EMPLOYEES SHALL PROVIDE TRAINING AND EDUCATION TO ALL
42 EMPLOYEES REGARDING HARASSMENT AND DISCRIMINATION PREVENTION,
43 BYSTANDER INTERVENTION, AND CIVILITY IN THE WORKPLACE.

44 (II) THE EMPLOYER SHALL PROVIDE THE TRAINING AND EDUCATION
45 TO:

(A) NEW EMPLOYEES WITHIN ONE HUNDRED EIGHTY DAYS AFTER HIRE; AND

(B) TO ALL EMPLOYEES AT LEAST ANNUALLY.

(b) THE EMPLOYER SHALL INCLUDE AS PART OF THE TRAINING AND EDUCATION REQUIRED BY THIS SECTION THE NAMES OF AT LEAST TWO INDIVIDUALS OR POSITIONS WITHIN THE ORGANIZATION TO WHOM HARASSING OR DISCRIMINATORY CONDUCT SHOULD BE REPORTED.

(c) AN EMPLOYER MAY USE THE PROGRAMS DEVELOPED BY THE COMMISSION OR ANY OTHER TRAINING AND EDUCATION PROGRAMS THAT ADDRESS HARASSMENT AND DISCRIMINATION PREVENTION, BYSTANDER INTERVENTION, AND CIVILITY IN THE WORKPLACE.

(d) AN EMPLOYER SHALL MAINTAIN RECORDS, IN A FORM AND MANNER DETERMINED BY THE COMMISSION BY RULE, DEMONSTRATING COMPLIANCE WITH THIS SECTION. AN EMPLOYER SHALL MAINTAIN THE RECORDS FOR AT LEAST THREE YEARS AND SHALL MAKE THE RECORDS AVAILABLE TO THE DIVISION UPON REQUEST.

(e) EMPLOYERS WITH FEWER THAN TWENTY EMPLOYEES ARE ENCOURAGED TO PROVIDE THE TRAINING AND EDUCATION SPECIFIED IN THIS SUBSECTION (1) TO THEIR EMPLOYEES.

(2) (a) ALL EMPLOYERS SHALL INFORM EMPLOYEES, AT THE TIME OF HIRE, AND INCLUDE AS PART OF ANY EMPLOYEE HANDBOOK, MANUAL, OR OTHER MATERIALS OUTLINING THE TERMS AND CONDITIONS OF THE EMPLOYMENT RELATIONSHIP, THE FOLLOWING:

(I) THAT EMPLOYEES SHOULD EXPECT A WORKPLACE THAT IS FREE FROM HARASSMENT AND DISCRIMINATION:

(II) THE NAME AND CONTACT INFORMATION FOR THE INDIVIDUALS OR POSITIONS WITHIN THE ORGANIZATION TO WHOM AN EMPLOYEE IS TO REPORT ANY HARASSING OR DISCRIMINATORY CONDUCT; AND

(III) THE CONTACT INFORMATION FOR THE DIVISION FOR PURPOSES OF FILING A CHARGE IF THE EMPLOYEE IS NOT COMFORTABLE REPORTING TO THE ORGANIZATION'S DESIGNATED INDIVIDUAL.

(b) EMPLOYERS SHALL INCLUDE THE INFORMATION SPECIFIED IN SUBSECTION (2)(a) OF THIS SECTION ON A WRITTEN NOTICE POSTED IN A CONSPICUOUS PLACE IN THE EMPLOYER'S PLACE OF BUSINESS IN AN AREA ACCESSIBLE TO EMPLOYEES.

(3) UPON FINDING THAT AN EMPLOYER HAS FAILED TO COMPLY WITH THE REQUIREMENTS OF THIS SECTION, THE DIRECTOR MAY ORDER THE EMPLOYER TO PAY A FINE OF NO LESS THAN FIVE HUNDRED DOLLARS AND NO MORE THAN TEN THOUSAND DOLLARS PER VIOLATION.

(4) IN ANY CIVIL ACTION INVOLVING A CLAIM OF A DISCRIMINATORY OR UNFAIR EMPLOYMENT PRACTICE, A PLAINTIFF MAY PRESENT EVIDENCE THAT THE EMPLOYER AGAINST WHOM THE ACTION WAS FILED FAILED TO COMPLY WITH THE TRAINING REQUIREMENTS SPECIFIED IN SUBSECTION (1) OF THIS SECTION. IF SUCH EVIDENCE IS PRESENTED, THE COURT SHALL ALLOW THE JURY TO CONSIDER THE EVIDENCE IN SUPPORT

1 OF AN AWARD OF PUNITIVE DAMAGES.

2 **SECTION 12.** In Colorado Revised Statutes, 24-34-104, **repeal**
3 (28)(a)(II) as follows:

4 **24-34-104. General assembly review of regulatory agencies**
5 **and functions for repeal, continuation, or reestablishment - legislative**
6 **declaration - repeal.** (28)(a) The following agencies, functions, or both,
7 are scheduled for repeal on September 1, 2027:

8 (II) ~~The Colorado civil rights division, including the Colorado~~
9 ~~civil rights commission, created in part 3 of this article 34;~~

10 **SECTION 13. Act subject to petition - effective date -**
11 **applicability.** (1) This act takes effect at 12:01 a.m. on the day following
12 the expiration of the ninety-day period after final adjournment of the
13 general assembly; except that, if a referendum petition is filed pursuant
14 to section 1 (3) of article V of the state constitution against this act or an
15 item, section, or part of this act within such period, then the act, item,
16 section, or part will not take effect unless approved by the people at the
17 general election to be held in November 2022 and, in such case, will take
18 effect on the date of the official declaration of the vote thereon by the
19 governor.

20 (2) This act applies to employment practices occurring on or after
21 the applicable effective date of this act.".

*** * * * *