

SENATE COMMITTEE OF REFERENCE REPORT

_____ May 6, 2021
Chair of Committee Date

Committee on Judiciary.

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

SB21-176 be amended as follows, and as so amended, be referred to the Committee on Appropriations with favorable recommendation:

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22 (2) This part 3 is repealed, effective September 1, 2027.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

1 ~~review in accordance with section 24-34-104.~~

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

5 **24-34-306. Charge - complaint - hearing - procedure -**
6 **exhaustion of administrative remedies.** (1) (a) (I) Any person claiming
7 to be aggrieved by a discriminatory or unfair practice as defined by parts
8 4 to 7 of this ~~article~~ ARTICLE 34 may, by himself or herself or through ~~his~~
9 ~~or her~~ THE PERSON'S attorney-at-law, make, sign, and file with the division
10 a verified written charge stating the name and address of the respondent
11 alleged to have committed the discriminatory or unfair practice, setting
12 forth the particulars of the alleged discriminatory or unfair practice, and
13 containing any other information required by the division.

14 (II) THE DIVISION SHALL INCLUDE ON ANY CHARGE FORM OR
15 CHARGE INTAKE MECHANISM AN OPTION TO SELECT "HARASSMENT" AS A
16 BASIS OR DESCRIPTION OF THE TYPE OF DISCRIMINATORY OR UNFAIR
17 EMPLOYMENT PRACTICE THAT IS THE SUBJECT OF THE CHARGE.

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

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

27 (B) That, if the charging party wishes to file a civil action in a
28 ~~district~~ court OF COMPETENT JURISDICTION IN A DISTRICT in this state OR,
29 IF APPLICABLE IN CASES ALLEGING A VIOLATION OF PART 4 OF THIS
30 ARTICLE 34, IN A COURT OF COMPETENT JURISDICTION IN A COUNTY IN THIS
31 STATE based on the alleged discriminatory or unfair practice that was the
32 subject of the charge filed with the commission, ~~he or she must do so~~ THE
33 CHARGING PARTY MUST FILE THE ACTION: Within ninety days after the
34 date the notice specified in this ~~subparagraph (I)~~ SUBSECTION (2)(b)(I) is
35 mailed if ~~he or she~~ THE CHARGING PARTY does not file an appeal with the
36 commission pursuant to ~~sub-subparagraph (A) of this subparagraph (I)~~
37 SUBSECTION (2)(b)(I)(A) OF THIS SECTION; or within ninety days after the
38 date the notice that the commission has dismissed the appeal specified in
39 ~~sub-subparagraph (A) of this subparagraph (I)~~ SUBSECTION (2)(b)(I)(A)
40 OF THIS SECTION is mailed;

41 (C) That, if the charging party does not file an action within the



1 time limits specified in ~~sub-subparagraph (B) of this subparagraph (F)~~
2 SUBSECTION (2)(b)(I)(B) OF THIS SECTION, the action will be barred, and
3 no ~~district court shall have~~ HAS jurisdiction to hear the action.

4 (11) If written notice that a formal hearing will be held is not
5 served within two hundred seventy days after the filing of the charge, if
6 the complainant has requested and received a notice of right to sue
7 pursuant to subsection (15) of this section, or if the hearing is not
8 commenced within the one-hundred-twenty-day period prescribed by
9 subsection (4) of this section, the jurisdiction of the commission over the
10 complaint ~~shall cease~~ CEASES, and the complainant may seek the relief
11 authorized under this part 3 and parts 4 to 7 of this ~~article~~ ARTICLE 34
12 against the respondent by filing a civil action in ~~the district court for the~~
13 A COURT OF COMPETENT JURISDICTION IN THE district OR, IF APPLICABLE
14 IN COMPLAINTS ALLEGING A VIOLATION OF PART 4 OF THIS ARTICLE 34, IN
15 THE COUNTY in which the alleged discriminatory or unfair practice
16 occurred. ~~Such~~ THE action must be filed within ninety days ~~of~~ AFTER the
17 date upon which the jurisdiction of the commission ceased, and if not so
18 filed, it ~~shall be~~ IS barred and the ~~district court shall have~~ HAS no
19 jurisdiction to hear ~~such~~ THE action. If any party requests the extension of
20 any time period prescribed by this subsection (11), ~~such~~ THE extension
21 may be granted for good cause by the commission, a commissioner, or the
22 administrative law judge, as the case may be, but the total period of all
23 such extensions to either the respondent or the complainant ~~shall~~ MUST
24 not exceed ninety days each, and, in the case of multiple parties, the total
25 period of all extensions ~~shall~~ MUST not exceed one hundred eighty days.

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

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

41 **24-34-310. Training and education programs for employers -**

1 **commission to develop.** IN ADDITION TO ANY EDUCATION AND OUTREACH
2 DUTIES SPECIFIED IN SECTION 24-34-305, THE COMMISSION SHALL
3 DEVELOP SAMPLE TRAINING AND EDUCATION PROGRAMS REGARDING THE
4 PREVENTION OF HARASSMENT AND DISCRIMINATION IN THE WORKPLACE,
5 BYSTANDER INTERVENTION, AND WORKPLACE CIVILITY. WITHIN SIX
6 MONTHS AFTER THE EFFECTIVE DATE OF THIS SECTION, THE COMMISSION
7 SHALL DEVELOP THE TRAINING AND EDUCATION PROGRAMS AND MAKE
8 THE PROGRAMS AVAILABLE TO EMPLOYERS, AT NO COST, ON THE
9 DIVISION'S WEBSITE AND IN OTHER MANNERS THAT ENABLE EMPLOYERS TO
10 ACCESS THE PROGRAMS.

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

13 **24-34-400.2. Legislative declaration.** (1) THE GENERAL
14 ASSEMBLY FINDS THAT:

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

19 (b) WHEN EMPLOYEES HAVE A SAFE WORKPLACE THAT IS FREE
20 FROM HARASSMENT AND DISCRIMINATION, THOSE EMPLOYEES ARE MORE
21 PRODUCTIVE AND ARE MORE INCLINED TO REMAIN IN THEIR JOBS, AND
22 EMPLOYERS BENEFIT FROM INCREASED EMPLOYEE PRODUCTIVITY AND
23 RETENTION;

24 (c) WHILE MANY EMPLOYERS HAVE MADE GREAT STRIDES IN
25 IMPROVING WORKPLACE ENVIRONMENTS BY MAKING THEM FREE FROM
26 HARASSMENT AND DISCRIMINATION SINCE THE FIRST ITERATION OF THIS
27 PART 4 WAS ENACTED IN 1951, MANY EMPLOYEES IN THIS STATE STILL
28 EXPERIENCE HARASSMENT AND DISCRIMINATION IN THE WORKPLACE,
29 RESULTING IN MENTAL, PHYSICAL, AND ECONOMIC HARM;

30 (d) WITH REGARD TO SEXUAL HARASSMENT IN THE WORKPLACE,
31 RECENT STUDIES AND REPORTS, INCLUDING THE 2018 HISCOX WORKPLACE
32 HARASSMENT STUDY AND A 2020 ISSUE BRIEF FROM THE CENTER FOR
33 WOMEN AND WORK IN THE RUTGERS SCHOOL OF MANAGEMENT AND
34 LABOR RELATIONS ENTITLED "ECONOMIC IMPACTS OF SEXUAL
35 HARASSMENT: COMBATING SEXUAL HARASSMENT CAN FURTHER GENDER
36 EQUALITY", HAVE SHOWN THAT:

37 (I) BASED ON DATA FROM A STUDY ON HARASSMENT IN THE
38 WORKPLACE CONDUCTED BY A SPECIAL TASK FORCE OF THE UNITED
39 STATES EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, UP TO
40 EIGHTY-FIVE PERCENT OF ALL WOMEN HAVE EXPERIENCED SOME FORM OF
41 SEXUAL HARASSMENT WHILE AT WORK, AND, IN ABOUT TWELVE PERCENT

1 OF CASES, THE HARASSMENT OCCURRED ON A DAILY OR WEEKLY BASIS;
2 (II) UP TO THIRTY-ONE PERCENT OF PEOPLE SAY THAT NO ACTION
3 WAS TAKEN ON THEIR CLAIM OF SEXUAL HARASSMENT, EVEN THOUGH
4 INCIDENTS OCCURRED FREQUENTLY; AND
5 (III) FIFTY-THREE PERCENT OF EMPLOYEES WHO EXPERIENCED
6 SEXUAL HARASSMENT WERE TOO AFRAID TO REPORT THE UNWELCOME
7 BEHAVIOR;
8 (e) IT IS CRITICAL THAT EMPLOYERS ENGAGE IN PREVENTIVE AND
9 CORRECTIVE ACTIONS TO ELIMINATE WORKPLACE DISCRIMINATION AND
10 HARASSMENT AND ENSURE A SAFE WORKPLACE ENVIRONMENT FOR ALL
11 THEIR EMPLOYEES; AND
12 (f) COURTS SHOULD APPLY THE LAW CONSISTENTLY TO ALL
13 WORKPLACES.
14 (2) ADDITIONALLY, THE GENERAL ASSEMBLY:
15 (a) FINDS THAT THE "SEVERE OR PERVASIVE" STANDARD CREATED
16 BY COURTS TO DETERMINE IF HARASSMENT AT WORK IS A DISCRIMINATORY
17 OR UNFAIR EMPLOYMENT PRACTICE DOES NOT TAKE INTO ACCOUNT THE
18 REALITIES OF THE WORKPLACE OR THE HARM THAT WORKPLACE
19 HARASSMENT CAUSES; AND
20 (b) REJECTS THE "SEVERE OR PERVASIVE" STANDARD FOR PROOF
21 OF WORKPLACE HARASSMENT IN FAVOR OF A STANDARD THAT PROHIBITS
22 UNWELCOME HARASSMENT.
23 (3) THE GENERAL ASSEMBLY FURTHER FINDS AND DECLARES THAT:
24 (a) IT IS THE PUBLIC POLICY OF THE STATE TO ENCOURAGE:
25 (I) EMPLOYERS TO ADOPT EQUAL EMPLOYMENT OPPORTUNITY
26 POLICIES TO PREVENT AND DISINCENTIVIZE ILLEGAL DISCRIMINATION AND
27 HARASSMENT; AND
28 (II) THE FREE REPORTING, DISCUSSION, AND EXPOSURE OF
29 DISCRIMINATORY OR UNFAIR EMPLOYMENT PRACTICES IN ORDER TO
30 BETTER PROTECT EMPLOYEES AND DISCOURAGE DISCRIMINATORY OR
31 UNFAIR EMPLOYMENT PRACTICES; AND
32 (b) ATTEMPTS TO INTERFERE WITH EMPLOYEES' ABILITY TO
33 COMMUNICATE ABOUT AND REPORT ALLEGED DISCRIMINATORY OR UNFAIR
34 EMPLOYMENT PRACTICES ARE CONTRARY TO THE PUBLIC POLICY OF THE
35 STATE.
36 **SECTION 7.** In Colorado Revised Statutes, 24-34-401, **amend**
37 **(2); and add (1.3), (1.5), (1.7), (4.5), and (6.3) as follows:**
38 **24-34-401. Definitions.** As used in this part 4, unless otherwise
39 defined in section 24-34-301 or unless the context otherwise requires:
40 (1.3) "CAREGIVER" MEANS AN INDIVIDUAL WHO PROVIDES DIRECT
41 AND ONGOING CARE TO A MINOR CHILD OR CARE RECIPIENT.



1 (1.5) "CARE RECIPIENT" MEANS AN INDIVIDUAL WHO:
2 (a) (I) HAS A MENTAL OR PHYSICAL ILLNESS, INJURY, OR HEALTH
3 CONDITION;
4 (II) NEEDS TO OBTAIN A MEDICAL DIAGNOSIS, CARE, OR
5 TREATMENT FOR A MENTAL OR PHYSICAL ILLNESS, INJURY, OR HEALTH
6 CONDITION; OR
7 (III) NEEDS TO OBTAIN PREVENTIVE MEDICAL CARE;
8 (b) IS A FAMILY MEMBER, AS DEFINED IN SECTION 8-13.3-503 (11),
9 OF THE CAREGIVER OR RESIDES IN THE CAREGIVER'S HOUSEHOLD; AND
10 (c) RELIES ON THE CAREGIVER FOR MEDICAL CARE OR TO MEET THE
11 NEEDS OF DAILY LIVING.
12 (1.7) "CHILD" MEANS A BIOLOGICAL, ADOPTED, OR FOSTER CHILD;
13 A STEPCHILD; A LEGAL WARD; A CHILD OF A DOMESTIC PARTNER; OR A
14 CHILD TO WHOM THE CAREGIVER STANDS IN LOCO PARENTIS.
15 (2) (a) "Employee" means any ~~person~~ INDIVIDUAL employed by an
16 employer. ~~except a person in the domestic service of any person.~~
17 (b) (I) FOR PURPOSES OF THIS PART 4 ONLY, AN INDIVIDUAL WHO
18 PERFORMS SERVICES FOR PAY FOR ANOTHER IS DEEMED AN EMPLOYEE,
19 IRRESPECTIVE OF WHETHER THE COMMON-LAW RELATIONSHIP OF MASTER
20 AND SERVANT EXISTS, UNLESS IT IS PROVED BY A PREPONDERANCE OF THE
21 EVIDENCE THAT THE INDIVIDUAL IS:
22 (A) FREE FROM CONTROL AND DIRECTION IN THE PERFORMANCE OF
23 THE SERVICE, BOTH UNDER THE CONTRACT FOR PERFORMANCE OF THE
24 SERVICE AND IN FACT; AND
25 (B) CUSTOMARILY ENGAGED IN AN INDEPENDENT TRADE,
26 OCCUPATION, PROFESSION, OR BUSINESS RELATED TO THE SERVICE
27 PERFORMED.
28 (II) FOR PURPOSES OF THIS PART 4 ONLY, TO PROVE THAT AN
29 INDIVIDUAL IS NOT AN EMPLOYEE AND IS ENGAGED IN AN INDEPENDENT
30 TRADE, OCCUPATION, PROFESSION, OR BUSINESS AND IS FREE FROM
31 CONTROL AND DIRECTION IN THE PERFORMANCE OF THE SERVICE, THE
32 PERSON FOR WHOM THE SERVICES ARE PERFORMED MUST SHOW BY A
33 PREPONDERANCE OF THE EVIDENCE THAT:
34 (A) THE CONDITIONS SPECIFIED IN SECTION 8-70-115 (1)(c) AND
35 (1)(d) HAVE BEEN SATISFIED; AND
36 (B) THE INDIVIDUAL PERFORMING THE SERVICES AND THE PERSON
37 FOR WHOM THE SERVICES ARE PERFORMED EXECUTED A SIGNED, WRITTEN
38 AGREEMENT UNDER WHICH THE PERSON FOR WHOM THE SERVICES ARE
39 PERFORMED UNAMBIGUOUSLY AGREES THAT, DURING THE PERFORMANCE
40 OF THE AGREEMENT, THE PERSON FOR WHOM THE SERVICES ARE
41 PERFORMED WILL NOT DISCRIMINATE AGAINST OR HARASS THE INDIVIDUAL



1 BECAUSE OF DISABILITY, RACE, CREED, COLOR, SEX, SEXUAL ORIENTATION,
2 GENDER IDENTITY, GENDER EXPRESSION, MARITAL STATUS, CAREGIVER
3 STATUS, RELIGION, AGE, NATIONAL ORIGIN, OR ANCESTRY.

4 (III) IF THE PERSON FOR WHOM THE SERVICES ARE PERFORMED
5 SATISFIES THE REQUIREMENTS OF SUBSECTION (2)(b)(II) OF THIS SECTION,
6 THE INDIVIDUAL PERFORMING THE SERVICES FOR THE PERSON WILL NOT BE
7 DEEMED AN EMPLOYEE FOR PURPOSES OF THIS PART 4 ONLY. A
8 DETERMINATION PURSUANT TO THIS SUBSECTION (2)(b) THAT AN
9 INDIVIDUAL IS NOT AN EMPLOYEE FOR PURPOSES OF THIS PART 4 DOES NOT
10 AFFECT THE RIGHTS OR LIABILITIES OF THE INDIVIDUAL PERFORMING
11 SERVICES OR THE PERSON FOR WHOM THE SERVICES ARE PERFORMED
12 UNDER THE AGREEMENT OR ANY OTHER LAW.

13 (4.5) (a) "HARASS" OR "HARASSMENT" MEANS TO SUBJECT AN
14 INDIVIDUAL TO UNWELCOME VERBAL, WRITTEN, OR PHYSICAL CONDUCT,
15 WHERE THE FOLLOWING FACTORS ARE MET:

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

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

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

24 (C) WHEN TAKEN AS A WHOLE, THE CONDUCT WOULD BE
25 OFFENSIVE TO A REASONABLE PERSON WITH THE SAME OR SIMILAR
26 CHARACTERISTICS AS THE INDIVIDUAL SUBJECTED TO THE CONDUCT AND
27 WAS OFFENSIVE TO THE INDIVIDUAL.

28 (b) WHETHER THE CONDUCT WOULD BE OFFENSIVE TO A
29 REASONABLE PERSON WITH THE SAME OR SIMILAR CHARACTERISTICS AS
30 THE INDIVIDUAL SUBJECTED TO THE CONDUCT MUST BE DETERMINED BY
31 A REVIEW OF THE TOTALITY OF THE CIRCUMSTANCES OF THE CONDUCT,
32 INCLUDING:

33 (I) THE TYPE OF CONDUCT;

34 (II) THE NATURE OF THE CONDUCT; AND

35 (III) THE FREQUENCY OF THE CONDUCT, RECOGNIZING THAT A
36 SINGLE ACT OF HARASSMENT MAY BE OFFENSIVE TO A REASONABLE
37 PERSON IN THE TOTALITY OF THE CIRCUMSTANCES.

38 (c) WHETHER THE CONDUCT WAS OFFENSIVE TO THE INDIVIDUAL
39 MUST BE DETERMINED BY A REVIEW OF THE TOTALITY OF THE
40 CIRCUMSTANCES OF THE CONDUCT, INCLUDING:

41 (I) THE IDENTITY OF THE INDIVIDUAL ENGAGING IN THE CONDUCT;



1 AND

2 (II) WHETHER THE INDIVIDUAL WHO WAS SUBJECTED TO THE
3 CONDUCT FELT EXPLICIT OR IMPLICIT PRESSURE TO CONDONE, ENCOURAGE,
4 OR PARTICIPATE IN THE CONDUCT.

5 (6.3) "MINOR CHILD" MEANS A CHILD WHO IS UNDER EIGHTEEN
6 YEARS OF AGE.

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

10 **24-34-402. Discriminatory or unfair employment practices.**

11 (1) It ~~shall be~~ IS a discriminatory or unfair employment practice:

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

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

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

36 (B) THE CONDUCT DOES NOT NEED TO BE SEVERE OR PERVASIVE TO
37 CONSTITUTE A DISCRIMINATORY OR UNFAIR EMPLOYMENT PRACTICE
38 UNDER THIS SUBSECTION (1)(a).

39 (C) IT SHALL BE AN AFFIRMATIVE DEFENSE IF AN EMPLOYER
40 DEMONSTRATES THAT WHEN THE EMPLOYER KNEW OR SHOULD HAVE
41 KNOWN OF THE HARASSMENT, THE EMPLOYER TOOK PROMPT,



1 REASONABLE, REMEDIAL ACTION TO END THE HARASSMENT, DETER
2 FUTURE HARASSERS, AND PROTECT EMPLOYEES.

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

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

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

40 (f) For any employer, labor organization, joint apprenticeship
41 committee, or vocational school providing, coordinating, or controlling

1 apprenticeship programs or providing, coordinating, or controlling
2 on-the-job training programs or other instruction, training, or retraining
3 programs:

4 (I) To deny to or withhold from any qualified ~~person~~ INDIVIDUAL,
5 because of disability, race, creed, color, sex, sexual orientation, MARITAL
6 STATUS, CAREGIVER STATUS, religion, age, national origin, or ancestry, the
7 right to be admitted to or participate in an apprenticeship training
8 program, an on-the-job training program, or any other occupational
9 instruction, training, or retraining program; but, with regard to a
10 disability, it is not a discriminatory or an unfair employment practice to
11 deny or withhold the right to be admitted to or participate in any such
12 program if there is no reasonable accommodation that can be made with
13 regard to the disability, the disability actually disqualifies the applicant
14 from the program, and the disability has a significant impact on
15 participation in the program;

16 (II) To discriminate against any qualified ~~person~~ INDIVIDUAL in
17 pursuit of such programs or to discriminate against ~~such a person~~ THE
18 INDIVIDUAL in the terms, conditions, or privileges of such programs
19 because of disability, race, creed, color, sex, sexual orientation, MARITAL
20 STATUS, CAREGIVER STATUS, religion, age, national origin, or ancestry; OR

21 (III) To print or circulate or cause to be printed or circulated any
22 statement, advertisement, or publication, or to use any form of application
23 for such programs, or to make any inquiry in connection with such
24 programs that expresses, directly or indirectly, any limitation,
25 specification, or discrimination as to disability, race, creed, color, sex,
26 sexual orientation, MARITAL STATUS, CAREGIVER STATUS, religion, age,
27 national origin, or ancestry or any intent to make any such limitation,
28 specification, or discrimination, unless based on a bona fide occupational
29 qualification;

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

35 (1.5) WHEN AN EMPLOYEE CLAIMS THAT A SUPERVISOR HAS
36 UNLAWFULLY HARASSED THAT EMPLOYEE, THE EMPLOYER CAN AVOID
37 LIABILITY ONLY IF IT ESTABLISHES THAT:

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

41 (b) THE EMPLOYER HAS COMMUNICATED THE EXISTENCE AND



1 DETAILS OF THE PROGRAM SPECIFIED IN SUBSECTION (1.5)(a) OF THIS
2 SECTION TO BOTH ITS SUPERVISORY AND NONSUPERVISORY EMPLOYEES;

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

7 (d) THE EMPLOYEE HAS UNREASONABLY FAILED TO TAKE
8 ADVANTAGE OF THE EMPLOYER'S PROGRAM SPECIFIED IN SUBSECTION
9 (1.5)(a) OF THIS SECTION, AS ESTABLISHED BY THE TOTALITY OF THE
10 CIRCUMSTANCES.

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

13 **24-34-403. Time limits on filing of charges.** Any charge alleging
14 a violation of this part 4 ~~shall~~ MUST be filed with the commission
15 pursuant to section 24-34-306 within ~~six months~~ THREE HUNDRED DAYS
16 after the alleged discriminatory or unfair employment practice occurred,
17 and if IT IS not so filed, it ~~shall be~~ IS barred.

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

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

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

39 **SECTION 11.** In Colorado Revised Statutes, **add** 24-34-407 and
40 24-34-408 as follows:

41 **24-34-407. Nondisclosure agreements - requirements for**



1 **enforcement - prior charges against an employer - access.** (1) (a) ON
2 AND AFTER THE EFFECTIVE DATE OF THIS SECTION, A PROVISION IN AN
3 AGREEMENT BETWEEN AN EMPLOYER AND AN EMPLOYEE THAT LIMITS THE
4 ABILITY OF AN EMPLOYEE TO DISCLOSE OR DISCUSS, EITHER ORALLY OR IN
5 WRITING, ALLEGED DISCRIMINATORY OR UNFAIR EMPLOYMENT PRACTICES,
6 WHICH PROVISION IS REFERRED TO IN THIS SECTION AS A "NONDISCLOSURE
7 PROVISION", IS VOID UNLESS:

- 8 (I) THE NONDISCLOSURE PROVISION:
 - 9 (A) WAS FIRST PROPOSED BY THE EMPLOYEE; AND
 - 10 (B) APPLIES EQUALLY TO ALL PARTIES TO THE AGREEMENT;
- 11 (II) AN ADDENDUM, SIGNED BY ALL PARTIES TO THE AGREEMENT
12 AND ATTESTING TO COMPLIANCE WITH THIS SUBSECTION (1), IS ATTACHED
13 TO THE AGREEMENT;
- 14 (III) THE NONDISCLOSURE PROVISION DOES NOT RESTRAIN THE
15 EMPLOYEE FROM DISCLOSING THE UNDERLYING FACTS OF THE ALLEGED
16 DISCRIMINATORY OR UNFAIR EMPLOYMENT PRACTICE:
 - 17 (A) TO THE EMPLOYEE'S IMMEDIATE FAMILY, RELIGIOUS ADVISOR,
18 MEDICAL OR MENTAL HEALTH PROVIDER, LEGAL COUNSEL, FINANCIAL
19 ADVISOR, OR TAX PREPARER; OR
 - 20 (B) AS REQUIRED BY LAW; AND
- 21 (IV) THE AGREEMENT INCLUDES A CONDITION THAT ANY
22 MATERIAL MISREPRESENTATION BY THE EMPLOYER OR THE INDIVIDUAL OR
23 INDIVIDUALS WHO ENGAGED IN THE ALLEGED DISCRIMINATORY OR UNFAIR
24 EMPLOYMENT PRACTICE ABOUT THE COMPLAINING EMPLOYEE VOIDS THE
25 NONDISCLOSURE PROVISION AND ANY ASSOCIATED LIQUIDATED DAMAGES
26 FOR VIOLATIONS OF THE NONDISCLOSURE PROVISION, AS THE
27 NONDISCLOSURE PROVISION APPLIES TO THE EMPLOYEE, BUT THE
28 REMAINDER OF THE AGREEMENT REMAINS ENFORCEABLE.

29 (b) IN ANY CIVIL ACTION INVOLVING A CLAIM OF A
30 DISCRIMINATORY OR UNFAIR EMPLOYMENT PRACTICE, A PLAINTIFF MAY
31 PRESENT EVIDENCE THAT THE EMPLOYER AGAINST WHOM THE ACTION WAS
32 FILED ENTERED INTO ONE OR MORE AGREEMENTS THAT INCLUDED A
33 NONDISCLOSURE PROVISION INVOLVING THE CONDUCT OF THE SAME
34 INDIVIDUAL OR INDIVIDUALS WHO ARE ALLEGED IN THE ACTION TO HAVE
35 ENGAGED IN THE DISCRIMINATORY OR UNFAIR EMPLOYMENT PRACTICE. IF
36 SUCH EVIDENCE IS PRESENTED, THE COURT SHALL ALLOW THE JURY TO
37 CONSIDER THE EVIDENCE IN SUPPORT OF AN AWARD OF PUNITIVE
38 DAMAGES.

39 (2) (a) UPON THE FILING OF A CHARGE OF A DISCRIMINATORY OR
40 UNFAIR EMPLOYMENT PRACTICE PURSUANT TO SECTION 24-34-306(2), THE
41 DIVISION SHALL PROVIDE TO THE CHARGING PARTY ANY OTHER CHARGES



1 FILED WITH THE DIVISION AGAINST THE SAME RESPONDENT, INCLUDING
2 THE RESPONDENT'S POSITION STATEMENT PROVIDED TO THE DIVISION IN
3 RESPONSE TO A PREVIOUS CHARGE.

4 (b) BEFORE PROVIDING PRIOR CHARGES TO A CHARGING PARTY
5 PURSUANT TO THIS SECTION, THE DIVISION SHALL REDACT THE NAME OF
6 THE CHARGING PARTY IN ANY PREVIOUS CHARGE AGAINST THE SAME
7 RESPONDENT.

8 **24-34-408. Employer training requirements - records - notices**
9 **to employees - rules - enforcement.** (1) (a) (I) STARTING ONE YEAR
10 AFTER THE EFFECTIVE DATE OF THIS SECTION, AN EMPLOYER WITH TWENTY
11 OR MORE EMPLOYEES SHALL PROVIDE TRAINING AND EDUCATION TO ALL
12 EMPLOYEES REGARDING HARASSMENT AND DISCRIMINATION PREVENTION,
13 BYSTANDER INTERVENTION, AND CIVILITY IN THE WORKPLACE.

14 (II) THE EMPLOYER SHALL PROVIDE THE TRAINING AND EDUCATION
15 TO:

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

18 (B) TO ALL EMPLOYEES AT LEAST ANNUALLY.

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

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

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

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

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

39 (I) THAT EMPLOYEES SHOULD EXPECT A WORKPLACE THAT IS FREE
40 FROM HARASSMENT AND DISCRIMINATION;

41 (II) THE NAME AND CONTACT INFORMATION FOR THE INDIVIDUALS



1 OR POSITIONS WITHIN THE ORGANIZATION TO WHOM AN EMPLOYEE IS TO
2 REPORT ANY HARASSING OR DISCRIMINATORY CONDUCT; AND

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

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

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

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

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

23 **24-34-104. General assembly review of regulatory agencies**
24 **and functions for repeal, continuation, or reestablishment - legislative**
25 **declaration - repeal.** (28) (a) The following agencies, functions, or both,
26 are scheduled for repeal on September 1, 2027:

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

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

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

41 ** ** ** **



