

PROPOSED STATUTORY CHANGES RELATED TO SB23-172 AND SB23-286

SECTION 1. In Colorado Revised Statutes, 2-3-511, **amend** (3); and **add** (2.5) and (3.5) as follows:

<{*New subsection (2.5) is created to conform with record-keeping requirements in SB23-172. Changes to subsection (3) and the new subsection (3.5) are to conform with SB23-286*}>

2-3-511. Office of legislative workplace relations - creation - duties - records - definitions. (2.5) IN ACCORDANCE WITH SECTION 24-34-408 (2), THE OFFICE OF LEGISLATIVE WORKPLACE RELATIONS IS THE DESIGNATED REPOSITORY OF ALL WRITTEN OR ORAL COMPLAINTS OF DISCRIMINATORY OR UNFAIR EMPLOYMENT PRACTICES FOR EACH EMPLOYER IN THE LEGISLATIVE DEPARTMENT. THE OFFICE SHALL PRESERVE ANY WRITTEN OR ORAL COMPLAINTS OF DISCRIMINATION OR UNFAIR EMPLOYMENT PRACTICES AS SPECIFIED IN SECTION 24-34-408 (2), AND SUCH RECORDS SHALL BE TREATED AS SPECIFIED IN SECTION 24-34-408 (2) FOR PURPOSES OF THE "COLORADO OPEN RECORDS ACT", PART 2 OF ARTICLE 72 OF TITLE 24.

(3) (a) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (3)(b) OR (3.5) OF THIS SECTION, records created and maintained by the office of legislative workplace relations that are related to a workplace harassment complaint or investigation UNDER THE WORKPLACE HARASSMENT POLICY, a complaint under the workplace expectations policy, or an inquiry or request concerning workplace harassment or conduct, whether or not the COMPLAINT, INVESTIGATION, inquiry, or request leads to a formal or informal complaint or resolution process, are not public records as defined in section 24-72-202 (6) and shall not be made available for public inspection. ~~except that, notwithstanding the provisions of section 24-72-204 (3)(a)(X):~~

~~(a) (b) NOTWITHSTANDING SECTION 24-72-204 (3)(a)(X):~~

(I) The director of the office of legislative workplace relations shall publish and make available to the public an annual statistical report showing the total number of complaints received under the workplace harassment policy and the workplace expectations policy and their resolution. The director shall ensure that the report does not contain information that would disclose the identity of a complainant, respondent, or witness.

~~(b) (I) Except as provided in subsection (3)(b)(II) of this section, if, after an investigation in accordance with the workplace harassment policy, a workplace harassment committee of the senate or house of representatives finds that the facts found more likely than not in the investigation establish a violation of the policy by a member of the general assembly, the director of the office of legislative workplace relations shall make available to the public the executive summary of the report of the investigation and the name of the member. The director shall ensure that the executive summary does not contain information that would disclose the identity of the complainant or any witness.~~

~~(II) The committee may decide by a two-thirds vote to not release the executive summary as required by subsection (3)(b)(I) of this section. The committee shall meet in executive session to determine whether to release the executive summary or any portion thereof and shall take into consideration the severity of the conduct alleged, any patterns of harassing behavior by the member, and the public's interest in being informed of the conduct of elected officials.~~

~~(c) (II) Records of the expenditure of public money on complaints, investigations, or other~~

functions of the office of legislative workplace relations are public records subject to inspection in accordance with part 2 of article 72 of title 24, except to the extent that they contain information that would disclose the details of, or the identity of an individual involved in, a complaint, investigation, or inquiry or request concerning workplace harassment or conduct.

(3.5) (a) RECORDS CREATED AND MAINTAINED BY THE OFFICE OF LEGISLATIVE WORKPLACE RELATIONS THAT ARE RELATED TO A SEXUAL HARASSMENT COMPLAINT OR INVESTIGATION OR AN INQUIRY OR REQUEST CONCERNING SEXUAL HARASSMENT ARE PUBLIC RECORDS AS DEFINED IN SECTION 24-72-202 (6) AND SHALL BE MADE AVAILABLE FOR PUBLIC INSPECTION IN ACCORDANCE WITH SECTION 24-72-204 (9) IF:

(I) THE COMPLAINT, INVESTIGATION, INQUIRY, OR REQUEST IS REGARDING A MEMBER OF THE GENERAL ASSEMBLY;

(II) THE COMPLAINT, INVESTIGATION, INQUIRY, OR REQUEST LEADS TO A FORMAL OR INFORMAL COMPLAINT OR RESOLUTION PROCESS; AND

(III) THE COMPLAINT OR RESOLUTION PROCESS CONCLUDES THAT THE MEMBER OF THE GENERAL ASSEMBLY IS CULPABLE FOR ANY ACT OF SEXUAL HARASSMENT.

(b) (I) REGARDLESS OF WHETHER A REQUEST FOR RECORDS IS MADE PURSUANT TO THE "COLORADO OPEN RECORDS ACT", PART 2 OF ARTICLE 72 OF TITLE 24, AND EXCEPT AS PROVIDED IN SUBSECTION (3.5)(b)(II) OF THIS SECTION, IF, AFTER AN INVESTIGATION IN ACCORDANCE WITH THE WORKPLACE HARASSMENT POLICY, A WORKPLACE HARASSMENT COMMITTEE OF THE SENATE OR HOUSE OF REPRESENTATIVES DETERMINES THAT THE FACTS FOUND IN THE INVESTIGATION ESTABLISH THAT IT IS MORE LIKELY THAN NOT THAT A MEMBER OF THE GENERAL ASSEMBLY VIOLATED THE POLICY, THE DIRECTOR OF THE OFFICE OF LEGISLATIVE WORKPLACE RELATIONS SHALL MAKE AVAILABLE TO THE PUBLIC THE EXECUTIVE SUMMARY OF THE REPORT OF THE INVESTIGATION AND THE NAME OF THE MEMBER. THE DIRECTOR SHALL ENSURE THAT THE EXECUTIVE SUMMARY DOES NOT CONTAIN INFORMATION THAT WOULD DISCLOSE THE IDENTITY OF THE COMPLAINANT OR ANY WITNESS.

(II) A WORKPLACE HARASSMENT COMMITTEE OF THE SENATE OR THE HOUSE OF REPRESENTATIVES MAY DECIDE BY A TWO-THIRDS VOTE NOT TO RELEASE THE EXECUTIVE SUMMARY AS REQUIRED BY SUBSECTION (3.5)(b)(I) OF THIS SECTION. THE COMMITTEE SHALL MEET IN EXECUTIVE SESSION TO DETERMINE WHETHER TO RELEASE THE EXECUTIVE SUMMARY OR ANY PORTION OF THE EXECUTIVE SUMMARY AND SHALL TAKE INTO CONSIDERATION THE SEVERITY OF THE CONDUCT ALLEGED, ANY PATTERNS OF HARASSING BEHAVIOR BY THE MEMBER, AND THE PUBLIC'S INTEREST IN BEING INFORMED OF THE CONDUCT OF ELECTED OFFICIALS. NOTWITHSTANDING THIS SUBSECTION (3.5)(b)(II), IF A REQUEST FOR RECORDS IS MADE PURSUANT TO THE "COLORADO OPEN RECORDS ACT" FOR AN EXECUTIVE SUMMARY OF AN INVESTIGATION OF AN ACT OF SEXUAL HARASSMENT FOR WHICH A MEMBER OF THE GENERAL ASSEMBLY IS FOUND CULPABLE, THE EXECUTIVE SUMMARY IS A PUBLIC RECORD AS DEFINED IN SECTION 24-72-202 (6) AND SHALL BE MADE AVAILABLE FOR INSPECTION IN ACCORDANCE WITH SECTION 24-72-204 (9), EVEN IF THE COMMITTEE VOTED NOT TO RELEASE THE EXECUTIVE SUMMARY.

SECTION 2. In Colorado Revised Statutes, 24-6-402, **amend** (3)(a)(III) as follows:

24-6-402. Meetings - open to public - legislative declaration - definitions. (3) (a) The members of a state public body subject to this part 4, upon the announcement by the state public body to the public of the topic for discussion in the executive session, including specific citation to the provision of this subsection (3) authorizing the body to meet in an executive session and identification of the particular matter to be discussed in as much detail as possible without compromising the purpose for which the executive session is authorized, and the affirmative vote of two-thirds of the entire membership of the body after such announcement, may hold an executive session only at a regular or special meeting and for the sole purpose of considering any of the matters enumerated in subsection (3)(b) of this section or the following matters; except that no adoption of any proposed policy, position, resolution, rule, regulation, or formal action, except the review, approval, and amendment of the minutes of an executive session recorded pursuant to subsection (2)(d.5)(I) of this section, shall occur at any executive session that is not open to the public:

(III) Matters required to be kept confidential:

(A) By federal law or rules;

(B) BY state statutes; ~~or~~

(C) In accordance with the requirements of any joint rule of the senate and house of representatives pertaining to lobbying practices, ~~or~~ THE workplace harassment POLICY, or THE workplace expectations ~~policies~~ POLICY; OR

(D) IN ACCORDANCE WITH THE REQUIREMENTS OF THE WORKPLACE HARASSMENT POLICY;
<{***Conforming amendments related to SB23-286.***}>

SECTION 3. In Colorado Revised Statutes, 24-72-204, **amend** (3)(a)(X)(A), (3)(a)(X.5), and (9) as follows:

<{***Changes to this section are to conform with SB23-286***}>

24-72-204. Allowance or denial of inspection - grounds - procedure - appeal - definitions - repeal. (3) (a) The custodian shall deny the right of inspection of the following records, unless otherwise provided by law; except that the custodian shall make any of the following records, other than letters of reference concerning employment, licensing, or issuance of permits, available to the person in interest in accordance with this subsection (3):

(X) (A) EXCEPT AS OTHERWISE SPECIFIED IN SUBSECTION (9) OF THIS SECTION, any records of sexual harassment complaints and investigations, whether or not such records are maintained as part of a personnel file; except that, an administrative agency investigating the complaint may, upon a showing of necessity to the custodian of records, gain access to information necessary to the investigation of such a complaint. This ~~sub-subparagraph (A) shall~~ SUBSECTION (3)(a)(X)(A) DOES not apply to records of sexual harassment complaints and investigations that are included in court files and records of court proceedings. Disclosure of all or a part of any records of sexual harassment complaints and investigations to the person in interest is permissible to the extent that the disclosure can be made without permitting the identification, as a result of the disclosure, of any individual involved. This ~~sub-subparagraph (A) shall~~ SUBSECTION (3)(a)(X)(A) DOES not preclude disclosure of all or part of the results of an investigation of the general employment policies and procedures of

an agency, office, department, or division, to the extent that the disclosure can be made without permitting the identification, as a result of the disclosure, of any individual involved.

(X.5) EXCEPT AS OTHERWISE SPECIFIED IN SUBSECTION (9) OF THIS SECTION, records created, maintained, or provided to a custodian by the office of legislative workplace relations created in section 2-3-511 that are related to a workplace harassment complaint or investigation, a complaint under the workplace expectations policy, or an inquiry or request concerning workplace harassment or conduct, whether or not the records are part of a formal or informal complaint or resolution process;

(9) ~~Unless any other provision of this part 2 applies to prevent or restrict disclosure, and notwithstanding the provisions of section 2-3-511 and subsections (3)(a)(X) and (3)(a)(X.5) of this section,~~ Records of sexual harassment complaints made against an elected official and the results or report of investigations regarding alleged sexual harassment by an elected official conducted by or for that official's government shall be made available for inspection if the investigation concludes that the elected official is culpable for any act of sexual harassment; except that the identity of any accuser, accused who is not an elected official, victim, or witness and any other information that would identify any such person must be redacted. The records must be redacted, if possible, to permit inspection without revealing any part of the record that would not be subject to disclosure pursuant to any other provision of this part 2. Nothing in this subsection (9) requires the disclosure of any record subject to part 3 of this article 72.

SECTION 4. In Colorado Revised Statutes, 24-34-408, **amend** (2)(b) as follows:
<{*Changes to this new section enacted by SB23-172 are to conform with SB23-286*}>

24-34-408. Employer record keeping - repository of discrimination complaints - definition. (2) (b) Records of complaints in an employer's designated repository maintained in accordance with this subsection (2) are not public records, as defined in section 24-72-202 (6), and, for purposes of an employer that is subject to part 2 of article 72 of this title 24, records in a designated repository are considered personnel records, as defined in section 24-72-202 (4.5), and are not open to public inspection pursuant to section 24-72-204 (3)(a)(II)(A). Additionally, in accordance with section 24-72-204 (3)(a)(X), any record of a sexual harassment complaint or investigation is not open to public inspection except as specified in ~~said section 24-72-204 (3)(a)(X)~~ SECTION 24-72-204 (3)(a)(X) OR (9).