

SENATE COMMITTEE OF REFERENCE AMENDMENT

Committee on Judiciary.

SB23-172 be amended as follows:

- 1 Amend printed bill, page 5, strike lines 3 through 27.
- 2 Page 6, strike lines 1 through 13.
- 3 Renumber succeeding sections accordingly.
- 4 Page 6, line 16, strike "(1)(j)" and substitute "(1)(j), (1.3),".
- 5 Page 7, strike lines 1 and 2 and substitute "unfair employment practice for
- 6 an employer to ~~act as provided in this subsection (1)(a)~~ REFUSE TO HIRE,
- 7 TO DISCHARGE, OR TO PROMOTE OR DEMOTE AN INDIVIDUAL WITH A
- 8 DISABILITY if there is no".
- 9 Page 7, line 4, before "AND" insert "THAT WOULD ALLOW THE INDIVIDUAL
- 10 TO SATISFY THE ESSENTIAL FUNCTIONS OF THE JOB".
- 11 Page 7, strike lines 14 through 21.
- 12 Page 10, before line 22 insert:
 - 13 "(1.3) (a) AS USED IN SUBSECTIONS (1)(a) AND (1.5) OF THIS
 - 14 SECTION AND IN THIS SUBSECTION (1.3), "HARASS" OR "HARASSMENT"
 - 15 MEANS TO ENGAGE IN, OR THE ACT OF ENGAGING IN, ANY UNWELCOME
 - 16 PHYSICAL OR VERBAL CONDUCT OR ANY WRITTEN, PICTORIAL, OR VISUAL
 - 17 COMMUNICATION DIRECTED AT AN INDIVIDUAL OR GROUP OF INDIVIDUALS
 - 18 BECAUSE OF THAT INDIVIDUAL'S OR GROUP'S MEMBERSHIP IN, OR
 - 19 PERCEIVED MEMBERSHIP IN, A PROTECTED CLASS, AS DESCRIBED IN
 - 20 SUBSECTION (1)(a) OF THIS SECTION, WHICH CONDUCT OR
 - 21 COMMUNICATION IS SUBJECTIVELY OFFENSIVE TO THE INDIVIDUAL
 - 22 ALLEGING HARASSMENT AND IS OBJECTIVELY OFFENSIVE TO A
 - 23 REASONABLE INDIVIDUAL WHO IS A MEMBER OF THE SAME PROTECTED
 - 24 CLASS. THE CONDUCT OR COMMUNICATION NEED NOT BE SEVERE OR
 - 25 PERVASIVE TO CONSTITUTE A DISCRIMINATORY OR AN UNFAIR
 - 26 EMPLOYMENT PRACTICE UNDER SUBSECTION (1)(a) OF THIS SECTION AND
 - 27 IS A VIOLATION OF SUBSECTION (1)(a) OF THIS SECTION IF:
 - 28 (I) SUBMISSION TO THE CONDUCT OR COMMUNICATION IS
 - 29 EXPLICITLY OR IMPLICITLY MADE A TERM OR CONDITION OF THE
 - 30 INDIVIDUAL'S EMPLOYMENT;
 - 31 (II) SUBMISSION TO, OBJECTION TO, OR REJECTION OF THE
 - 32 CONDUCT OR COMMUNICATION IS USED AS A BASIS FOR EMPLOYMENT
 - 33 DECISIONS AFFECTING THE INDIVIDUAL; OR

1 (III) THE CONDUCT OR COMMUNICATION HAS THE PURPOSE OR
2 EFFECT OF UNREASONABLY INTERFERING WITH THE INDIVIDUAL'S WORK
3 PERFORMANCE OR CREATING AN INTIMIDATING, HOSTILE, OR OFFENSIVE
4 WORKING ENVIRONMENT.

5 (b) THE NATURE OF THE WORK OR THE FREQUENCY WITH WHICH
6 HARASSMENT IN THE WORKPLACE OCCURRED IN THE PAST IS NOT
7 RELEVANT TO WHETHER THE CONDUCT OR COMMUNICATION IS A
8 DISCRIMINATORY OR AN UNFAIR EMPLOYMENT PRACTICE UNDER
9 SUBSECTION (1)(a) OF THIS SECTION.

10 (c) (I) NOTWITHSTANDING SUBSECTION (1)(a) OF THIS SECTION,
11 PETTY SLIGHTS, MINOR ANNOYANCES, AND LACK OF GOOD MANNERS DO
12 NOT CONSTITUTE HARASSMENT UNLESS THE SLIGHTS, ANNOYANCES, OR
13 LACK OF MANNERS, WHEN TAKEN INDIVIDUALLY OR IN COMBINATION AND
14 UNDER THE TOTALITY OF THE CIRCUMSTANCES, MEET THE STANDARDS SET
15 FORTH IN SUBSECTION (1.3)(a) OF THIS SECTION.

16 (II) FACTORS TO CONSIDER UNDER THE TOTALITY OF THE
17 CIRCUMSTANCES INCLUDE:

18 (A) THE FREQUENCY OF THE CONDUCT OR COMMUNICATION,
19 RECOGNIZING THAT A SINGLE INCIDENT MAY RISE TO THE LEVEL OF
20 HARASSMENT;

21 (B) THE NUMBER OF INDIVIDUALS ENGAGED IN THE CONDUCT OR
22 COMMUNICATION;

23 (C) THE TYPE OR NATURE OF THE CONDUCT OR COMMUNICATION,
24 RECOGNIZING THAT CONDUCT OR COMMUNICATION THAT, AT ONE TIME,
25 WAS OR IS WELCOME BETWEEN TWO OR MORE INDIVIDUALS MAY BECOME
26 UNWELCOME TO ONE OR MORE OF THOSE INDIVIDUALS;

27 (D) THE DURATION OF THE CONDUCT OR COMMUNICATION;

28 (E) THE LOCATION WHERE THE CONDUCT OR COMMUNICATION
29 OCCURRED;

30 (F) WHETHER THE CONDUCT OR COMMUNICATION IS
31 THREATENING;

32 (G) WHETHER ANY POWER DIFFERENTIAL EXISTS BETWEEN THE
33 INDIVIDUAL ALLEGED TO HAVE ENGAGED IN HARASSMENT AND THE
34 INDIVIDUAL ALLEGING THE HARASSMENT;

35 (H) ANY USE OF EPITHETS, SLURS, OR OTHER CONDUCT OR
36 COMMUNICATION THAT IS HUMILIATING OR DEGRADING; AND

37 (I) WHETHER THE CONDUCT OR COMMUNICATION REFLECTS
38 STEREOTYPES ABOUT AN INDIVIDUAL OR GROUP OF INDIVIDUALS IN A
39 PROTECTED CLASS."

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