

LLS NO.09-0234\_L.001

SENATE JUDICIARY COMMITTEE  
OF REFERENCE REPORT

\_\_\_\_\_  
Chairman of Committee

\_\_\_\_\_  
Date

Committee on Judiciary.

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

LLS NO. 09-0234 be amended as follows:

1 Amend proposed bill, (LLS NO. 09-0234.01), page 11, after line 16,  
2 insert the following:

3 "SECTION 11. 24-34-402.7 (3) (a), (3) (b), and (4), Colorado  
4 Revised Statutes, are amended to read:

5 **24-34-402.7. Unlawful action against employees seeking**  
6 **protection.** (3) (a) It shall be ~~unlawful~~ A DISCRIMINATORY OR UNFAIR  
7 EMPLOYMENT PRACTICE for any employer to interfere with, restrain, or  
8 deny the exercise of or any attempt to exercise any rights provided under  
9 this section.

10 (b) It shall be ~~unlawful~~ A DISCRIMINATORY OR UNFAIR  
11 EMPLOYMENT PRACTICE for any employer to discharge or in any other  
12 manner discriminate against any individual for exercising his or her rights  
13 under this section.

14 (4) ~~Notwithstanding any other provisions of this article to the~~  
15 ~~contrary, the sole remedy for any person claiming to be aggrieved by a~~  
16 ~~violation of this section shall be to bring a civil suit for damages or~~  
17 ~~equitable relief or both in any district court of competent jurisdiction.~~  
18 ~~Such person may claim as damages all wages and benefits that would~~  
19 ~~have been due the person up to and including the date of the judgment~~

1 had the act violating this section not occurred; except that nothing in this  
2 section shall be construed to relieve such person from the obligation to  
3 mitigate his or her damages.

4 **SECTION 12.** 24-34-405, Colorado Revised Statutes, is  
5 REPEALED AND REENACTED, WITH AMENDMENTS, to read:

6 **24-34-405. Relief authorized.** (1) (a) IN ADDITION TO THE  
7 RELIEF AUTHORIZED BY SECTION 24-34-306 (9), THE COMMISSION OR THE  
8 COURT MAY ORDER AFFIRMATIVE RELIEF THAT THE COMMISSION OR COURT  
9 DETERMINES TO BE APPROPRIATE, INCLUDING, WITHOUT LIMITATION, THE  
10 FOLLOWING:

11 (I) REINSTATEMENT OR HIRING OF EMPLOYEES, WITH OR WITHOUT  
12 BACK PAY, WHICH, IF AWARDED, SHALL BE PAID BY THE EMPLOYER,  
13 EMPLOYMENT AGENCY, OR LABOR ORGANIZATION RESPONSIBLE FOR THE  
14 DISCRIMINATORY OR UNFAIR EMPLOYMENT PRACTICE;

15 (II) FRONT PAY; OR

16 (III) ANY OTHER EQUITABLE RELIEF DEEMED APPROPRIATE BY THE  
17 COMMISSION OR COURT.

18 (b) IF THE COMMISSION OR COURT ORDERS BACK PAY, THE  
19 LIABILITY FOR BACK PAY SHALL ACCRUE FROM A DATE NOT MORE THAN  
20 TWO YEARS PRIOR TO THE FILING OF A CHARGE WITH THE DIVISION. THE  
21 COMMISSION OR COURT SHALL REDUCE AN AWARD OF BACK PAY BY ANY  
22 AMOUNT OF ACTUAL EARNINGS OF OR AMOUNTS THAT COULD HAVE BEEN  
23 EARNED WITH REASONABLE DILIGENCE BY THE PERSON WHO WAS THE  
24 VICTIM OF THE DISCRIMINATORY OR UNFAIR EMPLOYMENT PRACTICE.

25 (2) (a) IN ADDITION TO THE RELIEF AVAILABLE PURSUANT TO  
26 SUBSECTION (1) OF THIS SECTION, IN A PROCEEDING OR CIVIL ACTION  
27 BROUGHT BY A COMPLAINING PARTY OR PLAINTIFF UNDER THIS PART 4  
28 AGAINST A RESPONDENT OR DEFENDANT WHO IS FOUND TO HAVE ENGAGED  
29 IN A DISCRIMINATORY OR UNFAIR EMPLOYMENT PRACTICE, THE  
30 COMPLAINING PARTY OR PLAINTIFF MAY RECOVER COMPENSATORY AND  
31 PUNITIVE DAMAGES AS SPECIFIED IN THIS SUBSECTION (2).

1 (b) A COMPLAINING PARTY OR PLAINTIFF MAY RECOVER PUNITIVE  
2 DAMAGES AGAINST A RESPONDENT OR DEFENDANT, OTHER THAN A  
3 GOVERNMENT, GOVERNMENT AGENCY, OR POLITICAL SUBDIVISION OF THE  
4 STATE, IF THE COMPLAINING PARTY OR PLAINTIFF DEMONSTRATES BY A  
5 PREPONDERANCE OF THE EVIDENCE THAT THE RESPONDENT OR  
6 DEFENDANT ENGAGED IN A DISCRIMINATORY OR UNFAIR EMPLOYMENT  
7 PRACTICE WITH MALICE OR RECKLESS INDIFFERENCE TO THE RIGHTS OF  
8 THE COMPLAINING PARTY OR PLAINTIFF.

9 (c) A COMPLAINING PARTY OR PLAINTIFF MAY RECOVER  
10 COMPENSATORY DAMAGES AGAINST A RESPONDENT OR DEFENDANT FOR  
11 FUTURE PECUNIARY LOSSES, EMOTIONAL PAIN, SUFFERING,  
12 INCONVENIENCE, MENTAL ANGUISH, LOSS OF ENJOYMENT OF LIFE, AND  
13 OTHER NONPECUNIARY LOSSES.

14 (d) THE TOTAL AMOUNT OF DAMAGES AWARDED PURSUANT TO  
15 THIS SUBSECTION (2) SHALL NOT EXCEED THE FOLLOWING AMOUNTS FOR  
16 EACH COMPLAINING PARTY OR PLAINTIFF, REGARDLESS OF WHETHER THE  
17 DAMAGES ARE COMPENSATORY, PUNITIVE, OR A COMBINATION OF  
18 COMPENSATORY AND PUNITIVE DAMAGES:

19 (I) IF THE RESPONDENT OR DEFENDANT HAS FOURTEEN OR FEWER  
20 EMPLOYEES IN EACH OF TWENTY OR MORE CALENDAR WEEKS IN EITHER  
21 THE CURRENT OR PRECEDING CALENDAR YEAR, TWENTY-FIVE THOUSAND  
22 DOLLARS;

23 (II) IF THE RESPONDENT OR DEFENDANT HAS FIFTEEN OR MORE  
24 EMPLOYEES AND ONE HUNDRED OR FEWER EMPLOYEES IN EACH OF  
25 TWENTY OR MORE CALENDAR WEEKS IN EITHER THE CURRENT OR  
26 PRECEDING CALENDAR YEAR, FIFTY THOUSAND DOLLARS;

27 (III) IF THE RESPONDENT OR DEFENDANT HAS MORE THAN ONE  
28 HUNDRED AND TWO HUNDRED OR FEWER EMPLOYEES IN EACH OF TWENTY  
29 OR MORE CALENDAR WEEKS IN EITHER THE CURRENT OR PRECEDING  
30 CALENDAR YEAR, ONE HUNDRED THOUSAND DOLLARS;

31 (IV) IF THE RESPONDENT OR DEFENDANT HAS MORE THAN TWO  
32 HUNDRED EMPLOYEES AND FIVE HUNDRED OR FEWER EMPLOYEES IN EACH  
33 OF TWENTY OR MORE CALENDAR WEEKS IN EITHER THE CURRENT OR

1 PRECEDING CALENDAR YEAR, TWO HUNDRED THOUSAND DOLLARS; AND

2 (V) IF THE RESPONDENT OR DEFENDANT HAS MORE THAN FIVE  
3 HUNDRED EMPLOYEES IN EACH OF TWENTY OR MORE CALENDAR WEEKS IN  
4 EITHER THE CURRENT OR PRECEDING CALENDAR YEAR, THREE HUNDRED  
5 THOUSAND DOLLARS.

6 (e) (I) BEGINNING MARCH 1, 2011, AND EACH MARCH 1  
7 THEREAFTER, THE LIMITATION AMOUNTS ON DAMAGE AWARDS SPECIFIED  
8 IN PARAGRAPH (d) OF THIS SUBSECTION (2) SHALL BE ADJUSTED FOR  
9 INFLATION. THE ADJUSTED DAMAGE LIMITATION AMOUNTS SHALL BE  
10 ROUNDED UPWARD OR DOWNWARD TO THE NEAREST TEN-DOLLAR  
11 INCREMENT.

12 (II) AS USED IN THIS PARAGRAPH (e), "INFLATION" MEANS THE  
13 ANNUAL PERCENTAGE CHANGE IN THE UNITED STATES DEPARTMENT OF  
14 LABOR, BUREAU OF LABOR STATISTICS, CONSUMER PRICE INDEX FOR  
15 DENVER-BOULDER-GREELEY, ALL ITEMS, ALL URBAN CONSUMERS, OR ITS  
16 SUCCESSOR INDEX.

17 (f) COMPENSATORY OR PUNITIVE DAMAGES AWARDED PURSUANT  
18 TO THIS SUBSECTION (2) SHALL BE IN ADDITION TO, AND SHALL NOT  
19 INCLUDE, FRONT PAY, BACK PAY, INTEREST ON BACK PAY, OR ANY OTHER  
20 TYPE OF RELIEF AWARDED PURSUANT TO SUBSECTION (1) OF THIS SECTION.

21 (3) IN CASES ALLEGING THAT A RESPONDENT OR DEFENDANT  
22 ENGAGED IN A DISCRIMINATORY OR UNFAIR EMPLOYMENT PRACTICE BY  
23 FAILING TO PROVIDE A REASONABLE ACCOMMODATION TO A PERSON WITH  
24 A DISABILITY WHO IS OTHERWISE QUALIFIED, IT SHALL BE AN AFFIRMATIVE  
25 DEFENSE TO AN AWARD OF DAMAGES UNDER THIS SECTION THAT THE  
26 RESPONDENT OR DEFENDANT DEMONSTRATED GOOD FAITH EFFORTS, IN  
27 CONSULTATION WITH THE PERSON WITH THE DISABILITY WHO INFORMED  
28 THE RESPONDENT OR DEFENDANT THAT AN ACCOMMODATION IS NEEDED,  
29 TO IDENTIFY AND MAKE A REASONABLE ACCOMMODATION THAT WOULD  
30 PROVIDE THE PERSON WITH THE DISABILITY WITH AN EQUALLY EFFECTIVE  
31 OPPORTUNITY AND WOULD NOT CAUSE AN UNDUE HARDSHIP ON THE  
32 OPERATION OF THE BUSINESS.

33 (4) (a) IF A PERSON WAS REFUSED ADMISSION INTO OR SUSPENDED

1 OR EXPELLED FROM A UNION, WAS REFUSED EMPLOYMENT OR  
2 ADVANCEMENT, OR WAS SUSPENDED OR DISCHARGED FROM EMPLOYMENT,  
3 AND THE LABOR ORGANIZATION OR EMPLOYER, AS APPLICABLE, TOOK THE  
4 ACTION FOR ANY BONA FIDE REASON OTHER THAN A DISCRIMINATORY OR  
5 UNFAIR EMPLOYMENT PRACTICE, THE COMMISSION OR A COURT SHALL NOT  
6 ISSUE AN ORDER REQUIRING, AS APPLICABLE:

7 (I) A LABOR ORGANIZATION TO ADMIT OR REINSTATE THE PERSON  
8 AS A MEMBER OF A UNION;

9 (II) AN EMPLOYER TO HIRE, REINSTATE, OR PROMOTE THE  
10 INDIVIDUAL; OR

11 (III) THE EMPLOYER TO PAY THE INDIVIDUAL BACK PAY.

12 (b) IF THE COMPLAINING PARTY OR PLAINTIFF ESTABLISHES THAT  
13 THE RESPONDENT OR DEFENDANT ENGAGED IN A DISCRIMINATORY OR  
14 UNFAIR EMPLOYMENT PRACTICE AND THE RESPONDENT OR DEFENDANT  
15 DEMONSTRATES THAT HE, SHE, OR IT WOULD HAVE TAKEN THE SAME  
16 ACTION IN THE ABSENCE OF THE IMPERMISSIBLE, MOTIVATING FACTOR,  
17 THE COMMISSION OR COURT:

18 (I) MAY GRANT ANY DECLARATORY RELIEF AND INJUNCTIVE  
19 RELIEF THE COMMISSION OR COURT DEEMS APPROPRIATE, TOGETHER WITH  
20 REASONABLE ATTORNEY FEES AND COSTS THAT THE COMPLAINING PARTY  
21 OR PLAINTIFF HAS DEMONSTRATED TO BE ATTRIBUTABLE TO THE PURSUIT  
22 OF THE CLAIM OR COMPLAINT; AND

23 (II) SHALL NOT AWARD COMPENSATORY OR PUNITIVE DAMAGES OR  
24 ISSUE AN ORDER REQUIRING ANY ADMISSION, REINSTATEMENT, HIRING,  
25 PROMOTION, OR PAYMENT OF BACK PAY, AS DESCRIBED IN PARAGRAPH (a)  
26 OF THIS SUBSECTION (4).

27 (5) IF A COMPLAINING PARTY OR PLAINTIFF IN A PROCEEDING  
28 BEFORE THE COMMISSION OR IN A CIVIL ACTION FILED UNDER THIS PART 4  
29 SEEKS COMPENSATORY OR PUNITIVE DAMAGES PURSUANT TO SUBSECTION  
30 (2) OF THIS SECTION:

31 (a) ANY PARTY IN THE CIVIL ACTION MAY DEMAND A TRIAL BY

1 JURY; AND

2 (b) THE COURT IN THE CIVIL ACTION SHALL NOT INFORM THE JURY  
3 OF THE LIMITATIONS DESCRIBED IN PARAGRAPH (d) OF SUBSECTION (2) OF  
4 THIS SECTION.

5 (6) (a) IN ANY PROCEEDING OR CIVIL ACTION UNDER THIS PART 4,  
6 THE COMMISSION OR COURT MAY AWARD REASONABLE ATTORNEY FEES  
7 AND COSTS TO THE PREVAILING PARTY, OTHER THAN A GOVERNMENT,  
8 GOVERNMENT AGENCY, OR POLITICAL SUBDIVISION OF THE STATE.

9 (b) NOTWITHSTANDING PARAGRAPH (a) OF THIS SUBSECTION (6),  
10 IN ANY PROCEEDING OR CIVIL ACTION UNDER THIS PART 4 AGAINST A  
11 JUDICIAL OFFICER FOR AN ACT OR OMISSION TAKEN IN THE OFFICER'S  
12 JUDICIAL CAPACITY, THE JUDICIAL OFFICER SHALL NOT BE LIABLE FOR ANY  
13 COSTS OR ATTORNEY FEES UNLESS THE ACTION WAS CLEARLY OUTSIDE THE  
14 SCOPE OF THE OFFICIAL'S JURISDICTION.

15 (c) IT IS THE INTENT OF THE GENERAL ASSEMBLY THAT THE  
16 COMMISSION'S OR COURT'S DISCRETION TO AWARD REASONABLE  
17 ATTORNEY FEES AND COSTS SHALL BE GUIDED BY STANDARDS  
18 ESTABLISHED THROUGH JUDICIAL INTERPRETATION OF THE DISCRETION  
19 GIVEN TO COURTS PURSUANT TO 42 U.S.C. SEC. 1988 OF THE FEDERAL  
20 "CIVIL RIGHTS ACT OF 1964", AS AMENDED, TO MAKE SUCH AWARDS IN  
21 CASES BROUGHT UNDER TITLE VII OF THE FEDERAL "CIVIL RIGHTS ACT OF  
22 1964", AS AMENDED.

23 (7) THIS SECTION SHALL NOT APPLY TO CLAIMS ALLEGING A  
24 VIOLATION OF SECTION 24-34-402.5".

25 Renumber succeeding sections accordingly.

26 Page 12, strike lines 15 and 16 and substitute the following:

27 "SECTION 14. **Effective date - applicability.** This act shall take  
28 effect July 1, 2009, and shall apply to causes of action alleging  
29 discriminatory or unfair practices accruing on or after said date."

\*\* \*\*\* \*\* \*\*\* \*\*