

SB110_L.013

HOUSE COMMITTEE OF REFERENCE REPORT

 Chairman of Committee

 Date
Committee on Judiciary.

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

SB09-110 be amended as follows:

1 Amend reengrossed bill, page 4, line 25, strike "(4)".

2 Page 8, strike lines 5 through 24.

3 Page 10, before line 9, insert the following:

4 "SECTION 8. 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5 REPEALED AND REENACTED, WITH AMENDMENTS, to read: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



1 LIABILITY FOR BACK PAY SHALL ACCRUE FROM A DATE NOT MORE THAN
2 TWO YEARS PRIOR TO THE FILING OF A CHARGE WITH THE DIVISION. THE
3 COMMISSION OR COURT SHALL REDUCE AN AWARD OF BACK PAY BY ANY
4 AMOUNT OF ACTUAL EARNINGS OF, OR AMOUNTS THAT COULD HAVE BEEN
5 EARNED WITH REASONABLE DILIGENCE BY, THE PERSON WHO WAS THE
6 VICTIM OF THE DISCRIMINATORY OR UNFAIR EMPLOYMENT PRACTICE.

7 (2) (a) IN ADDITION TO THE RELIEF AVAILABLE PURSUANT TO
8 SUBSECTION (1) OF THIS SECTION, IN A PROCEEDING OR CIVIL ACTION
9 BROUGHT BY A COMPLAINING PARTY OR PLAINTIFF UNDER THIS PART 4
10 AGAINST A RESPONDENT OR DEFENDANT WHO IS FOUND TO HAVE ENGAGED
11 IN AN INTENTIONAL DISCRIMINATORY OR UNFAIR EMPLOYMENT PRACTICE,
12 THE COMPLAINING PARTY OR PLAINTIFF MAY RECOVER COMPENSATORY
13 AND PUNITIVE DAMAGES AS SPECIFIED IN THIS SUBSECTION (2). A
14 COMPLAINING PARTY OR PLAINTIFF SHALL NOT BE AWARDED
15 COMPENSATORY OR PUNITIVE DAMAGES WHEN THE RESPONDENT OR
16 DEFENDANT IS FOUND TO HAVE ENGAGED IN AN EMPLOYMENT PRACTICE
17 THAT IS UNLAWFUL SOLELY BECAUSE OF ITS DISPARATE IMPACT.

18 (b) A COMPLAINING PARTY OR PLAINTIFF MAY RECOVER PUNITIVE
19 DAMAGES AGAINST A RESPONDENT OR DEFENDANT, OTHER THAN A
20 GOVERNMENT, GOVERNMENT AGENCY, OR POLITICAL SUBDIVISION OF THE
21 STATE, IF THE COMPLAINING PARTY OR PLAINTIFF DEMONSTRATES BY A
22 PREPONDERANCE OF THE EVIDENCE THAT THE RESPONDENT OR
23 DEFENDANT ENGAGED IN A DISCRIMINATORY OR UNFAIR EMPLOYMENT
24 PRACTICE WITH MALICE OR RECKLESS INDIFFERENCE TO THE RIGHTS OF
25 THE COMPLAINING PARTY OR PLAINTIFF.

26 (c) A COMPLAINING PARTY OR PLAINTIFF MAY RECOVER
27 COMPENSATORY DAMAGES AGAINST A RESPONDENT OR DEFENDANT FOR
28 FUTURE PECUNIARY LOSSES, EMOTIONAL PAIN, SUFFERING,
29 INCONVENIENCE, MENTAL ANGUISH, LOSS OF ENJOYMENT OF LIFE, AND
30 OTHER NONPECUNIARY LOSSES.

31 (d) THE TOTAL AMOUNT OF DAMAGES AWARDED PURSUANT TO
32 THIS SUBSECTION (2) SHALL NOT EXCEED THE FOLLOWING AMOUNTS FOR
33 EACH COMPLAINING PARTY OR PLAINTIFF, REGARDLESS OF WHETHER THE
34 DAMAGES ARE COMPENSATORY, PUNITIVE, OR A COMBINATION OF
35 COMPENSATORY AND PUNITIVE DAMAGES:

36 (I) IF THE RESPONDENT OR DEFENDANT HAS FOURTEEN OR FEWER



1 EMPLOYEES IN EACH OF TWENTY OR MORE CALENDAR WEEKS IN EITHER
2 THE CURRENT OR PRECEDING CALENDAR YEAR, TWENTY-FIVE THOUSAND
3 DOLLARS;

4 (II) IF THE RESPONDENT OR DEFENDANT HAS FIFTEEN OR MORE
5 EMPLOYEES AND ONE HUNDRED OR FEWER EMPLOYEES IN EACH OF
6 TWENTY OR MORE CALENDAR WEEKS IN EITHER THE CURRENT OR
7 PRECEDING CALENDAR YEAR, FIFTY THOUSAND DOLLARS;

8 (III) IF THE RESPONDENT OR DEFENDANT HAS MORE THAN ONE
9 HUNDRED AND TWO HUNDRED OR FEWER EMPLOYEES IN EACH OF TWENTY
10 OR MORE CALENDAR WEEKS IN EITHER THE CURRENT OR PRECEDING
11 CALENDAR YEAR, ONE HUNDRED THOUSAND DOLLARS;

12 (IV) IF THE RESPONDENT OR DEFENDANT HAS MORE THAN TWO
13 HUNDRED EMPLOYEES AND FIVE HUNDRED OR FEWER EMPLOYEES IN EACH
14 OF TWENTY OR MORE CALENDAR WEEKS IN EITHER THE CURRENT OR
15 PRECEDING CALENDAR YEAR, TWO HUNDRED THOUSAND DOLLARS; AND

16 (V) IF THE RESPONDENT OR DEFENDANT HAS MORE THAN FIVE
17 HUNDRED EMPLOYEES IN EACH OF TWENTY OR MORE CALENDAR WEEKS IN
18 EITHER THE CURRENT OR PRECEDING CALENDAR YEAR, THREE HUNDRED
19 THOUSAND DOLLARS.

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

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



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

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

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

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

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

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

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

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

32 (a) ANY PARTY IN THE CIVIL ACTION MAY DEMAND A TRIAL BY
33 JURY; AND



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

4 (6) (a) IN ANY PROCEEDING OR CIVIL ACTION UNDER THIS PART 4,
5 THE COMMISSION OR COURT MAY AWARD REASONABLE ATTORNEY FEES
6 AND COSTS TO THE PREVAILING PARTY UNLESS THE PREVAILING PARTY IS
7 A GOVERNMENT, GOVERNMENT AGENCY, OR POLITICAL SUBDIVISION OF
8 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 OFFICER'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 TO MAKE SUCH AWARDS IN CASES BROUGHT UNDER
20 TITLE VII OF THE FEDERAL "CIVIL RIGHTS ACT OF 1964", AS AMENDED.

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

23 Renumber succeeding sections accordingly.

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