



Colorado
Legislative
Council
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MEMORANDUM

April 22, 2009

TO: Representative Claire Levy
Members of the House Judiciary Committee

FROM: Clare Pramuk, Fiscal Analyst (303-866-2677)

SUBJECT: Fiscal Assessment of Proposed Amendment **SB110_L.013**.

This memorandum is an assessment of the fiscal impact of the attached proposed amendment to **SB09-110**. This fiscal assessment is for the impact of the bill with inclusion of this amendment only. Any other added amendment could influence the fiscal impact.

Summary of Proposed Amendment

Amendment L.013 adds to the bill the ability of a complaining party or plaintiff whose claim of discrimination is not covered by federal law, to recover compensatory and punitive damages as well as attorney fees and costs. Damages are limited based on employer size. The amendment removes the entitlement of a charging party whose claim cannot be brought under Title VII of the Civil Rights Act of 1964, to a formal hearing before the Civil Rights Commission, or an administrative law judge.

Fiscal Impact of Amendment

The amendment increases the fiscal impact shown in the fiscal note dated March 30, 2009, to the Colorado Civil Rights Division (CCRD) in the Department of Regulatory Agencies, the State Risk Management Division in the Department of Personnel and Administration, and the Department of Law by \$578,483 and 8.4 FTE in FY 2009-10 and \$464,194 and 7.1 FTE in FY 2010-11. The expansion of remedies available to complaining parties or plaintiffs is expected to increase caseloads and require additional outreach efforts. The CCRD would require additional staff to respond to inquiries, draft complaints and investigate cases. The Department of Law would provide legal support to the CCRD and the Risk Management Division.

All state agencies would be subject to increased liability in discrimination cases. Agencies would be defended and billed by the Department of Law and in cases where agencies do not prevail, they may be required to pay up to \$300,000 in compensatory damages. Estimates of defense costs and damages are not included in the fiscal impact.

Bill's Revised Fiscal Impact with Amendment

The bill would have a total fiscal impact of \$578,483 and 8.4 FTE in FY 2009-10 and \$464,194 and 7.1 FTE in FY 2010-11 with the adoption of L.013 as shown below.

- ***Department of Regulatory Agencies, CCRD*** - General Fund increase of \$443,303 and 7.3 FTE in FY 2009-10 and \$329,014 and 6.0 FTE in FY 2010-11; and
- ***Department of Law*** - \$157,710 and 1.1 FTE in both FY 2009-10 and FY 2010-11, reappropriated funds from the Division of Regulatory Agencies and the Department of Personnel and Administration.

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 (1) 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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