

SENATE JOURNAL
Sixty-eighth General Assembly
STATE OF COLORADO
First Regular Session

35th Legislative Day Tuesday, February 15, 2011

Prayer	By the chaplain, Pastor David Almanzar, Canon Community Baptist Church, Canon City.	11
Call to Order	By the President at 9:00 a.m.	13
Pledge	By Senator Grantham.	16
Roll Call	Present--31 Absent--1, Mitchell. Excused--3, Brophy, Jahn, Kopp. Present later--2, Brophy, Mitchell.	18 19 20 21
Quorum	The President announced a quorum present.	23
Reading of Journal	On motion of Senator Morse, reading of the Journal of Monday, February 14, 2011, was dispensed with and the Journal was approved as corrected by the Secretary.	25 26

SENATE SERVICES REPORT

Correctly Printed: SB11-168, 169, 170, 171 and 172; SJR11-015.
Correctly Reengrossed: SB11-062, 081, 086, 093, 104, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 159, 160, 161, 163 and 164.
Correctly Rerevised: HB11-1001 and 1011.

INTRODUCTION OF RESOLUTIONS

The following resolution was read by title:

SJR11-016 by Senator(s) Aguilar; also Representative(s) Kerr J.--Concerning Awareness Day for Individuals with Developmental Disabilities.

Laid over one day under Senate Rule 30(b).

Committee of the Whole On motion of Senator Schwartz, the Senate resolved itself into the Committee of the Whole for consideration of General Orders--Second Reading of Bills--Consent Calendar and Senator Schwartz was called to the Chair to act as Chairman.

**GENERAL ORDERS -- SECOND READING OF BILLS --
CONSENT CALENDAR**

The Committee of the Whole having risen, the Chairman reported that the following bills, reading at length having been dispensed with by unanimous consent, had been considered and action taken thereon as follows:

SB11-061	by Senator(s) Spence; also Representative(s) Ferrandino--Concerning the process for appeals under the "Exceptional Children's Education Act".	1
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	<u>Amendment No. 1, Agriculture, Natural Resources, and Energy Committee Amendment.</u>	4
	(Printed in Senate Journal, February 10, page 139 and placed in members' bill files.)	5
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	As amended, ordered engrossed and placed on the calendar for third reading and final passage.	7
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SB11-106	by Senator(s) Spence, Bacon, Heath, Hudak, Johnston, King K.; also Representative(s) Ferrandino--Concerning the repeal of the science and technology education center grants advisory board.	10
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	Ordered engrossed and placed on the calendar for third reading and final passage.	14
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SB11-101	by Senator(s) Spence, Bacon, Heath, Johnston, King K.; also Representative(s) Swalm--Concerning the continuation of the fixed tuition and fee rate program.	17
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	Ordered engrossed and placed on the calendar for third reading and final passage.	21
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SB11-123	by Senator(s) Foster; also Representative(s) Summers--Concerning technical changes to child support procedures.	24
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	Ordered engrossed and placed on the calendar for third reading and final passage.	27
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HB11-1037	by Representative(s) Ryden and Fields; also Senator(s) Carroll--Concerning the voluntary contribution designation benefiting the military family relief fund that appears on the state individual income tax return forms, and, in connection therewith, extending the period for the contribution designation.	30
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	Ordered revised and placed on the calendar for third reading and final passage.	35
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SB11-031	by Senator(s) Cadman; also Representative(s) Looper--Concerning motor vehicles valued as collector's items for historical reasons.	38
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	<u>Amendment No. 1, Finance Committee Amendment.</u>	41
	(Printed in Senate Journal, February 11, page 158 and placed in members' bill files.)	42
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	As amended, ordered engrossed and placed on the calendar for third reading and final passage.	44
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SB11-100	by Senator(s) Hudak and King K.; also Representative(s) Murray--Concerning continuation of the council of higher education representatives.	48
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	<u>Amendment No. 1, Education Committee Amendment.</u>	51
	(Printed in Senate Journal, February 11, page 170 and placed in members' bill files.)	52
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	As amended, ordered engrossed and placed on the calendar for third reading and final passage.	54
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SB11-087	by Senator(s) Boyd; --Concerning authority for the public utilities commission to create an exemption from tiered electricity rate plans based on a customer's medical condition.	58
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	Ordered engrossed and placed on the calendar for third reading and final passage.	61
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SB11-103	by Senator(s) Lundberg and Foster, Carroll, Newell, Roberts, White; also Representative(s) Scott--Concerning the repeal of the benefit design advisory committee.	64
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	Ordered engrossed and placed on the calendar for third reading and final passage.	67
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HB11-1006	by Representative(s) Coram; also Senator(s) Schwartz--Concerning the composition of a regional tourism authority governing board when the board will be comprised of more than two local governmental entities that are counties.	70
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Ordered revised and placed on the calendar for third reading and final passage.

HB11-1022 by Representative(s) Scott, Massey, Holbert, Joshi, McNulty; also Senator(s) Morse, Harvey, Grantham, Steadman--Concerning the exemption from laws regulating mortgage loan originators of certain persons providing seller financing for the sale of a limited number of residential properties.

Ordered revised and placed on the calendar for third reading and final passage.

**ADOPTION OF THE REPORT OF THE COMMITTEE OF THE WHOLE --
CONSENT CALENDAR**

On motion of Senator Schwartz, the report of the Committee of the Whole was **adopted** on the following roll call vote:

YES	33	NO	0	EXCUSED	2	ABSENT	0
Aguilar	Y	Guzman	Y	Kopp	E	Scheffel	Y
Bacon	Y	Harvey	Y	Lambert	Y	Schwartz	Y
Boyd	Y	Heath	Y	Lundberg	Y	Spence	Y
Brophy	Y	Hodge	Y	Mitchell	Y	Steadman	Y
Cadman	Y	Hudak	Y	Morse	Y	Tochtrop	Y
Carroll	Y	Jahn	E	Newell	Y	White	Y
Foster	Y	Johnston	Y	Nicholson	Y	Williams S.	Y
Giron	Y	King K.	Y	Renfroe	Y	President	Y
Grantham	Y	King S.	Y	Roberts	Y		

The Committee of the Whole took the following action:

Passed on second reading: SB11-061 as amended, SB11-106, SB11-101, SB11-123, SB11-031 as amended, SB11-100 as amended, SB11-087, SB11-103, HB11-1037, HB11-1006, HB11-1022.

Laid over to the end of the General Orders -- Second Reading of Bills calendar, Tuesday, February 15: SB11-124.

On motion of Senator Morse, and with a majority of those elected to the Senate having voted in the affirmative, the balance of the calendar of Tuesday, February 15 was laid over until Wednesday, February 16, retaining its place on the calendar.

General Orders -- Second Reading of Bills: SB11-013, SB11-010, SB11-039, SB11-012, SB11-019, SB11-034, SB11-043, SB11-009, SB11-007, SB11-016, SB11-055, SB11-110, SB11-008, SB11-107, SB11-025, SB11-040, SB11-124.

Consideration of Resolutions: SJR11-005.

Consideration of Governor's Appointments:

Executive Director of the Department of Local Affairs

COMMITTEE OF REFERENCE REPORTS

Business, Labor, & Technology After consideration on the merits, the Committee recommends that **HB11-1050** be referred to the Committee of the Whole with favorable recommendation and with a recommendation that it be placed on the Consent Calendar.

Judiciary After consideration on the merits, the Committee recommends that **SB11-096** be referred to the Committee of the Whole with favorable recommendation and with a recommendation that it be placed on the Consent Calendar.

Judiciary

After consideration on the merits, the Committee recommends that **SB11-072** be amended as follows, and as so amended, be referred to the Committee on Appropriations with favorable recommendation.

Amend printed bill, strike everything below the enacting clause and substitute:

"SECTION 1. 24-34-405, Colorado Revised Statutes, is REPEALED AND REENACTED, WITH AMENDMENTS, to read:

24-34-405. Relief authorized - short title. (1) THIS SECTION SHALL BE KNOWN AND MAY BE CITED AS THE "JOB PROTECTION AND CIVIL RIGHTS ENFORCEMENT ACT OF 2011".

(2) (a) IN ADDITION TO THE RELIEF AUTHORIZED BY SECTION 24-34-306(9), THE COMMISSION OR THE COURT MAY ORDER AFFIRMATIVE RELIEF THAT THE COMMISSION OR COURT DETERMINES TO BE APPROPRIATE, INCLUDING, WITHOUT LIMITATION, THE FOLLOWING:

(I) REINSTATEMENT OR HIRING OF EMPLOYEES, WITH OR WITHOUT BACK PAY. IF THE COMMISSION OR COURT ORDERS BACK PAY, THE EMPLOYER, EMPLOYMENT AGENCY, OR LABOR ORGANIZATION RESPONSIBLE FOR THE DISCRIMINATORY OR UNFAIR EMPLOYMENT PRACTICE SHALL PAY THE BACK PAY TO THE PERSON WHO WAS THE VICTIM OF THE PRACTICE.

(II) FRONT PAY; OR

(III) ANY OTHER EQUITABLE RELIEF THE COMMISSION OR COURT DEEMS APPROPRIATE.

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

(3) (a) IN ADDITION TO THE RELIEF AVAILABLE PURSUANT TO SUBSECTION (2) OF THIS SECTION, IN A PROCEEDING OR CIVIL ACTION BROUGHT BY A COMPLAINING PARTY OR PLAINTIFF UNDER THIS PART 4 AGAINST A RESPONDENT OR DEFENDANT WHO IS FOUND TO HAVE ENGAGED IN AN INTENTIONAL DISCRIMINATORY OR UNFAIR EMPLOYMENT PRACTICE, THE COMPLAINING PARTY OR PLAINTIFF MAY RECOVER COMPENSATORY AND PUNITIVE DAMAGES AS SPECIFIED IN THIS SUBSECTION (3). A COMPLAINING PARTY OR PLAINTIFF SHALL NOT BE AWARDED COMPENSATORY OR PUNITIVE DAMAGES WHEN THE RESPONDENT OR DEFENDANT IS FOUND TO HAVE ENGAGED IN AN EMPLOYMENT PRACTICE THAT IS UNLAWFUL SOLELY BECAUSE OF ITS DISPARATE IMPACT.

(b) EXCEPT AS LIMITED BY THE "COLORADO GOVERNMENTAL IMMUNITY ACT", ARTICLE 10 OF TITLE 24, C.R.S., A COMPLAINING PARTY OR PLAINTIFF MAY RECOVER PUNITIVE DAMAGES AGAINST A RESPONDENT OR DEFENDANT IF THE COMPLAINING PARTY OR PLAINTIFF DEMONSTRATES BY A PREPONDERANCE OF THE EVIDENCE THAT THE RESPONDENT OR DEFENDANT ENGAGED IN A DISCRIMINATORY OR UNFAIR EMPLOYMENT PRACTICE WITH MALICE OR RECKLESS INDIFFERENCE TO THE RIGHTS OF THE COMPLAINING PARTY OR PLAINTIFF.

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

(d) THE TOTAL AMOUNT OF COMPENSATORY AND PUNITIVE DAMAGES AWARDED PURSUANT TO THIS SUBSECTION (3) SHALL NOT EXCEED THE AMOUNTS SPECIFIED IN 42 U.S.C. SEC. 1981a (b) (3); EXCEPT THAT, FOR EMPLOYERS THAT EMPLOY FEWER EMPLOYEES THAN THE NUMBER SPECIFIED IN 42 U.S.C. SEC. 1981a (b) (3) (A), THE TOTAL AMOUNT OF COMPENSATORY AND PUNITIVE DAMAGES AWARDED PURSUANT TO THIS SUBSECTION (3) SHALL NOT EXCEED THE AMOUNT SPECIFIED IN 42 U.S.C. SEC. 1981a (b) (3) (A). IN DETERMINING THE APPROPRIATE LEVEL OF DAMAGES TO AWARD A COMPLAINING PARTY OR PLAINTIFF WHO HAS BEEN THE VICTIM OF AN INTENTIONAL

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DISCRIMINATORY OR UNFAIR EMPLOYMENT PRACTICE, THE COMMISSION OR COURT SHALL CONSIDER THE SIZE AND ASSETS OF THE RESPONDENT OR DEFENDANT AND THE EGREGIOUSNESS OF THE INTENTIONAL DISCRIMINATORY OR UNFAIR EMPLOYMENT PRACTICE.

(e) COMPENSATORY OR PUNITIVE DAMAGES AWARDED PURSUANT TO THIS SUBSECTION (3) ARE IN ADDITION TO, AND DO NOT INCLUDE, FRONT PAY, BACK PAY, INTEREST ON BACK PAY, OR ANY OTHER TYPE OF RELIEF AWARDED PURSUANT TO SUBSECTION (2) OF THIS SECTION.

(f) THE REMEDIES SPECIFIED IN THIS SUBSECTION (3) APPLY TO CAUSES OF ACTION ALLEGING DISCRIMINATORY OR UNFAIR EMPLOYMENT PRACTICES ACCRUING ON OR AFTER JANUARY 1, 2014.

(4) IF A COMPLAINING PARTY OR PLAINTIFF IN A PROCEEDING BEFORE THE COMMISSION OR IN A CIVIL ACTION FILED UNDER THIS PART 4 SEEKS COMPENSATORY OR PUNITIVE DAMAGES PURSUANT TO SUBSECTION (3) OF THIS SECTION, ANY PARTY IN THE CIVIL ACTION MAY DEMAND A TRIAL BY JURY.

(5) (a) IN ANY PROCEEDING OR CIVIL ACTION UNDER THIS PART 4, THE COMMISSION OR COURT MAY AWARD REASONABLE ATTORNEY FEES AND COSTS TO THE PREVAILING PARTY.

(b) IT IS THE INTENT OF THE GENERAL ASSEMBLY THAT THE COMMISSION'S OR COURT'S DISCRETION TO AWARD REASONABLE ATTORNEY FEES AND COSTS SHALL BE GUIDED BY STANDARDS ESTABLISHED THROUGH JUDICIAL INTERPRETATION OF THE DISCRETION GIVEN TO COURTS TO MAKE SUCH AWARDS IN CASES BROUGHT UNDER TITLE VII OF THE FEDERAL "CIVIL RIGHTS ACT OF 1964", 42 U.S.C. SEC. 2000e, AS AMENDED.

(6) IF THE COURT FINDS THAT AN ACTION BROUGHT PURSUANT TO THIS PART 4 WAS FRIVOLOUS, GROUNDLESS, OR VEXATIOUS AS PROVIDED IN ARTICLE 17 OF TITLE 13, C.R.S., THE COURT SHALL AWARD COSTS AND ATTORNEY FEES TO THE DEFENDANT IN THE ACTION.

SECTION 2. 24-34-305 (1) (c), Colorado Revised Statutes, is amended to read:

24-34-305. Powers and duties of commission. (1) The commission has the following powers and duties:

(c) (I) To investigate and study the existence, character, causes, and extent of unfair or discriminatory practices as defined in parts 4 to 7 of this article and to formulate plans for the elimination thereof OF THOSE PRACTICES by educational or other means.

(II) (A) IN FURTHERANCE OF ITS EDUCATIONAL EFFORTS TO REDUCE INSTANCES OF DISCRIMINATORY OR UNFAIR EMPLOYMENT PRACTICES, THE COMMISSION SHALL CREATE A VOLUNTEER WORKING GROUP REPRESENTING BOTH EMPLOYER AND EMPLOYEE INTERESTS, INCLUDING HUMAN RESOURCE PROFESSIONALS, TO ASSIST IN EDUCATION AND OUTREACH EFFORTS TO FOSTER UNDERSTANDING OF AND COMPLIANCE WITH PART 4 OF THIS ARTICLE. THE COMMISSION MAY ACCEPT GIFTS, GRANTS, AND DONATIONS TO ASSIST IN ITS DUTIES PURSUANT TO THIS SUBPARAGRAPH (II).

(B) THE COMMISSION SHALL CREATE THE VOLUNTEER WORKING GROUP BY SEPTEMBER 1, 2011. THE WORKING GROUP SHALL DEVELOP AND SUBMIT TO THE COMMISSION, BY JANUARY 1, 2012, AN EDUCATION AND OUTREACH PLAN FOR THE COMMISSION TO IMPLEMENT FOR PURPOSES OF EDUCATING EMPLOYERS AND PROVIDING OUTREACH REGARDING THIS PART 4.

(C) IN ADDITION TO THE OUTREACH PLAN REQUIRED BY SUB-SUBPARAGRAPH (B) OF THIS SUBPARAGRAPH (II), THE WORKING GROUP SHALL COMPILE AND PROVIDE TO THE COMMISSION INFORMATION ON RESOURCES AVAILABLE TO EMPLOYERS FOR EDUCATION ABOUT THE REQUIREMENTS OF AND COMPLIANCE WITH THIS PART 4, INCLUDING RESOURCES FOR EMPLOYERS ON PREVENTION OF DISCRIMINATORY EMPLOYMENT PRACTICES. THE COMMISSION SHALL POST THE INFORMATION ON ITS WEB SITE AND SHALL MAKE THE INFORMATION AVAILABLE IN AN ELECTRONIC FORMAT TO ALL STATE DEPARTMENTS AND AGENCIES THAT INTERACT WITH PRIVATE BUSINESSES IN THE STATE, INCLUDING THE DEPARTMENTS OF LABOR AND EMPLOYMENT, REGULATORY AGENCIES, REVENUE, AND STATE AND THE GOVERNOR'S OFFICE OF ECONOMIC DEVELOPMENT, AND THOSE DEPARTMENTS AND AGENCIES, WITHIN EXISTING RESOURCES, SHALL POST THE INFORMATION PROVIDED BY THE COMMISSION, OR LINKS TO THAT INFORMATION, ON

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THEIR WEB SITES.

SECTION 3. Act subject to petition - effective date - applicability. (1) This act shall take effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly (August 10, 2011, if adjournment sine die is on May 11, 2011); except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part shall not take effect unless approved by the people at the general election to be held in November 2012 and shall take effect on the date of the official declaration of the vote thereon by the governor.

(2) The provisions of this act shall apply to causes of action alleging discriminatory or unfair employment practices accruing on or after January 1, 2014."

Judiciary

After consideration on the merits, the Committee recommends that **SB11-068** be amended as follows, and as so amended, be referred to the Committee of the Whole with favorable recommendation.

Amend printed bill, page 2, strike lines 2 through 13.

Renumber succeeding sections accordingly.

Page 2, strike lines 17 through 20 and substitute:

"6-1-113.5. Private cause of action - elements - legislative declaration. (1) TO PREVAIL IN A CLAIM BROUGHT UNDER SECTION 6-1-113, A PLAINTIFF SHALL ESTABLISH THAT:

(a) THE DEFENDANT ENGAGED IN AN UNFAIR OR DECEPTIVE TRADE PRACTICE;

(b) THE CHALLENGED PRACTICE OCCURRED IN THE COURSE OF THE DEFENDANT'S BUSINESS, VOCATION, OR OCCUPATION;

(c) THE PLAINTIFF SUFFERED INJURY IN FACT TO A LEGALLY PROTECTED INTEREST; AND

(d) THE CHALLENGED PRACTICE CAUSED THE PLAINTIFF'S INJURY.

(2) THE GENERAL ASSEMBLY DECLARES THAT ITS PURPOSE IN CREATING THIS SECTION IS TO ELIMINATE THE REQUIREMENT, ARTICULATED BY THE COLORADO SUPREME COURT IN *HALL V. WALTER*, 969 P.2D 224 (1998), THAT, TO PROVE A PRIVATE CAUSE OF ACTION UNDER THIS ARTICLE, A PLAINTIFF MUST ESTABLISH THAT A DEFENDANT'S CHALLENGED PRACTICE SIGNIFICANTLY IMPACTS THE PUBLIC AS ACTUAL OR POTENTIAL CONSUMERS OF THE DEFENDANT'S GOODS, SERVICES, OR PROPERTY."

On motion of Senator Morse, the Senate adjourned until 9:00 a.m., Wednesday, February 16, 2011.

Approved:

Brandon C. Shaffer
President of the Senate

Attest:

Cindi Markwell
Secretary of the Senate

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