

SB0688/978770/1

BY: Judicial Proceedings Committee

AMENDMENTS TO SENATE BILL 688
(First Reading File Bill)

AMENDMENT NO. 1

On page 1, in the sponsor line, strike “and Rosapepe” and substitute “Rosapepe, and Forehand”; and strike beginning with “an” in line 3 down through “circumstances” in line 5 and substitute “an employer is liable under certain circumstances in an action concerning a violation of certain provisions of law based on the creation or continuation of a hostile work environment”.

On page 2, in line 10, after “under” insert “Title VII of the”; in the same line, after “Act” insert “of 1964”; in line 11, after “is” insert “vicariously”; in the same line, strike “the discriminatory actions of” and substitute “hostile work environment harassment by”; strike beginning with “hire,” in line 12 down through “employee” in line 13 and substitute “effect a significant change in employment status, including hiring, firing, failing to promote, reassignment to a position with significantly different responsibilities, or a significant change in benefits”; after line 13, insert:

“WHEREAS, The Supreme Court’s decision in Vance weakens protections from supervisor harassment that the Supreme Court established in Faragher v. Boca Raton, 524 U.S. 775 (1998) and Burlington Industries, Inc. v. Ellerth, 524 U.S. 742 (1998), which held that an employer may be vicariously liable under the Civil Rights Act of 1964 for hostile work environment harassment of an employee by an individual that has supervisory authority over that employee; and

WHEREAS, In Faragher and Ellerth, the Supreme Court held that a strict liability standard applies to harassment that results in a tangible employment action, but that when supervisors perpetrate harassment that creates a hostile work environment, but does not result in a tangible employment action, an employer is vicariously liable unless the employer exercised reasonable care to prevent and correct

(Over)

any harassing behavior, and the plaintiff unreasonably failed to take advantage of the preventive or corrective opportunities that the employer provided; and

WHEREAS, The Supreme Court holding in Vance limiting the definition of “supervisor” to those employees with the authority to take tangible employment actions against their victims ignores the fact that very often supervisors who direct daily work activities, but who do not have the authority to take tangible employment actions, wield significant power over their subordinates; and”;

strike beginning with “employee” in line 14 down through “actions” in line 15 and substitute “employer is liable for hostile work environment harassment by a supervisor”; and strike in their entirety lines 17 through 20, inclusive.

AMENDMENT NO. 2

On page 2, in lines 34 and 35, strike “**FOR UNLAWFUL EMPLOYMENT HARASSMENT**” and substitute “**BASED ON THE CREATION OR CONTINUATION OF A HOSTILE WORK ENVIRONMENT**”; in line 35, after “**LIABLE**” insert “**;**

(1)”;

in lines 35 and 36, strike “**ACT OR OMISSION**” and substitute “**ACTS OR OMISSIONS TOWARD AN EMPLOYEE OR APPLICANT FOR EMPLOYMENT**”; and in line 36, strike “**EMPLOYEE**” and substitute “**INDIVIDUAL**”.

On page 3, in lines 1 and 5, strike “**(1)**” and “**(2)**”, respectively, and substitute “**(I)**” and “**(II)**”, respectively; in lines 2, 4, and 6, in each instance, strike “**ANOTHER**” and substitute “**THE**”; in lines 2 and 4, in each instance, strike “**AN**”; and in line 6, after “**EMPLOYEE**” insert “**;OR**

(2) IF THE NEGLIGENCE OF THE EMPLOYER LED TO THE CREATION OR CONTINUATION OF THE HOSTILE WORK ENVIRONMENT”.