

Second Regular Session
Seventieth General Assembly
STATE OF COLORADO

REREVISED

*This Version Includes All Amendments
Adopted in the Second House*

LLS NO. 16-0208.01 Bart Miller x2173

SENATE BILL 16-056

SENATE SPONSORSHIP

Lambert,

HOUSE SPONSORSHIP

Lee,

Senate Committees

Judiciary
Appropriations

House Committees

State, Veterans, & Military Affairs

A BILL FOR AN ACT

101 CONCERNING BROADENING PROTECTIONS OF THE STATE
102 WHISTLEBLOWER PROTECTION LAW FOR STATE EMPLOYEES
103 WHO DISCLOSE CONFIDENTIAL INFORMATION TO CERTAIN STATE
104 ENTITIES THAT HAVE LEGAL REQUIREMENTS TO PRESERVE THE
105 CONFIDENTIALITY OF THE INFORMATION DISCLOSED.

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)

The bill broadens the protections of the state whistleblower protection law by specifying that no appointing authority or supervisor

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

HOUSE
3rd Reading Unamended
May 11, 2016

HOUSE
Amended 2nd Reading
May 10, 2016

SENATE
3rd Reading Unamended
April 26, 2016

SENATE
Amended 2nd Reading
April 25, 2016

may take disciplinary action against a state employee for disclosing information that is not subject to public inspection under the "Colorado Open Records Act", or that is confidential under any other provision of law, to any of the following state entities that are designated as whistleblower review agencies:

- ! The office of legislative legal services;
- ! The state attorney general; or
- ! The commission on judicial discipline.

The bill requires whistleblower review agencies to:

- ! Confer with each other within 30 days of receiving information and agree on whether information disclosed to a whistleblower review agency is confidential under law and, if so, to maintain the confidentiality of information if required by law;
- ! Release information to members of the general assembly and to the public if information is determined to be releasable;
- ! Maintain records of information disclosed to whistleblower review agencies and the decisions of the whistleblower review agencies with respect to the information; and
- ! Designate a person or persons as a point of contact for whistleblower review agency activities and publicize the information.

Within 60 days after receiving any information, a whistleblower review agency may confer with and transfer the information to the entity having jurisdiction or authority to investigate any allegation of unlawful behavior.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, amend 24-50.5-101

3 as follows:

4 **24-50.5-101. Legislative declaration - repeal.** (1) The general
5 assembly hereby declares that the people of Colorado are entitled to
6 information about the workings of state government in order to reduce the
7 waste and mismanagement of public funds, to reduce abuses in
8 government authority, and to prevent illegal and unethical practices. The
9 general assembly further declares that employees of the state of Colorado
10 are citizens first and have a right and a responsibility to behave as good

1 citizens in our common efforts to provide sound management of
2 governmental affairs. To help achieve these objectives, the general
3 assembly declares that state employees should be encouraged to disclose
4 information on actions of state agencies that are not in the public interest
5 and that legislation is needed to ensure that any employee making such
6 disclosures shall not be subject to disciplinary measures or harassment by
7 any public official.

8 (2) (a) THE GENERAL ASSEMBLY FURTHER DECLARES THAT THE
9 PURPOSE OF THE CREATION OF WHISTLEBLOWER REVIEW AGENCIES IN THIS
10 ARTICLE IS TO PROVIDE A MECHANISM FOR DETERMINING WHETHER
11 INFORMATION ABOUT STATE OPERATIONS OR CONDUCT PROVIDED BY A
12 STATE EMPLOYEE MAY BE MADE PUBLIC BY A STATE EMPLOYEE
13 WHISTLEBLOWER, EITHER TO MEMBERS OF THE GENERAL ASSEMBLY OR
14 ULTIMATELY TO THE PUBLIC, WHILE PROTECTING THAT STATE EMPLOYEE
15 FROM PUNITIVE ACTION AND WHILE MAINTAINING THE CONFIDENTIAL
16 NATURE OF INFORMATION WHERE REQUIRED BY LAW.

17 (b) THIS SUBSECTION (2) IS REPEALED, EFFECTIVE MAY 15, 2018.

18 **SECTION 2.** In Colorado Revised Statutes, 24-50.5-102, **add (6)**
19 **as follows:**

20 **24-50.5-102. Definitions - repeal.** As used in this article, unless
21 the context otherwise requires:

22 (6) (a) "WHISTLEBLOWER REVIEW AGENCY" MEANS THE DIRECTOR
23 OF THE OFFICE OF LEGISLATIVE LEGAL SERVICES UNDER PART 5 OF ARTICLE
24 3 OF TITLE 2, C.R.S., OR THE DIRECTOR'S DESIGNEE, THE ATTORNEY
25 GENERAL UNDER ARTICLE 31 OF THIS TITLE, OR THE ATTORNEY GENERAL'S
26 DESIGNEE, OR THE STATE COURT ADMINISTRATOR UNDER SECTION
27 13-3-101, C.R.S., OR THE STATE COURT ADMINISTRATOR'S DESIGNEE.

1 (b) THIS SUBSECTION (6) IS REPEALED, EFFECTIVE MAY 15, 2018.

2 SECTION 3. In Colorado Revised Statutes, amend 24-50.5-103
3 as follows:

4 24-50.5-103. Retaliation prohibited - repeal. (1) Except as
5 provided in subsection (2) of this section, no AN appointing authority or
6 supervisor shall NOT initiate or administer any disciplinary action against
7 an employee on account of the employee's disclosure of information. This
8 section shall SUBSECTION (1) DOES not apply to AN EMPLOYEE WHO
9 DISCLOSES:

10 (a) An employee who discloses Information that he OR SHE knows
11 to be false or who discloses information with disregard for the truth or
12 falsity thereof OF THE INFORMATION;

13 (b) An employee who discloses Information from public records
14 which THAT are closed to public inspection pursuant to section
15 24-72-204; OR

16 (c) An employee who discloses WITHOUT LAWFUL AUTHORITY,
17 information which THAT is confidential under any other provision of law
18 OR CLOSED TO PUBLIC INSPECTION UNDER SECTIONS 24-72-204 (2) (a) (I)
19 AND (2) (a) (VIII).

20 (2) It shall be the obligation of An employee who wishes to
21 disclose information under the protection of this article IS OBLIGATED to
22 make a good-faith effort to provide to his OR HER supervisor or appointing
23 authority or member of the general assembly the information to be
24 disclosed prior to the time of its disclosure.

25 (3) SUBSECTION (2) AND PARAGRAPHS (b) AND (c) OF SUBSECTION
26 (1) OF THIS SECTION DO NOT APPLY TO AN EMPLOYEE WHO DISCLOSES
27 INFORMATION TO A WHISTLEBLOWER REVIEW AGENCY.

1 (4) AN EMPLOYEE SHALL DISCLOSE INFORMATION UNDER
2 SUBSECTION (3) OF THIS SECTION TO THE ATTORNEY GENERAL OR THE
3 ATTORNEY GENERAL'S DESIGNEE UNLESS THE INFORMATION DISCLOSED
4 INVOLVES AN OFFICER OR EMPLOYEE OF THE DEPARTMENT OF LAW. IF THE
5 INFORMATION DISCLOSED UNDER SUBSECTION (3) OF THIS SECTION
6 INVOLVES AN OFFICER OR EMPLOYEE OF THE DEPARTMENT OF LAW, AN
7 EMPLOYEE MAY DISCLOSE THE INFORMATION TO ANY WHISTLEBLOWER
8 REVIEW AGENCY. ACCESS TO INFORMATION RECEIVED BY A
9 WHISTLEBLOWER REVIEW AGENCY UNDER THIS SECTION IS LIMITED TO
10 ONLY THOSE PERSONS CONDUCTING THE REVIEW.

11 (5) (a) (I) WITHIN THIRTY DAYS AFTER RECEIPT OF ANY
12 INFORMATION DISCLOSED UNDER SUBSECTION (3) OF THIS SECTION, A
13 WHISTLEBLOWER REVIEW AGENCY SHALL DETERMINE IN WRITING
14 WHETHER OR NOT THE INFORMATION IS:

15 (A) CLOSED TO PUBLIC INSPECTION UNDER SECTION 24-72-204; OR

16 (B) CONFIDENTIAL UNDER ANY OTHER PROVISION OF LAW.

17 (II) EACH WHISTLEBLOWER REVIEW AGENCY SHALL MAINTAIN THE
18 CONFIDENTIAL NATURE OF ANY INFORMATION DETERMINED TO BE CLOSED
19 TO PUBLIC INSPECTION OR CONFIDENTIAL UNDER SUBPARAGRAPH (I) OF
20 THIS PARAGRAPH (a).

21 (b) IF A WHISTLEBLOWER REVIEW AGENCY DETERMINES THAT ANY
22 INFORMATION DISCLOSED UNDER SUBSECTION (3) OF THIS SECTION
23 INCLUDES TRADE SECRETS, OR CONFIDENTIAL COMMERCIAL, FINANCIAL,
24 GEOLOGICAL, OR GEOPHYSICAL DATA, THE WHISTLEBLOWER REVIEW
25 AGENCY SHALL MAINTAIN THE CONFIDENTIAL NATURE OF THE
26 INFORMATION.

27 (c) (I) IF THERE IS A SUBSTANTIAL LIKELIHOOD THAT INFORMATION

1 DISCLOSED UNDER SUBSECTION (3) OF THIS SECTION TO A WHISTLEBLOWER
2 REVIEW AGENCY WILL BE RELEASED TO THE PUBLIC FOR REASONS
3 INCLUDING THAT THE WHISTLEBLOWER REVIEW AGENCY DETERMINES IN
4 WRITING THAT THE INFORMATION IS NOT CONFIDENTIAL, THAT A REQUEST
5 FOR INSPECTION OF THE INFORMATION EXISTS UNDER PART 2 OF ARTICLE
6 72 OF THIS TITLE, OR THAT A PERSON REQUESTS A COURT TO COMPEL
7 RELEASE OF THE INFORMATION, THE WHISTLEBLOWER REVIEW AGENCY
8 SHALL IMMEDIATELY GIVE WRITTEN NOTICE TO THE OWNER OF THE
9 INFORMATION THAT THE WHISTLEBLOWER REVIEW AGENCY IS IN
10 POSSESSION OF THE INFORMATION IN CONNECTION WITH A DISCLOSURE OF
11 INFORMATION UNDER SUBSECTION (3) OF THIS SECTION. WRITTEN NOTICE
12 UNDER THIS PARAGRAPH (c) TOLLS THE TIME PERIOD FOR THE INSPECTION
13 OF RECORDS UNDER SECTION 24-72-203 (3) UNTIL A REASONABLE TIME
14 AFTER THE THIRTY-DAY TIME PERIOD SPECIFIED IN SUBSECTION (6) OF THIS
15 SECTION AND THE CONCLUSION OF ANY LEGAL PROCEEDINGS UNDER
16 SUBSECTION (6) OF THIS SECTION. A WHISTLEBLOWER REVIEW AGENCY
17 SHALL NOT RELEASE ANY INFORMATION SUBJECT TO A NOTICE UNDER THIS
18 PARAGRAPH (c) UNTIL THIRTY DAYS AFTER THE DATE THAT WRITTEN
19 NOTICE IS GIVEN TO THE OWNER OF THE INFORMATION UNDER THIS
20 PARAGRAPH (c).

21 (II) THE WRITTEN NOTICE MUST CONTAIN THE DETERMINATION OF
22 THE WHISTLEBLOWER REVIEW AGENCY WITH RESPECT TO WHETHER THE
23 INFORMATION IS CONFIDENTIAL AND THE CIRCUMSTANCES CONSTITUTING
24 A SUBSTANTIAL LIKELIHOOD THAT THE INFORMATION WILL BE RELEASED
25 TO THE PUBLIC.

26 (III) THE WRITTEN NOTIFICATION REQUIREMENT OF THIS
27 PARAGRAPH (c) DOES NOT APPLY IF A WHISTLEBLOWER REVIEW AGENCY

1 MAKES A GOOD-FAITH EFFORT TO LOCATE THE OWNER OF THE
2 INFORMATION AND REASONABLY DETERMINES THAT THE OWNER CANNOT
3 BE LOCATED.

4 (6) ANY PERSON NOTIFIED UNDER PARAGRAPH (c) OF SUBSECTION
5 (5) OF THIS SECTION WHO COULD BE HARMED BY THE RELEASE OF
6 INFORMATION DESCRIBED UNDER PARAGRAPH (b) OF SUBSECTION (5) OF
7 THIS SECTION AND DISCLOSED UNDER SUBSECTION (3) OF THIS SECTION TO
8 A WHISTLEBLOWER REVIEW AGENCY MAY, WITHIN THIRTY DAYS AFTER
9 RECEIVING NOTICE UNDER PARAGRAPH (c) OF SUBSECTION (5) OF THIS
10 SECTION, FILE AN ACTION UNDER RULE 65 OF THE COLORADO RULES OF
11 CIVIL PROCEDURE AGAINST THE WHISTLEBLOWER REVIEW AGENCY IN
12 POSSESSION OF THE INFORMATION IN THE DISTRICT COURT FOR THE CITY
13 AND COUNTY OF DENVER FOR INJUNCTIVE RELIEF PROHIBITING RELEASE
14 OF THE INFORMATION.

15 (7) (a) SUBJECT TO SUBSECTION (6) OF THIS SECTION,
16 IMMEDIATELY AFTER RECEIVING ANY INFORMATION UNDER SUBSECTION
17 (3) OF THIS SECTION, A WHISTLEBLOWER REVIEW AGENCY SHALL NOTIFY
18 THE SUPERVISOR OR APPOINTING AUTHORITY OF THE EMPLOYEE THAT THE
19 WHISTLEBLOWER REVIEW AGENCY HAS RECEIVED THE INFORMATION AND
20 THAT NO RETALIATORY ACTION MAY BE TAKEN AGAINST THE EMPLOYEE
21 EXCEPT UNDER THE LIMITED CIRCUMSTANCES DESCRIBED IN PARAGRAPH
22 (a) OF SUBSECTION (1) OF THIS SECTION.

23 (b) SUBJECT TO SUBSECTION (6) OF THIS SECTION, WITHIN SIXTY
24 DAYS AFTER RECEIVING ANY INFORMATION UNDER SUBSECTION (3) OF THIS
25 SECTION, A WHISTLEBLOWER REVIEW AGENCY MAY CONFER WITH AND
26 TRANSFER THE INFORMATION TO THE ENTITY HAVING JURISDICTION OR
27 AUTHORITY TO INVESTIGATE ANY ALLEGATION OF UNLAWFUL BEHAVIOR.

1 (8) EXCEPT AS PROVIDED IN SUBSECTION (5) OF THIS SECTION, IF
2 A WHISTLEBLOWER REVIEW AGENCY DETERMINES THAT THE INFORMATION
3 OR A PORTION OF THE INFORMATION RECEIVED IS NOT PROHIBITED FROM
4 DISCLOSURE UNDER SECTION 24-72-204 OR IS NOT OTHERWISE
5 CONFIDENTIAL UNDER ANY OTHER PROVISION OF LAW, THAT INFORMATION
6 MAY BE RELEASED TO THE GENERAL ASSEMBLY OR THE PUBLIC UPON
7 REQUEST. EACH WHISTLEBLOWER REVIEW AGENCY SHALL MAINTAIN
8 RECORDS OF INFORMATION DISCLOSED TO THE WHISTLEBLOWER REVIEW
9 AGENCY UNDER SUBSECTION (3) OF THIS SECTION AND OF THE ACTION OF
10 THE WHISTLEBLOWER REVIEW AGENCY WITH RESPECT TO THE
11 INFORMATION.

12 (9) EACH WHISTLEBLOWER REVIEW AGENCY SHALL DESIGNATE A
13 PERSON OR PERSONS AS A POINT OF CONTACT FOR FUNCTIONS UNDER THIS
14 SECTION AND SHALL MAKE THE CONTACT INFORMATION FOR THAT PERSON
15 OR THOSE PERSONS PUBLIC, BOTH ON THE WEBSITE OF THE
16 WHISTLEBLOWER REVIEW AGENCY AND BY ANY OTHER APPROPRIATE
17 MEANS.

18 (10) IF THE PERSON OR PERSONS DESIGNATED UNDER SUBSECTION
19 (9) OF THIS SECTION BECOME AWARE THAT INFORMATION FROM PUBLIC
20 RECORDS THAT ARE CLOSED TO PUBLIC INSPECTION UNDER SECTION
21 24-72-204 OR INFORMATION THAT IS OTHERWISE CONFIDENTIAL UNDER
22 THE LAW IS DETERMINED TO HAVE BEEN DISCLOSED AT ANY TIME WITHOUT
23 LAWFUL AUTHORITY, THE PERSON OR PERSONS DESIGNATED IN
24 SUBSECTION (9) OF THIS SECTION SHALL MAKE REASONABLE EFFORTS TO
25 NOTIFY THE OWNER OF THE INFORMATION WITHIN A REASONABLE TIME.

26 (11) SUBSECTIONS (3) TO (10) OF THIS SECTION AND THIS
27 SUBSECTION (11) ARE REPEALED, EFFECTIVE MAY 15, 2018.

1 **SECTION 4.** In Colorado Revised Statutes, **add 24-50.5-108** as
2 follows:

3 **24-50.5-108. Working group - broadening protections for state**
4 **employee whistleblowers - confidential information subject of**
5 **whistleblowing - preserving confidentiality of confidential**
6 **information - repeal.** (1) THE GOVERNOR SHALL CONVENE A WORKING

7 GROUP ON BROADENING PROTECTIONS FOR STATE EMPLOYEE
8 WHISTLEBLOWERS WHO MAY BE REQUIRED TO DISCLOSE CONFIDENTIAL
9 INFORMATION THAT IS THE SUBJECT OF WHISTLEBLOWING. THE WORKING
10 GROUP CONSISTS OF THE FOLLOWING:

11 (a) A REPRESENTATIVE OF THE OFFICE OF THE GOVERNOR,
12 DESIGNATED BY THE GOVERNOR;

13 (b) THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF PERSONNEL
14 OR THE EXECUTIVE DIRECTOR'S DESIGNEE;

15 (c) A REPRESENTATIVE OF THE OFFICE OF THE ATTORNEY GENERAL,
16 DESIGNATED BY THE ATTORNEY GENERAL;

17 (d) THE DIRECTOR OF THE OFFICE OF LEGISLATIVE LEGAL SERVICES
18 OR THE DIRECTOR'S DESIGNEE.

19 (2) (a) THE WORKING GROUP SHALL EXAMINE THE
20 WHISTLEBLOWER PROTECTION LAWS OF THE FEDERAL GOVERNMENT AND
21 OF OTHER STATES AND COMPARE THOSE LAWS TO COLORADO'S
22 WHISTLEBLOWER PROTECTION LAW AS CONTAINED IN THIS ARTICLE. THE
23 WORKING GROUP SHALL DETERMINE MEANS OF BROADENING THE
24 WHISTLEBLOWER PROTECTIONS IN COLORADO LAW FOR SITUATIONS
25 WHERE THE SUBJECT OF WHISTLEBLOWING INVOLVES CONFIDENTIAL
26 INFORMATION THAT WOULD NEED TO BE DISCLOSED IN SOME MANNER IN
27 ORDER TO BRING TO LIGHT ACTIVITIES INCLUDING THE WASTE OF PUBLIC

1 FUNDS, ABUSE OF AUTHORITY, OR MISMANAGEMENT. THE WORKING GROUP
2 SHALL DETERMINE METHODS BY WHICH CONFIDENTIAL INFORMATION
3 COULD BE DISCLOSED WHILE PRESERVING THE CONFIDENTIAL NATURE OF
4 THE INFORMATION. THE WORKING GROUP SHALL INCLUDE INPUT FROM
5 ADVOCACY ORGANIZATIONS INCLUDING BUSINESS, PRIVACY ADVOCATES,
6 AND EMPLOYEE ADVOCATES.

7 (b) MEETINGS OF THE WORKING GROUP ARE SUBJECT TO PART 4 OF
8 ARTICLE 6 OF THIS TITLE, AND THE WORKING GROUP IS SUBJECT TO THE
9 "COLORADO OPEN RECORDS ACT", PART 2 OF ARTICLE 72 OF THIS TITLE.

10 (3) BY NOVEMBER 1, 2016, THE WORKING GROUP SHALL REPORT
11 ITS RECOMMENDATIONS TO THE COMMITTEE ON LEGAL SERVICES AND TO
12 THE JOINT BUDGET COMMITTEE OF THE GENERAL ASSEMBLY.

13 (4) THIS SECTION IS REPEALED, EFFECTIVE JULY 1, 2018.

14 **SECTION 5. Effective date - applicability.** This act takes effect
15 upon passage and applies to any information disclosed by a state
16 employee to a whistleblower review agency on or after said date.

17 **SECTION 6. Safety clause.** The general assembly hereby finds,
18 determines, and declares that this act is necessary for the immediate
19 preservation of the public peace, health, and safety.