

**Second Regular Session
Seventy-fourth General Assembly
STATE OF COLORADO**

INTRODUCED

LLS NO. 24-1022.01 Christy Chase x2008

SENATE BILL 24-160

SENATE SPONSORSHIP

Fenberg and Lundeen, Rodriguez

HOUSE SPONSORSHIP

McCluskie and Pugliese, Duran

Senate Committees

State, Veterans, & Military Affairs

House Committees

A BILL FOR AN ACT

101 **CONCERNING RECORDS RELATED TO COMPLAINTS OF DISCRIMINATORY**
102 **WORKPLACE PRACTICES.**

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://leg.colorado.gov>.)

Executive Committee of the Legislative Council. In the 2023 legislative session, the general assembly enacted 2 bills related to complaints and findings of discriminatory or unfair practices in the workplace, including complaints and findings of sexual harassment committed by an elected official, and access to records of such complaints and findings. The bills resulted in a conflict in the law with regard to

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing law.
Dashes through the words or numbers indicate deletions from existing law.

public access to records of sexual harassment complaints against an elected official. Specifically, Senate Bill 23-172:

- Requires employers to designate a repository of written and oral complaints of discriminatory or unfair employment practices, including sexual harassment complaints; and
- Specifies that records in an employer's designated repository are not public records and are not open to public inspection except in very limited circumstances specified in the "Colorado Open Records Act" (CORA).

Senate Bill 23-286 amended CORA to specifically require the custodian of any record of a sexual harassment complaint against an elected official to make the record available for public inspection, after redacting the identity of or any information that would identify any accuser, accused who is not an elected official, victim, or witness, if the investigation concludes that the elected official is culpable of sexual harassment.

The bill resolves the conflict between Senate Bill 23-172 and Senate Bill 23-286 by allowing public inspection of records in an employer's designated repository that pertain to a sexual harassment complaint or investigation against an elected official found culpable of sexual harassment.

Additionally, the bill designates the office of legislative workplace relations as the repository of complaint records for the employers in the legislative department.

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

2 **SECTION 1.** In Colorado Revised Statutes, 2-3-511, **amend** (3);
3 and **add** (2.5) and (3.5) as follows:

4 **2-3-511. Office of legislative workplace relations - creation -**
5 **duties - records - definitions.** (2.5) IN ACCORDANCE WITH SECTION
6 24-34-408 (2), THE OFFICE OF LEGISLATIVE WORKPLACE RELATIONS IS THE
7 DESIGNATED REPOSITORY OF ALL WRITTEN OR ORAL COMPLAINTS OF
8 DISCRIMINATORY OR UNFAIR EMPLOYMENT PRACTICES FOR EACH
9 EMPLOYER IN THE LEGISLATIVE DEPARTMENT. THE OFFICE SHALL
10 PRESERVE ANY WRITTEN OR ORAL COMPLAINTS OF DISCRIMINATION OR
11 UNFAIR EMPLOYMENT PRACTICES AS SPECIFIED IN SECTION 24-34-408 (2),

1 AND SUCH RECORDS SHALL BE TREATED AS SPECIFIED IN SECTION
2 24-34-408 (2) FOR PURPOSES OF THE "COLORADO OPEN RECORDS ACT",
3 PART 2 OF ARTICLE 72 OF TITLE 24.

4 (3) (a) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (3)(b) OR
5 (3.5) OF THIS SECTION, records created and maintained by the office of
6 legislative workplace relations that are related to a workplace harassment
7 complaint or investigation UNDER THE WORKPLACE HARASSMENT POLICY,
8 a complaint under the workplace expectations policy, or an inquiry or
9 request concerning workplace harassment or conduct, whether or not the
10 COMPLAINT, INVESTIGATION, inquiry, or request leads to a formal or
11 informal complaint or resolution process, are not public records as
12 defined in section 24-72-202 (6) and shall not be made available for
13 public inspection. ~~except that, notwithstanding the provisions of section~~
14 ~~24-72-204 (3)(a)(X):~~

15 (a) (b) NOTWITHSTANDING SECTION 24-72-204 (3)(a)(X):

16 (I) The director of the office of legislative workplace relations
17 shall publish and make available to the public an annual statistical report
18 showing the total number of complaints received under the workplace
19 harassment policy and the workplace expectations policy and their
20 resolution. The director shall ensure that the report does not contain
21 information that would disclose the identity of a complainant, respondent,
22 or witness.

23 ~~(b) (I) Except as provided in subsection (3)(b)(II) of this section,~~
24 ~~if, after an investigation in accordance with the workplace harassment~~
25 ~~policy, a workplace harassment committee of the senate or house of~~
26 ~~representatives finds that the facts found more likely than not in the~~
27 ~~investigation establish a violation of the policy by a member of the~~

1 ~~general assembly, the director of the office of legislative workplace~~
2 ~~relations shall make available to the public the executive summary of the~~
3 ~~report of the investigation and the name of the member. The director shall~~
4 ~~ensure that the executive summary does not contain information that~~
5 ~~would disclose the identity of the complainant or any witness.~~

6 ~~(H) The committee may decide by a two-thirds vote to not release~~
7 ~~the executive summary as required by subsection (3)(b)(I) of this section.~~
8 ~~The committee shall meet in executive session to determine whether to~~
9 ~~release the executive summary or any portion thereof and shall take into~~
10 ~~consideration the severity of the conduct alleged, any patterns of~~
11 ~~harassing behavior by the member, and the public's interest in being~~
12 ~~informed of the conduct of elected officials.~~

13 ~~(e)(II) Records of the expenditure of public money on complaints,~~
14 ~~investigations, or other functions of the office of legislative workplace~~
15 ~~relations are public records subject to inspection in accordance with part~~
16 ~~2 of article 72 of title 24, except to the extent that they contain~~
17 ~~information that would disclose the details of, or the identity of an~~
18 ~~individual involved in, a complaint, investigation, or inquiry, or request~~
19 ~~concerning workplace harassment or conduct.~~

20 (3.5) (a) RECORDS CREATED AND MAINTAINED BY THE OFFICE OF
21 LEGISLATIVE WORKPLACE RELATIONS THAT ARE RELATED TO A SEXUAL
22 HARASSMENT COMPLAINT OR INVESTIGATION OR AN INQUIRY OR REQUEST
23 CONCERNING SEXUAL HARASSMENT ARE PUBLIC RECORDS AS DEFINED IN
24 SECTION 24-72-202 (6) AND SHALL BE MADE AVAILABLE FOR PUBLIC
25 INSPECTION IN ACCORDANCE WITH SECTION 24-72-204 (9) IF:

26 (I) THE COMPLAINT, INVESTIGATION, INQUIRY, OR REQUEST IS
27 REGARDING A MEMBER OF THE GENERAL ASSEMBLY;

1 (II) THE COMPLAINT, INVESTIGATION, INQUIRY, OR REQUEST LEADS
2 TO A FORMAL OR INFORMAL COMPLAINT OR RESOLUTION PROCESS; AND

3 (III) THE COMPLAINT OR RESOLUTION PROCESS CONCLUDES THAT
4 THE MEMBER OF THE GENERAL ASSEMBLY IS CULPABLE FOR ANY ACT OF
5 SEXUAL HARASSMENT.

6 (b) (I) REGARDLESS OF WHETHER A REQUEST FOR RECORDS IS
7 MADE PURSUANT TO THE "COLORADO OPEN RECORDS ACT", PART 2 OF
8 ARTICLE 72 OF TITLE 24, AND EXCEPT AS PROVIDED IN SUBSECTION
9 (3.5)(b)(II) OF THIS SECTION, IF, AFTER AN INVESTIGATION IN
10 ACCORDANCE WITH THE WORKPLACE HARASSMENT POLICY, A WORKPLACE
11 HARASSMENT COMMITTEE OF THE SENATE OR HOUSE OF REPRESENTATIVES
12 DETERMINES THAT THE FACTS FOUND IN THE INVESTIGATION ESTABLISH
13 THAT IT IS MORE LIKELY THAN NOT THAT A MEMBER OF THE GENERAL
14 ASSEMBLY VIOLATED THE POLICY, THE DIRECTOR OF THE OFFICE OF
15 LEGISLATIVE WORKPLACE RELATIONS SHALL MAKE AVAILABLE TO THE
16 PUBLIC THE EXECUTIVE SUMMARY OF THE REPORT OF THE INVESTIGATION
17 AND THE NAME OF THE MEMBER. THE DIRECTOR SHALL ENSURE THAT THE
18 EXECUTIVE SUMMARY DOES NOT CONTAIN INFORMATION THAT WOULD
19 DISCLOSE THE IDENTITY OF THE COMPLAINANT OR ANY WITNESS.

20 (II) A WORKPLACE HARASSMENT COMMITTEE OF THE SENATE OR
21 HOUSE OF REPRESENTATIVES MAY DECIDE BY A TWO-THIRDS VOTE NOT TO
22 RELEASE THE EXECUTIVE SUMMARY AS REQUIRED BY SUBSECTION
23 (3.5)(b)(I) OF THIS SECTION. THE COMMITTEE SHALL MEET IN EXECUTIVE
24 SESSION TO DETERMINE WHETHER TO RELEASE THE EXECUTIVE SUMMARY
25 OR ANY PORTION OF THE EXECUTIVE SUMMARY AND SHALL TAKE INTO
26 CONSIDERATION THE SEVERITY OF THE CONDUCT ALLEGED, ANY PATTERNS
27 OF HARASSING BEHAVIOR BY THE MEMBER, AND THE PUBLIC'S INTEREST IN

1 BEING INFORMED OF THE CONDUCT OF ELECTED OFFICIALS.
2 NOTWITHSTANDING THIS SUBSECTION (3.5)(b)(II), IF A REQUEST FOR
3 RECORDS IS MADE PURSUANT TO THE "COLORADO OPEN RECORDS ACT",
4 PART 2 OF ARTICLE 72 OF TITLE 24, FOR AN EXECUTIVE SUMMARY OF AN
5 INVESTIGATION OF AN ACT OF SEXUAL HARASSMENT FOR WHICH A MEMBER
6 OF THE GENERAL ASSEMBLY IS FOUND CULPABLE, THE EXECUTIVE
7 SUMMARY IS A PUBLIC RECORD AS DEFINED IN SECTION 24-72-202 (6) AND
8 SHALL BE MADE AVAILABLE FOR INSPECTION IN ACCORDANCE WITH
9 SECTION 24-72-204 (9), EVEN IF THE COMMITTEE VOTED NOT TO RELEASE
10 THE EXECUTIVE SUMMARY.

11 **SECTION 2.** In Colorado Revised Statutes, 24-6-402, **amend**
12 (3)(a)(III) as follows:

13 **24-6-402. Meetings - open to public - legislative declaration -**
14 **definitions.** (3) (a) The members of a state public body subject to this
15 part 4, upon the announcement by the state public body to the public of
16 the topic for discussion in the executive session, including specific
17 citation to the provision of this subsection (3) authorizing the body to
18 meet in an executive session and identification of the particular matter to
19 be discussed in as much detail as possible without compromising the
20 purpose for which the executive session is authorized, and the affirmative
21 vote of two-thirds of the entire membership of the body after such
22 announcement, may hold an executive session only at a regular or special
23 meeting and for the sole purpose of considering any of the matters
24 enumerated in subsection (3)(b) of this section or the following matters;
25 except that no adoption of any proposed policy, position, resolution, rule,
26 regulation, or formal action, except the review, approval, and amendment
27 of the minutes of an executive session recorded pursuant to subsection

1 (2)(d.5)(I) of this section, shall occur at any executive session that is not
2 open to the public:

3 (III) Matters required to be kept confidential:

4 (A) By federal law or rules;

5 (B) BY state statutes; ~~or~~

6 (C) In accordance with the requirements of any joint rule of the
7 senate and house of representatives pertaining to lobbying practices, ~~or~~
8 THE workplace harassment POLICY, or THE workplace expectations
9 ~~policies~~ POLICY; OR

10 (D) IN ACCORDANCE WITH THE REQUIREMENTS OF THE
11 WORKPLACE HARASSMENT POLICY;

12 **SECTION 3.** In Colorado Revised Statutes, 24-34-408, **amend**
13 (2)(b) as follows:

14 **24-34-408. Employer record keeping - repository of**
15 **discrimination complaints - definition.** (2) (b) Records of complaints
16 in an employer's designated repository maintained in accordance with this
17 subsection (2) are not public records, as defined in section 24-72-202 (6),
18 and, for purposes of an employer that is subject to part 2 of article 72 of
19 this title 24, records in a designated repository are considered personnel
20 ~~records~~ FILES, as defined in section 24-72-202 (4.5), and are not open to
21 public inspection pursuant to section 24-72-204 (3)(a)(II)(A).
22 Additionally, in accordance with section 24-72-204 (3)(a)(X), any record
23 of a sexual harassment complaint or investigation is not open to public
24 inspection except as specified in ~~said section 24-72-204 (3)(a)(X)~~
25 SECTION 24-72-204 (3)(a)(X) OR (9).

26 **SECTION 4.** In Colorado Revised Statutes, 24-72-204, **amend**
27 (3)(a)(X)(A), (3)(a)(X.5), and (9) as follows:

1 **24-72-204. Allowance or denial of inspection - grounds -**
2 **procedure - appeal - definitions - repeal.** (3) (a) The custodian shall
3 deny the right of inspection of the following records, unless otherwise
4 provided by law; except that the custodian shall make any of the
5 following records, other than letters of reference concerning employment,
6 licensing, or issuance of permits, available to the person in interest in
7 accordance with this subsection (3):

8 (X) (A) EXCEPT AS OTHERWISE SPECIFIED IN SUBSECTION (9) OF
9 THIS SECTION, any records of sexual harassment complaints and
10 investigations, whether or not such records are maintained as part of a
11 personnel file; except that an administrative agency investigating the
12 complaint may, upon a showing of necessity to the custodian of records,
13 gain access to information necessary to the investigation of such a
14 complaint. This ~~sub-subparagraph (A) shall~~ SUBSECTION (3)(a)(X)(A)
15 DOES not apply to records of sexual harassment complaints and
16 investigations that are included in court files and records of court
17 proceedings. Disclosure of all or a part of any records of sexual
18 harassment complaints and investigations to the person in interest is
19 permissible to the extent that the disclosure can be made without
20 permitting the identification, as a result of the disclosure, of any
21 individual involved. This ~~sub-subparagraph (A) shall~~ SUBSECTION
22 (3)(a)(X)(A) DOES not preclude disclosure of all or part of the results of
23 an investigation of the general employment policies and procedures of an
24 agency, office, department, or division, to the extent that the disclosure
25 can be made without permitting the identification, as a result of the
26 disclosure, of any individual involved.

27 (X.5) EXCEPT AS OTHERWISE SPECIFIED IN SUBSECTION (9) OF THIS

1 SECTION, records created, maintained, or provided to a custodian by the
2 office of legislative workplace relations created in section 2-3-511 that
3 are related to a workplace harassment complaint or investigation, a
4 complaint under the workplace expectations policy, or an inquiry or
5 request concerning workplace harassment or conduct, whether or not the
6 records are part of a formal or informal complaint or resolution process;

7 (9) ~~Unless any other provision of this part 2 applies to prevent or~~
8 ~~restrict disclosure and notwithstanding the provisions of section 2-3-511~~
9 ~~and subsections (3)(a)(X) and (3)(a)(X.5) of this section,~~ Records of
10 sexual harassment complaints made against an elected official and the
11 results or report of investigations regarding alleged sexual harassment by
12 an elected official conducted by or for that official's government shall be
13 made available for inspection if the investigation concludes that the
14 elected official is culpable for any act of sexual harassment; except that
15 the identity of any accuser, accused who is not an elected official, victim,
16 or witness and any other information that would identify any such person
17 must be redacted. The records must be redacted, if possible, to permit
18 inspection without revealing any part of the record that would not be
19 subject to disclosure pursuant to any other provision of this part 2.
20 Nothing in this subsection (9) requires the disclosure of any record
21 subject to part 3 of this article 72.

22 **SECTION 5. Act subject to petition - effective date.** This act
23 takes effect at 12:01 a.m. on the day following the expiration of the
24 ninety-day period after final adjournment of the general assembly; except
25 that, if a referendum petition is filed pursuant to section 1 (3) of article V
26 of the state constitution against this act or an item, section, or part of this
27 act within such period, then the act, item, section, or part will not take

1 effect unless approved by the people at the general election to be held in
2 November 2024 and, in such case, will take effect on the date of the
3 official declaration of the vote thereon by the governor.