

Second Regular Session
Seventieth General Assembly
STATE OF COLORADO

REENGROSSED

*This Version Includes All Amendments
Adopted in the House of Introduction*

LLS NO. 16-1221.01 Bart Miller x2173

HOUSE BILL 16-1432

HOUSE SPONSORSHIP

Winter,

SENATE SPONSORSHIP

Kerr,

House Committees
Judiciary

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING THE RIGHTS OF PRIVATE SECTOR EMPLOYEES TO INSPECT**
102 **THEIR PERSONNEL FILES.**

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 allows an employee or former employee at least annually to request that his or her employer permit the employee or former employee to inspect or request copies of the employee's or former employee's personnel file at the employer's office and at a time convenient to both the employer and the employee or former employee. Employees or former employees are required to pay reasonable costs of

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
April 25, 2016

HOUSE
Amended 2nd Reading
April 22, 2016

duplication of documents.

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

2 **SECTION 1. Legislative declaration.** The general assembly
3 finds, determines, and declares that it is the public policy of this state that
4 an employee have access to his or her personnel files maintained by a
5 current or former employer. The general assembly intends this policy to
6 foster an environment of open communication between employers and
7 employees regarding the employment status of employees and to deter
8 frivolous lawsuits against employers. The general assembly recognizes
9 that this act does not cover public employees because they have access to
10 their personnel files under the "Colorado Open Records Act", part 2 of
11 article 72 of title 24, Colorado Revised Statutes.

12 **SECTION 2.** In Colorado Revised Statutes, **add 8-2-129** as
13 follows:

14 **8-2-129. Access to personnel files and records - definition -**
15 **exemptions.** (1) EVERY EMPLOYER SHALL, AT LEAST ANNUALLY, UPON
16 THE REQUEST OF AN EMPLOYEE, PERMIT THAT EMPLOYEE TO INSPECT
17 AND OBTAIN A COPY OF ANY PART OF HIS OR HER OWN PERSONNEL FILE OR
18 FILES AT THE EMPLOYER'S OFFICE AND AT A TIME CONVENIENT TO BOTH
19 THE EMPLOYER AND THE EMPLOYEE. A FORMER EMPLOYEE MAY MAKE ONE
20 INSPECTION OF HIS OR HER PERSONNEL FILE AFTER TERMINATION OF
21 EMPLOYMENT. AN EMPLOYER MAY RESTRICT THE EMPLOYEE'S OR FORMER
22 EMPLOYEE'S ACCESS TO HIS OR HER FILES TO BE ONLY IN THE PRESENCE OF
23 A PERSON RESPONSIBLE FOR MANAGING PERSONNEL DATA ON BEHALF OF
24 THE EMPLOYER OR ANOTHER EMPLOYEE DESIGNATED BY THE EMPLOYER.
25 THE EMPLOYER MAY REQUIRE THE EMPLOYEE OR FORMER EMPLOYEE TO

1 PAY THE REASONABLE COST OF DUPLICATION OF DOCUMENTS.

2 (2) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE
3 REQUIRES:

4 (a) "EMPLOYEE" DOES NOT INCLUDE A PERSON EMPLOYED BY AN
5 ENTITY SUBJECT TO THE "COLORADO OPEN RECORDS ACT", PART 2 OF
6 ARTICLE 72 OF TITLE 24, C.R.S.

7 (b) "EMPLOYER" DOES NOT INCLUDE ANY ENTITY SUBJECT TO THE
8 "COLORADO OPEN RECORDS ACT", PART 2 OF ARTICLE 72 OF TITLE 24,
9 C.R.S.

10 (3) "PERSONNEL FILE" MEANS THE PERSONNEL RECORDS OF AN
11 EMPLOYEE, IN THE MANNER MAINTAINED BY THE EMPLOYER AND USING
12 REASONABLE EFFORTS BY THE EMPLOYER TO COLLECT, THAT ARE USED OR
13 HAVE BEEN USED TO DETERMINE THE EMPLOYEE'S QUALIFICATIONS FOR
14 EMPLOYMENT, PROMOTION, ADDITIONAL COMPENSATION, OR
15 EMPLOYMENT TERMINATION OR OTHER DISCIPLINARY ACTION.
16 "PERSONNEL FILE" DOES NOT INCLUDE DOCUMENTS OR RECORDS
17 REQUIRED TO BE PLACED OR MAINTAINED IN A SEPARATE FILE FROM THE
18 REGULAR PERSONNEL FILE BY FEDERAL OR STATE LAW OR RULE;
19 DOCUMENTS OR RECORDS PERTAINING TO CONFIDENTIAL REPORTS FROM
20 PREVIOUS EMPLOYERS OF THE EMPLOYEE; OR AN ACTIVE CRIMINAL
21 INVESTIGATION, AN ACTIVE DISCIPLINARY INVESTIGATION BY THE
22 EMPLOYER, OR AN ACTIVE INVESTIGATION BY A REGULATORY AGENCY.
23 "PERSONNEL FILE" ALSO DOES NOT INCLUDE ANY INFORMATION IN A
24 DOCUMENT OR RECORD THAT IDENTIFIES ANY PERSON WHO MADE A
25 CONFIDENTIAL ACCUSATION, AS DETERMINED BY THE EMPLOYER, AGAINST
26 THE EMPLOYEE WHO MAKES A REQUEST UNDER SUBSECTION (1) OF THIS
27 SECTION.

- 1 (4) NOTHING IN THIS SECTION:
- 2 (a) CREATES OR AUTHORIZES A PRIVATE CAUSE OF ACTION BY A
- 3 PERSON AGGRIEVED BY A VIOLATION OF THIS SECTION;
- 4 (b) REQUIRES AN EMPLOYER TO CREATE, MAINTAIN, OR RETAIN A
- 5 PERSONNEL FILE ON AN EMPLOYEE OR FORMER EMPLOYEE; OR
- 6 (c) REQUIRES AN EMPLOYER TO RETAIN ANY DOCUMENTS THAT
- 7 ARE OR WERE CONTAINED IN AN EMPLOYEE'S OR FORMER EMPLOYEE'S
- 8 PERSONNEL FILE FOR ANY SPECIFIED PERIOD OF TIME.
- 9 (5) THIS SECTION DOES NOT APPLY TO A FINANCIAL INSTITUTION
- 10 CHARTERED AND SUPERVISED UNDER STATE OR FEDERAL LAW, INCLUDING
- 11 WITHOUT LIMITATION:
- 12 (a) A BANK;
- 13 (b) A TRUST COMPANY;
- 14 (c) A SAVINGS INSTITUTION; AND
- 15 (d) A CREDIT UNION.

16 **SECTION 3. Act subject to petition - effective date.** This act

17 takes effect January 1, 2017; except that, if a referendum petition is filed

18 pursuant to section 1 (3) of article V of the state constitution against this

19 act or an item, section, or part of this act within the ninety-day period

20 after final adjournment of the general assembly, then the act, item,

21 section, or part will not take effect unless approved by the people at the

22 general election to be held in November 2016 and, in such case, will take

23 effect on January 1, 2017, or on the date of the official declaration of the

24 vote thereon by the governor, whichever is later.