

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

INTRODUCED

LLS NO. 23-0369.01 Jason Gelender x4330

SENATE BILL 23-053

SENATE SPONSORSHIP

Kirkmeyer,

HOUSE SPONSORSHIP

(None),

Senate Committees

State, Veterans, & Military Affairs

House Committees

A BILL FOR AN ACT

101 **CONCERNING RESTRICTIONS ON NONDISCLOSURE AGREEMENTS THAT**
102 **AFFECT GOVERNMENT EMPLOYEES.**

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>.)

The bill prohibits the state, counties, cities and counties, municipalities, schools districts, and any of their departments, institutions, or agencies from making it a condition of employment that an employee or a prospective employee executes a contract or other form of agreement that prohibits, prevents, or otherwise restricts the employee or prospective employee from disclosing factual circumstances concerning the

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.*

individual's employment with the government (nondisclosure agreement) unless the nondisclosure agreement is necessary to prevent disclosure of:

- Factual circumstances relating to the employment that reasonably implicate privacy interests held by the employee who is a party to the agreement; or
- Matters required to be kept confidential by federal law or rules, the state constitution, or state statute, or matters bearing on the specialized details of security arrangements or investigations.

The bill prohibits nondisclosure agreements that prohibit employees of the state, counties, city and counties, municipalities, school districts, or any of their departments, institutions, or agencies from disclosing factual circumstances concerning their employment. To the extent that an employer includes any such provision in any employment contract or agreement, the provision is deemed to be against public policy and unenforceable against a current or former employee who is a party to the contract or agreement unless the provision is intended to prevent disclosure of factual circumstances implicating the employee's privacy interests, matters required to be kept confidential under federal law or rules, the state constitution, or state statute, or matters bearing on the specialized details of security arrangements or investigations.

The bill prohibits the state, counties, city and counties, municipalities, or any of their departments, institutions, or agencies from taking any retaliatory action against an individual on the grounds that the individual does not enter into a contract or agreement deemed to be against public policy and unenforceable under the bill. Any person who enforces or attempts to enforce a provision deemed to be against public policy and unenforceable under the bill is liable for the employee's reasonable attorney fees and costs in defending against the action.

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

2 **SECTION 1. Legislative declaration.** (1) The general assembly
3 finds and declares that:

4 (a) (I) Government employees, including employees of the state,
5 counties, cities and counties, municipalities, school districts, and any
6 department, institution, or agency of any such government, are public
7 servants who are hired to undertake their job duties and responsibilities
8 to serve the public;

1 (II) Public employees are paid with public money, and they and
2 their employers are accountable to the public for the manner in which
3 they carry out their public duties and responsibilities;

4 (III) The public has a fundamental interest in transparency
5 concerning the conduct of government, including state government,
6 county government, city and county government, municipal government,
7 and school district government. From the free speech provisions of its
8 founding constitution to the enactment of laws requiring that meetings be
9 conducted in an open manner and that public records be broadly
10 disclosed, the state of Colorado has been at the forefront of efforts to
11 ensure that the formation of public policy is public business that may not
12 be conducted in secret. These constitutional and statutory requirements
13 are intended to provide the public with as much knowledge as possible
14 about how public business is being conducted while it is being conducted;

15 (IV) Nondisclosure agreements imposed on government
16 employees or prospective employees that effectively prohibit government
17 employees from disclosing details about their government service
18 obstruct these fundamental principles of government transparency and
19 public accountability. The details of public business should not be hidden
20 from public view by means of nondisclosure agreements imposed on
21 government employees as a condition of their employment or in
22 connection with their leaving government service; and

23 (V) In the absence of legitimate concerns about the protection of
24 the privacy interests of government employees, or to protect against
25 disclosure matters that are truly confidential and sensitive to the public
26 interest, neither the state nor any of its departments, institutions, or
27 agencies should be permitted to silence their employees from being able

1 to speak openly about their government service through the imposition of
2 nondisclosure agreements. Such employees should ordinarily be permitted
3 to speak openly about their government service.

4 (b) By enacting this act, the general assembly intends to restrict
5 the ability of a government, including the state, a county, a city and
6 county, a municipality, or a school district, or any department, institution,
7 or agency of a government, from requiring its employees or prospective
8 employees to enter into nondisclosure agreements as a condition of their
9 being hired. Nor may such a government, department, institution, or
10 agency insist upon the enforcement of a nondisclosure agreement when
11 an employee ends their employment with the government, department,
12 institution, or agency. The general assembly intends that, absent the
13 presence of very select circumstances, enforcement of such nondisclosure
14 agreements be prohibited and that such nondisclosure agreements be
15 deemed void as against public policy and of no legal force and effect. The
16 general assembly further intends that this act be liberally construed to
17 further the fundamental principle that state government be conducted in
18 public to the greatest extent possible; and

19 (c) Transparency concerning the conduct of government is a
20 matter of statewide concern and, therefore, the provisions of this act apply
21 to all counties, cities and counties, municipalities, and school districts
22 including home rule counties, cities and counties, and municipalities.

23 **SECTION 2.** In Colorado Revised Statutes, **add** 22-1-135.5 as
24 follows:

25 **22-1-135.5. Nondisclosure agreements - protection of school**
26 **district, board of cooperative services, and public school employees.**

27 (1) (a) NO SCHOOL DISTRICT, BOARD OF COOPERATIVE SERVICES, PUBLIC

1 SCHOOL, OR ANY DEPARTMENT, INSTITUTION, OR AGENCY OF A SCHOOL
2 DISTRICT, BOARD OF COOPERATIVE SERVICES, OR PUBLIC SCHOOL SHALL
3 MAKE IT A CONDITION OF EMPLOYMENT THAT AN EMPLOYEE OR A
4 PROSPECTIVE EMPLOYEE EXECUTES A CONTRACT OR OTHER FORM OF
5 AGREEMENT THAT PROHIBITS, PREVENTS, OR OTHERWISE RESTRICTS THE
6 EMPLOYEE OR PROSPECTIVE EMPLOYEE FROM DISCLOSING FACTUAL
7 CIRCUMSTANCES CONCERNING THE INDIVIDUAL'S EMPLOYMENT WITH THE
8 SCHOOL DISTRICT, BOARD OF COOPERATIVE SERVICES, OR PUBLIC SCHOOL
9 OR ANY OF ITS DEPARTMENTS, INSTITUTIONS, OR AGENCIES UNLESS THE
10 PROHIBITION OR RESTRICTION IN THE CONTRACT OR AGREEMENT IS
11 NECESSARY TO PREVENT DISCLOSURE OF:

12 (I) FACTUAL CIRCUMSTANCES RELATING TO THE EMPLOYMENT
13 THAT REASONABLY IMPLICATE PRIVACY INTERESTS OF THE EMPLOYEE WHO
14 IS A PARTY TO THE AGREEMENT IF THE EMPLOYEE ELECTS IN THE
15 EMPLOYEE'S SOLE DISCRETION TO RESTRICT DISCLOSURE OF SUCH
16 CIRCUMSTANCES ON SUCH GROUNDS; OR

17 (II) MATTERS REQUIRED TO BE KEPT CONFIDENTIAL BY FEDERAL
18 LAW OR RULES, THE STATE CONSTITUTION, STATE STATUTE, OR MATTERS
19 BEARING ON THE SPECIALIZED DETAILS OF SECURITY ARRANGEMENTS OR
20 INVESTIGATIONS.

21 (b) ANY PROVISION IN ANY EMPLOYMENT CONTRACT OR
22 SETTLEMENT AGREEMENT ENTERED INTO BETWEEN AN EMPLOYEE OF A
23 SCHOOL DISTRICT, BOARD OF COOPERATIVE SERVICES, OR PUBLIC SCHOOL
24 OR ANY DEPARTMENT, INSTITUTION, OR AGENCY OF A SCHOOL DISTRICT,
25 A BOARD OF COOPERATIVE SERVICES, OR A PUBLIC SCHOOL, AND THE
26 SCHOOL DISTRICT, BOARD OF COOPERATIVE SERVICES, PUBLIC SCHOOL,
27 DEPARTMENT, INSTITUTION, OR AGENCY THAT HAS THE PURPOSE OR

1 EFFECT OF CONCEALING FACTUAL CIRCUMSTANCES CONCERNING THE
2 INDIVIDUAL'S EMPLOYMENT WITH THE SCHOOL DISTRICT, BOARD OF
3 COOPERATIVE SERVICES, PUBLIC SCHOOL, DEPARTMENT, INSTITUTION, OR
4 AGENCY IS PROHIBITED. TO THE EXTENT THAT AN EMPLOYER INCLUDES
5 ANY SUCH PROVISION IN ANY EMPLOYMENT CONTRACT OR AGREEMENT,
6 THE PROVISION IS DEEMED TO BE AGAINST PUBLIC POLICY AND
7 UNENFORCEABLE AGAINST A CURRENT OR FORMER EMPLOYEE WHO IS A
8 PARTY TO THE CONTRACT OR AGREEMENT UNLESS THE PROVISION IS
9 INTENDED TO PREVENT DISCLOSURE OF:

10 (I) FACTUAL CIRCUMSTANCES RELATING TO THE EMPLOYMENT
11 THAT REASONABLY IMPLICATE PRIVACY INTERESTS OF THE EMPLOYEE WHO
12 IS A PARTY TO THE AGREEMENT IF THE EMPLOYEE ELECTS IN THE
13 EMPLOYEE'S SOLE DISCRETION TO RESTRICT DISCLOSURE OF SUCH
14 CIRCUMSTANCES ON SUCH GROUNDS; OR

15 (II) MATTERS REQUIRED TO BE KEPT CONFIDENTIAL BY FEDERAL
16 LAW OR RULES, THE STATE CONSTITUTION, OR STATE STATUTE, OR
17 MATTERS BEARING ON THE SPECIALIZED DETAILS OF SECURITY
18 ARRANGEMENTS OR INVESTIGATIONS.

19 (2) (a) NO SCHOOL DISTRICT, BOARD OF COOPERATIVE SERVICES,
20 PUBLIC SCHOOL, OR DEPARTMENT, INSTITUTION, OR AGENCY OF A SCHOOL
21 DISTRICT, A BOARD OF COOPERATIVE SERVICES, OR A PUBLIC SCHOOL
22 SHALL TAKE ANY RETALIATORY ACTION, INCLUDING, WITHOUT
23 LIMITATION, FAILURE TO HIRE, DISCHARGE, SUSPENSION, DEMOTION,
24 DISCRIMINATION IN THE TERMS, CONDITIONS, OR PRIVILEGES OF
25 EMPLOYMENT, OR OTHER ADVERSE ACTION AGAINST AN INDIVIDUAL ON
26 THE GROUNDS THAT THE INDIVIDUAL DOES NOT ENTER INTO A CONTRACT
27 OR AGREEMENT DEEMED TO BE AGAINST PUBLIC POLICY AND

1 UNENFORCEABLE UNDER SUBSECTION (1)(b) OF THIS SECTION.

2 (b) ANY PERSON WHO ENFORCES OR ATTEMPTS TO ENFORCE A
3 PROVISION DEEMED TO BE AGAINST PUBLIC POLICY AND UNENFORCEABLE
4 PURSUANT TO SUBSECTION (1)(b) OF THIS SECTION IS LIABLE FOR THE
5 EMPLOYEE'S REASONABLE ATTORNEY FEES AND COSTS IN DEFENDING
6 AGAINST THE ACTION.

7 **SECTION 3.** In Colorado Revised Statutes, **add 24-50.5-105.5**
8 as follows:

9 **24-50.5-105.5. Nondisclosure agreements - protection of state**
10 **employees - definition.** (1) (a) NEITHER THE STATE NOR ANY
11 DEPARTMENT, INSTITUTION, OR AGENCY OF THE STATE SHALL MAKE IT A
12 CONDITION OF EMPLOYMENT THAT AN EMPLOYEE OR A PROSPECTIVE
13 EMPLOYEE EXECUTES A CONTRACT OR OTHER FORM OF AGREEMENT THAT
14 PROHIBITS, PREVENTS, OR OTHERWISE RESTRICTS THE EMPLOYEE OR
15 PROSPECTIVE EMPLOYEE FROM DISCLOSING FACTUAL CIRCUMSTANCES
16 CONCERNING THE INDIVIDUAL'S EMPLOYMENT WITH THE STATE OR ANY OF
17 ITS DEPARTMENTS, INSTITUTIONS, OR AGENCIES UNLESS THE PROHIBITION
18 OR RESTRICTION IN THE CONTRACT OR AGREEMENT IS NECESSARY TO
19 PREVENT DISCLOSURE OF:

20 (I) FACTUAL CIRCUMSTANCES RELATING TO THE EMPLOYMENT
21 THAT REASONABLY IMPLICATE PRIVACY INTERESTS OF THE EMPLOYEE WHO
22 IS A PARTY TO THE AGREEMENT IF THE EMPLOYEE ELECTS IN THE
23 EMPLOYEE'S SOLE DISCRETION TO RESTRICT DISCLOSURE OF SUCH
24 CIRCUMSTANCES ON SUCH GROUNDS; AND

25 (II) MATTERS REQUIRED TO BE KEPT CONFIDENTIAL BY FEDERAL
26 LAW OR RULES, THE STATE CONSTITUTION, STATE STATUTE, OR MATTERS
27 BEARING ON THE SPECIALIZED DETAILS OF SECURITY ARRANGEMENTS OR

1 INVESTIGATIONS.

2 (b) ANY PROVISION IN ANY EMPLOYMENT CONTRACT OR
3 SETTLEMENT AGREEMENT ENTERED INTO BETWEEN AN EMPLOYEE OF THE
4 STATE OR ANY OF ITS DEPARTMENTS, INSTITUTIONS, OR AGENCIES AND THE
5 STATE OR ANY OF ITS DEPARTMENTS, INSTITUTIONS, OR AGENCIES THAT
6 HAS THE PURPOSE OR EFFECT OF CONCEALING FACTUAL CIRCUMSTANCES
7 CONCERNING THE INDIVIDUAL'S EMPLOYMENT WITH THE STATE OR ANY OF
8 ITS DEPARTMENTS, INSTITUTIONS, OR AGENCIES IS PROHIBITED. TO THE
9 EXTENT THAT AN EMPLOYER INCLUDES ANY SUCH PROVISION IN ANY
10 EMPLOYMENT CONTRACT OR AGREEMENT, THE PROVISION IS DEEMED TO
11 BE AGAINST PUBLIC POLICY AND UNENFORCEABLE AGAINST A CURRENT OR
12 FORMER EMPLOYEE WHO IS A PARTY TO THE CONTRACT OR AGREEMENT
13 UNLESS THE PROVISION IS INTENDED TO PREVENT DISCLOSURE OF:

14 (I) FACTUAL CIRCUMSTANCES RELATING TO THE EMPLOYMENT
15 THAT REASONABLY IMPLICATE PRIVACY INTERESTS OF THE EMPLOYEE WHO
16 IS A PARTY TO THE AGREEMENT IF THE EMPLOYEE ELECTS IN THE
17 EMPLOYEE'S SOLE DISCRETION TO RESTRICT DISCLOSURE OF SUCH
18 CIRCUMSTANCES ON SUCH GROUNDS; AND

19 (II) MATTERS REQUIRED TO BE KEPT CONFIDENTIAL BY FEDERAL
20 LAW OR RULES, THE STATE CONSTITUTION, STATE STATUTE, OR MATTERS
21 BEARING ON THE SPECIALIZED DETAILS OF SECURITY ARRANGEMENTS OR
22 INVESTIGATIONS.

23 (2) (a) NEITHER THE STATE NOR ANY OF ITS DEPARTMENTS,
24 INSTITUTIONS, OR AGENCIES SHALL TAKE ANY RETALIATORY ACTION,
25 INCLUDING, WITHOUT LIMITATION, FAILURE TO HIRE, DISCHARGE,
26 SUSPENSION, DEMOTION, DISCRIMINATION IN THE TERMS, CONDITIONS, OR
27 PRIVILEGES OF EMPLOYMENT, OR OTHER ADVERSE ACTION AGAINST AN

1 INDIVIDUAL ON THE GROUNDS THAT THE INDIVIDUAL DOES NOT ENTER
2 INTO A CONTRACT OR AGREEMENT DEEMED TO BE AGAINST PUBLIC POLICY
3 AND UNENFORCEABLE UNDER SUBSECTION (1)(b) OF THIS SECTION.

4 (b) ANY PERSON WHO ENFORCES OR ATTEMPTS TO ENFORCE A
5 PROVISION DEEMED TO BE AGAINST PUBLIC POLICY AND UNENFORCEABLE
6 PURSUANT TO SUBSECTION (1)(b) OF THIS SECTION IS LIABLE FOR THE
7 EMPLOYEE'S REASONABLE ATTORNEY FEES AND COSTS IN DEFENDING
8 AGAINST THE ACTION.

9 (3) AS USED IN THIS SECTION, "THE STATE" INCLUDES WITHOUT
10 LIMITATION EACH OF THE STATE OFFICERS LISTED IN SECTION 1 OF ARTICLE
11 IV OF THE STATE CONSTITUTION AS WELL AS THE EXECUTIVE,
12 LEGISLATIVE, AND JUDICIAL DEPARTMENTS OF THE GOVERNMENT OF THE
13 STATE.

14 **SECTION 4.** In Colorado Revised Statutes, **add** part 16 to article
15 1 of title 29 as follows:

16 PART 16

17 LOCAL GOVERNMENT NONDISCLOSURE AGREEMENTS

18 **29-1-1601. Nondisclosure agreements - protection of local**
19 **government employees - definition.** (1) (a) NEITHER A LOCAL
20 GOVERNMENT NOR A DEPARTMENT, INSTITUTION, OR AGENCY OF A LOCAL
21 GOVERNMENT SHALL MAKE IT A CONDITION OF EMPLOYMENT THAT AN
22 EMPLOYEE OR A PROSPECTIVE EMPLOYEE EXECUTES A CONTRACT OR
23 OTHER FORM OF AGREEMENT THAT PROHIBITS, PREVENTS, OR OTHERWISE
24 RESTRICTS THE EMPLOYEE OR PROSPECTIVE EMPLOYEE FROM DISCLOSING
25 FACTUAL CIRCUMSTANCES CONCERNING THE INDIVIDUAL'S EMPLOYMENT
26 WITH THE LOCAL GOVERNMENT OR ANY OF ITS DEPARTMENTS,
27 INSTITUTIONS, OR AGENCIES UNLESS THE PROHIBITION OR RESTRICTION IN

1 THE CONTRACT OR AGREEMENT IS NECESSARY TO PREVENT DISCLOSURE
2 OF:

3 (I) FACTUAL CIRCUMSTANCES RELATING TO THE EMPLOYMENT
4 THAT REASONABLY IMPLICATE PRIVACY INTERESTS OF THE EMPLOYEE WHO
5 IS A PARTY TO THE AGREEMENT IF THE EMPLOYEE ELECTS IN THE
6 EMPLOYEE'S SOLE DISCRETION TO RESTRICT DISCLOSURE OF SUCH
7 CIRCUMSTANCES ON SUCH GROUNDS; OR

8 (II) MATTERS REQUIRED TO BE KEPT CONFIDENTIAL BY FEDERAL
9 LAW OR RULES, THE STATE CONSTITUTION, STATE STATUTE, OR MATTERS
10 BEARING ON THE SPECIALIZED DETAILS OF SECURITY ARRANGEMENTS OR
11 INVESTIGATIONS.

12 (b) ANY PROVISION IN ANY EMPLOYMENT CONTRACT OR
13 SETTLEMENT AGREEMENT ENTERED INTO BETWEEN AN EMPLOYEE OF A
14 LOCAL GOVERNMENT OR ANY DEPARTMENT, INSTITUTION, OR AGENCY OF
15 A LOCAL GOVERNMENT AND THE LOCAL GOVERNMENT, DEPARTMENT,
16 INSTITUTION, OR AGENCY THAT HAS THE PURPOSE OR EFFECT OF
17 CONCEALING FACTUAL CIRCUMSTANCES CONCERNING THE INDIVIDUAL'S
18 EMPLOYMENT WITH THE LOCAL GOVERNMENT, DEPARTMENT, INSTITUTION,
19 OR AGENCY IS PROHIBITED. TO THE EXTENT THAT AN EMPLOYER INCLUDES
20 ANY SUCH PROVISION IN ANY EMPLOYMENT CONTRACT OR AGREEMENT,
21 THE PROVISION IS DEEMED TO BE AGAINST PUBLIC POLICY AND
22 UNENFORCEABLE AGAINST A CURRENT OR FORMER EMPLOYEE WHO IS A
23 PARTY TO THE CONTRACT OR AGREEMENT UNLESS THE PROVISION IS
24 INTENDED TO PREVENT DISCLOSURE OF:

25 (I) FACTUAL CIRCUMSTANCES RELATING TO THE EMPLOYMENT
26 THAT REASONABLY IMPLICATE PRIVACY INTERESTS OF THE EMPLOYEE WHO
27 IS A PARTY TO THE AGREEMENT IF THE EMPLOYEE ELECTS IN THE

1 EMPLOYEE'S SOLE DISCRETION TO RESTRICT DISCLOSURE OF SUCH
2 CIRCUMSTANCES ON SUCH GROUNDS; OR

3 (II) MATTERS REQUIRED TO BE KEPT CONFIDENTIAL BY FEDERAL
4 LAW OR RULES, THE STATE CONSTITUTION, STATE STATUTE OR MATTERS
5 BEARING ON THE SPECIALIZED DETAILS OF SECURITY ARRANGEMENTS OR
6 INVESTIGATIONS.

7 (2) (a) NEITHER A LOCAL GOVERNMENT NOR A DEPARTMENT, AN
8 INSTITUTION, OR AN AGENCY OF A LOCAL GOVERNMENT SHALL TAKE ANY
9 RETALIATORY ACTION, INCLUDING, WITHOUT LIMITATION, FAILURE TO
10 HIRE, DISCHARGE, SUSPENSION, DEMOTION, DISCRIMINATION IN THE
11 TERMS, CONDITIONS, OR PRIVILEGES OF EMPLOYMENT, OR OTHER ADVERSE
12 ACTION AGAINST AN INDIVIDUAL ON THE GROUNDS THAT THE INDIVIDUAL
13 DOES NOT ENTER INTO A CONTRACT OR AGREEMENT DEEMED TO BE
14 AGAINST PUBLIC POLICY AND UNENFORCEABLE UNDER SUBSECTION (1)(b)
15 OF THIS SECTION.

16 (b) ANY PERSON WHO ENFORCES OR ATTEMPTS TO ENFORCE A
17 PROVISION DEEMED AGAINST PUBLIC POLICY AND UNENFORCEABLE
18 PURSUANT TO SUBSECTION (1)(b) OF THIS SECTION IS LIABLE FOR THE
19 EMPLOYEE'S REASONABLE ATTORNEY FEES AND COSTS IN DEFENDING
20 AGAINST THE ACTION.

21 (3) AS USED IN THIS SECTION, "LOCAL GOVERNMENT" MEANS A
22 STATUTORY OR HOME RULE COUNTY, A CITY AND COUNTY, OR A
23 STATUTORY OR HOME RULE MUNICIPALITY.

24 **SECTION 5. Act subject to petition - effective date -**
25 **applicability.** (1) This act takes effect at 12:01 a.m. on the day following
26 the expiration of the ninety-day period after final adjournment of the
27 general assembly; except that, if a referendum petition is filed pursuant

1 to section 1 (3) of article V of the state constitution against this act or an
2 item, section, or part of this act within such period, then the act, item,
3 section, or part will not take effect unless approved by the people at the
4 general election to be held in November 2024 and, in such case, will take
5 effect on the date of the official declaration of the vote thereon by the
6 governor.

7 (2) This act applies to contracts and agreements entered into,
8 renewed, modified, or amended on or after the applicable effective date
9 of this act.