

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

ENGROSSED

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

LLS NO. 23-0369.01 Jason Gelender x4330

SENATE BILL 23-053

SENATE SPONSORSHIP

Kirkmeyer and Rodriguez,

HOUSE SPONSORSHIP

Woodrow and Evans,

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.

SENATE
Amended 2nd Reading
March 23, 2023

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) Government employees are paid with public money, and they
2 and 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 _____ applicants for
16 government employment, government employees, and past government
17 employees that effectively prohibit such applicants and employees from
18 disclosing details about their prospective, current, or past government
19 service obstruct these fundamental principles of government transparency
20 and public accountability. The details of public business should not be
21 hidden from public view by means of nondisclosure agreements imposed
22 on such applicants or employees as a condition of their hiring or
23 employment or in connection with their leaving government service or
24 their past government service; and

25 (V) In the absence of legitimate concerns about the protection of
26 the privacy interests of applicants for government employment,
27 government employees, and past government employees, or to protect

1 against disclosure matters that are truly confidential and sensitive to the
2 public interest, neither the state nor any of its departments, institutions,
3 or agencies should be permitted to silence such applicants and employees
4 from being able to speak openly about their prospective, current, or past
5 government service through the imposition of nondisclosure agreements.
6 Such applicants and employees should ordinarily be permitted to speak
7 openly about their prospective, current, or past government service.

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

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

27 **SECTION 2.** In Colorado Revised Statutes, **add** 22-1-135.5 as

1 follows:

2 **22-1-135.5. Nondisclosure agreements - protection of school**
3 **district, board of cooperative services, and public school employees**

4 **- definition.** (1) (a) NO SCHOOL DISTRICT, BOARD OF COOPERATIVE
5 SERVICES, PUBLIC SCHOOL, OR ANY DEPARTMENT, INSTITUTION, OR
6 AGENCY OF A SCHOOL DISTRICT, BOARD OF COOPERATIVE SERVICES, OR
7 PUBLIC SCHOOL SHALL MAKE IT A CONDITION OF EMPLOYMENT THAT AN
8 EMPLOYEE EXECUTES A CONTRACT OR OTHER FORM OF AGREEMENT
9 THAT PROHIBITS, PREVENTS, OR OTHERWISE RESTRICTS THE EMPLOYEE
10 FROM DISCLOSING FACTUAL CIRCUMSTANCES CONCERNING THE
11 EMPLOYEE'S EMPLOYMENT WITH THE SCHOOL DISTRICT, BOARD OF
12 COOPERATIVE SERVICES, OR PUBLIC SCHOOL OR ANY OF ITS DEPARTMENTS,
13 INSTITUTIONS, OR AGENCIES UNLESS THE PROHIBITION OR RESTRICTION IN
14 THE CONTRACT OR AGREEMENT IS NECESSARY TO PREVENT DISCLOSURE
15 OF:

16 (I) THE EMPLOYEE'S IDENTITY, FACTS THAT MIGHT LEAD TO THE
17 DISCOVERY OF THE EMPLOYEE'S IDENTITY, OR FACTUAL CIRCUMSTANCES
18 RELATING TO THE EMPLOYMENT THAT REASONABLY IMPLICATE
19 LEGITIMATE PRIVACY INTERESTS OF THE EMPLOYEE WHO IS A PARTY TO
20 THE AGREEMENT IF THE EMPLOYEE ELECTS IN THE EMPLOYEE'S SOLE
21 DISCRETION TO RESTRICT DISCLOSURE OF THE EMPLOYEE'S IDENTITY, SUCH
22 FACTS, OR SUCH CIRCUMSTANCES ON SUCH GROUNDS;

23 (II) DATA; INFORMATION, INCLUDING PERSONAL IDENTIFYING
24 INFORMATION, AS DEFINED IN SECTION 24-74-102 (1); OR MATTERS THAT
25 ARE REQUIRED TO BE KEPT CONFIDENTIAL BY FEDERAL LAW OR
26 REGULATIONS, THE STATE CONSTITUTION, OR STATE LAW OR RULES;

27 (III) TRADE SECRETS OR OTHER CONFIDENTIAL OR SENSITIVE

1 INFORMATION PROVIDED TO OR MADE ACCESSIBLE TO THE EMPLOYEE BY
2 A CONTRACTOR OR PROSPECTIVE CONTRACTOR OF THE EMPLOYEE'S
3 EMPLOYER DURING THE PROCUREMENT PROCESS OR WHILE THE
4 CONTRACTOR IS PROVIDING GOODS OR SERVICES TO THE EMPLOYEE'S
5 EMPLOYER IF THE PROTECTION OF SUCH INFORMATION IS NEEDED TO
6 ENSURE SUCCESSFUL PROCUREMENT OR PROVISION OF THE GOODS OR
7 SERVICES; OR

8 (IV) INFORMATION BEARING ON THE SPECIALIZED DETAILS OF
9 SECURITY ARRANGEMENTS OR INVESTIGATIONS.

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

26 (I) THE EMPLOYEE'S IDENTITY, FACTS THAT MIGHT LEAD TO THE
27 DISCOVERY OF THE EMPLOYEE'S IDENTITY, OR FACTUAL CIRCUMSTANCES

1 RELATING TO THE EMPLOYMENT THAT REASONABLY IMPLICATE
2 LEGITIMATE PRIVACY INTERESTS OF THE EMPLOYEE WHO IS A PARTY TO
3 THE AGREEMENT IF THE EMPLOYEE ELECTS IN THE EMPLOYEE'S SOLE
4 DISCRETION TO RESTRICT DISCLOSURE OF THE EMPLOYEE'S IDENTITY, SUCH
5 FACTS, OR SUCH CIRCUMSTANCES ON SUCH GROUNDS; ___

6 (II) DATA; INFORMATION, INCLUDING PERSONAL IDENTIFYING
7 INFORMATION, AS DEFINED IN SECTION 24-74-102 (1); OR MATTERS THAT
8 ARE REQUIRED TO BE KEPT CONFIDENTIAL BY FEDERAL LAW OR
9 REGULATIONS, THE STATE CONSTITUTION, OR STATE LAW OR RULES;

10 (III) TRADE SECRETS OR OTHER CONFIDENTIAL OR SENSITIVE
11 INFORMATION PROVIDED TO OR MADE ACCESSIBLE TO THE EMPLOYEE BY
12 A CONTRACTOR OR PROSPECTIVE CONTRACTOR OF THE EMPLOYEE'S
13 EMPLOYER DURING THE PROCUREMENT PROCESS OR WHILE THE
14 CONTRACTOR IS PROVIDING GOODS OR SERVICES TO THE EMPLOYEE'S
15 EMPLOYER IF THE PROTECTION OF SUCH INFORMATION IS NEEDED TO
16 ENSURE SUCCESSFUL PROCUREMENT OR PROVISION OF THE GOODS OR
17 SERVICES; OR

18 (IV) INFORMATION ___ BEARING ON THE SPECIALIZED DETAILS OF
19 SECURITY ARRANGEMENTS OR INVESTIGATIONS.

20 (2) (a) No SCHOOL DISTRICT, BOARD OF COOPERATIVE SERVICES,
21 PUBLIC SCHOOL, OR DEPARTMENT, INSTITUTION, OR AGENCY OF A SCHOOL
22 DISTRICT, A BOARD OF COOPERATIVE SERVICES, OR A PUBLIC SCHOOL
23 SHALL TAKE ANY MATERIALLY ADVERSE EMPLOYMENT-RELATED ACTION,
24 INCLUDING, WITHOUT LIMITATION, WITHDRAWAL OF AN OFFER OF
25 EMPLOYMENT, DISCHARGE, SUSPENSION, DEMOTION, DISCRIMINATION IN
26 THE TERMS, CONDITIONS, OR PRIVILEGES OF EMPLOYMENT, OR OTHER
27 ADVERSE ACTION AGAINST AN EMPLOYEE ON THE GROUNDS THAT THE

1 EMPLOYEE DOES NOT ENTER INTO A CONTRACT OR AGREEMENT DEEMED
2 TO BE AGAINST PUBLIC POLICY AND UNENFORCEABLE UNDER SUBSECTION
3 (1)(b) OF THIS SECTION. THE TAKING OF SUCH A MATERIALLY ADVERSE
4 EMPLOYMENT-RELATED ACTION AFTER AN EMPLOYEE HAS REFUSED TO
5 ENTER INTO SUCH A CONTRACT OR AGREEMENT IS PRIMA FACIE EVIDENCE
6 OF RETALIATION.

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

12 (c) AN ACTION TO ENFORCE A PROVISION OF THIS SECTION MUST BE
13 BROUGHT IN THE DISTRICT COURT FOR THE DISTRICT IN WHICH THE
14 EMPLOYEE IS PRIMARILY EMPLOYED.

15 (3) A SETTLEMENT AGREEMENT BETWEEN AN EMPLOYER THAT IS
16 A SCHOOL DISTRICT, BOARD OF COOPERATIVE SERVICES, OR PUBLIC
17 SCHOOL OR A DEPARTMENT, INSTITUTION, OR AGENCY OF A SCHOOL
18 DISTRICT, A BOARD OF COOPERATIVE SERVICES, OR A PUBLIC SCHOOL AND
19 AN EMPLOYEE OF THE EMPLOYER MUST BE SIGNED BY BOTH THE EMPLOYER
20 AND THE EMPLOYEE.

21 (4) AS USED IN THIS SECTION:

22 (a) "CONDITION OF EMPLOYMENT" MEANS AN
23 EMPLOYMENT-RELATED POLICY, PRACTICE, REQUIREMENT, OR
24 RESTRICTION DICTATED BY AN EMPLOYER THAT AN INDIVIDUAL MUST
25 AGREE TO ABIDE BY IN ORDER TO BE HIRED BY OR RETAIN EMPLOYMENT
26 WITH THE EMPLOYER.

27 (b) "EMPLOYEE" MEANS AN APPLICANT FOR EMPLOYMENT WITH OR

1 CURRENT OR PAST EMPLOYEE OF A SCHOOL DISTRICT, BOARD OF
2 COOPERATIVE SERVICES, OR PUBLIC SCHOOL OR A DEPARTMENT,
3 INSTITUTION, OR AGENCY OF A SCHOOL DISTRICT, BOARD OF COOPERATIVE
4 SERVICES, OR PUBLIC SCHOOL.

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

7 **24-50.5-105.5. Nondisclosure agreements - protection of state**
8 **employees - definitions.** (1) (a) NEITHER THE STATE NOR ANY
9 DEPARTMENT, INSTITUTION, OR AGENCY OF THE STATE SHALL MAKE IT A
10 CONDITION OF EMPLOYMENT THAT AN EMPLOYEE _____ EXECUTES A
11 CONTRACT OR OTHER FORM OF AGREEMENT THAT PROHIBITS, PREVENTS,
12 OR OTHERWISE RESTRICTS THE EMPLOYEE ___ FROM DISCLOSING FACTUAL
13 CIRCUMSTANCES CONCERNING THE EMPLOYEE'S EMPLOYMENT WITH THE
14 STATE OR ANY OF ITS DEPARTMENTS, INSTITUTIONS, OR AGENCIES UNLESS
15 THE PROHIBITION OR RESTRICTION IN THE CONTRACT OR AGREEMENT IS
16 NECESSARY TO PREVENT DISCLOSURE OF:

17 (I) THE EMPLOYEE'S IDENTITY, FACTS THAT MIGHT LEAD TO THE
18 DISCOVERY OF THE EMPLOYEE'S IDENTITY, OR FACTUAL CIRCUMSTANCES
19 RELATING TO THE EMPLOYMENT THAT REASONABLY IMPLICATE
20 LEGITIMATE PRIVACY INTERESTS OF THE EMPLOYEE WHO IS A PARTY TO
21 THE AGREEMENT IF THE EMPLOYEE ELECTS IN THE EMPLOYEE'S SOLE
22 DISCRETION TO RESTRICT DISCLOSURE OF THE EMPLOYEE'S IDENTITY, SUCH
23 FACTS, OR SUCH CIRCUMSTANCES ON SUCH GROUNDS; ___

24 (II) DATA; INFORMATION, INCLUDING PERSONAL IDENTIFYING
25 INFORMATION, AS DEFINED IN SECTION 24-74-102 (1); OR MATTERS THAT
26 ARE REQUIRED TO BE KEPT CONFIDENTIAL BY FEDERAL LAW OR
27 REGULATIONS, THE STATE CONSTITUTION, OR STATE LAW OR RULES;

1 (III) NONPUBLIC AND CONFIDENTIAL LABOR RELATIONS POSITIONS
2 AND STRATEGIES;
3 (IV) ATTORNEY WORK PRODUCT;
4 (V) VENDOR LISTS AND VENDOR PREFERENCES;
5 (VI) STATE BUSINESS-RELATED INFORMATION RECEIVED FROM A
6 THIRD PARTY THAT THE THIRD PARTY HAS DESIGNATED CONFIDENTIAL;
7 (VII) TRADE SECRETS OR OTHER CONFIDENTIAL OR SENSITIVE
8 INFORMATION PROVIDED TO OR MADE ACCESSIBLE TO THE EMPLOYEE BY
9 A CONTRACTOR OR PROSPECTIVE CONTRACTOR OF THE EMPLOYEE'S
10 EMPLOYER DURING THE PROCUREMENT PROCESS OR WHILE THE
11 CONTRACTOR IS PROVIDING GOODS OR SERVICES TO THE EMPLOYEE'S
12 EMPLOYER IF THE PROTECTION OF SUCH INFORMATION IS NEEDED TO
13 ENSURE SUCCESSFUL PROCUREMENT OR PROVISION OF THE GOODS OR
14 SERVICES; OR
15 (VIII) INFORMATION BEARING ON THE SPECIALIZED DETAILS OF
16 SECURITY ARRANGEMENTS OR INVESTIGATIONS.

17 (b) ANY PROVISION IN ANY EMPLOYMENT CONTRACT OR
18 SETTLEMENT AGREEMENT ENTERED INTO BETWEEN AN EMPLOYEE OF THE
19 STATE OR ANY OF ITS DEPARTMENTS, INSTITUTIONS, OR AGENCIES AND THE
20 STATE OR ANY OF ITS DEPARTMENTS, INSTITUTIONS, OR AGENCIES THAT
21 HAS THE PURPOSE OR EFFECT OF CONCEALING FACTUAL CIRCUMSTANCES
22 CONCERNING THE EMPLOYEE'S EMPLOYMENT WITH THE STATE OR ANY OF
23 ITS DEPARTMENTS, INSTITUTIONS, OR AGENCIES IS PROHIBITED. TO THE
24 EXTENT THAT AN EMPLOYER INCLUDES ANY SUCH PROVISION IN ANY
25 EMPLOYMENT CONTRACT OR AGREEMENT, THE PROVISION IS DEEMED TO
26 BE AGAINST PUBLIC POLICY AND UNENFORCEABLE AGAINST AN EMPLOYEE
27 WHO IS A PARTY TO THE CONTRACT OR AGREEMENT UNLESS THE

1 PROVISION IS INTENDED TO PREVENT DISCLOSURE OF:

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

9 (II) DATA; INFORMATION, INCLUDING PERSONAL IDENTIFYING
10 INFORMATION, AS DEFINED IN SECTION 24-74-102 (1); OR MATTERS THAT
11 ARE REQUIRED TO BE KEPT CONFIDENTIAL BY FEDERAL LAW OR
12 REGULATIONS, THE STATE CONSTITUTION, OR STATE LAW OR RULES;

13 (III) NONPUBLIC AND CONFIDENTIAL LABOR RELATIONS POSITIONS
14 AND STRATEGIES;

15 (IV) ATTORNEY WORK PRODUCT;

16 (V) VENDOR LISTS AND VENDOR PREFERENCES;

17 (VI) STATE BUSINESS-RELATED INFORMATION RECEIVED FROM A
18 THIRD PARTY THAT THE THIRD PARTY HAS DESIGNATED CONFIDENTIAL;

19 (VII) TRADE SECRETS OR OTHER CONFIDENTIAL OR SENSITIVE
20 INFORMATION PROVIDED TO OR MADE ACCESSIBLE TO THE EMPLOYEE BY
21 A CONTRACTOR OR PROSPECTIVE CONTRACTOR OF THE EMPLOYEE'S
22 EMPLOYER DURING THE PROCUREMENT PROCESS OR WHILE THE
23 CONTRACTOR IS PROVIDING GOODS OR SERVICES TO THE EMPLOYEE'S
24 EMPLOYER IF THE PROTECTION OF SUCH INFORMATION IS NEEDED TO
25 ENSURE SUCCESSFUL PROCUREMENT OR PROVISION OF THE GOODS OR
26 SERVICES; OR

27 (VIII) INFORMATION BEARING ON THE SPECIALIZED DETAILS OF

1 SECURITY ARRANGEMENTS OR INVESTIGATIONS.

2 (2) (a) NEITHER THE STATE NOR ANY OF ITS DEPARTMENTS,
3 INSTITUTIONS, OR AGENCIES SHALL TAKE ANY MATERIALLY ADVERSE
4 EMPLOYMENT-RELATED ACTION, INCLUDING, WITHOUT LIMITATION,
5 WITHDRAWAL OF AN OFFER OF EMPLOYMENT, DISCHARGE, SUSPENSION,
6 DEMOTION, DISCRIMINATION IN THE TERMS, CONDITIONS, OR PRIVILEGES
7 OF EMPLOYMENT, OR OTHER ADVERSE ACTION AGAINST AN EMPLOYEE ON
8 THE GROUNDS THAT THE EMPLOYEE DOES NOT ENTER INTO A CONTRACT
9 OR AGREEMENT DEEMED TO BE AGAINST PUBLIC POLICY AND
10 UNENFORCEABLE UNDER SUBSECTION (1)(b) OF THIS SECTION. THE TAKING
11 OF SUCH A MATERIALLY ADVERSE EMPLOYMENT-RELATED ACTION AFTER
12 AN EMPLOYEE HAS REFUSED TO ENTER INTO SUCH A CONTRACT OR
13 AGREEMENT IS PRIMA FACIE EVIDENCE OF RETALIATION.

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

19 (c) AN ACTION TO ENFORCE A PROVISION OF THIS SECTION MUST BE
20 BROUGHT IN THE DISTRICT COURT FOR THE DISTRICT IN WHICH THE
21 EMPLOYEE IS PRIMARILY EMPLOYED.

22 (3) A SETTLEMENT AGREEMENT BETWEEN AN EMPLOYER THAT IS
23 THE STATE OR A DEPARTMENT, INSTITUTION, OR AGENCY OF THE STATE
24 AND AN EMPLOYEE OF THE STATE OR THE DEPARTMENT, INSTITUTION, OR
25 AGENCY OF THE STATE MUST BE SIGNED BY BOTH THE EMPLOYER AND THE
26 EMPLOYEE.

27 (4) AS USED IN THIS SECTION:

1 DISCOVERY OF THE EMPLOYEE'S IDENTITY, OR FACTUAL CIRCUMSTANCES
2 RELATING TO THE EMPLOYMENT THAT REASONABLY IMPLICATE
3 LEGITIMATE PRIVACY INTERESTS OF THE EMPLOYEE WHO IS A PARTY TO
4 THE AGREEMENT IF THE EMPLOYEE ELECTS IN THE EMPLOYEE'S SOLE
5 DISCRETION TO RESTRICT DISCLOSURE OF THE EMPLOYEE'S IDENTITY, SUCH
6 FACTS, OR SUCH CIRCUMSTANCES ON SUCH GROUNDS; ___

7 (II) DATA; INFORMATION, INCLUDING PERSONAL IDENTIFYING
8 INFORMATION, AS DEFINED IN SECTION 24-74-102 (1); OR MATTERS THAT
9 ARE REQUIRED TO BE KEPT CONFIDENTIAL BY FEDERAL LAW OR
10 REGULATIONS, THE STATE CONSTITUTION, OR STATE LAW OR RULES;

11 (III) TRADE SECRETS OR OTHER CONFIDENTIAL OR SENSITIVE
12 INFORMATION PROVIDED TO OR MADE ACCESSIBLE TO THE EMPLOYEE BY
13 A CONTRACTOR OR PROSPECTIVE CONTRACTOR OF THE EMPLOYEE'S
14 EMPLOYER DURING THE PROCUREMENT PROCESS OR WHILE THE
15 CONTRACTOR IS PROVIDING GOODS OR SERVICES TO THE EMPLOYEE'S
16 EMPLOYER IF THE PROTECTION OF SUCH INFORMATION IS NEEDED TO
17 ENSURE SUCCESSFUL PROCUREMENT OR PROVISION OF THE GOODS OR
18 SERVICES;

19 (IV) TRADE SECRETS OR OTHER CONFIDENTIAL OR SENSITIVE
20 INFORMATION PROVIDED TO OR MADE ACCESSIBLE TO THE EMPLOYEE BY
21 AN EMPLOYER'S CURRENT OR PROSPECTIVE CUSTOMER, CONTRACTOR,
22 LESSEE, LESSOR, BUSINESS PARTNER, OR AFFILIATE;

23 (V) TRADE SECRETS OR OTHER CONFIDENTIAL OR SENSITIVE
24 INFORMATION PROVIDED TO OR MADE ACCESSIBLE TO THE EMPLOYEE BY
25 A PURCHASER OR SELLER OF PROPERTY THAT IS ENGAGED IN
26 NEGOTIATIONS OR UNDER CONTRACT WITH THE EMPLOYER; OR

27 (VI) INFORMATION BEARING ON THE SPECIALIZED DETAILS OF

1 SECURITY ARRANGEMENTS OR INVESTIGATIONS.

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

15 (I) THE EMPLOYEE'S IDENTITY, FACTS THAT MIGHT LEAD TO THE
16 DISCOVERY OF THE EMPLOYEE'S IDENTITY, OR FACTUAL CIRCUMSTANCES
17 RELATING TO THE EMPLOYMENT THAT REASONABLY IMPLICATE
18 LEGITIMATE PRIVACY INTERESTS OF THE EMPLOYEE WHO IS A PARTY TO
19 THE AGREEMENT IF THE EMPLOYEE ELECTS IN THE EMPLOYEE'S SOLE
20 DISCRETION TO RESTRICT DISCLOSURE OF THE EMPLOYEE'S IDENTITY, SUCH
21 FACTS, OR SUCH CIRCUMSTANCES ON SUCH GROUNDS; ___

22 (II) DATA; INFORMATION, INCLUDING PERSONAL IDENTIFYING
23 INFORMATION, AS DEFINED IN SECTION 24-74-102 (1); OR MATTERS THAT
24 ARE REQUIRED TO BE KEPT CONFIDENTIAL BY FEDERAL LAW OR
25 REGULATIONS, THE STATE CONSTITUTION, OR STATE LAW OR RULES;

26 (III) TRADE SECRETS OR OTHER CONFIDENTIAL OR SENSITIVE
27 INFORMATION PROVIDED TO OR MADE ACCESSIBLE TO THE EMPLOYEE BY

1 A CONTRACTOR OR PROSPECTIVE CONTRACTOR OF THE EMPLOYEE'S
2 EMPLOYER DURING THE PROCUREMENT PROCESS OR WHILE THE
3 CONTRACTOR IS PROVIDING GOODS OR SERVICES TO THE EMPLOYEE'S
4 EMPLOYER IF THE PROTECTION OF SUCH INFORMATION IS NEEDED TO
5 ENSURE SUCCESSFUL PROCUREMENT OR PROVISION OF THE GOODS OR
6 SERVICES;

7 (IV) TRADE SECRETS OR OTHER CONFIDENTIAL OR SENSITIVE
8 INFORMATION PROVIDED TO OR MADE ACCESSIBLE TO THE EMPLOYEE BY
9 AN EMPLOYER'S CURRENT OR PROSPECTIVE CUSTOMER, CONTRACTOR,
10 LESSEE, LESSOR, BUSINESS PARTNER, OR AFFILIATE;

11 (V) TRADE SECRETS OR OTHER CONFIDENTIAL OR SENSITIVE
12 INFORMATION PROVIDED TO OR MADE ACCESSIBLE TO THE EMPLOYEE BY
13 A PURCHASER OR SELLER OF PROPERTY THAT IS ENGAGED IN
14 NEGOTIATIONS OR UNDER CONTRACT WITH THE EMPLOYER; OR

15 (VI) INFORMATION BEARING ON THE SPECIALIZED DETAILS OF
16 SECURITY ARRANGEMENTS OR INVESTIGATIONS.

17 (2) (a) NEITHER A LOCAL GOVERNMENT NOR A DEPARTMENT, AN
18 INSTITUTION, OR AN AGENCY OF A LOCAL GOVERNMENT SHALL TAKE ANY
19 MATERIALLY ADVERSE EMPLOYMENT-RELATED ACTION, INCLUDING,
20 WITHOUT LIMITATION, WITHDRAWAL OF AN OFFER OF EMPLOYMENT,
21 DISCHARGE, SUSPENSION, DEMOTION, DISCRIMINATION IN THE TERMS,
22 CONDITIONS, OR PRIVILEGES OF EMPLOYMENT, OR OTHER ADVERSE ACTION
23 AGAINST AN EMPLOYEE ON THE GROUNDS THAT THE EMPLOYEE DOES NOT
24 ENTER INTO A CONTRACT OR AGREEMENT DEEMED TO BE AGAINST PUBLIC
25 POLICY AND UNENFORCEABLE UNDER SUBSECTION (1)(b) OF THIS SECTION.
26 THE TAKING OF SUCH A MATERIALLY ADVERSE EMPLOYMENT-RELATED
27 ACTION AFTER AN EMPLOYEE HAS REFUSED TO ENTER INTO SUCH A

1 CONTRACT OR AGREEMENT IS PRIMA FACIE EVIDENCE OF RETALIATION.

2 (b) ANY PERSON WHO ENFORCES OR ATTEMPTS TO ENFORCE A
3 PROVISION DEEMED 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 (c) AN ACTION TO ENFORCE A PROVISION OF THIS SECTION MUST BE
8 BROUGHT IN THE DISTRICT COURT FOR THE DISTRICT IN WHICH THE
9 EMPLOYEE IS PRIMARILY EMPLOYED.

10 (3) A SETTLEMENT AGREEMENT BETWEEN AN EMPLOYER THAT IS
11 A LOCAL GOVERNMENT OR A DEPARTMENT, INSTITUTION, OR AGENCY OF
12 A LOCAL GOVERNMENT AND AN EMPLOYEE OF THE LOCAL GOVERNMENT
13 OR THE DEPARTMENT, INSTITUTION, OR AGENCY OF THE LOCAL
14 GOVERNMENT MUST BE SIGNED BY BOTH THE EMPLOYER AND THE
15 EMPLOYEE.

16 (4) AS USED IN THIS SECTION:

17 (a) "CONDITION OF EMPLOYMENT" MEANS AN
18 EMPLOYMENT-RELATED POLICY, PRACTICE, REQUIREMENT, OR
19 RESTRICTION DICTATED BY AN EMPLOYER THAT AN INDIVIDUAL MUST
20 AGREE TO ABIDE BY IN ORDER TO BE HIRED BY OR RETAIN EMPLOYMENT
21 WITH THE EMPLOYER.

22 (b) "EMPLOYEE" MEANS AN APPLICANT FOR EMPLOYMENT WITH OR
23 CURRENT OR PAST EMPLOYEE OF A LOCAL GOVERNMENT OR A
24 DEPARTMENT, INSTITUTION, OR AGENCY OF A LOCAL GOVERNMENT.

25 (c) "LOCAL GOVERNMENT" MEANS A STATUTORY OR HOME RULE
26 COUNTY, A CITY AND COUNTY, OR A STATUTORY OR HOME RULE
27 MUNICIPALITY.

1 **SECTION 5. Act subject to petition - effective date -**

2 **applicability.** (1) This act takes effect at 12:01 a.m. on the day following
3 the expiration of the ninety-day period after final adjournment of the
4 general assembly; except that, if a referendum petition is filed pursuant
5 to section 1 (3) of article V of the state constitution against this act or an
6 item, section, or part of this act within such period, then the act, item,
7 section, or part will not take effect unless approved by the people at the
8 general election to be held in November 2024 and, in such case, will take
9 effect on the date of the official declaration of the vote thereon by the
10 governor.

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