

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

REREVISED

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

LLS NO. 23-0369.01 Jason Gelender x4330

SENATE BILL 23-053

SENATE SPONSORSHIP

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Senate Committees

State, Veterans, & Military Affairs

House Committees

State, Civic, Military, & Veterans Affairs

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.

HOUSE
Amended 3rd Reading
May 1, 2023

HOUSE
Amended 2nd Reading
April 29, 2023

SENATE
3rd Reading Unamended
March 24, 2023

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 OR
22 SUCH FACTS AND CIRCUMSTANCES;

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, STATE LAW, STATE
27 REGULATIONS, OR STATE RULES, OR A COURT OF LAW OR AS

1 ATTORNEY-CLIENT PRIVILEGED COMMUNICATIONS, AS PRIVILEGED WORK
2 PRODUCT, AS COMMUNICATIONS RELATED TO A THREATENED OR PENDING
3 LEGAL OR ADMINISTRATIVE ACTION, OR AS MATERIALS RELATED TO
4 PERSONNEL OR REGULATORY INVESTIGATIONS BY THE EMPLOYER;

5 (III) TRADE SECRETS OR OTHER CONFIDENTIAL OR SENSITIVE
6 INFORMATION PROVIDED TO OR MADE ACCESSIBLE TO THE EMPLOYEE BY
7 A CURRENT OR PROSPECTIVE CONTRACTOR, VENDOR, GRANTEE OR AS PART
8 OF A PUBLIC-PRIVATE PARTNERSHIP, OR ENTITY WORKING WITH THE STATE
9 AS PART OF AN ECONOMIC DEVELOPMENT ACTIVITY;

10 (IV) INFORMATION BEARING ON THE SPECIALIZED DETAILS OF
11 SECURITY ARRANGEMENTS OR INVESTIGATIONS INCLUDING SECURITY
12 ARRANGEMENTS FOR OR INVESTIGATIONS INTO ELECTED OFFICIALS OR
13 OTHER INDIVIDUALS, PHYSICAL INFRASTRUCTURE, OR CYBERSECURITY;

14 (V) INFORMATION DERIVED FROM COMMUNICATIONS OF THE
15 EMPLOYER RELATED TO THREATENED OR PENDING LEGAL OR
16 ADMINISTRATIVE ACTION;

17 (VI) DISCUSSIONS THAT OCCUR IN AN EXECUTIVE SESSION
18 AUTHORIZED BY SECTION 24-6-402;

19 (VII) TRADE SECRETS OR INFORMATION DERIVED FROM TRADE
20 SECRETS OR PROPRIETARY INFORMATION OF THE EMPLOYER;

21 (VIII) INFORMATION AND RECORDS NOT SUBJECT TO DISCLOSURE
22 UNDER THE "COLORADO OPEN RECORDS ACT", PART 2 OF ARTICLE 72 OF
23 TITLE 24; OR

24 (IX) TRADE SECRETS OWNED BY THE EMPLOYER.

25 (b) ANY PROVISION IN ANY CONTRACT OR AGREEMENT THAT
26 VIOLATES SUBSECTION (1)(a) OF THIS SECTION IS DEEMED TO BE
27 AGAINST PUBLIC POLICY AND IS UNENFORCEABLE AGAINST AN EMPLOYEE

1 UNLESS THE 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 OR
8 SUCH FACTS AND CIRCUMSTANCES;

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, STATE LAW, STATE
13 REGULATIONS, OR STATE RULES, OR A COURT OF LAW OR AS
14 ATTORNEY-CLIENT PRIVILEGED COMMUNICATIONS, AS PRIVILEGED WORK
15 PRODUCT, AS COMMUNICATIONS RELATED TO A THREATENED OR PENDING
16 LEGAL OR ADMINISTRATIVE ACTION, OR AS MATERIALS RELATED TO
17 PERSONNEL OR REGULATORY INVESTIGATIONS BY THE EMPLOYER;

18 (III) TRADE SECRETS OR OTHER CONFIDENTIAL OR SENSITIVE
19 INFORMATION PROVIDED TO OR MADE ACCESSIBLE TO THE EMPLOYEE BY
20 A CURRENT OR PROSPECTIVE CONTRACTOR, VENDOR, GRANTEE OR AS PART
21 OF A PUBLIC-PRIVATE PARTNERSHIP, OR ENTITY WORKING WITH THE STATE
22 AS PART OF AN ECONOMIC DEVELOPMENT ACTIVITY;

23 (IV) INFORMATION BEARING ON THE SPECIALIZED DETAILS OF
24 SECURITY ARRANGEMENTS OR INVESTIGATIONS INCLUDING FOR ELECTED
25 OFFICIALS OR OTHER INDIVIDUALS, PHYSICAL INFRASTRUCTURE, OR
26 CYBERSECURITY;

27 (V) INFORMATION DERIVED FROM COMMUNICATIONS OF THE

1 EMPLOYER RELATED TO THREATENED OR PENDING LEGAL OR
2 ADMINISTRATIVE ACTION;

3 (VI) DISCUSSIONS THAT OCCUR IN AN EXECUTIVE SESSION
4 AUTHORIZED BY SECTION 24-6-402;

5 (VII) TRADE SECRETS OR INFORMATION DERIVED FROM TRADE
6 SECRETS OR PROPRIETARY INFORMATION OF THE EMPLOYER;

7 (VIII) INFORMATION AND RECORDS NOT SUBJECT TO DISCLOSURE
8 UNDER THE "COLORADO OPEN RECORDS ACT", PART 2 OF ARTICLE 72 OF
9 TITLE 24; OR

10 (IX) TRADE SECRETS OWNED BY THE EMPLOYER.

11 (2) (a) No SCHOOL DISTRICT, BOARD OF COOPERATIVE SERVICES,
12 PUBLIC SCHOOL, OR DEPARTMENT, INSTITUTION, OR AGENCY OF A SCHOOL
13 DISTRICT, A BOARD OF COOPERATIVE SERVICES, OR A PUBLIC SCHOOL
14 SHALL TAKE ANY MATERIALLY ADVERSE EMPLOYMENT-RELATED ACTION,
15 INCLUDING, WITHOUT LIMITATION, WITHDRAWAL OF AN OFFER OF
16 EMPLOYMENT, DISCHARGE, SUSPENSION, DEMOTION, DISCRIMINATION IN
17 THE TERMS, CONDITIONS, OR PRIVILEGES OF EMPLOYMENT, OR OTHER
18 ADVERSE ACTION AGAINST AN EMPLOYEE ON THE GROUNDS THAT THE
19 EMPLOYEE DOES NOT ENTER INTO A CONTRACT OR AGREEMENT DEEMED
20 TO BE AGAINST PUBLIC POLICY AND UNENFORCEABLE UNDER SUBSECTION
21 (1)(b) OF THIS SECTION. THE TAKING OF SUCH A MATERIALLY ADVERSE
22 EMPLOYMENT-RELATED ACTION AFTER AN EMPLOYEE HAS REFUSED TO
23 ENTER INTO SUCH A CONTRACT OR AGREEMENT IS PRIMA FACIE EVIDENCE
24 OF RETALIATION.

25 (b) ANY EMPLOYER WHO ENFORCES OR ATTEMPTS TO ENFORCE A
26 PROVISION DEEMED BY A COURT TO BE AGAINST PUBLIC POLICY AND
27 UNENFORCEABLE PURSUANT TO SUBSECTION (1) OF THIS SECTION IS

1 LIABLE FOR THE EMPLOYEE'S REASONABLE ATTORNEY FEES AND COSTS IN
2 DEFENDING AGAINST THE ACTION.

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

6 (3) A SETTLEMENT AGREEMENT BETWEEN AN EMPLOYER THAT IS
7 A SCHOOL DISTRICT, BOARD OF COOPERATIVE SERVICES, OR PUBLIC
8 SCHOOL OR A DEPARTMENT, INSTITUTION, OR AGENCY OF A SCHOOL
9 DISTRICT, A BOARD OF COOPERATIVE SERVICES, OR A PUBLIC SCHOOL AND
10 AN EMPLOYEE OF THE EMPLOYER MUST BE SIGNED BY BOTH THE EMPLOYER
11 AND THE EMPLOYEE.

12 (4) A NONDISCLOSURE AGREEMENT MAY NOT PROHIBIT THE
13 RELEASE OF INFORMATION REQUIRED TO BE RELEASED UNDER THE
14 "COLORADO OPEN RECORDS ACT", PART 2 OF ARTICLE 72 OF TITLE 24.

15 (5) NOTHING IN THIS SECTION PREVENTS AN EMPLOYER FROM
16 REQUIRING AN EMPLOYEE TO ENTER INTO A NONDISCLOSURE AGREEMENT
17 WITH A THIRD PARTY IN THE EMPLOYEE'S OFFICIAL CAPACITY AND ON
18 BEHALF OF THE EMPLOYER.

19 (6) AS USED IN THIS SECTION:

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

25 (b) "EMPLOYEE" MEANS AN APPLICANT FOR EMPLOYMENT WITH OR
26 CURRENT OR PAST EMPLOYEE OF A SCHOOL DISTRICT, BOARD OF
27 COOPERATIVE SERVICES, OR PUBLIC SCHOOL OR A DEPARTMENT,

1 INSTITUTION, OR AGENCY OF A SCHOOL DISTRICT, BOARD OF COOPERATIVE
2 SERVICES, OR PUBLIC SCHOOL.

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

5 **24-50.5-105.5. Nondisclosure agreements - protection of state**
6 **employees - definitions.** (1) (a) NEITHER THE STATE NOR ANY

7 DEPARTMENT, INSTITUTION, OR AGENCY OF THE STATE SHALL MAKE IT A
8 CONDITION OF EMPLOYMENT THAT AN EMPLOYEE _____ EXECUTES A
9 CONTRACT OR OTHER FORM OF AGREEMENT THAT PROHIBITS, PREVENTS,
10 OR OTHERWISE RESTRICTS THE EMPLOYEE ___ FROM DISCLOSING FACTUAL
11 CIRCUMSTANCES CONCERNING THE EMPLOYEE'S EMPLOYMENT WITH THE
12 STATE OR ANY OF ITS DEPARTMENTS, INSTITUTIONS, OR AGENCIES UNLESS
13 THE PROHIBITION OR RESTRICTION IN THE CONTRACT OR AGREEMENT IS
14 NECESSARY TO 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 OR
21 SUCH FACTS AND CIRCUMSTANCES;

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, STATE LAW, STATE
26 REGULATIONS, OR STATE RULES, OR A COURT OF LAW OR AS
27 ATTORNEY-CLIENT PRIVILEGED COMMUNICATIONS, AS PRIVILEGED WORK

1 PRODUCT, AS COMMUNICATIONS RELATED TO A THREATENED OR PENDING
2 LEGAL OR ADMINISTRATIVE ACTION, OR AS MATERIALS RELATED TO
3 PERSONNEL OR REGULATORY INVESTIGATIONS BY THE EMPLOYER;

4 (III) NONPUBLIC AND CONFIDENTIAL LABOR RELATIONS POSITIONS
5 AND STRATEGIES;

6 (IV) ATTORNEY WORK PRODUCT;

7 (V) VENDOR LISTS AND VENDOR PREFERENCES;

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

10 (VII) INFORMATION AND MATTERS RELATED TO STATE ACTIVE
11 DUTY ORDERS OF NATIONAL GUARD SOLDIERS AND AIRMEN AND
12 PERSONNEL DISPUTES SUBJECT TO THE JURISDICTION OF THE UNITED
13 STATES DEPARTMENT OF DEFENSE;

14 (VIII) TRADE SECRETS OR OTHER CONFIDENTIAL OR SENSITIVE
15 INFORMATION PROVIDED TO OR MADE ACCESSIBLE TO THE EMPLOYEE BY
16 A CURRENT OR PROSPECTIVE CONTRACTOR, VENDOR, GRANTEE OR AS PART
17 OF A PUBLIC-PRIVATE PARTNERSHIP, OR ENTITY WORKING WITH THE STATE
18 AS PART OF AN ECONOMIC DEVELOPMENT ACTIVITY;

19 (IX) INFORMATION BEARING ON THE SPECIALIZED DETAILS OF
20 SECURITY ARRANGEMENTS OR INVESTIGATIONS INCLUDING FOR ELECTED
21 OFFICIALS OR OTHER INDIVIDUALS, PHYSICAL INFRASTRUCTURE, OR
22 CYBERSECURITY;

23 (X) INFORMATION DERIVED FROM COMMUNICATIONS OF THE
24 EMPLOYER RELATED TO THREATENED OR PENDING LEGAL OR
25 ADMINISTRATIVE ACTION;

26 (XI) DISCUSSIONS THAT OCCUR IN AN EXECUTIVE SESSION
27 AUTHORIZED BY SECTION 24-6-402;

1 (XII) TRADE SECRETS OR INFORMATION DERIVED FROM TRADE
2 SECRETS OR PROPRIETARY INFORMATION OF THE EMPLOYER;

3 (XIII) INFORMATION AND RECORDS NOT SUBJECT TO DISCLOSURE
4 UNDER THE "COLORADO OPEN RECORDS ACT", PART 2 OF ARTICLE 72 OF
5 TITLE 24; OR

6 (XIV) TRADE SECRETS OWNED BY THE EMPLOYER.

7 (b) ANY PROVISION IN ANY CONTRACT OR AGREEMENT THAT
8 VIOLATES SUBSECTION (1)(a) OF THIS SECTION IS DEEMED TO BE
9 AGAINST PUBLIC POLICY AND IS UNENFORCEABLE AGAINST AN EMPLOYEE
10 UNLESS THE PROVISION IS INTENDED TO PREVENT DISCLOSURE OF:

11 (I) THE EMPLOYEE'S IDENTITY, FACTS THAT MIGHT LEAD TO THE
12 DISCOVERY OF THE EMPLOYEE'S IDENTITY, OR FACTUAL CIRCUMSTANCES
13 RELATING TO THE EMPLOYMENT THAT REASONABLY IMPLICATE
14 LEGITIMATE PRIVACY INTERESTS OF THE EMPLOYEE WHO IS A PARTY TO
15 THE AGREEMENT IF THE EMPLOYEE ELECTS IN THE EMPLOYEE'S SOLE
16 DISCRETION TO RESTRICT DISCLOSURE OF THE EMPLOYEE'S IDENTITY OR
17 SUCH FACTS AND CIRCUMSTANCES;

18 (II) DATA; INFORMATION, INCLUDING PERSONAL IDENTIFYING
19 INFORMATION, AS DEFINED IN SECTION 24-74-102 (1); OR MATTERS THAT
20 ARE REQUIRED TO BE KEPT CONFIDENTIAL BY FEDERAL LAW OR
21 REGULATIONS, THE STATE CONSTITUTION, STATE LAW, STATE
22 REGULATIONS, OR STATE RULES, OR A COURT OF LAW OR AS
23 ATTORNEY-CLIENT PRIVILEGED COMMUNICATIONS, AS PRIVILEGED WORK
24 PRODUCT, AS COMMUNICATIONS RELATED TO A THREATENED OR PENDING
25 LEGAL OR ADMINISTRATIVE ACTION, OR AS MATERIALS RELATED TO
26 PERSONNEL OR REGULATORY INVESTIGATIONS BY THE EMPLOYER;

27 (III) NONPUBLIC AND CONFIDENTIAL LABOR RELATIONS POSITIONS

- 1 AND STRATEGIES;
- 2 (IV) ATTORNEY WORK PRODUCT;
- 3 (V) VENDOR LISTS AND VENDOR PREFERENCES;
- 4 (VI) STATE BUSINESS-RELATED INFORMATION RECEIVED FROM A
5 THIRD PARTY THAT THE THIRD PARTY HAS DESIGNATED CONFIDENTIAL;
- 6 (VII) INFORMATION AND MATTERS RELATED TO STATE ACTIVE
7 DUTY ORDERS OF NATIONAL GUARD SOLDIERS AND AIRMEN AND
8 PERSONNEL DISPUTES SUBJECT TO THE JURISDICTION OF THE UNITED
9 STATES DEPARTMENT OF DEFENSE;
- 10 (VIII) TRADE SECRETS OR OTHER CONFIDENTIAL OR SENSITIVE
11 INFORMATION PROVIDED TO OR MADE ACCESSIBLE TO THE EMPLOYEE BY
12 A CURRENT OR PROSPECTIVE CONTRACTOR, VENDOR, GRANTEE OR AS PART
13 OF A PUBLIC-PRIVATE PARTNERSHIP, OR ENTITY WORKING WITH THE STATE
14 AS PART OF AN ECONOMIC DEVELOPMENT ACTIVITY;
- 15 (IX) INFORMATION BEARING ON THE SPECIALIZED DETAILS OF
16 SECURITY ARRANGEMENTS OR INVESTIGATIONS INCLUDING FOR ELECTED
17 OFFICIALS OR OTHER INDIVIDUALS, PHYSICAL INFRASTRUCTURE, OR
18 CYBERSECURITY;
- 19 (X) INFORMATION DERIVED FROM COMMUNICATIONS OF THE
20 EMPLOYER RELATED TO THREATENED OR PENDING LEGAL OR
21 ADMINISTRATIVE ACTION;
- 22 (XI) DISCUSSIONS THAT OCCUR IN AN EXECUTIVE SESSION
23 AUTHORIZED BY SECTION 24-6-402;
- 24 (XII) TRADE SECRETS OR INFORMATION DERIVED FROM TRADE
25 SECRETS OR PROPRIETARY INFORMATION OF THE EMPLOYER;
- 26 (XIII) INFORMATION AND RECORDS NOT SUBJECT TO DISCLOSURE
27 UNDER THE "COLORADO OPEN RECORDS ACT", PART 2 OF ARTICLE 72 OF

1 TITLE 24; OR

2 (XIV) TRADE SECRETS OWNED BY THE EMPLOYER.

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

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

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

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

1 (4) A NONDISCLOSURE AGREEMENT MUST STATE THAT STATE
2 EMPLOYEES ARE PROTECTED FROM RETALIATION FOR DISCLOSURE OF
3 INFORMATION ABOUT STATE AGENCIES THAT ARE WORKING OUTSIDE THE
4 PUBLIC INTEREST IN ACCORDANCE WITH THE PROVISIONS OF ARTICLE 50.5
5 OF TITLE 24.

6 (5) A NONDISCLOSURE AGREEMENT MAY NOT PROHIBIT THE
7 RELEASE OF INFORMATION REQUIRED TO BE RELEASED UNDER THE
8 "COLORADO OPEN RECORDS ACT", PART 2 OF ARTICLE 72 OF TITLE 24.

9 (6) NOTHING IN THIS SECTION PREVENTS AN EMPLOYER FROM
10 REQUIRING AN EMPLOYEE TO ENTER INTO A NONDISCLOSURE AGREEMENT
11 WITH A THIRD PARTY IN THE EMPLOYEE'S OFFICIAL CAPACITY AND ON
12 BEHALF OF THE EMPLOYER.

13 (7) AS USED IN THIS SECTION:

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

18 (b) "EMPLOYEE" MEANS AN APPLICANT FOR EMPLOYMENT WITH OR
19 CURRENT OR PAST EMPLOYEE OF THE STATE OR A DEPARTMENT,
20 INSTITUTION, OR AGENCY OF THE STATE.

21 (c) "THE STATE" INCLUDES WITHOUT LIMITATION EACH OF THE
22 STATE OFFICERS LISTED IN SECTION 1 OF ARTICLE IV OF THE STATE
23 CONSTITUTION AS WELL AS THE EXECUTIVE, LEGISLATIVE, AND JUDICIAL
24 DEPARTMENTS OF THE GOVERNMENT OF THE STATE.

25 **SECTION 4.** In Colorado Revised Statutes, **add** part 16 to article
26 1 of title 29 as follows:

27 PART 16

1 LOCAL GOVERNMENT NONDISCLOSURE AGREEMENTS

2 **29-1-1601. Nondisclosure agreements - protection of local**
3 **government employees - definitions.** (1) (a) NEITHER A LOCAL
4 GOVERNMENT NOR A DEPARTMENT, INSTITUTION, OR AGENCY OF A LOCAL
5 GOVERNMENT SHALL MAKE IT A CONDITION OF EMPLOYMENT THAT AN
6 EMPLOYEE EXECUTES A CONTRACT OR OTHER FORM OF AGREEMENT
7 THAT PROHIBITS, PREVENTS, OR OTHERWISE RESTRICTS THE EMPLOYEE
8 FROM DISCLOSING FACTUAL CIRCUMSTANCES CONCERNING THE
9 EMPLOYEE'S EMPLOYMENT WITH THE LOCAL GOVERNMENT OR ANY OF ITS
10 DEPARTMENTS, INSTITUTIONS, OR AGENCIES UNLESS THE PROHIBITION OR
11 RESTRICTION IN THE CONTRACT OR AGREEMENT IS NECESSARY TO PREVENT
12 DISCLOSURE OF:

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

20 (II) DATA; INFORMATION, INCLUDING PERSONAL IDENTIFYING
21 INFORMATION, AS DEFINED IN SECTION 24-74-102 (1); OR MATTERS THAT
22 ARE REQUIRED TO BE KEPT CONFIDENTIAL BY FEDERAL LAW OR
23 REGULATIONS, THE STATE CONSTITUTION, STATE LAW, STATE
24 REGULATIONS, OR STATE RULES, OR A COURT OF LAW OR AS
25 ATTORNEY-CLIENT PRIVILEGED COMMUNICATIONS, AS PRIVILEGED WORK
26 PRODUCT, AS COMMUNICATIONS RELATED TO A THREATENED OR PENDING
27 LEGAL OR ADMINISTRATIVE ACTION, OR AS MATERIALS RELATED TO

1 PERSONNEL OR REGULATORY INVESTIGATIONS BY THE EMPLOYER;

2 (III) TRADE SECRETS OR OTHER CONFIDENTIAL OR SENSITIVE
3 INFORMATION PROVIDED TO OR MADE ACCESSIBLE TO THE EMPLOYEE BY
4 A CURRENT OR PROSPECTIVE CONTRACTOR, VENDOR, GRANTEE OR AS PART
5 OF A PUBLIC-PRIVATE PARTNERSHIP, OR ENTITY WORKING WITH THE STATE
6 AS PART OF AN ECONOMIC DEVELOPMENT ACTIVITY;

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;

15 (VI) INFORMATION BEARING ON THE SPECIALIZED DETAILS OF
16 SECURITY ARRANGEMENTS OR CRIMINAL INVESTIGATIONS INCLUDING FOR
17 ELECTED OFFICIALS OR OTHER INDIVIDUALS, PHYSICAL INFRASTRUCTURE,
18 OR CYBERSECURITY;

19 (VII) INFORMATION DERIVED FROM COMMUNICATIONS OF THE
20 EMPLOYER RELATED TO THREATENED OR PENDING LEGAL OR
21 ADMINISTRATIVE ACTION;

22 (VIII) DISCUSSIONS THAT OCCUR IN AN EXECUTIVE SESSION
23 AUTHORIZED BY SECTION 24-6-402;

24 (IX) TRADE SECRETS OR INFORMATION DERIVED FROM TRADE
25 SECRETS OR PROPRIETARY INFORMATION OF THE EMPLOYER;

26 (X) INFORMATION AND RECORDS NOT SUBJECT TO DISCLOSURE
27 UNDER THE "COLORADO OPEN RECORDS ACT", PART 2 OF ARTICLE 72 OF

1 TITLE 24; OR
2 (XI) TRADE SECRETS OWNED BY THE EMPLOYER.
3 (b) ANY PROVISION IN ANY CONTRACT OR AGREEMENT THAT
4 VIOLATES SUBSECTION (1)(a) OF THIS SECTION IS DEEMED TO BE
5 AGAINST PUBLIC POLICY AND IS UNENFORCEABLE AGAINST AN EMPLOYEE
6 UNLESS THE PROVISION IS INTENDED TO PREVENT DISCLOSURE OF:
7 (I) THE EMPLOYEE'S IDENTITY, FACTS THAT MIGHT LEAD TO THE
8 DISCOVERY OF THE EMPLOYEE'S IDENTITY, OR FACTUAL CIRCUMSTANCES
9 RELATING TO THE EMPLOYMENT THAT REASONABLY IMPLICATE
10 LEGITIMATE PRIVACY INTERESTS OF THE EMPLOYEE WHO IS A PARTY TO
11 THE AGREEMENT IF THE EMPLOYEE ELECTS IN THE EMPLOYEE'S SOLE
12 DISCRETION TO RESTRICT DISCLOSURE OF THE EMPLOYEE'S IDENTITY OR
13 SUCH FACTS AND CIRCUMSTANCES;
14 (II) DATA; INFORMATION, INCLUDING PERSONAL IDENTIFYING
15 INFORMATION, AS DEFINED IN SECTION 24-74-102 (1); OR MATTERS THAT
16 ARE REQUIRED TO BE KEPT CONFIDENTIAL BY FEDERAL LAW OR
17 REGULATIONS, THE STATE CONSTITUTION, STATE LAW, STATE
18 REGULATIONS, OR STATE RULES, OR A COURT OF LAW OR AS
19 ATTORNEY-CLIENT PRIVILEGED COMMUNICATIONS, AS PRIVILEGED WORK
20 PRODUCT, AS COMMUNICATIONS RELATED TO A THREATENED OR PENDING
21 LEGAL OR ADMINISTRATIVE ACTION, OR AS MATERIALS RELATED TO
22 PERSONNEL OR REGULATORY INVESTIGATIONS BY THE EMPLOYER;
23 (III) TRADE SECRETS OR OTHER CONFIDENTIAL OR SENSITIVE
24 INFORMATION PROVIDED TO OR MADE ACCESSIBLE TO THE EMPLOYEE BY
25 A CURRENT OR PROSPECTIVE CONTRACTOR, VENDOR, GRANTEE OR AS PART
26 OF A PUBLIC-PRIVATE PARTNERSHIP, OR ENTITY WORKING WITH THE STATE
27 AS PART OF AN ECONOMIC DEVELOPMENT ACTIVITY;

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

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

9 (VI) INFORMATION BEARING ON THE SPECIALIZED DETAILS OF
10 SECURITY ARRANGEMENTS OR CRIMINAL INVESTIGATIONS INCLUDING FOR
11 ELECTED OFFICIALS OR OTHER INDIVIDUALS, PHYSICAL INFRASTRUCTURE,
12 OR CYBERSECURITY;

13 (VII) INFORMATION DERIVED FROM COMMUNICATIONS OF THE
14 EMPLOYER RELATED TO THREATENED OR PENDING LEGAL OR
15 ADMINISTRATIVE ACTION;

16 (VIII) DISCUSSIONS THAT OCCUR IN AN EXECUTIVE SESSION
17 AUTHORIZED BY SECTION 24-6-402;

18 (IX) TRADE SECRETS OR INFORMATION DERIVED FROM TRADE
19 SECRETS OR PROPRIETARY INFORMATION OF THE EMPLOYER;

20 (X) INFORMATION AND RECORDS NOT SUBJECT TO DISCLOSURE
21 UNDER THE "COLORADO OPEN RECORDS ACT", PART 2 OF ARTICLE 72 OF
22 TITLE 24; OR

23 (XI) TRADE SECRETS OWNED BY THE EMPLOYER.

24 (2) (a) NEITHER A LOCAL GOVERNMENT NOR A DEPARTMENT, AN
25 INSTITUTION, OR AN AGENCY OF A LOCAL GOVERNMENT SHALL TAKE ANY
26 MATERIALLY ADVERSE EMPLOYMENT-RELATED ACTION, INCLUDING,
27 WITHOUT LIMITATION, WITHDRAWAL OF AN OFFER OF EMPLOYMENT,

1 DISCHARGE, SUSPENSION, DEMOTION, DISCRIMINATION IN THE TERMS,
2 CONDITIONS, OR PRIVILEGES OF EMPLOYMENT, OR OTHER ADVERSE ACTION
3 AGAINST AN EMPLOYEE ON THE GROUNDS THAT THE EMPLOYEE DOES NOT
4 ENTER INTO A CONTRACT OR AGREEMENT DEEMED TO BE AGAINST PUBLIC
5 POLICY AND UNENFORCEABLE UNDER SUBSECTION (1)(b) OF THIS SECTION.
6 THE TAKING OF SUCH A MATERIALLY ADVERSE EMPLOYMENT-RELATED
7 ACTION AFTER AN EMPLOYEE HAS REFUSED TO ENTER INTO SUCH A
8 CONTRACT OR AGREEMENT IS PRIMA FACIE EVIDENCE OF RETALIATION.

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

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

17 (3) A SETTLEMENT AGREEMENT BETWEEN AN EMPLOYER THAT IS
18 A LOCAL GOVERNMENT OR A DEPARTMENT, INSTITUTION, OR AGENCY OF
19 A LOCAL GOVERNMENT AND AN EMPLOYEE OF THE LOCAL GOVERNMENT
20 OR THE DEPARTMENT, INSTITUTION, OR AGENCY OF THE LOCAL
21 GOVERNMENT MUST BE SIGNED BY BOTH THE EMPLOYER AND THE
22 EMPLOYEE.

23 (4) A NONDISCLOSURE AGREEMENT MAY NOT PROHIBIT THE
24 RELEASE OF INFORMATION REQUIRED TO BE RELEASED UNDER THE
25 "COLORADO OPEN RECORDS ACT", PART 2 OF ARTICLE 72 OF TITLE 24.

26 (5) NOTHING IN THIS SECTION PREVENTS AN EMPLOYER FROM
27 REQUIRING AN EMPLOYEE TO ENTER INTO A NONDISCLOSURE AGREEMENT

1 WITH A THIRD PARTY IN THE EMPLOYEE'S OFFICIAL CAPACITY AND ON
2 BEHALF OF THE EMPLOYER.

3 (6) AS USED IN THIS SECTION:

4 (a) "CONDITION OF EMPLOYMENT" MEANS AN
5 EMPLOYMENT-RELATED POLICY, PRACTICE, REQUIREMENT, OR
6 RESTRICTION DICTATED BY AN EMPLOYER THAT AN INDIVIDUAL MUST
7 AGREE TO ABIDE BY IN ORDER TO BE HIRED BY OR RETAIN EMPLOYMENT
8 WITH THE EMPLOYER.

9 (b) "EMPLOYEE" MEANS AN APPLICANT FOR EMPLOYMENT WITH OR
10 CURRENT OR PAST EMPLOYEE OF A LOCAL GOVERNMENT OR A
11 DEPARTMENT, INSTITUTION, OR AGENCY OF A LOCAL GOVERNMENT.

12 (c) "LOCAL GOVERNMENT" MEANS A STATUTORY OR HOME RULE
13 COUNTY, A CITY AND COUNTY, OR A STATUTORY OR HOME RULE
14 MUNICIPALITY.

15 **SECTION 5. Act subject to petition - effective date -**
16 **applicability.** (1) This act takes effect at 12:01 a.m. on the day following
17 the expiration of the ninety-day period after final adjournment of the
18 general assembly; except that, if a referendum petition is filed pursuant
19 to section 1 (3) of article V of the state constitution against this act or an
20 item, section, or part of this act within such period, 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 2024 and, in such case, will take
23 effect on the date of the official declaration of the vote thereon by the
24 governor.

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