

CHAPTER 180

GOVERNMENT - STATE

HOUSE BILL 93-1223

BY REPRESENTATIVES Faatz, Acquafresca, Coffman, Foster, Kreutz, and Morrison;
also SENATOR R. Powers.

AN ACT

**CONCERNING A LIMITATION ON THE PAYMENT OF POST-EMPLOYMENT COMPENSATION TO
GOVERNMENT-SUPPORTED EMPLOYEES.**

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

SECTION 1. Title 24, Colorado Revised Statutes, 1988 Repl. Vol., as amended,
is amended BY THE ADDITION OF A NEW ARTICLE to read:

ARTICLE 19
Payment of Post-Employment Compensation
to Government-Supported Employees

24-19-101. Legislative declaration. (1) THE GENERAL ASSEMBLY HEREBY FINDS
AND DECLARES THAT:

(a) THE PAYMENT OF COMPENSATION TO GOVERNMENT-SUPPORTED OFFICIALS OR
EMPLOYEES AFTER SUCH OFFICIALS OR EMPLOYEES HAVE ENDED THEIR EMPLOYMENT
CREATES UNNECESSARY COSTS, WHICH ULTIMATELY ARE BORNE BY THE TAXPAYERS
OF THIS STATE.

(b) IN ORDER TO REDUCE GOVERNMENT COSTS, IT IS NECESSARY FOR THE STATE TO
LIMIT THE PAYMENT OF POST-EMPLOYMENT COMPENSATION TO
GOVERNMENT-SUPPORTED OFFICIALS AND EMPLOYEES.

(c) THE CONTINUED PAYMENT OF COMPENSATION TO ANY OFFICIAL OR EMPLOYEE
AFTER SUCH OFFICIAL OR EMPLOYEE HAS ENDED HIS OR HER SERVICE WITH A
GOVERNMENTAL UNIT OR GOVERNMENT-FINANCED ENTITY NOT ONLY AFFECTS THE
FINANCES OF SUCH GOVERNMENTAL UNIT OR GOVERNMENT-FINANCED ENTITY, BUT
ALSO HAS A SERIOUS IMPACT ON THE STATE AS A WHOLE BECAUSE OF THE TOTAL

*Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing
statutes and such material not part of act.*

EFFECT OF SUCH COMPENSATION PAYMENT ARRANGEMENTS ON THE ABILITY OF STATE AND LOCAL GOVERNMENTS TO PROVIDE SERVICES USING THE SCARCE RESOURCES THAT ARE AVAILABLE. FURTHER, THE GENERAL ASSEMBLY FINDS AND DECLARES THAT THE PROVISION OF LARGE PAYMENTS TO GOVERNMENT-SUPPORTED OFFICIALS AND EMPLOYEES AFTER THEIR EMPLOYMENT HAS ENDED HAS CAUSED GRAVE DAMAGE TO THE TRUST OF THE CITIZENS OF THIS STATE IN THEIR STATE AND LOCAL GOVERNMENT OFFICIALS. BECAUSE OF THESE CONCERNS, THE GENERAL ASSEMBLY FINDS AND DECLARES THAT THIS IS A MATTER OF STATEWIDE CONCERN.

24-19-102. Definitions. FOR THE PURPOSES OF THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "GOVERNMENT-FINANCED ENTITY" MEANS ANY ORGANIZATION, GROUP, OR OTHER ENTITY IF:

(a) SUCH ENTITY IS COMPOSED OF MEMBERS WHICH ARE GOVERNMENTAL UNITS OR WHO ARE OFFICIALS OR EMPLOYEES OF GOVERNMENTAL UNITS; AND

(b) AT LEAST FIFTY PERCENT OF THE ANNUAL OPERATING BUDGET FOR SUCH ENTITY IS DERIVED FROM DUES, CONTRIBUTIONS, OR OTHER PAYMENTS RECEIVED FROM GOVERNMENTAL UNITS.

(2) "GOVERNMENT-SUPPORTED OFFICIAL OR EMPLOYEE" MEANS ANY PERSON WHO IS EMPLOYED OR WHO WAS EMPLOYED BY A GOVERNMENTAL UNIT OR BY A GOVERNMENT-FINANCED ENTITY AND WHO IS OR WAS A MANAGER, AN OFFICIAL, OR AN ADMINISTRATOR FOR SUCH GOVERNMENTAL UNIT OR GOVERNMENT-FINANCED ENTITY.

(3) (a) "GOVERNMENTAL UNIT" MEANS THE STATE OF COLORADO, ANY DEPARTMENT, DIVISION, SECTION, UNIT, OFFICE, COMMISSION, BOARD, INSTITUTION, INSTITUTION OF HIGHER EDUCATION, OR OTHER AGENCY OF THE EXECUTIVE, LEGISLATIVE, OR JUDICIAL BRANCH OF THE STATE GOVERNMENT, OR ANY SPECIAL DISTRICT, AUTHORITY, PUBLIC CORPORATION, BODY POLITIC, OR OTHER INSTRUMENTALITY OF THE STATE.

(b) "GOVERNMENTAL UNIT" DOES NOT INCLUDE THE UNIVERSITY OF COLORADO HOSPITAL AUTHORITY CREATED PURSUANT TO SECTION 23-21-503, C.R.S.

(4) "LOCAL GOVERNMENT" MEANS A COUNTY, MUNICIPALITY, CITY AND COUNTY, OR SCHOOL DISTRICT OR A SPECIAL DISTRICT CREATED PURSUANT TO THE "SPECIAL DISTRICT ACT", ARTICLE 1 OF TITLE 32, C.R.S.

(5) (a) "POST-EMPLOYMENT COMPENSATION" MEANS COMPENSATION PAID TO A GOVERNMENT-SUPPORTED OFFICIAL OR EMPLOYEE AFTER TERMINATION OF SUCH GOVERNMENT-SUPPORTED OFFICIAL OR EMPLOYEE'S EMPLOYMENT WITH A GOVERNMENTAL UNIT OR A GOVERNMENT-FINANCED ENTITY OR AFTER TERMINATION OF THE PERFORMANCE OF ACTUAL SERVICES FOR SUCH GOVERNMENTAL UNIT OR GOVERNMENT-FINANCED ENTITY IF SUCH COMPENSATION WAS NOT EARNED PRIOR TO SUCH TERMINATION. "POST-EMPLOYMENT COMPENSATION" SHALL INCLUDE, BUT IS NOT LIMITED TO, THE PROVISION OF ANY UNEARNED POST-EMPLOYMENT EMPLOYEE BENEFITS. "POST-EMPLOYMENT COMPENSATION" DOES NOT INCLUDE THE

FOLLOWING:

(I) ANY RETIREMENT BENEFITS EARNED BY A GOVERNMENT-SUPPORTED OFFICIAL OR EMPLOYEE DURING THE EMPLOYMENT OF SUCH OFFICIAL OR EMPLOYEE WITH A GOVERNMENTAL UNIT OR GOVERNMENT-FINANCED ENTITY;

(II) ANY PAYMENT MADE AS A PART OF A BONA FIDE EARLY RETIREMENT PROGRAM THAT IS AVAILABLE TO A CLASS OF FIVE OR MORE GOVERNMENT-SUPPORTED OFFICIALS OR EMPLOYEES;

(III) ANY PAYMENTS OF DEFERRED COMPENSATION THAT HAVE BEEN EARNED BY A GOVERNMENT-SUPPORTED OFFICIAL OR EMPLOYEE DURING THE EMPLOYMENT OF SUCH OFFICIAL OR EMPLOYEE WITH A GOVERNMENTAL UNIT OR GOVERNMENT-FINANCED ENTITY;

(IV) ANY WORKERS' COMPENSATION PAYMENT; OR

(V) ANY UNEMPLOYMENT COMPENSATION PAYMENT.

(b) THE TERM "POST-EMPLOYMENT COMPENSATION" INCLUDES ANY RETIREMENT BENEFITS OR ANY PAYMENTS OF DEFERRED COMPENSATION TO BE PAID INTO A RETIREMENT FUND OR DEFERRED COMPENSATION PLAN AFTER TERMINATION OF PERFORMANCE OF ACTUAL SERVICES IN THE USUAL COURSE OF SAID EMPLOYMENT. THE PROHIBITION OF POST-EMPLOYMENT COMPENSATION IS INTENDED TO ELIMINATE ANY EMPLOYMENT CONTRACT PROVISION THAT BINDS THE EMPLOYER TO MAKE PAYMENTS INTO A RETIREMENT FUND OR DEFERRED COMPENSATION PROGRAM AFTER TERMINATION OF PERFORMANCE OF ACTUAL SERVICES. SAID PROHIBITION IS NOT INTENDED TO FORBID THE RECEIPT OF BENEFITS OR PAYMENTS EARNED DURING ACTUAL PERFORMANCE OF SERVICES IF THESE BENEFITS OR PAYMENTS ARE TO BE CREDITED TO OR RECEIVED BY THE EMPLOYEE AFTER TERMINATION OF ACTUAL PERFORMANCE OF SERVICES.

24-19-103. Prohibition against post-employment compensation - exception.

(1) EXCEPT AS PROVIDED IN SUBSECTION (2) OF THIS SECTION, NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY, NO GOVERNMENTAL UNIT OR GOVERNMENT-FINANCED ENTITY SHALL PAY POST-EMPLOYMENT COMPENSATION TO ANY GOVERNMENT-SUPPORTED OFFICIAL OR EMPLOYEE.

(2) (a) AT THE OPTION OF THE APPOINTING AUTHORITY FOR ANY GOVERNMENT-SUPPORTED OFFICIAL OR EMPLOYEE, SUCH OFFICIAL OR EMPLOYEE MAY BE PROVIDED POST-EMPLOYMENT COMPENSATION THAT CONSISTS OF THE PAYMENT OF UP TO A MAXIMUM OF THREE MONTHS OF SALARY FOR SUCH OFFICIAL OR EMPLOYEE AND THE PROVISION OF UP TO A MAXIMUM OF THREE MONTHS OF EMPLOYEE BENEFITS FOR SUCH OFFICIAL OR EMPLOYEE. NO POST-EMPLOYMENT COMPENSATION SHALL BE PROVIDED OTHER THAN CASH PAYMENTS AND THE PROVISION OF EMPLOYEE BENEFITS. POST-EMPLOYMENT COMPENSATION MAY BE APPROVED AND PROVIDED ONLY IF THE GOVERNMENT-SUPPORTED OFFICIAL OR EMPLOYEE WHO IS TO RECEIVE SUCH COMPENSATION WAS EMPLOYED BY THE GOVERNMENTAL UNIT OR GOVERNMENT-FINANCED ENTITY FOR LESS THAN FIVE YEARS.

(b) POST-EMPLOYMENT COMPENSATION MAY BE PROVIDED TO ANY GOVERNMENT-SUPPORTED OFFICIAL OR EMPLOYEE ONLY IF THE APPOINTING AUTHORITY FOR THE OFFICIAL OR EMPLOYEE TAKES POSITIVE ACTION TO APPROVE SUCH COMPENSATION. THE PROVISIONS OF THIS SUBSECTION (2) SHALL NOT BE CONSTRUED TO AUTHORIZE ANY EMPLOYMENT CONTRACT TERM REQUIRING THE PROVISION OF POST-EMPLOYMENT COMPENSATION IN VIOLATION OF THE PROVISIONS OF SECTION 24-19-104. POST-EMPLOYMENT COMPENSATION PAYMENTS SHALL BE SOLELY THE OPTION OF THE APPOINTING AUTHORITY FOR A GOVERNMENT-SUPPORTED OFFICIAL OR EMPLOYEE AND NO OFFICIAL OR EMPLOYEE SHALL BE ENTITLED TO OR HAVE ANY RIGHT TO RECEIVE ANY POST-EMPLOYMENT COMPENSATION.

24-19-104. Terms of employment contracts - public inspection. (1) IF ANY GOVERNMENTAL UNIT OR GOVERNMENT-FINANCED ENTITY ENTERS INTO AN EMPLOYMENT CONTRACT OR EMPLOYMENT CONTRACT EXTENSION WITH A GOVERNMENT-SUPPORTED OFFICIAL OR EMPLOYEE, SUCH EMPLOYMENT CONTRACT OR EMPLOYMENT CONTRACT EXTENSION SHALL CONTAIN TERMS THAT CLEARLY STATE THAT:

(a) SUCH EMPLOYMENT CONTRACT IS SUBJECT TO TERMINATION BY EITHER PARTY TO SUCH CONTRACT AT ANY TIME DURING THE TERM OF SUCH CONTRACT AND THAT SUCH OFFICIAL OR EMPLOYEE SHALL BE DEEMED TO BE AN EMPLOYEE-AT-WILL; AND

(b) NO COMPENSATION, WHETHER AS A BUY-OUT OF THE REMAINING TERM OF THE CONTRACT, AS LIQUIDATED DAMAGES, OR AS ANY OTHER FORM OF REMUNERATION, SHALL BE OWED OR PAID TO SUCH GOVERNMENT-SUPPORTED OFFICIAL OR EMPLOYEE UPON OR AFTER THE TERMINATION OF SUCH CONTRACT EXCEPT FOR COMPENSATION THAT WAS EARNED PRIOR TO TERMINATION PRORATED TO THE DATE OF TERMINATION.

(2) IF ANY GOVERNMENTAL UNIT OR GOVERNMENT-FINANCED ENTITY ENTERS INTO AN EMPLOYMENT CONTRACT OR EMPLOYMENT CONTRACT EXTENSION WITH ANY GOVERNMENT-SUPPORTED OFFICIAL OR EMPLOYEE ON OR AFTER JULY 1, 1993, SUCH GOVERNMENTAL UNIT OR GOVERNMENT-FINANCED ENTITY SHALL MAKE THE TERMS OF SUCH CONTRACT AVAILABLE TO THE PUBLIC FOR INSPECTION AND COPYING DURING REGULAR BUSINESS HOURS.

(3) THE PROVISIONS OF THIS SECTION SHALL NOT BE INTERPRETED TO AUTHORIZE THE TERMINATION OF ANY GOVERNMENT-SUPPORTED OFFICIAL OR EMPLOYEE FOR ANY REASON THAT IS CONTRARY TO APPLICABLE FEDERAL, STATE, OR LOCAL LAW.

(4)(a) NO GOVERNMENTAL UNIT OR GOVERNMENT-FINANCED ENTITY SHALL ENTER INTO AN EMPLOYMENT CONTRACT WITH A GOVERNMENT-SUPPORTED OFFICIAL OR EMPLOYEE OR EXTEND AN EXISTING EMPLOYMENT CONTRACT WITH A GOVERNMENT-SUPPORTED OFFICIAL OR EMPLOYEE IF SUCH EMPLOYMENT CONTRACT OR CONTRACT EXTENSION CONTAINS ANY PROVISIONS THAT ARE INTENDED TO EVADE THE REQUIREMENTS OF THIS ARTICLE. CONTRACTUAL PROVISIONS THAT ARE PROHIBITED UNDER THE PROVISIONS OF SUBSECTION (1) OF THIS SECTION INCLUDE, BUT ARE NOT LIMITED TO, ANY PROVISION THAT ALLOWS A GOVERNMENT-SUPPORTED OFFICIAL OR EMPLOYEE TO EARN AN UNREASONABLY LARGE PORTION OF CONTRACTUAL COMPENSATION DURING THE EARLY STAGES OF THE TERM OF EMPLOYMENT OF SUCH GOVERNMENT-SUPPORTED OFFICIAL OR EMPLOYEE.

(b) THE PROVISIONS OF PARAGRAPH (a) OF THIS SUBSECTION (4) SHALL NOT BE INTERPRETED TO PROHIBIT THE REIMBURSEMENT OF ANY ACTUAL RELOCATION EXPENSES OF GOVERNMENT-SUPPORTED OFFICIALS OR EMPLOYEES OR THE PAYMENT OF REASONABLE INCENTIVES FOR ACCEPTING EMPLOYMENT TO GOVERNMENT-SUPPORTED OFFICIALS OR EMPLOYEES.

24-19-105. Settlement agreements - public inspection. (1) NOTWITHSTANDING ANY OTHER LAW TO THE CONTRARY, IF ANY SETTLEMENT AGREEMENT BETWEEN A GOVERNMENTAL UNIT OR GOVERNMENT-FINANCED ENTITY AND A GOVERNMENT-SUPPORTED OFFICIAL OR EMPLOYEE SETTLES ANY EMPLOYMENT DISPUTE BETWEEN SUCH PARTIES AND INVOLVES THE PAYMENT OF ANY COMPENSATION TO SUCH OFFICIAL OR EMPLOYEE AFTER THE TERM OF EMPLOYMENT OF SUCH OFFICIAL OR EMPLOYEE HAS ENDED, INFORMATION REGARDING ANY AMOUNTS PAID OR BENEFITS PROVIDED UNDER SUCH SETTLEMENT AGREEMENT SHALL BE A MATTER OF PUBLIC RECORD. ANY GOVERNMENTAL UNIT OR GOVERNMENT-FINANCED ENTITY THAT IS A PARTY TO SUCH A SETTLEMENT AGREEMENT SHALL MAKE SUCH INFORMATION AVAILABLE FOR PUBLIC INSPECTION AND COPYING DURING REGULAR BUSINESS HOURS.

(2) THE PROVISIONS OF SUBSECTION (1) OF THIS SECTION SHALL APPLY TO:

(a) ANY SETTLEMENT AGREEMENT ENTERED INTO ON OR AFTER JULY 1, 1993; AND

(b) ANY SETTLEMENT AGREEMENT ENTERED INTO PRIOR TO JULY 1, 1993, IF NO OTHER PROVISION OF LAW WOULD PROHIBIT PUBLIC DISCLOSURE OF THE PROVISIONS OF SUCH SETTLEMENT AGREEMENT.

24-19-106. Existing employment contracts - contract extensions. THE PROVISIONS OF THIS ARTICLE SHALL NOT APPLY TO ANY EMPLOYMENT CONTRACT WHICH WAS IN EXISTENCE BEFORE JULY 1, 1993; EXCEPT THAT THE PROVISIONS OF THIS ARTICLE SHALL APPLY TO ANY EXTENSION OF AN EXISTING CONTRACT IF SUCH CONTRACT DOES NOT CONTAIN ANY TERM WHICH WOULD PROHIBIT THE APPLICATION OF THE PROVISIONS OF THIS ARTICLE TO SUCH CONTRACT EXTENSION.

24-19-107. Open records. IF A GOVERNMENTAL UNIT IS REQUIRED UNDER THE PROVISIONS OF THIS ARTICLE TO MAKE ANY EMPLOYMENT CONTRACTS OR ANY INFORMATION REGARDING AMOUNTS PAID OR BENEFITS PROVIDED UNDER ANY SETTLEMENT AGREEMENTS AVAILABLE TO THE PUBLIC, SUCH EMPLOYMENT CONTRACTS OR INFORMATION SHALL BE DEEMED TO BE PUBLIC RECORDS, AS SUCH TERM IS DEFINED IN SECTION 24-72-202 (6), AND SHALL BE SUBJECT TO THE PROVISIONS OF PART 2 OF ARTICLE 72 OF THIS TITLE.

24-19-108. Exceptions. (1) THE PROVISIONS OF THIS ARTICLE SHALL NOT APPLY TO THE FOLLOWING:

(a) ANY EMPLOYEE EMPLOYED BY THE STATE GOVERNMENT OR ANY OTHER GOVERNMENTAL UNIT WHO IS TO HOLD HIS OR HER POSITION OF EMPLOYMENT DURING EFFICIENT SERVICE OR UNTIL REACHING RETIREMENT AGE UNDER AN EMPLOYMENT SYSTEM DENOMINATED AS CIVIL SERVICE, CLASSIFIED SERVICE, OR ANY SIMILAR EMPLOYMENT SYSTEM CLASSIFICATION;

(b) ANY TENURED OR TENURE TRACK FACULTY MEMBER WHOSE PRIMARY JOB ASSIGNMENT IS TEACHING, RESEARCH, OR BOTH TEACHING AND RESEARCH AND WHO IS EMPLOYED AT A STATE INSTITUTION OF HIGHER EDUCATION; OR

(c) ANY EMPLOYEE EMPLOYED BY A UNIT OF LOCAL GOVERNMENT WHOSE GOVERNING BODY IS DIRECTLY ELECTED BY THE ELECTORS OF SUCH LOCAL GOVERNMENT.

SECTION 2. 24-72-204 (3) (a) (II), Colorado Revised Statutes, 1988 Repl. Vol., as amended, is amended to read:

24-72-204. Allowance or denial of inspection - grounds procedure - appeal.

(3) (a) The custodian shall deny the right of inspection of the following records, unless otherwise provided by law; except that any of the following records, other than letters of reference concerning employment, licensing, or issuance of permits, shall be available to the person in interest under this subsection (3):

(II) (A) Personnel files; but such files shall be available to the person in interest and to the duly elected and appointed public officials who supervise ~~his~~ SUCH PERSON'S work;

(B) THE PROVISIONS OF THIS SUBPARAGRAPH (II) SHALL NOT BE INTERPRETED TO PREVENT THE PUBLIC INSPECTION OR COPYING OF ANY EMPLOYMENT CONTRACT OR ANY INFORMATION REGARDING AMOUNTS PAID OR BENEFITS PROVIDED UNDER ANY SETTLEMENT AGREEMENT PURSUANT TO THE PROVISIONS OF ARTICLE 19 OF THIS TITLE.

SECTION 3. Severability. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

SECTION 4. Effective date. This act shall take effect July 1, 1993.

SECTION 5. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: April 30, 1993