

CHAPTER 180

GOVERNMENT - STATE

HOUSE BILL 96-1344

BY REPRESENTATIVES Faatz, Acquafresca, Allen, Entz, Hagedorn, Jerke, Mace, Nichol, Swenson, Taylor, Tupa, and Young;
also SENATORS R. Powers and Johnson.

AN ACT

CONCERNING THE PAYMENT OF POSTEMPLOYMENT COMPENSATION.

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

SECTION 1. 24-19-102 (3) (a), the introductory portion to 24-19-102 (5) (a), and 24-19-102 (5) (b), Colorado Revised Statutes, 1988 Repl. Vol., as amended, are amended, and the said 24-19-102 (5) is further amended BY THE ADDITION OF A NEW PARAGRAPH, to read:

24-19-102. Definitions. For the purposes of this article, unless the context otherwise requires:

(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~~ LOCAL GOVERNMENT, authority, public corporation, body politic, or other instrumentality of the state.

(5) (a) "Postemployment compensation" means compensation paid to a government-supported official or employee after termination of such government-supported official or employee's employment FROM A PARTICULAR EMPLOYMENT POSITION 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 IN SUCH EMPLOYMENT POSITION if such compensation was not earned prior to such termination OR, FOR AN OFFICIAL OR EMPLOYEE WHO BECOMES EMPLOYED IN A NEW POSITION WITH THE GOVERNMENTAL UNIT OR GOVERNMENT-FINANCED ENTITY AFTER SUCH TERMINATION, IF SUCH COMPENSATION WAS NOT EARNED IN THE NEW POSITION. "Postemployment compensation" shall

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

include, but is not limited to, the provision of any unearned postemployment employee benefits. "Postemployment compensation" does not include the following:

(b) The term "postemployment 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 FOR THE PARTICULAR EMPLOYMENT POSITION in the usual course of said employment. The prohibition of postemployment 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 IN AN EMPLOYMENT POSITION. 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 FOR AN EMPLOYMENT POSITION.

(c) UNLESS OTHERWISE EXCLUDED BY THE PROVISIONS OF THIS ARTICLE, THE TERM "POSTEMPLOYMENT COMPENSATION" INCLUDES ANY PAYMENT MADE TO A GOVERNMENT-SUPPORTED OFFICIAL OR EMPLOYEE AFTER THE TERM OF EMPLOYMENT OF SUCH OFFICIAL OR EMPLOYEE IN A PARTICULAR EMPLOYMENT POSITION HAS ENDED PURSUANT TO A SETTLEMENT AGREEMENT BETWEEN A GOVERNMENTAL UNIT OR GOVERNMENT-FINANCED ENTITY AND THE OFFICIAL OR EMPLOYEE; EXCEPT THAT SUCH PAYMENT IS NOT POSTEMPLOYMENT COMPENSATION IF SUCH PAYMENT IS MADE AS PART OF A BONA FIDE SETTLEMENT OF A LEGITIMATE LEGAL DISPUTE.

SECTION 2. 24-19-103, Colorado Revised Statutes, 1988 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

24-19-103. Prohibition against postemployment compensation - exception.

(3) ANY EMPLOYMENT CONTRACT, EMPLOYMENT CONTRACT EXTENSION, OR OTHER AGREEMENT BETWEEN A GOVERNMENTAL UNIT OR GOVERNMENT-FINANCED ENTITY AND A GOVERNMENT-SUPPORTED OFFICIAL OR EMPLOYEE THAT IS NOT SUBSTANTIALLY IN COMPLIANCE WITH THIS SECTION IS NULL AND VOID. ANY PAYMENT MADE TO ANY PERSON BY A GOVERNMENTAL UNIT OR GOVERNMENT-FINANCED ENTITY IN VIOLATION OF THIS SECTION IS ILLEGAL AND THE RECIPIENT OF SUCH PAYMENT SHALL RETURN THE PAYMENT TO THE GOVERNMENTAL UNIT OR GOVERNMENT-FINANCED ENTITY.

SECTION 3. 24-19-104 (1) (a) and (1) (b), Colorado Revised Statutes, 1988 Repl. Vol., as amended, are amended, and the said 24-19-104 (1) is further amended BY THE ADDITION OF A NEW PARAGRAPH, to read:

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; AND

(c) IF THE CONTRACT IS NOT SUBSTANTIALLY IN COMPLIANCE WITH THE PROHIBITION AGAINST PAYMENT OF POSTEMPLOYMENT COMPENSATION, THE CONTRACT IS NULL AND VOID.

SECTION 4. 24-19-105 (1), Colorado Revised Statutes, 1988 Repl. Vol., as amended, is amended to read:

24-19-105. Settlement agreements - public inspection - filing with the department of personnel. (1) (a) 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 IN A PARTICULAR EMPLOYMENT POSITION 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.

(b) IF A STATE GOVERNMENTAL UNIT ENTERS INTO A SETTLEMENT AGREEMENT TO SETTLE ANY EMPLOYMENT DISPUTE WITH A GOVERNMENT-SUPPORTED OFFICIAL OR EMPLOYEE, THE STATE GOVERNMENTAL UNIT SHALL FILE A COPY OF THE FINAL SETTLEMENT AGREEMENT WITH THE DEPARTMENT OF PERSONNEL, WHICH SHALL BE A PUBLIC RECORD PURSUANT TO THE PROVISIONS OF PART 2 OF ARTICLE 72 OF THIS TITLE.

SECTION 5. Article 19 of title 24, Colorado Revised Statutes, 1988 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW SECTION to read:

24-19-109. Enforcement of article - civil suit. IF ANY GOVERNMENTAL UNIT OR GOVERNMENT-FINANCED ENTITY MAKES ANY PAYMENT OR ENTERS INTO ANY AGREEMENT IN VIOLATION OF THIS ARTICLE, THE PROVISIONS OF THIS ARTICLE MAY BE ENFORCED THROUGH A CIVIL SUIT FILED IN A COURT OF COMPETENT JURISDICTION.

SECTION 6. 23-20-106, Colorado Revised Statutes, 1995 Repl. Vol., is amended to read:

23-20-106. President - election. The regents of the university shall elect a president of the university, who shall ~~hold his office until removed by the board for cause or until he resigns the same~~ BE AN EMPLOYEE-AT-WILL PURSUANT TO SECTION 24-19-104, C.R.S., AND WHOSE EMPLOYMENT SHALL BE SUBJECT TO THE RESTRICTIONS IMPOSED BY ARTICLE 19 OF TITLE 24, C.R.S. ~~He~~ THE PRESIDENT shall be the principal executive officer of the university and a member of the faculty thereof and shall carry out the policies and programs established by the board of regents.

SECTION 7. Effective date - applicability. This act shall take effect upon passage and shall apply to agreements made on or after said date.

SECTION 8. 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: May 23, 1996