

SB056_L.001

SENATE COMMITTEE OF REFERENCE AMENDMENT

Committee on Judiciary.SB16-056 be amended as follows:

1 Amend printed bill, strike everything below the enacting clause and
2 substitute:

3 "SECTION 1. In Colorado Revised Statutes, **amend** 24-50.5-101
4 as follows:

5 **24-50.5-101. Legislative declaration.** (1) The general assembly
6 hereby declares that the people of Colorado are entitled to information
7 about the workings of state government in order to reduce the waste and
8 mismanagement of public funds, to reduce abuses in government
9 authority, and to prevent illegal and unethical practices. The general
10 assembly further declares that employees of the state of Colorado are
11 citizens first and have a right and a responsibility to behave as good
12 citizens in our common efforts to provide sound management of
13 governmental affairs. To help achieve these objectives, the general
14 assembly declares that state employees should be encouraged to disclose
15 information on actions of state agencies that are not in the public interest
16 and that legislation is needed to ensure that any employee making such
17 disclosures shall not be subject to disciplinary measures or harassment by
18 any public official.

19 (2) THE GENERAL ASSEMBLY FURTHER DECLARES THAT THE
20 PURPOSE OF THE CREATION OF WHISTLEBLOWER REVIEW AGENCIES IN THIS
21 ARTICLE IS TO PROVIDE A MECHANISM FOR DETERMINING WHETHER
22 INFORMATION ABOUT STATE OPERATIONS OR CONDUCT PROVIDED BY A
23 STATE EMPLOYEE MAY BE MADE PUBLIC BY A STATE EMPLOYEE
24 WHISTLEBLOWER, EITHER TO MEMBERS OF THE GENERAL ASSEMBLY OR
25 ULTIMATELY TO THE PUBLIC, WHILE PROTECTING THAT STATE EMPLOYEE
26 FROM PUNITIVE ACTION AND WHILE MAINTAINING THE CONFIDENTIAL
27 NATURE OF INFORMATION WHERE REQUIRED BY LAW.

28 **SECTION 2.** In Colorado Revised Statutes, 24-50.5-102, **add** (6)
29 as follows:

30 **24-50.5-102. Definitions.** As used in this article, unless the
31 context otherwise requires:

32 (6) "WHISTLEBLOWER REVIEW AGENCY" MEANS THE DIRECTOR OF
33 THE OFFICE OF LEGISLATIVE LEGAL SERVICES UNDER PART 5 OF ARTICLE 3
34 OF TITLE 2, C.R.S., OR THE DIRECTOR'S DESIGNEE, THE ATTORNEY
35 GENERAL UNDER ARTICLE 31 OF THIS TITLE, OR THE ATTORNEY GENERAL'S
36 DESIGNEE, OR THE STATE COURT ADMINISTRATOR UNDER SECTION
37 13-3-101, C.R.S., OR THE STATE COURT ADMINISTRATOR'S DESIGNEE.

1 **SECTION 3.** In Colorado Revised Statutes, **amend 24-50.5-103**
2 as follows:

3 **24-50.5-103. Retaliation prohibited.** (1) Except as provided in
4 subsection (2) of this section, ~~no~~ AN appointing authority or supervisor
5 shall NOT initiate or administer any disciplinary action against an
6 employee on account of the employee's disclosure of information. This
7 ~~section shall~~ SUBSECTION (1) DOES not apply to AN EMPLOYEE WHO
8 DISCLOSES:

9 (a) ~~An employee who discloses~~ Information that he OR SHE knows
10 to be false or who discloses information with disregard for the truth or
11 falsity ~~thereof~~ OF THE INFORMATION;

12 (b) ~~An employee who discloses~~ Information from public records
13 ~~which~~ THAT are closed to public inspection pursuant to section
14 24-72-204; OR

15 (c) ~~An employee who discloses~~ WITHOUT LAWFUL AUTHORITY,
16 information ~~which~~ THAT is confidential under any other provision of law.

17 (2) ~~It shall be the obligation of~~ An employee who wishes to
18 disclose information under the protection of this article IS OBLIGATED to
19 make a good-faith effort to provide to his OR HER supervisor or appointing
20 authority or member of the general assembly the information to be
21 disclosed prior to the time of its disclosure.

22 (3) SUBSECTION (2) AND PARAGRAPHS (b) AND (c) OF SUBSECTION
23 (1) OF THIS SECTION DO NOT APPLY TO AN EMPLOYEE WHO DISCLOSES
24 INFORMATION TO A WHISTLEBLOWER REVIEW AGENCY.

25 (4) AN EMPLOYEE SHALL DISCLOSE INFORMATION UNDER
26 SUBSECTION (3) OF THIS SECTION TO THE ATTORNEY GENERAL OR THE
27 ATTORNEY GENERAL'S DESIGNEE UNLESS THE INFORMATION DISCLOSED
28 INVOLVES AN OFFICER OR EMPLOYEE OF THE DEPARTMENT OF LAW. IF THE
29 INFORMATION DISCLOSED UNDER SUBSECTION (3) OF THIS SECTION
30 INVOLVES AN OFFICER OR EMPLOYEE OF THE DEPARTMENT OF LAW, AN
31 EMPLOYEE MAY DISCLOSE THE INFORMATION TO ANY WHISTLEBLOWER
32 REVIEW AGENCY. ACCESS TO INFORMATION RECEIVED BY A
33 WHISTLEBLOWER REVIEW AGENCY UNDER THIS SECTION IS LIMITED TO
34 ONLY THOSE PERSONS CONDUCTING THE REVIEW.

35 (5) (a) (I) WITHIN THIRTY DAYS AFTER RECEIPT OF ANY
36 INFORMATION DISCLOSED UNDER SUBSECTION (3) OF THIS SECTION, A
37 WHISTLEBLOWER REVIEW AGENCY SHALL DETERMINE IN WRITING
38 WHETHER OR NOT THE INFORMATION IS:

39 (A) CLOSED TO PUBLIC INSPECTION UNDER SECTION 24-72-204; OR

40 (B) CONFIDENTIAL UNDER ANY OTHER PROVISION OF LAW.

41 (II) EACH WHISTLEBLOWER REVIEW AGENCY SHALL MAINTAIN THE

1 CONFIDENTIAL NATURE OF ANY INFORMATION DETERMINED TO BE CLOSED
2 TO PUBLIC INSPECTION OR CONFIDENTIAL UNDER SUBPARAGRAPH (I) OF
3 THIS PARAGRAPH (a).

4 (b) IF A WHISTLEBLOWER REVIEW AGENCY DETERMINES THAT ANY
5 INFORMATION DISCLOSED UNDER SUBSECTION (3) OF THIS SECTION
6 INCLUDES TRADE SECRETS, OR CONFIDENTIAL COMMERCIAL, FINANCIAL,
7 GEOLOGICAL, OR GEOPHYSICAL DATA, THE WHISTLEBLOWER REVIEW
8 AGENCY SHALL MAINTAIN THE CONFIDENTIAL NATURE OF THE
9 INFORMATION.

10 (c) (I) IF THERE IS A SUBSTANTIAL LIKELIHOOD THAT INFORMATION
11 DISCLOSED UNDER SUBSECTION (3) OF THIS SECTION TO A WHISTLEBLOWER
12 REVIEW AGENCY WILL BE RELEASED TO THE PUBLIC FOR REASONS
13 INCLUDING THAT THE WHISTLEBLOWER REVIEW AGENCY DETERMINES IN
14 WRITING THAT THE INFORMATION IS NOT CONFIDENTIAL, THAT A REQUEST
15 FOR INSPECTION OF THE INFORMATION EXISTS UNDER PART 2 OF ARTICLE
16 72 OF THIS TITLE, OR THAT A PERSON REQUESTS A COURT TO COMPEL
17 RELEASE OF THE INFORMATION, THE WHISTLEBLOWER REVIEW AGENCY
18 SHALL IMMEDIATELY GIVE WRITTEN NOTICE TO THE OWNER OF THE
19 INFORMATION THAT THE WHISTLEBLOWER REVIEW AGENCY IS IN
20 POSSESSION OF THE INFORMATION IN CONNECTION WITH A DISCLOSURE OF
21 INFORMATION UNDER SUBSECTION (3) OF THIS SECTION. WRITTEN NOTICE
22 UNDER THIS PARAGRAPH (c) TOLLS THE TIME PERIOD FOR THE INSPECTION
23 OF RECORDS UNDER SECTION 24-72-203 (3) UNTIL A REASONABLE TIME
24 AFTER THE THIRTY-DAY TIME PERIOD SPECIFIED IN SUBSECTION (6) OF THIS
25 SECTION AND THE CONCLUSION OF ANY LEGAL PROCEEDINGS UNDER
26 SUBSECTION (6) OF THIS SECTION. A WHISTLEBLOWER REVIEW AGENCY
27 SHALL NOT RELEASE ANY INFORMATION SUBJECT TO A NOTICE UNDER THIS
28 PARAGRAPH (c) UNTIL THIRTY DAYS AFTER THE DATE THAT WRITTEN
29 NOTICE IS GIVEN TO THE OWNER OF THE INFORMATION UNDER THIS
30 PARAGRAPH (c).

31 (II) THE WRITTEN NOTICE MUST CONTAIN THE DETERMINATION OF
32 THE WHISTLEBLOWER REVIEW AGENCY WITH RESPECT TO WHETHER THE
33 INFORMATION IS CONFIDENTIAL AND THE CIRCUMSTANCES CONSTITUTING
34 A SUBSTANTIAL LIKELIHOOD THAT THE INFORMATION WILL BE RELEASED
35 TO THE PUBLIC.

36 (III) THE WRITTEN NOTIFICATION REQUIREMENT OF THIS
37 PARAGRAPH (c) DOES NOT APPLY IF A WHISTLEBLOWER REVIEW AGENCY
38 MAKES A GOOD-FAITH EFFORT TO LOCATE THE OWNER OF THE
39 INFORMATION AND REASONABLY DETERMINES THAT THE OWNER CANNOT
40 BE LOCATED.

41 (6) ANY PERSON NOTIFIED UNDER PARAGRAPH (c) OF SUBSECTION



1 (5) OF THIS SECTION WHO COULD BE HARMED BY THE RELEASE OF
2 INFORMATION DESCRIBED UNDER PARAGRAPH (b) OF SUBSECTION (5) OF
3 THIS SECTION AND DISCLOSED UNDER SUBSECTION (3) OF THIS SECTION TO
4 A WHISTLEBLOWER REVIEW AGENCY MAY, WITHIN THIRTY DAYS AFTER
5 RECEIVING NOTICE UNDER PARAGRAPH (c) OF SUBSECTION (5) OF THIS
6 SECTION, FILE AN ACTION UNDER RULE 65 OF THE COLORADO RULES OF
7 CIVIL PROCEDURE AGAINST THE WHISTLEBLOWER REVIEW AGENCY IN
8 POSSESSION OF THE INFORMATION IN THE DISTRICT COURT FOR THE CITY
9 AND COUNTY OF DENVER FOR INJUNCTIVE RELIEF PROHIBITING RELEASE
10 OF THE INFORMATION.

11 (7) (a) SUBJECT TO SUBSECTION (6) OF THIS SECTION,
12 IMMEDIATELY AFTER RECEIVING ANY INFORMATION UNDER SUBSECTION
13 (3) OF THIS SECTION, A WHISTLEBLOWER REVIEW AGENCY SHALL NOTIFY
14 THE SUPERVISOR OR APPOINTING AUTHORITY OF THE EMPLOYEE THAT THE
15 WHISTLEBLOWER REVIEW AGENCY HAS RECEIVED THE INFORMATION AND
16 THAT NO RETALIATORY ACTION MAY BE TAKEN AGAINST THE EMPLOYEE
17 EXCEPT UNDER THE LIMITED CIRCUMSTANCES DESCRIBED IN PARAGRAPH
18 (a) OF SUBSECTION (1) OF THIS SECTION.

19 (b) SUBJECT TO SUBSECTION (6) OF THIS SECTION, WITHIN SIXTY
20 DAYS AFTER RECEIVING ANY INFORMATION UNDER SUBSECTION (3) OF THIS
21 SECTION, A WHISTLEBLOWER REVIEW AGENCY MAY CONFER WITH AND
22 TRANSFER THE INFORMATION TO THE ENTITY HAVING JURISDICTION OR
23 AUTHORITY TO INVESTIGATE ANY ALLEGATION OF UNLAWFUL BEHAVIOR.

24 (8) EXCEPT AS PROVIDED IN SUBSECTION (5) OF THIS SECTION, IF
25 A WHISTLEBLOWER REVIEW AGENCY DETERMINES THAT THE INFORMATION
26 OR A PORTION OF THE INFORMATION RECEIVED IS NOT PROHIBITED FROM
27 DISCLOSURE UNDER SECTION 24-72-204 OR IS NOT OTHERWISE
28 CONFIDENTIAL UNDER ANY OTHER PROVISION OF LAW, THAT INFORMATION
29 MAY BE RELEASED TO THE GENERAL ASSEMBLY OR THE PUBLIC UPON
30 REQUEST. EACH WHISTLEBLOWER REVIEW AGENCY SHALL MAINTAIN
31 RECORDS OF INFORMATION DISCLOSED TO THE WHISTLEBLOWER REVIEW
32 AGENCY UNDER SUBSECTION (3) OF THIS SECTION AND OF THE ACTION OF
33 THE WHISTLEBLOWER REVIEW AGENCY WITH RESPECT TO THE
34 INFORMATION.

35 (9) EACH WHISTLEBLOWER REVIEW AGENCY SHALL DESIGNATE A
36 PERSON OR PERSONS AS A POINT OF CONTACT FOR FUNCTIONS UNDER THIS
37 SECTION AND SHALL MAKE THE CONTACT INFORMATION FOR THAT PERSON
38 OR THOSE PERSONS PUBLIC, BOTH ON THE WEBSITE OF THE
39 WHISTLEBLOWER REVIEW AGENCY AND BY ANY OTHER APPROPRIATE
40 MEANS.

41 (10) IF THE PERSON OR PERSONS DESIGNATED UNDER SUBSECTION

1 (9) OF THIS SECTION BECOME AWARE THAT INFORMATION FROM PUBLIC
2 RECORDS THAT ARE CLOSED TO PUBLIC INSPECTION UNDER SECTION
3 24-72-204 OR INFORMATION THAT IS OTHERWISE CONFIDENTIAL UNDER
4 THE LAW IS DETERMINED TO HAVE BEEN DISCLOSED AT ANY TIME WITHOUT
5 LAWFUL AUTHORITY, THE PERSON OR PERSONS DESIGNATED IN
6 SUBSECTION (9) OF THIS SECTION SHALL MAKE REASONABLE EFFORTS TO
7 NOTIFY THE OWNER OF THE INFORMATION WITHIN A REASONABLE TIME.

8 **SECTION 4. Effective date - applicability.** This act takes effect
9 upon passage and applies to any information disclosed by a state
10 employee to a whistleblower review agency on or after said date.

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

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