

Second Regular Session
Seventieth General Assembly
STATE OF COLORADO

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

LLS NO. 16-0208.01 Bart Miller x2173

SENATE BILL 16-056

SENATE SPONSORSHIP

Lambert,

HOUSE SPONSORSHIP

(None),

Senate Committees

Judiciary
Appropriations

House Committees

A BILL FOR AN ACT

101 **CONCERNING BROADENING PROTECTIONS OF THE STATE**
102 **WHISTLEBLOWER PROTECTION LAW FOR STATE EMPLOYEES**
103 **WHO DISCLOSE CONFIDENTIAL INFORMATION TO CERTAIN STATE**
104 **ENTITIES THAT HAVE LEGAL REQUIREMENTS TO PRESERVE THE**
105 **CONFIDENTIALITY OF THE INFORMATION DISCLOSED.**

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://www.leg.state.co.us/billsummaries>.)

The bill broadens the protections of the state whistleblower protection law by specifying that no appointing authority or supervisor

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

may take disciplinary action against a state employee for disclosing information that is not subject to public inspection under the "Colorado Open Records Act", or that is confidential under any other provision of law, to any of the following state entities that are designated as whistleblower review agencies:

- ! The office of legislative legal services;
- ! The state attorney general; or
- ! The commission on judicial discipline.

The bill requires whistleblower review agencies to:

- ! Confer with each other within 30 days of receiving information and agree on whether information disclosed to a whistleblower review agency is confidential under law and, if so, to maintain the confidentiality of information if required by law;
- ! Release information to members of the general assembly and to the public if information is determined to be releasable;
- ! Maintain records of information disclosed to whistleblower review agencies and the decisions of the whistleblower review agencies with respect to the information; and
- ! Designate a person or persons as a point of contact for whistleblower review agency activities and publicize the information.

Within 60 days after receiving any information, a whistleblower review agency may confer with and transfer the information to the entity having jurisdiction or authority to investigate any allegation of unlawful behavior.

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

2 **SECTION 1. In Colorado Revised Statutes, amend 24-50.5-101**

3 **as follows:**

4 **24-50.5-101. Legislative declaration. (1) The general assembly**
5 **hereby declares that the people of Colorado are entitled to information**
6 **about the workings of state government in order to reduce the waste and**
7 **mismanagement of public funds, to reduce abuses in government**
8 **authority, and to prevent illegal and unethical practices. The general**
9 **assembly further declares that employees of the state of Colorado are**
10 **citizens first and have a right and a responsibility to behave as good**

1 citizens in our common efforts to provide sound management of
2 governmental affairs. To help achieve these objectives, the general
3 assembly declares that state employees should be encouraged to disclose
4 information on actions of state agencies that are not in the public interest
5 and that legislation is needed to ensure that any employee making such
6 disclosures shall not be subject to disciplinary measures or harassment by
7 any public official.

8 (2) THE GENERAL ASSEMBLY FURTHER DECLARES THAT THE
9 PURPOSE OF THE CREATION OF WHISTLEBLOWER REVIEW AGENCIES IN THIS
10 ARTICLE IS TO PROVIDE A MECHANISM FOR DETERMINING WHETHER
11 INFORMATION ABOUT STATE OPERATIONS OR CONDUCT PROVIDED BY A
12 STATE EMPLOYEE MAY BE MADE PUBLIC BY A STATE EMPLOYEE
13 WHISTLEBLOWER, EITHER TO MEMBERS OF THE GENERAL ASSEMBLY OR
14 ULTIMATELY TO THE PUBLIC, WHILE PROTECTING THAT STATE EMPLOYEE
15 FROM PUNITIVE ACTION AND WHILE MAINTAINING THE CONFIDENTIAL
16 NATURE OF INFORMATION WHERE REQUIRED BY LAW.

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

19 **24-50.5-102. Definitions.** As used in this article, unless the
20 context otherwise requires:

21 (6) "WHISTLEBLOWER REVIEW AGENCY" MEANS THE DIRECTOR OF
22 THE OFFICE OF LEGISLATIVE LEGAL SERVICES UNDER PART 5 OF ARTICLE 3
23 OF TITLE 2, C.R.S., OR THE DIRECTOR'S DESIGNEE, THE ATTORNEY
24 GENERAL UNDER ARTICLE 31 OF THIS TITLE, OR THE ATTORNEY GENERAL'S
25 DESIGNEE, OR THE STATE COURT ADMINISTRATOR UNDER SECTION
26 13-3-101, C.R.S., OR THE STATE COURT ADMINISTRATOR'S DESIGNEE.

27 **SECTION 3.** In Colorado Revised Statutes, **amend** 24-50.5-103

1 as follows:

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

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

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

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

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

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

24 (4) AN EMPLOYEE SHALL DISCLOSE INFORMATION UNDER
25 SUBSECTION (3) OF THIS SECTION TO THE ATTORNEY GENERAL OR THE
26 ATTORNEY GENERAL'S DESIGNEE UNLESS THE INFORMATION DISCLOSED
27 INVOLVES AN OFFICER OR EMPLOYEE OF THE DEPARTMENT OF LAW. IF THE

1 INFORMATION DISCLOSED UNDER SUBSECTION (3) OF THIS SECTION
2 INVOLVES AN OFFICER OR EMPLOYEE OF THE DEPARTMENT OF LAW, AN
3 EMPLOYEE MAY DISCLOSE THE INFORMATION TO ANY WHISTLEBLOWER
4 REVIEW AGENCY. ACCESS TO INFORMATION RECEIVED BY A
5 WHISTLEBLOWER REVIEW AGENCY UNDER THIS SECTION IS LIMITED TO
6 ONLY THOSE PERSONS CONDUCTING THE REVIEW.

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

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

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

13 (II) EACH WHISTLEBLOWER REVIEW AGENCY SHALL MAINTAIN THE
14 CONFIDENTIAL NATURE OF ANY INFORMATION DETERMINED TO BE CLOSED
15 TO PUBLIC INSPECTION OR CONFIDENTIAL UNDER SUBPARAGRAPH (I) OF
16 THIS PARAGRAPH (a).

17 (b) IF A WHISTLEBLOWER REVIEW AGENCY DETERMINES THAT ANY
18 INFORMATION DISCLOSED UNDER SUBSECTION (3) OF THIS SECTION
19 INCLUDES TRADE SECRETS, OR CONFIDENTIAL COMMERCIAL, FINANCIAL,
20 GEOLOGICAL, OR GEOPHYSICAL DATA, THE WHISTLEBLOWER REVIEW
21 AGENCY SHALL MAINTAIN THE CONFIDENTIAL NATURE OF THE
22 INFORMATION.

23 (c) (I) IF THERE IS A SUBSTANTIAL LIKELIHOOD THAT INFORMATION
24 DISCLOSED UNDER SUBSECTION (3) OF THIS SECTION TO A WHISTLEBLOWER
25 REVIEW AGENCY WILL BE RELEASED TO THE PUBLIC FOR REASONS
26 INCLUDING THAT THE WHISTLEBLOWER REVIEW AGENCY DETERMINES IN
27 WRITING THAT THE INFORMATION IS NOT CONFIDENTIAL, THAT A REQUEST

1 FOR INSPECTION OF THE INFORMATION EXISTS UNDER PART 2 OF ARTICLE
2 72 OF THIS TITLE, OR THAT A PERSON REQUESTS A COURT TO COMPEL
3 RELEASE OF THE INFORMATION, THE WHISTLEBLOWER REVIEW AGENCY
4 SHALL IMMEDIATELY GIVE WRITTEN NOTICE TO THE OWNER OF THE
5 INFORMATION THAT THE WHISTLEBLOWER REVIEW AGENCY IS IN
6 POSSESSION OF THE INFORMATION IN CONNECTION WITH A DISCLOSURE OF
7 INFORMATION UNDER SUBSECTION (3) OF THIS SECTION. WRITTEN NOTICE
8 UNDER THIS PARAGRAPH (c) TOLLS THE TIME PERIOD FOR THE INSPECTION
9 OF RECORDS UNDER SECTION 24-72-203 (3) UNTIL A REASONABLE TIME
10 AFTER THE THIRTY-DAY TIME PERIOD SPECIFIED IN SUBSECTION (6) OF THIS
11 SECTION AND THE CONCLUSION OF ANY LEGAL PROCEEDINGS UNDER
12 SUBSECTION (6) OF THIS SECTION. A WHISTLEBLOWER REVIEW AGENCY
13 SHALL NOT RELEASE ANY INFORMATION SUBJECT TO A NOTICE UNDER THIS
14 PARAGRAPH (c) UNTIL THIRTY DAYS AFTER THE DATE THAT WRITTEN
15 NOTICE IS GIVEN TO THE OWNER OF THE INFORMATION UNDER THIS
16 PARAGRAPH (c).

17 (II) THE WRITTEN NOTICE MUST CONTAIN THE DETERMINATION OF
18 THE WHISTLEBLOWER REVIEW AGENCY WITH RESPECT TO WHETHER THE
19 INFORMATION IS CONFIDENTIAL AND THE CIRCUMSTANCES CONSTITUTING
20 A SUBSTANTIAL LIKELIHOOD THAT THE INFORMATION WILL BE RELEASED
21 TO THE PUBLIC.

22 (III) THE WRITTEN NOTIFICATION REQUIREMENT OF THIS
23 PARAGRAPH (c) DOES NOT APPLY IF A WHISTLEBLOWER REVIEW AGENCY
24 MAKES A GOOD-FAITH EFFORT TO LOCATE THE OWNER OF THE
25 INFORMATION AND REASONABLY DETERMINES THAT THE OWNER CANNOT
26 BE LOCATED.

27 (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

1 CONFIDENTIAL UNDER ANY OTHER PROVISION OF LAW, THAT INFORMATION
2 MAY BE RELEASED TO THE GENERAL ASSEMBLY OR THE PUBLIC UPON
3 REQUEST. EACH WHISTLEBLOWER REVIEW AGENCY SHALL MAINTAIN
4 RECORDS OF INFORMATION DISCLOSED TO THE WHISTLEBLOWER REVIEW
5 AGENCY UNDER SUBSECTION (3) OF THIS SECTION AND OF THE ACTION OF
6 THE WHISTLEBLOWER REVIEW AGENCY WITH RESPECT TO THE
7 INFORMATION.

8 (9) EACH WHISTLEBLOWER REVIEW AGENCY SHALL DESIGNATE A
9 PERSON OR PERSONS AS A POINT OF CONTACT FOR FUNCTIONS UNDER THIS
10 SECTION AND SHALL MAKE THE CONTACT INFORMATION FOR THAT PERSON
11 OR THOSE PERSONS PUBLIC, BOTH ON THE WEBSITE OF THE
12 WHISTLEBLOWER REVIEW AGENCY AND BY ANY OTHER APPROPRIATE
13 MEANS.

14 (10) IF THE PERSON OR PERSONS DESIGNATED UNDER SUBSECTION
15 (9) OF THIS SECTION BECOME AWARE THAT INFORMATION FROM PUBLIC
16 RECORDS THAT ARE CLOSED TO PUBLIC INSPECTION UNDER SECTION
17 24-72-204 OR INFORMATION THAT IS OTHERWISE CONFIDENTIAL UNDER
18 THE LAW IS DETERMINED TO HAVE BEEN DISCLOSED AT ANY TIME WITHOUT
19 LAWFUL AUTHORITY, THE PERSON OR PERSONS DESIGNATED IN
20 SUBSECTION (9) OF THIS SECTION SHALL MAKE REASONABLE EFFORTS TO
21 NOTIFY THE OWNER OF THE INFORMATION WITHIN A REASONABLE TIME.

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

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