

Second Regular Session
Seventieth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 16-0755.02 Ed DeCecco x4216

HOUSE BILL 16-1078

HOUSE SPONSORSHIP

Kagan,

SENATE SPONSORSHIP

(None),

House Committees
Local Government

Senate Committees

A BILL FOR AN ACT

101 CONCERNING THE ESTABLISHMENT OF WHISTLEBLOWER PROTECTION
102 FOR PUBLIC EMPLOYEES NOT EMPLOYED BY THE STATE.

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 prohibits a county, municipality, or local education provider from imposing any disciplinary action against an employee on account of the employee's statements to any person about the local government that the employee reasonably believes to show:

! A violation of a state or federal law, a local ordinance or resolution, or a local education provider policy;

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.

- ! A waste or misuse of public funds;
- ! Fraud;
- ! An abuse of authority;
- ! Mismanagement; or
- ! A danger to the health or safety of students, employees, or the public.

The bill permits an employee to file a written complaint with the office of administrative courts for referral to an administrative law judge alleging that a local government has imposed disciplinary action that violates this prohibition and seeking injunctive relief and damages. Employees who lose the administrative hearing may file a civil action in district court. The employee protection does not apply if the disclosure was false or made with reckless disregard for the truth or falsity thereof, or if it was of a protected public record or confidential information that was not reasonably necessary to show one or more of the identified circumstances.

Administrative law judges are given jurisdiction to hear, determine, and make findings and awards on all these whistleblower cases. The director of the office of administrative courts is required to establish rules to govern these proceedings and hearings.



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

2 **SECTION 1.** In Colorado Revised Statutes, **add** 22-1-130 as
 3 follows:

4 **22-1-130. Disclosure - retaliation prohibited - civil action -**
 5 **definitions.** (1) AS USED IN THIS SECTION:

6 (a) "DISCIPLINARY ACTION" MEANS ANY FORM OF DISCIPLINE OR
 7 PENALTY, INCLUDING, BUT NOT LIMITED TO, DISMISSAL, DEMOTION,
 8 TRANSFER, REASSIGNMENT, SUSPENSION, CORRECTIVE ACTION,
 9 REPRIMAND, ADMONISHMENT, UNSATISFACTORY OR BELOW STANDARD
 10 PERFORMANCE EVALUATION, REDUCTION IN FORCE, OR WITHHOLDING OF
 11 WORK, OR THE THREAT OF ANY SUCH DISCIPLINE OR PENALTY.

12 (b) "EMPLOYEE" MEANS ANY PERSON EMPLOYED BY A LOCAL
 13 EDUCATION PROVIDER.

14 (c) "LOCAL EDUCATION PROVIDER" MEANS A SCHOOL DISTRICT, A

1 CHARTER SCHOOL AUTHORIZED BY A SCHOOL DISTRICT PURSUANT TO PART
2 1 OF ARTICLE 30.5 OF THIS TITLE, A CHARTER SCHOOL AUTHORIZED BY THE
3 STATE CHARTER SCHOOL INSTITUTE PURSUANT TO PART 5 OF ARTICLE 30.5
4 OF THIS TITLE, OR A BOARD OF COOPERATIVE SERVICES CREATED AND
5 OPERATING PURSUANT TO ARTICLE 5 OF THIS TITLE THAT OPERATES ONE
6 OR MORE PUBLIC SCHOOLS.

7 (2) (a) A LOCAL EDUCATION PROVIDER SHALL NOT INITIATE OR
8 ADMINISTER ANY DISCIPLINARY ACTION AGAINST AN EMPLOYEE ON
9 ACCOUNT OF THE EMPLOYEE'S STATEMENTS TO ANY PERSON ABOUT THE
10 LOCAL EDUCATION PROVIDER THAT THE EMPLOYEE REASONABLY BELIEVES
11 TO SHOW:

12 (I) A VIOLATION OF A STATE OR FEDERAL LAW OR A LOCAL
13 EDUCATION PROVIDER POLICY;

14 (II) A WASTE OR MISUSE OF PUBLIC FUNDS;

15 (III) FRAUD;

16 (IV) AN ABUSE OF AUTHORITY;

17 (V) MISMANAGEMENT; OR

18 (VI) A DANGER TO THE HEALTH OR SAFETY OF STUDENTS,
19 EMPLOYEES, OR THE PUBLIC.

20 (b) THE PROHIBITION SET FORTH IN PARAGRAPH (a) OF THIS
21 SUBSECTION (2) DOES NOT APPLY TO:

22 (I) AN EMPLOYEE WHO DISCLOSES INFORMATION THAT HE OR SHE
23 KNOWS TO BE FALSE OR WHO DISCLOSES INFORMATION WITH RECKLESS
24 DISREGARD FOR THE TRUTH OR FALSITY THEREOF;

25 (II) AN EMPLOYEE WHO DISCLOSES INFORMATION THAT IS FROM A
26 PUBLIC RECORD CLOSED TO PUBLIC INSPECTION PURSUANT TO SECTION
27 24-72-204, C.R.S., OR THAT IS OTHERWISE CONFIDENTIAL UNDER STATE

1 LAW, IF THE EMPLOYEE'S DISCLOSURE IS NOT REASONABLY NECESSARY TO
2 SHOW ONE OR MORE OF THE CIRCUMSTANCES IDENTIFIED IN PARAGRAPH
3 (a) OF THIS SUBSECTION (2); OR

4 (III) AN EMPLOYEE WHO DISCLOSES INFORMATION THAT IS
5 CONFIDENTIAL UNDER ANY PROVISION OF FEDERAL LAW.

6 (3) WITHIN NINETY DAYS AFTER THE EMPLOYEE KNEW OR SHOULD
7 HAVE KNOWN OF A DISCIPLINARY ACTION, AN EMPLOYEE MAY FILE A
8 WRITTEN COMPLAINT WITH THE OFFICE OF ADMINISTRATIVE COURTS IN THE
9 DEPARTMENT OF PERSONNEL FOR REFERRAL TO AN ADMINISTRATIVE LAW
10 JUDGE ALLEGING A VIOLATION OF THIS SECTION AND SEEKING INJUNCTIVE
11 RELIEF AND DAMAGES. WITHIN TEN DAYS AFTER RECEIVING THE
12 COMPLAINT, THE OFFICE SHALL SEND A COPY OF THE COMPLAINT TO THE
13 LOCAL EDUCATION PROVIDER AND SHALL PROVIDE WRITTEN NOTICE TO
14 THE LOCAL EDUCATION PROVIDER AND THE EMPLOYEE THAT STATES THE
15 COMPLAINT HAS BEEN DOCKETED, DESCRIBES THE PROCESS FOR
16 REVIEWING THE COMPLAINT, AND IDENTIFIES THE HEARING DATE.

17 (4) IF AN ADMINISTRATIVE LAW JUDGE DETERMINES THAT THE
18 EMPLOYER DID NOT VIOLATE SUBSECTION (2) OF THIS SECTION, AN
19 EMPLOYEE MAY BRING A CIVIL ACTION IN THE DISTRICT COURT ALLEGING
20 THE SAME VIOLATION AND SEEKING INJUNCTIVE RELIEF AND DAMAGES.

21 (5) AN ADMINISTRATIVE LAW JUDGE OR DISTRICT COURT JUDGE
22 MAY AWARD AN EMPLOYEE WHO PREVAILS IN ACTION BROUGHT UNDER
23 THIS SECTION DAMAGES, INJUNCTIVE RELIEF, ADMINISTRATIVE OR COURT
24 COSTS, ATTORNEY FEES, AND SUCH OTHER RELIEF AS HE OR SHE DEEMS
25 APPROPRIATE.

26 **SECTION 2.** In Colorado Revised Statutes, 24-30-1003, **add** (6)
27 as follows:

1 (II) A WASTE OR MISUSE OF PUBLIC FUNDS;
2 (III) FRAUD;
3 (IV) AN ABUSE OF AUTHORITY;
4 (V) MISMANAGEMENT; OR
5 (VI) A DANGER TO THE HEALTH OR SAFETY OF EMPLOYEES OR THE
6 PUBLIC.

7 (b) THE PROHIBITION SET FORTH IN PARAGRAPH (a) OF THIS
8 SUBSECTION (2) DOES NOT APPLY TO:

9 (I) AN EMPLOYEE WHO DISCLOSES INFORMATION THAT HE OR SHE
10 KNOWS TO BE FALSE OR WHO DISCLOSES INFORMATION WITH RECKLESS
11 DISREGARD FOR THE TRUTH OR FALSITY THEREOF;

12 (II) AN EMPLOYEE WHO DISCLOSES INFORMATION THAT IS FROM A
13 PUBLIC RECORD CLOSED TO PUBLIC INSPECTION PURSUANT TO SECTION
14 24-72-204, C.R.S., OR THAT IS OTHERWISE CONFIDENTIAL UNDER STATE
15 LAW, IF THE EMPLOYEE'S DISCLOSURE IS NOT REASONABLY NECESSARY TO
16 SHOW ONE OR MORE OF THE CIRCUMSTANCES IDENTIFIED IN PARAGRAPH
17 (a) OF THIS SUBSECTION (2); OR

18 (III) AN EMPLOYEE WHO DISCLOSES INFORMATION THAT IS
19 CONFIDENTIAL UNDER ANY PROVISION OF FEDERAL LAW.

20 (3) WITHIN NINETY DAYS AFTER THE EMPLOYEE KNEW OR SHOULD
21 HAVE KNOWN OF A DISCIPLINARY ACTION, AN EMPLOYEE MAY FILE A
22 WRITTEN COMPLAINT WITH THE OFFICE OF ADMINISTRATIVE COURTS IN THE
23 DEPARTMENT OF PERSONNEL FOR REFERRAL TO AN ADMINISTRATIVE LAW
24 JUDGE ALLEGING A VIOLATION OF THIS SECTION AND SEEKING INJUNCTIVE
25 RELIEF AND DAMAGES. WITHIN TEN DAYS AFTER RECEIVING THE
26 COMPLAINT, THE OFFICE SHALL SEND A COPY OF THE COMPLAINT TO THE
27 COUNTY AND SHALL PROVIDE WRITTEN NOTICE TO THE COUNTY AND THE

1 EMPLOYEE THAT STATES THE COMPLAINT HAS BEEN DOCKETED, DESCRIBES
2 THE PROCESS FOR REVIEWING THE COMPLAINT, AND IDENTIFIES THE
3 HEARING DATE.

4 (4) IF AN ADMINISTRATIVE LAW JUDGE DETERMINES THAT THE
5 EMPLOYER DID NOT VIOLATE SUBSECTION (2) OF THIS SECTION, AN
6 EMPLOYEE MAY BRING A CIVIL ACTION IN THE DISTRICT COURT ALLEGING
7 THE SAME VIOLATION AND SEEKING INJUNCTIVE RELIEF AND DAMAGES.

8 (5) AN ADMINISTRATIVE LAW JUDGE OR DISTRICT COURT JUDGE
9 MAY AWARD AN EMPLOYEE WHO PREVAILS IN ACTION BROUGHT UNDER
10 THIS SECTION DAMAGES, INJUNCTIVE RELIEF, ADMINISTRATIVE OR COURT
11 COSTS, ATTORNEY FEES, AND SUCH OTHER RELIEF AS HE OR SHE DEEMS
12 APPROPRIATE.

13 **SECTION 4.** In Colorado Revised Statutes, **add** part 6 to article
14 4 of title 31 as follows:

15 PART 6

16 WHISTLEBLOWER PROTECTION

17 **31-4-601. Disclosure - retaliation prohibited - civil action -**
18 **definitions.** (1) AS USED IN THIS SECTION:

19 (a) "DISCIPLINARY ACTION" MEANS ANY FORM OF DISCIPLINE OR
20 PENALTY, INCLUDING, BUT NOT LIMITED TO, DISMISSAL, DEMOTION,
21 TRANSFER, REASSIGNMENT, SUSPENSION, CORRECTIVE ACTION,
22 REPRIMAND, ADMONISHMENT, UNSATISFACTORY OR BELOW STANDARD
23 PERFORMANCE EVALUATION, REDUCTION IN FORCE, OR WITHHOLDING OF
24 WORK, OR THE THREAT OF ANY SUCH DISCIPLINE OR PENALTY.

25 (b) "EMPLOYEE" MEANS ANY PERSON EMPLOYED BY A
26 MUNICIPALITY.

27 (2) (a) A MUNICIPALITY SHALL NOT INITIATE OR ADMINISTER ANY

1 DISCIPLINARY ACTION AGAINST AN EMPLOYEE ON ACCOUNT OF THE
2 EMPLOYEE'S STATEMENTS TO ANY PERSON ABOUT THE MUNICIPALITY THAT
3 THE EMPLOYEE REASONABLY BELIEVES TO SHOW:

4 (I) A VIOLATION OF A STATE OR FEDERAL LAW OR A LOCAL
5 ORDINANCE OR RESOLUTION;

6 (II) A WASTE OR MISUSE OF PUBLIC FUNDS;

7 (III) FRAUD;

8 (IV) AN ABUSE OF AUTHORITY;

9 (V) MISMANAGEMENT; OR

10 (VI) A DANGER TO THE HEALTH OR SAFETY OF EMPLOYEES OR THE
11 PUBLIC.

12 (b) THE PROHIBITION SET FORTH IN PARAGRAPH (a) OF THIS
13 SUBSECTION (2) DOES NOT APPLY TO:

14 (I) AN EMPLOYEE WHO DISCLOSES INFORMATION THAT HE OR SHE
15 KNOWS TO BE FALSE OR WHO DISCLOSES INFORMATION WITH RECKLESS
16 DISREGARD FOR THE TRUTH OR FALSITY THEREOF;

17 (II) AN EMPLOYEE WHO DISCLOSES INFORMATION THAT IS FROM A
18 PUBLIC RECORD CLOSED TO PUBLIC INSPECTION PURSUANT TO SECTION
19 24-72-204, C.R.S., OR THAT IS OTHERWISE CONFIDENTIAL UNDER STATE
20 LAW, IF THE EMPLOYEE'S DISCLOSURE IS NOT REASONABLY NECESSARY TO
21 SHOW ONE OR MORE OF THE CIRCUMSTANCES IDENTIFIED IN PARAGRAPH
22 (a) OF THIS SUBSECTION (2); OR

23 (III) AN EMPLOYEE WHO DISCLOSES INFORMATION THAT IS
24 CONFIDENTIAL UNDER ANY PROVISION OF FEDERAL LAW.

25 (3) WITHIN NINETY DAYS AFTER THE EMPLOYEE KNEW OR SHOULD
26 HAVE KNOWN OF A DISCIPLINARY ACTION, AN EMPLOYEE MAY FILE A
27 WRITTEN COMPLAINT WITH THE OFFICE OF ADMINISTRATIVE COURTS IN THE

1 DEPARTMENT OF PERSONNEL FOR REFERRAL TO AN ADMINISTRATIVE LAW
2 JUDGE ALLEGING A VIOLATION OF THIS SECTION AND SEEKING INJUNCTIVE
3 RELIEF AND DAMAGES. WITHIN TEN DAYS AFTER RECEIVING THE
4 COMPLAINT, THE OFFICE SHALL SEND A COPY OF THE COMPLAINT TO THE
5 MUNICIPALITY AND SHALL PROVIDE WRITTEN NOTICE TO THE
6 MUNICIPALITY AND THE EMPLOYEE THAT STATES THE COMPLAINT HAS
7 BEEN DOCKETED, DESCRIBES THE PROCESS FOR REVIEWING THE
8 COMPLAINT, AND IDENTIFIES THE HEARING DATE.

9 (4) IF AN ADMINISTRATIVE LAW JUDGE DETERMINES THAT THE
10 EMPLOYER DID NOT VIOLATE SUBSECTION (2) OF THIS SECTION, AN
11 EMPLOYEE MAY BRING A CIVIL ACTION IN THE DISTRICT COURT ALLEGING
12 THE SAME VIOLATION AND SEEKING INJUNCTIVE RELIEF AND DAMAGES.

13 (5) AN ADMINISTRATIVE LAW JUDGE OR DISTRICT COURT JUDGE
14 MAY AWARD AN EMPLOYEE WHO PREVAILS IN ACTION BROUGHT UNDER
15 THIS SECTION DAMAGES, INJUNCTIVE RELIEF, ADMINISTRATIVE OR COURT
16 COSTS, ATTORNEY FEES, AND SUCH OTHER RELIEF AS HE OR SHE DEEMS
17 APPROPRIATE.

18 **SECTION 5. Act subject to petition - effective date -**
19 **applicability.** (1) This act takes effect at 12:01 a.m. on the day following
20 the expiration of the ninety-day period after final adjournment of the
21 general assembly (August 10, 2016, if adjournment sine die is on May 11,
22 2016); except that, if a referendum petition is filed pursuant to section 1
23 (3) of article V of the state constitution against this act or an item, section,
24 or part of this act within such period, then the act, item, section, or part
25 will not take effect unless approved by the people at the general election
26 to be held in November 2016 and, in such case, will take effect on the
27 date of the official declaration of the vote thereon by the governor.

1 (2) This act applies to information disclosed on or after the
2 applicable effective date of this act.