

Second Regular Session
Seventieth General Assembly
STATE OF COLORADO

REENGROSSED

*This Version Includes All Amendments
Adopted in the House of Introduction*

LLS NO. 16-0755.02 Ed DeCecco x4216

HOUSE BILL 16-1078

HOUSE SPONSORSHIP

Kagan,

SENATE SPONSORSHIP

Hodge,

House Committees

Local Government
Appropriations

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.*

HOUSE
3rd Reading Unamended
April 19, 2016

HOUSE
Amended 2nd Reading
April 13, 2016

- ! 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 DIRECT OR INDIRECT FORM
7 OF DISCIPLINE OR PENALTY, INCLUDING, BUT NOT LIMITED TO, DISMISSAL,
8 DEMOTION, 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) "DISCLOSURE OF INFORMATION" MEANS THE WRITTEN
13 PROVISION OF EVIDENCE TO ANY PERSON, OR THE TESTIMONY BEFORE ANY
14 COMMITTEE OF THE GENERAL ASSEMBLY, REGARDING ANY ACTION,

1 POLICY, REGULATION, PRACTICE, OR PROCEDURE, INCLUDING, BUT NOT
2 LIMITED TO, THE WASTE OF PUBLIC FUNDS, ABUSE OF AUTHORITY, OR
3 MISMANAGEMENT OF ANY LOCAL EDUCATION PROVIDER.

4 (c) "EMPLOYEE" MEANS ANY PERSON EMPLOYED BY A LOCAL
5 EDUCATION PROVIDER.

6 (d) "LOCAL EDUCATION PROVIDER" MEANS A SCHOOL DISTRICT, A
7 CHARTER SCHOOL AUTHORIZED BY A SCHOOL DISTRICT PURSUANT TO PART
8 1 OF ARTICLE 30.5 OF THIS TITLE, A CHARTER SCHOOL AUTHORIZED BY THE
9 STATE CHARTER SCHOOL INSTITUTE PURSUANT TO PART 5 OF ARTICLE 30.5
10 OF THIS TITLE, OR A BOARD OF COOPERATIVE SERVICES CREATED AND
11 OPERATING PURSUANT TO ARTICLE 5 OF THIS TITLE THAT OPERATES ONE
12 OR MORE PUBLIC SCHOOLS.

13 (e) "SUPERVISOR" MEANS ANY PERSON WHO SUPERVISES OR IS
14 RESPONSIBLE FOR THE WORK OF ONE OR MORE EMPLOYEES.

15 (2) EXCEPT AS PROVIDED IN SUBSECTION (3) OF THIS SECTION, NO
16 APPOINTING AUTHORITY OR SUPERVISOR SHALL INITIATE OR ADMINISTER
17 ANY DISCIPLINARY ACTION AGAINST AN EMPLOYEE ON ACCOUNT OF THE
18 EMPLOYEE'S DISCLOSURE OF INFORMATION. THIS SECTION SHALL NOT
19 APPLY TO:

20 (a) AN EMPLOYEE WHO DISCLOSES INFORMATION THAT HE OR SHE
21 KNOWS TO BE FALSE OR WHO DISCLOSES INFORMATION WITH DISREGARD
22 FOR THE TRUTH OR FALSITY THEREOF;

23 (b) AN EMPLOYEE WHO DISCLOSES INFORMATION FROM PUBLIC
24 RECORDS THAT ARE CLOSED TO PUBLIC INSPECTION PURSUANT TO SECTION
25 24-72-204; OR

26 (c) AN EMPLOYEE WHO DISCLOSES INFORMATION THAT IS
27 CONFIDENTIAL UNDER ANY OTHER PROVISION OF LAW.

1 (3) IT SHALL BE THE OBLIGATION OF AN EMPLOYEE WHO WISHES TO
2 DISCLOSE INFORMATION UNDER THE PROTECTION OF THIS SECTION TO
3 MAKE A GOOD FAITH EFFORT TO PROVIDE TO HIS OR HER SUPERVISOR OR
4 APPOINTING AUTHORITY OR A BOARD MEMBER OF THE LOCAL EDUCATION
5 PROVIDER THE INFORMATION TO BE DISCLOSED PRIOR TO THE TIME OF ITS
6 DISCLOSURE.

7 (4) WITHIN NINETY DAYS AFTER THE EMPLOYEE KNEW OR SHOULD
8 HAVE KNOWN OF A DISCIPLINARY ACTION, AN EMPLOYEE MAY FILE A
9 WRITTEN COMPLAINT WITH THE OFFICE OF ADMINISTRATIVE COURTS IN THE
10 DEPARTMENT OF PERSONNEL FOR REFERRAL TO AN ADMINISTRATIVE LAW
11 JUDGE ALLEGING A VIOLATION OF THIS SECTION. THE EMPLOYEE MUST
12 SERVE THE LOCAL EDUCATION PROVIDER IN ACCORDANCE WITH THE
13 COLORADO RULES OF CIVIL PROCEDURE. PRIOR TO THE TIME THAT AN
14 ANSWER IS DUE, THE LOCAL EDUCATION PROVIDER MAY FILE A WRITTEN
15 NOTICE REJECTING THE ADMINISTRATIVE LAW JUDGE'S JURISDICTION, AND,
16 IN WHICH CASE, THE JUDGE SHALL DISMISS THE COMPLAINT WITHOUT
17 PREJUDICE. HEARINGS ARE CONDUCTED CONSISTENT WITH THE PROVISIONS
18 OF SECTION 24-4-105, C.R.S., UNLESS THE DIRECTOR OF THE OFFICE OF
19 ADMINISTRATIVE COURTS ESTABLISHES DIFFERENT RULES THAT APPLY.
20 THE FINAL DECISION OF THE ADMINISTRATIVE LAW JUDGE IS SUBJECT TO
21 JUDICIAL REVIEW BY THE COURT OF APPEALS IN THE SAME MANNER AS AN
22 AGENCY ACTION THAT IS APPEALED IN ACCORDANCE WITH SECTION
23 24-4-106 (11), C.R.S.

24 (5) AN EMPLOYEE WHO DID NOT FILE A WRITTEN COMPLAINT WITH
25 THE OFFICE OF ADMINISTRATIVE COURTS OR WHO FILED A WRITTEN
26 COMPLAINT BUT THE LOCAL EDUCATION PROVIDER REJECTED THE
27 JURISDICTION MAY BRING A CIVIL ACTION IN THE APPROPRIATE DISTRICT

1 COURT OF THE STATE ALLEGING A VIOLATION OF THIS SECTION.

2 (6) IF THE EMPLOYEE PREVAILS, THE EMPLOYEE MAY RECOVER
3 DAMAGES, TOGETHER WITH COURT COSTS, AND THE COURT OR
4 ADMINISTRATIVE LAW JUDGE MAY ORDER SUCH OTHER RELIEF AS THE
5 COURT OR ADMINISTRATIVE LAW JUDGE DEEMS APPROPRIATE.

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

8 **24-30-1003. Administrative law judges - appointment -**
9 **qualifications - standards of conduct.** (6) ADMINISTRATIVE LAW
10 JUDGES IN THE OFFICE OF ADMINISTRATIVE COURTS HAVE JURISDICTION TO
11 HEAR, DETERMINE, AND MAKE FINDINGS AND AWARDS ON ALL CASES
12 REFERRED TO THEM IN ACCORDANCE WITH SECTION 22-1-130 (3),
13 30-10-1101 (3), OR 31-4-601 (3), C.R.S. THE DIRECTOR OF THE OFFICE OF
14 ADMINISTRATIVE COURTS MAY ESTABLISH RULES TO GOVERN THESE
15 PROCEEDINGS AND HEARINGS.

16 **SECTION 3.** In Colorado Revised Statutes, **add** part 11 to article
17 10 of title 30 as follows:

18 **PART 11**

19 **COUNTY EMPLOYEE**

20 **PROTECTION**

21 **30-10-1101. Disclosure - retaliation prohibited - civil action -**
22 **definitions.** (1) AS USED IN THIS SECTION:

23 (a) "DISCIPLINARY ACTION" MEANS ANY DIRECT OR INDIRECT FORM
24 OF DISCIPLINE OR PENALTY, INCLUDING, BUT NOT LIMITED TO, DISMISSAL,
25 DEMOTION, TRANSFER, REASSIGNMENT, SUSPENSION, CORRECTIVE ACTION,
26 REPRIMAND, ADMONISHMENT, UNSATISFACTORY OR BELOW STANDARD
27 PERFORMANCE EVALUATION, REDUCTION IN FORCE, OR WITHHOLDING OF

1 WORK, OR THE THREAT OF ANY SUCH DISCIPLINE OR PENALTY.

2 (b) "DISCLOSURE OF INFORMATION" MEANS THE WRITTEN
3 PROVISION OF EVIDENCE TO ANY PERSON, OR THE TESTIMONY BEFORE ANY
4 COMMITTEE OF THE GENERAL ASSEMBLY, REGARDING ANY ACTION,
5 POLICY, REGULATION, PRACTICE, OR PROCEDURE, INCLUDING, BUT NOT
6 LIMITED TO, THE WASTE OF PUBLIC FUNDS, ABUSE OF AUTHORITY, OR
7 MISMANAGEMENT OF ANY COUNTY.

8 (c) "EMPLOYEE" MEANS ANY PERSON EMPLOYED BY A COUNTY.

9 (d) "SUPERVISOR" MEANS ANY PERSON WHO SUPERVISES OR IS
10 RESPONSIBLE FOR THE WORK OF ONE OR MORE EMPLOYEES.

11 (2) EXCEPT AS PROVIDED IN SUBSECTION (3) OF THIS SECTION, NO
12 APPOINTING AUTHORITY OR SUPERVISOR SHALL INITIATE OR ADMINISTER
13 ANY DISCIPLINARY ACTION AGAINST AN EMPLOYEE ON ACCOUNT OF THE
14 EMPLOYEE'S DISCLOSURE OF INFORMATION. THIS SECTION SHALL NOT
15 APPLY TO:

16 (a) AN EMPLOYEE WHO DISCLOSES INFORMATION THAT HE OR SHE
17 KNOWS TO BE FALSE OR WHO DISCLOSES INFORMATION WITH DISREGARD
18 FOR THE TRUTH OR FALSITY THEREOF;

19 (b) AN EMPLOYEE WHO DISCLOSES INFORMATION FROM PUBLIC
20 RECORDS THAT ARE CLOSED TO PUBLIC INSPECTION PURSUANT TO SECTION
21 24-72-204; OR

22 (c) AN EMPLOYEE WHO DISCLOSES INFORMATION THAT IS
23 CONFIDENTIAL UNDER ANY OTHER PROVISION OF LAW.

24 (3) IT SHALL BE THE OBLIGATION OF AN EMPLOYEE WHO WISHES TO
25 DISCLOSE INFORMATION UNDER THE PROTECTION OF THIS SECTION TO
26 MAKE A GOOD FAITH EFFORT TO PROVIDE TO HIS OR HER SUPERVISOR OR
27 APPOINTING AUTHORITY OR A COUNTY COMMISSIONER THE INFORMATION

1 TO BE DISCLOSED PRIOR TO THE TIME OF ITS DISCLOSURE.

2 (4) WITHIN NINETY DAYS AFTER THE EMPLOYEE KNEW OR SHOULD
3 HAVE KNOWN OF A DISCIPLINARY ACTION, AN EMPLOYEE MAY FILE A
4 WRITTEN COMPLAINT WITH THE OFFICE OF ADMINISTRATIVE COURTS IN THE
5 DEPARTMENT OF PERSONNEL FOR REFERRAL TO AN ADMINISTRATIVE LAW
6 JUDGE ALLEGING A VIOLATION OF THIS SECTION. THE EMPLOYEE MUST
7 SERVE THE COUNTY IN ACCORDANCE WITH THE COLORADO RULES OF CIVIL
8 PROCEDURE. PRIOR TO THE TIME THAT AN ANSWER IS DUE, THE COUNTY
9 MAY FILE A WRITTEN NOTICE REJECTING THE ADMINISTRATIVE LAW
10 JUDGE'S JURISDICTION, AND, IN WHICH CASE, THE JUDGE SHALL DISMISS
11 THE COMPLAINT WITHOUT PREJUDICE. HEARINGS ARE CONDUCTED
12 CONSISTENT WITH THE PROVISIONS OF SECTION 24-4-105, C.R.S., UNLESS
13 THE DIRECTOR OF THE OFFICE OF ADMINISTRATIVE COURTS ESTABLISHES
14 DIFFERENT RULES THAT APPLY. THE FINAL DECISION OF THE
15 ADMINISTRATIVE LAW JUDGE IS SUBJECT TO JUDICIAL REVIEW BY THE
16 COURT OF APPEALS IN THE SAME MANNER AS AN AGENCY ACTION THAT IS
17 APPEALED IN ACCORDANCE WITH SECTION 24-4-106 (11), C.R.S.

18 (5) AN EMPLOYEE WHO DID NOT FILE A WRITTEN COMPLAINT WITH
19 THE OFFICE OF ADMINISTRATIVE COURTS OR WHO FILED A WRITTEN
20 COMPLAINT BUT THE COUNTY REJECTED THE JURISDICTION MAY BRING A
21 CIVIL ACTION IN THE APPROPRIATE DISTRICT COURT OF THE STATE
22 ALLEGING A VIOLATION OF THIS SECTION.

23 (6) IF THE EMPLOYEE PREVAILS, THE EMPLOYEE MAY RECOVER
24 DAMAGES, TOGETHER WITH COURT COSTS, AND THE COURT OR
25 ADMINISTRATIVE LAW JUDGE MAY ORDER SUCH OTHER RELIEF AS THE
26 COURT OR ADMINISTRATIVE LAW JUDGE DEEMS APPROPRIATE.

27 **SECTION 3.** In Colorado Revised Statutes, **add** part 6 to article

1 4 of title 31 as follows:

2 PART 6

3 MUNICIPAL EMPLOYEE

4 PROTECTION

5 **31-4-601. Disclosure - retaliation prohibited - civil action -**
6 **definitions.** (1) AS USED IN THIS SECTION:

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

13 (b) "DISCLOSURE OF INFORMATION" MEANS THE WRITTEN
14 PROVISION OF EVIDENCE TO ANY PERSON, OR THE TESTIMONY BEFORE ANY
15 COMMITTEE OF THE GENERAL ASSEMBLY, REGARDING ANY ACTION,
16 POLICY, REGULATION, PRACTICE, OR PROCEDURE, INCLUDING, BUT NOT
17 LIMITED TO, THE WASTE OF PUBLIC FUNDS, ABUSE OF AUTHORITY, OR
18 MISMANAGEMENT OF ANY MUNICIPALITY.

19 (c) "EMPLOYEE" MEANS ANY PERSON EMPLOYED BY A
20 MUNICIPALITY.

21 (d) "SUPERVISOR" MEANS ANY PERSON WHO SUPERVISES OR IS
22 RESPONSIBLE FOR THE WORK OF ONE OR MORE EMPLOYEES.

23 (2) EXCEPT AS PROVIDED IN SUBSECTION (3) OF THIS SECTION, NO
24 APPOINTING AUTHORITY OR SUPERVISOR SHALL INITIATE OR ADMINISTER
25 ANY DISCIPLINARY ACTION AGAINST AN EMPLOYEE ON ACCOUNT OF THE
26 EMPLOYEE'S DISCLOSURE OF INFORMATION. THIS SECTION SHALL NOT
27 APPLY TO:

1 (a) AN EMPLOYEE WHO DISCLOSES INFORMATION THAT HE OR SHE
2 KNOWS TO BE FALSE OR WHO DISCLOSES INFORMATION WITH DISREGARD
3 FOR THE TRUTH OR FALSITY THEREOF;

4 (b) AN EMPLOYEE WHO DISCLOSES INFORMATION FROM PUBLIC
5 RECORDS THAT ARE CLOSED TO PUBLIC INSPECTION PURSUANT TO SECTION
6 24-72-204; OR

7 (c) AN EMPLOYEE WHO DISCLOSES INFORMATION THAT IS
8 CONFIDENTIAL UNDER ANY OTHER PROVISION OF LAW.

9 (3) IT SHALL BE THE OBLIGATION OF AN EMPLOYEE WHO WISHES TO
10 DISCLOSE INFORMATION UNDER THE PROTECTION OF THIS SECTION TO
11 MAKE A GOOD FAITH EFFORT TO PROVIDE TO HIS OR HER SUPERVISOR OR
12 APPOINTING AUTHORITY OR A MEMBER OF THE MUNICIPALITY'S
13 GOVERNING BODY THE INFORMATION TO BE DISCLOSED PRIOR TO THE TIME
14 OF ITS DISCLOSURE.

15 (4) WITHIN NINETY DAYS AFTER THE EMPLOYEE KNEW OR SHOULD
16 HAVE KNOWN OF A DISCIPLINARY ACTION, AN EMPLOYEE MAY FILE A
17 WRITTEN COMPLAINT WITH THE OFFICE OF ADMINISTRATIVE COURTS IN THE
18 DEPARTMENT OF PERSONNEL FOR REFERRAL TO AN ADMINISTRATIVE LAW
19 JUDGE ALLEGING A VIOLATION OF THIS SECTION. THE EMPLOYEE MUST
20 SERVE THE MUNICIPALITY IN ACCORDANCE WITH THE COLORADO RULES OF
21 CIVIL PROCEDURE. PRIOR TO THE TIME THAT AN ANSWER IS DUE, THE
22 MUNICIPALITY MAY FILE A WRITTEN NOTICE REJECTING THE
23 ADMINISTRATIVE LAW JUDGE'S JURISDICTION, AND, IN WHICH CASE, THE
24 JUDGE SHALL DISMISS THE COMPLAINT WITHOUT PREJUDICE. HEARINGS
25 ARE CONDUCTED CONSISTENT WITH THE PROVISIONS OF SECTION 24-4-105,
26 C.R.S., UNLESS THE DIRECTOR OF THE OFFICE OF ADMINISTRATIVE COURTS
27 ESTABLISHES DIFFERENT RULES THAT APPLY. THE FINAL DECISION OF THE

1 ADMINISTRATIVE LAW JUDGE IS SUBJECT TO JUDICIAL REVIEW BY THE
2 COURT OF APPEALS IN THE SAME MANNER AS AN AGENCY ACTION THAT IS
3 APPEALED IN ACCORDANCE WITH SECTION 24-4-106 (11), C.R.S.

4 (5) AN EMPLOYEE WHO DID NOT FILE A WRITTEN COMPLAINT WITH
5 THE OFFICE OF ADMINISTRATIVE COURTS OR WHO FILED A WRITTEN
6 COMPLAINT BUT THE MUNICIPALITY REJECTED THE JURISDICTION MAY
7 BRING A CIVIL ACTION IN THE APPROPRIATE DISTRICT COURT OF THE STATE
8 ALLEGING A VIOLATION OF THIS SECTION.

9 (6) IF THE EMPLOYEE PREVAILS, THE EMPLOYEE MAY RECOVER
10 DAMAGES, TOGETHER WITH COURT COSTS, AND THE COURT OR
11 ADMINISTRATIVE LAW JUDGE MAY ORDER SUCH OTHER RELIEF AS THE
12 COURT OR ADMINISTRATIVE LAW JUDGE DEEMS APPROPRIATE.

13 **SECTION 4. Act subject to petition - effective date -**
14 **applicability.** (1) This act takes effect at 12:01 a.m. on the day following
15 the expiration of the ninety-day period after final adjournment of the
16 general assembly (August 10, 2016, if adjournment sine die is on May 11,
17 2016); except that, if a referendum petition is filed pursuant to section 1
18 (3) of article V of the state constitution against this act or an item, section,
19 or part of this act within such period, then the act, item, section, or part
20 will not take effect unless approved by the people at the general election
21 to be held in November 2016 and, in such case, will take effect on the
22 date of the official declaration of the vote thereon by the governor.

23 (2) This act applies to the disclosure of information on or after the
24 applicable effective date of this act.