

Second Regular Session
Seventieth General Assembly
STATE OF COLORADO

PREAMENDED

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

LLS NO. 16-0755.02 Ed DeCecco x4216

HOUSE BILL 16-1078

HOUSE SPONSORSHIP

Kagan,

SENATE SPONSORSHIP

(None),

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.

- ! 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) EXCEPT AS SET FORTH IN PARAGRAPH (c) OF THIS
8 SUBSECTION (2), A LOCAL EDUCATION PROVIDER SHALL NOT INITIATE OR
9 ADMINISTER ANY DISCIPLINARY ACTION AGAINST AN EMPLOYEE ON
10 ACCOUNT OF THE EMPLOYEE'S STATEMENTS TO ANY PERSON ABOUT THE
11 LOCAL EDUCATION PROVIDER THAT THE EMPLOYEE REASONABLY BELIEVES
12 TO SHOW:

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

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

16 (III) FRAUD;

17 (IV) AN ABUSE OF AUTHORITY;

18 (V) GROSS MISMANAGEMENT; OR

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

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

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

26 (II) AN EMPLOYEE WHO DISCLOSES INFORMATION THAT IS FROM A
27 PUBLIC RECORD CLOSED TO PUBLIC INSPECTION PURSUANT TO SECTION

1 24-72-204, C.R.S., OR THAT IS OTHERWISE CONFIDENTIAL UNDER STATE
2 LAW, IF THE EMPLOYEE'S DISCLOSURE IS NOT REASONABLY NECESSARY TO
3 SHOW ONE OR MORE OF THE CIRCUMSTANCES IDENTIFIED IN PARAGRAPH
4 (a) OF THIS SUBSECTION (2); OR

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

7 (c) IT IS THE OBLIGATION OF AN EMPLOYEE WHO WISHES TO
8 DISCLOSE INFORMATION UNDER THE PROTECTION OF THIS SECTION TO
9 MAKE A GOOD FAITH EFFORT TO INFORM HIS OR HER SUPERVISOR, AN
10 ADMINISTRATOR ABOVE THE LEVEL OF HIS OR HER SUPERVISOR, OR A
11 BOARD MEMBER OF THE LOCAL EDUCATION PROVIDER OF THE NATURE OF
12 THE INFORMATION TO BE DISCLOSED PRIOR TO THE TIME OF DISCLOSURE.

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

1 COURT OF APPEALS IN THE SAME MANNER AS AN AGENCY ACTION THAT IS
2 APPEALED IN ACCORDANCE WITH SECTION 24-4-106 (11), C.R.S.

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

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

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

16 **24-30-1003. Administrative law judges - appointment -**
17 **qualifications - standards of conduct.** (6) ADMINISTRATIVE LAW
18 JUDGES IN THE OFFICE OF ADMINISTRATIVE COURTS HAVE JURISDICTION TO
19 HEAR, DETERMINE, AND MAKE FINDINGS AND AWARDS ON ALL CASES
20 REFERRED TO THEM IN ACCORDANCE WITH SECTION 22-1-130 (3),
21 30-10-1101 (3), OR 31-4-601 (3), C.R.S. THE DIRECTOR OF THE OFFICE OF
22 ADMINISTRATIVE COURTS **MAY** ESTABLISH RULES TO GOVERN THESE
23 PROCEEDINGS AND HEARINGS.

24 **SECTION 3.** In Colorado Revised Statutes, **add** part 11 to article
25 10 of title 30 as follows:

26 PART 11
27 WHISTLEBLOWER PROTECTION

1 **30-10-1101. Disclosure - retaliation prohibited - civil action -**

2 **definitions.** (1) AS USED IN THIS SECTION:

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

9 (b) "EMPLOYEE" MEANS ANY PERSON EMPLOYED BY A COUNTY.

10 (2) (a) EXCEPT AS SET FORTH IN PARAGRAPH (c) OF THIS
11 SUBSECTION (2), A COUNTY SHALL NOT INITIATE OR ADMINISTER ANY
12 DISCIPLINARY ACTION AGAINST AN EMPLOYEE ON ACCOUNT OF THE
13 EMPLOYEE'S STATEMENTS TO ANY PERSON ABOUT THE COUNTY THAT THE
14 EMPLOYEE REASONABLY BELIEVES TO SHOW:

15 (I) A VIOLATION OF A STATE OR FEDERAL LAW OR A LOCAL
16 ORDINANCE OR RESOLUTION;

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

18 (III) FRAUD;

19 (IV) AN ABUSE OF AUTHORITY;

20 (V) GROSS MISMANAGEMENT; OR

21 (VI) A DANGER TO THE HEALTH OR SAFETY OF EMPLOYEES OR THE
22 PUBLIC.

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

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

1 (II) AN EMPLOYEE WHO DISCLOSES INFORMATION THAT IS FROM A
2 PUBLIC RECORD CLOSED TO PUBLIC INSPECTION PURSUANT TO SECTION
3 24-72-204, C.R.S., OR THAT IS OTHERWISE CONFIDENTIAL UNDER STATE
4 LAW, IF THE EMPLOYEE'S DISCLOSURE IS NOT REASONABLY NECESSARY TO
5 SHOW ONE OR MORE OF THE CIRCUMSTANCES IDENTIFIED IN PARAGRAPH
6 (a) OF THIS SUBSECTION (2); OR

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

9 (c) IT IS 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 INFORM HIS OR HER SUPERVISOR, AN
12 ADMINISTRATOR ABOVE THE LEVEL OF HIS OR HER SUPERVISOR, OR A
13 COUNTY COMMISSIONER OF THE NATURE OF THE INFORMATION TO BE
14 DISCLOSED PRIOR TO THE TIME OF DISCLOSURE.

15 (3) 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 AND SEEKING INJUNCTIVE
20 RELIEF AND DAMAGES. THE EMPLOYEE MUST SERVE THE COUNTY IN
21 ACCORDANCE WITH THE COLORADO RULES OF CIVIL PROCEDURE. PRIOR TO
22 THE TIME THAT AN ANSWER IS DUE, THE COUNTY MAY FILE A WRITTEN
23 NOTICE REJECTING THE ADMINISTRATIVE LAW JUDGE'S JURISDICTION, AND,
24 IN WHICH CASE, THE JUDGE SHALL DISMISS THE COMPLAINT WITHOUT
25 PREJUDICE. HEARINGS ARE CONDUCTED CONSISTENT WITH THE PROVISIONS
26 OF SECTION 24-4-105, C.R.S., UNLESS THE DIRECTOR OF THE OFFICE OF
27 ADMINISTRATIVE COURTS ESTABLISHES DIFFERENT RULES THAT APPLY.

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

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

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

16 **SECTION 4.** In Colorado Revised Statutes, **add** part 6 to article
17 4 of title 31 as follows:

18 PART 6

19 WHISTLEBLOWER PROTECTION

20 **31-4-601. Disclosure - retaliation prohibited - civil action -**
21 **definitions.** (1) AS USED IN THIS SECTION:

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

1 (b) "EMPLOYEE" MEANS ANY PERSON EMPLOYED BY A
2 MUNICIPALITY.

3 (2) (a) EXCEPT AS SET FORTH IN PARAGRAPH (c) OF THIS
4 SUBSECTION (2), A MUNICIPALITY SHALL NOT INITIATE OR ADMINISTER
5 ANY DISCIPLINARY ACTION AGAINST AN EMPLOYEE ON ACCOUNT OF THE
6 EMPLOYEE'S STATEMENTS TO ANY PERSON ABOUT THE MUNICIPALITY THAT
7 THE EMPLOYEE REASONABLY BELIEVES TO SHOW:

8 (I) A VIOLATION OF A STATE OR FEDERAL LAW OR A LOCAL
9 ORDINANCE OR RESOLUTION;

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

11 (III) FRAUD;

12 (IV) AN ABUSE OF AUTHORITY;

13 (V) GROSS MISMANAGEMENT; OR

14 (VI) A DANGER TO THE HEALTH OR SAFETY OF EMPLOYEES OR THE
15 PUBLIC.

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

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

21 (II) AN EMPLOYEE WHO DISCLOSES INFORMATION THAT IS FROM A
22 PUBLIC RECORD CLOSED TO PUBLIC INSPECTION PURSUANT TO SECTION
23 24-72-204, C.R.S., OR THAT IS OTHERWISE CONFIDENTIAL UNDER STATE
24 LAW, IF THE EMPLOYEE'S DISCLOSURE IS NOT REASONABLY NECESSARY TO
25 SHOW ONE OR MORE OF THE CIRCUMSTANCES IDENTIFIED IN PARAGRAPH
26 (a) OF THIS SUBSECTION (2); OR

27 (III) AN EMPLOYEE WHO DISCLOSES INFORMATION THAT IS

1 CONFIDENTIAL UNDER ANY PROVISION OF FEDERAL LAW.

2 (c) IT IS THE OBLIGATION OF AN EMPLOYEE WHO WISHES TO
3 DISCLOSE INFORMATION UNDER THE PROTECTION OF THIS SECTION TO
4 MAKE A GOOD FAITH EFFORT TO INFORM HIS OR HER SUPERVISOR, AN
5 ADMINISTRATOR ABOVE THE LEVEL OF HIS OR HER SUPERVISOR, OR A
6 MEMBER OF THE MUNICIPALITY'S GOVERNING BODY TO BE DISCLOSED
7 PRIOR TO THE TIME OF DISCLOSURE.

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

25 (4) AN EMPLOYEE WHO DID NOT FILE A WRITTEN COMPLAINT WITH
26 THE OFFICE OF ADMINISTRATIVE COURTS OR WHO FILED A WRITTEN
27 COMPLAINT BUT THE MUNICIPALITY REJECTED THE JURISDICTION MAY

1 BRING A CIVIL ACTION IN THE APPROPRIATE DISTRICT COURT OF THE STATE
2 ALLEGING A VIOLATION OF THIS SECTION AND SEEKING DAMAGES AND
3 INJUNCTIVE RELIEF.

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

9 **SECTION 5. Act subject to petition - effective date -**
10 **applicability.** (1) This act takes effect at 12:01 a.m. on the day following
11 the expiration of the ninety-day period after final adjournment of the
12 general assembly (August 10, 2016, if adjournment sine die is on May 11,
13 2016); except that, if a referendum petition is filed pursuant to section 1
14 (3) of article V of the state constitution against this act or an item, section,
15 or part of this act within such period, then the act, item, section, or part
16 will not take effect unless approved by the people at the general election
17 to be held in November 2016 and, in such case, will take effect on the
18 date of the official declaration of the vote thereon by the governor.

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