

CHAPTER 294

GOVERNMENT - STATE

SENATE BILL 16-056

BY SENATOR(S) Lambert, Aguilar, Grantham, Heath, Jones, Kefalas, Kerr, Martinez Humenik, Merrifield, Newell, Steadman, Tate, Todd, Woods;
 also REPRESENTATIVE(S) Lee, Becker K., Buckner, Duran, Fields, Ginal, Kraft-Tharp, Lebsock, Lontine, Melton, Mitsch Bush, Ryden, Salazar, Singer, Williams, Hullinghorst.

AN ACT

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

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

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

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

(2) (a) THE GENERAL ASSEMBLY FURTHER DECLARES THAT THE PURPOSE OF THE CREATION OF WHISTLEBLOWER REVIEW AGENCIES IN THIS ARTICLE IS TO PROVIDE A MECHANISM FOR DETERMINING WHETHER INFORMATION ABOUT STATE OPERATIONS OR CONDUCT PROVIDED BY A STATE EMPLOYEE MAY BE MADE PUBLIC BY A STATE EMPLOYEE WHISTLEBLOWER, EITHER TO MEMBERS OF THE GENERAL ASSEMBLY OR

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

ULTIMATELY TO THE PUBLIC, WHILE PROTECTING THAT STATE EMPLOYEE FROM PUNITIVE ACTION AND WHILE MAINTAINING THE CONFIDENTIAL NATURE OF INFORMATION WHERE REQUIRED BY LAW.

(b) THIS SUBSECTION (2) IS REPEALED, EFFECTIVE MAY 15, 2018.

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

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

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

(b) THIS SUBSECTION (6) IS REPEALED, EFFECTIVE MAY 15, 2018.

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

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

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

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

(c) ~~An employee who discloses~~ WITHOUT LAWFUL AUTHORITY, information ~~which~~ THAT IS CONFIDENTIAL UNDER ANY OTHER PROVISION OF LAW OR CLOSED TO PUBLIC INSPECTION UNDER SECTION 24-72-204 (2) (a) (I) AND (2) (a) (VIII).

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

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

(4) AN EMPLOYEE SHALL DISCLOSE INFORMATION UNDER SUBSECTION (3) OF THIS SECTION TO THE ATTORNEY GENERAL OR THE ATTORNEY GENERAL'S DESIGNEE UNLESS THE INFORMATION DISCLOSED INVOLVES AN OFFICER OR EMPLOYEE OF THE

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

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

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

(B) CONFIDENTIAL UNDER ANY OTHER PROVISION OF LAW.

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

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

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

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

(III) THE WRITTEN NOTIFICATION REQUIREMENT OF THIS PARAGRAPH (c) DOES NOT APPLY IF A WHISTLEBLOWER REVIEW AGENCY MAKES A GOOD-FAITH EFFORT TO

LOCATE THE OWNER OF THE INFORMATION AND REASONABLY DETERMINES THAT THE OWNER CANNOT BE LOCATED.

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

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

(b) SUBJECT TO SUBSECTION (6) OF THIS SECTION, WITHIN SIXTY DAYS AFTER RECEIVING ANY INFORMATION UNDER SUBSECTION (3) OF THIS SECTION, 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.

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

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

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

(11) SUBSECTIONS (3) TO (10) OF THIS SECTION AND THIS SUBSECTION (11) ARE REPEALED, EFFECTIVE MAY 15, 2018.

SECTION 4. In Colorado Revised Statutes, **add 24-50.5-108** as follows:

24-50.5-108. Working group - broadening protections for state employee whistleblowers - confidentiality of confidential information - repeal. (1) THE GOVERNOR SHALL CONVENE A WORKING GROUP ON BROADENING PROTECTIONS FOR STATE EMPLOYEE WHISTLEBLOWERS WHO MAY BE REQUIRED TO DISCLOSE CONFIDENTIAL INFORMATION THAT IS THE SUBJECT OF WHISTLEBLOWING. THE WORKING GROUP CONSISTS OF THE FOLLOWING:

(a) A REPRESENTATIVE OF THE OFFICE OF THE GOVERNOR, DESIGNATED BY THE GOVERNOR;

(b) THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF PERSONNEL OR THE EXECUTIVE DIRECTOR'S DESIGNEE;

(c) A REPRESENTATIVE OF THE OFFICE OF THE ATTORNEY GENERAL, DESIGNATED BY THE ATTORNEY GENERAL;

(d) THE DIRECTOR OF THE OFFICE OF LEGISLATIVE LEGAL SERVICES OR THE DIRECTOR'S DESIGNEE.

(2)(a) THE WORKING GROUP SHALL EXAMINE THE WHISTLEBLOWER PROTECTION LAWS OF THE FEDERAL GOVERNMENT AND OF OTHER STATES AND COMPARE THOSE LAWS TO COLORADO'S WHISTLEBLOWER PROTECTION LAW AS CONTAINED IN THIS ARTICLE. THE WORKING GROUP SHALL DETERMINE MEANS OF BROADENING THE WHISTLEBLOWER PROTECTIONS IN COLORADO LAW FOR SITUATIONS WHERE THE SUBJECT OF WHISTLEBLOWING INVOLVES CONFIDENTIAL INFORMATION THAT WOULD NEED TO BE DISCLOSED IN SOME MANNER IN ORDER TO BRING TO LIGHT ACTIVITIES INCLUDING THE WASTE OF PUBLIC FUNDS, ABUSE OF AUTHORITY, OR MISMANAGEMENT. THE WORKING GROUP SHALL DETERMINE METHODS BY WHICH CONFIDENTIAL INFORMATION COULD BE DISCLOSED WHILE PRESERVING THE CONFIDENTIAL NATURE OF THE INFORMATION. THE WORKING GROUP SHALL INCLUDE INPUT FROM ADVOCACY ORGANIZATIONS INCLUDING BUSINESS, PRIVACY ADVOCATES, AND EMPLOYEE ADVOCATES.

(b) MEETINGS OF THE WORKING GROUP ARE SUBJECT TO PART 4 OF ARTICLE 6 OF THIS TITLE, AND THE WORKING GROUP IS SUBJECT TO THE "COLORADO OPEN RECORDS ACT", PART 2 OF ARTICLE 72 OF THIS TITLE.

(3) BY NOVEMBER 1, 2016, THE WORKING GROUP SHALL REPORT ITS RECOMMENDATIONS TO THE COMMITTEE ON LEGAL SERVICES AND TO THE JOINT BUDGET COMMITTEE OF THE GENERAL ASSEMBLY.

(4) THIS SECTION IS REPEALED, EFFECTIVE JULY 1, 2018.

SECTION 5. Effective date - applicability. This act takes effect upon passage and applies to any information disclosed by a state employee to a whistleblower

review agency on or after said date.

SECTION 6. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: June 10, 2016