

First Regular Session  
Seventy-fourth General Assembly  
STATE OF COLORADO

**PREAMENDED**

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

LLS NO. 23-0369.01 Jason Gelender x4330

**SENATE BILL 23-053**

**SENATE SPONSORSHIP**

**Kirkmeyer and Rodriguez**, Baisley, Bridges, Buckner, Coleman, Gardner, Ginal, Gonzales, Hansen, Kolker, Liston, Lundeen, Marchman, Mullica, Pelton B., Pelton R., Priola, Roberts, Simpson, Smallwood, Van Winkle, Will, Winter F.

**HOUSE SPONSORSHIP**

**Woodrow and Evans**,

**Senate Committees**

State, Veterans, & Military Affairs

**House Committees**

State, Civic, Military, & Veterans Affairs

**A BILL FOR AN ACT**

101 **CONCERNING RESTRICTIONS ON NONDISCLOSURE AGREEMENTS THAT**  
102 **AFFECT GOVERNMENT EMPLOYEES.**

**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://leg.colorado.gov>.)*

The bill prohibits the state, counties, cities and counties, municipalities, schools districts, and any of their departments, institutions, or agencies from making it a condition of employment that an employee or a prospective employee executes a contract or other form of agreement that prohibits, prevents, or otherwise restricts the employee or prospective employee from disclosing factual circumstances concerning the

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.  
*Capital letters or bold & italic numbers indicate new material to be added to existing law.*  
*Dashes through the words or numbers indicate deletions from existing law.*

SENATE  
3rd Reading Unamended  
March 24, 2023

SENATE  
Amended 2nd Reading  
March 23, 2023

individual's employment with the government (nondisclosure agreement) unless the nondisclosure agreement is necessary to prevent disclosure of:

- Factual circumstances relating to the employment that reasonably implicate privacy interests held by the employee who is a party to the agreement; or
- Matters required to be kept confidential by federal law or rules, the state constitution, or state statute, or matters bearing on the specialized details of security arrangements or investigations.

The bill prohibits nondisclosure agreements that prohibit employees of the state, counties, city and counties, municipalities, school districts, or any of their departments, institutions, or agencies from disclosing factual circumstances concerning their employment. To the extent that an employer includes any such provision in any employment contract or agreement, the provision is deemed to be against public policy and unenforceable against a current or former employee who is a party to the contract or agreement unless the provision is intended to prevent disclosure of factual circumstances implicating the employee's privacy interests, matters required to be kept confidential under federal law or rules, the state constitution, or state statute, or matters bearing on the specialized details of security arrangements or investigations.

The bill prohibits the state, counties, city and counties, municipalities, or any of their departments, institutions, or agencies from taking any retaliatory action against an individual on the grounds that the individual does not enter into a contract or agreement deemed to be against public policy and unenforceable under the bill. Any person who enforces or attempts to enforce a provision deemed to be against public policy and unenforceable under the bill is liable for the employee's reasonable attorney fees and costs in defending against the action.

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

2           **SECTION 1. Legislative declaration.** (1) The general assembly  
3 finds and declares that:

4           (a) (I) Government employees, including employees of the state,  
5 counties, cities and counties, municipalities, school districts, and any  
6 department, institution, or agency of any such government, are public  
7 servants who are hired to undertake their job duties and responsibilities  
8 to serve the public;

1 (II) Government employees are paid with public money, and they  
2 and their employers are accountable to the public for the manner in which  
3 they carry out their public duties and responsibilities;

4 (III) The public has a fundamental interest in transparency  
5 concerning the conduct of government, including state government,  
6 county government, city and county government, municipal government,  
7 and school district government. From the free speech provisions of its  
8 founding constitution to the enactment of laws requiring that meetings be  
9 conducted in an open manner and that public records be broadly  
10 disclosed, the state of Colorado has been at the forefront of efforts to  
11 ensure that the formation of public policy is public business that may not  
12 be conducted in secret. These constitutional and statutory requirements  
13 are intended to provide the public with as much knowledge as possible  
14 about how public business is being conducted while it is being conducted;

15 (IV) Nondisclosure agreements imposed on \_\_\_\_\_ applicants for  
16 government employment, government employees, and past government  
17 employees that effectively prohibit such applicants and employees from  
18 disclosing details about their prospective, current, or past government  
19 service obstruct these fundamental principles of government transparency  
20 and public accountability. The details of public business should not be  
21 hidden from public view by means of nondisclosure agreements imposed  
22 on such applicants or employees as a condition of their hiring or  
23 employment or in connection with their leaving government service or  
24 their past government service; and

25 (V) In the absence of legitimate concerns about the protection of  
26 the privacy interests of applicants for government employment,  
27 government employees, and past government employees, or to protect

1 against disclosure matters that are truly confidential and sensitive to the  
2 public interest, neither the state nor any of its departments, institutions,  
3 or agencies should be permitted to silence such applicants and employees  
4 from being able to speak openly about their prospective, current, or past  
5 government service through the imposition of nondisclosure agreements.  
6 Such applicants and employees should ordinarily be permitted to speak  
7 openly about their prospective, current, or past government service.

8 (b) By enacting this act, the general assembly intends to restrict  
9 the ability of a government, including the state, a county, a city and  
10 county, a municipality, or a school district, or any department, institution,  
11 or agency of a government, from requiring applicants for employment or  
12 employees to enter into nondisclosure agreements as a condition of their  
13 being hired. Nor may such a government, department, institution, or  
14 agency insist upon the enforcement of a nondisclosure agreement when  
15 or after an employee ends their employment with the government,  
16 department, institution, or agency. The general assembly intends that,  
17 absent the presence of very select circumstances, enforcement of such  
18 nondisclosure agreements be prohibited and that such nondisclosure  
19 agreements be deemed void as against public policy and of no legal force  
20 and effect. The general assembly further intends that this act be liberally  
21 construed to further the fundamental principle that state government be  
22 conducted in public to the greatest extent possible; and

23 (c) Transparency concerning the conduct of government is a  
24 matter of statewide concern and, therefore, the provisions of this act apply  
25 to all counties, cities and counties, municipalities, and school districts  
26 including home rule counties, cities and counties, and municipalities.

27 **SECTION 2.** In Colorado Revised Statutes, **add** 22-1-135.5 as

1 follows:

2 **22-1-135.5. Nondisclosure agreements - protection of school**  
3 **district, board of cooperative services, and public school employees**

4 **- definition.** (1) (a) NO SCHOOL DISTRICT, BOARD OF COOPERATIVE  
5 SERVICES, PUBLIC SCHOOL, OR ANY DEPARTMENT, INSTITUTION, OR  
6 AGENCY OF A SCHOOL DISTRICT, BOARD OF COOPERATIVE SERVICES, OR  
7 PUBLIC SCHOOL SHALL MAKE IT A CONDITION OF EMPLOYMENT THAT AN  
8 EMPLOYEE     EXECUTES A CONTRACT OR OTHER FORM OF AGREEMENT  
9 THAT PROHIBITS, PREVENTS, OR OTHERWISE RESTRICTS THE EMPLOYEE      
10 FROM DISCLOSING FACTUAL CIRCUMSTANCES CONCERNING THE  
11 EMPLOYEE'S EMPLOYMENT WITH THE SCHOOL DISTRICT, BOARD OF  
12 COOPERATIVE SERVICES, OR PUBLIC SCHOOL OR ANY OF ITS DEPARTMENTS,  
13 INSTITUTIONS, OR AGENCIES UNLESS THE PROHIBITION OR RESTRICTION IN  
14 THE CONTRACT OR AGREEMENT IS NECESSARY TO PREVENT DISCLOSURE  
15 OF:

16 (I) THE EMPLOYEE'S IDENTITY, FACTS THAT MIGHT LEAD TO THE  
17 DISCOVERY OF THE EMPLOYEE'S IDENTITY, OR FACTUAL CIRCUMSTANCES  
18 RELATING TO THE EMPLOYMENT THAT REASONABLY IMPLICATE  
19 LEGITIMATE PRIVACY INTERESTS OF THE EMPLOYEE WHO IS A PARTY TO  
20 THE AGREEMENT IF THE EMPLOYEE ELECTS IN THE EMPLOYEE'S SOLE  
21 DISCRETION TO RESTRICT DISCLOSURE OF THE EMPLOYEE'S IDENTITY, SUCH  
22 FACTS, OR SUCH CIRCUMSTANCES ON SUCH GROUNDS;    

23 (II) DATA; INFORMATION, INCLUDING PERSONAL IDENTIFYING  
24 INFORMATION, AS DEFINED IN SECTION 24-74-102 (1); OR MATTERS THAT  
25 ARE REQUIRED TO BE KEPT CONFIDENTIAL BY FEDERAL LAW OR  
26 REGULATIONS, THE STATE CONSTITUTION, OR STATE LAW OR RULES;

27 (III) TRADE SECRETS OR OTHER CONFIDENTIAL OR SENSITIVE

1 INFORMATION PROVIDED TO OR MADE ACCESSIBLE TO THE EMPLOYEE BY  
2 A CONTRACTOR OR PROSPECTIVE CONTRACTOR OF THE EMPLOYEE'S  
3 EMPLOYER DURING THE PROCUREMENT PROCESS OR WHILE THE  
4 CONTRACTOR IS PROVIDING GOODS OR SERVICES TO THE EMPLOYEE'S  
5 EMPLOYER IF THE PROTECTION OF SUCH INFORMATION IS NEEDED TO  
6 ENSURE SUCCESSFUL PROCUREMENT OR PROVISION OF THE GOODS OR  
7 SERVICES; OR

8 (IV) INFORMATION BEARING ON THE SPECIALIZED DETAILS OF  
9 SECURITY ARRANGEMENTS OR INVESTIGATIONS.

10 (b) ANY PROVISION IN ANY EMPLOYMENT CONTRACT OR  
11 SETTLEMENT AGREEMENT ENTERED INTO BETWEEN AN EMPLOYEE OF A  
12 SCHOOL DISTRICT, BOARD OF COOPERATIVE SERVICES, OR PUBLIC SCHOOL  
13 OR ANY DEPARTMENT, INSTITUTION, OR AGENCY OF A SCHOOL DISTRICT,  
14 A BOARD OF COOPERATIVE SERVICES, OR A PUBLIC SCHOOL, AND THE  
15 SCHOOL DISTRICT, BOARD OF COOPERATIVE SERVICES, PUBLIC SCHOOL,  
16 DEPARTMENT, INSTITUTION, OR AGENCY THAT HAS THE PURPOSE OR  
17 EFFECT OF CONCEALING FACTUAL CIRCUMSTANCES CONCERNING THE  
18 EMPLOYEE'S EMPLOYMENT WITH THE SCHOOL DISTRICT, BOARD OF  
19 COOPERATIVE SERVICES, PUBLIC SCHOOL, DEPARTMENT, INSTITUTION, OR  
20 AGENCY IS PROHIBITED. TO THE EXTENT THAT AN EMPLOYER INCLUDES  
21 ANY SUCH PROVISION IN ANY EMPLOYMENT CONTRACT OR AGREEMENT,  
22 THE PROVISION IS DEEMED TO BE AGAINST PUBLIC POLICY AND  
23 UNENFORCEABLE AGAINST AN EMPLOYEE WHO IS A PARTY TO THE  
24 CONTRACT OR AGREEMENT UNLESS THE PROVISION IS INTENDED TO  
25 PREVENT DISCLOSURE OF:

26 (I) THE EMPLOYEE'S IDENTITY, FACTS THAT MIGHT LEAD TO THE  
27 DISCOVERY OF THE EMPLOYEE'S IDENTITY, OR FACTUAL CIRCUMSTANCES

1 RELATING TO THE EMPLOYMENT THAT REASONABLY IMPLICATE  
2 LEGITIMATE PRIVACY INTERESTS OF THE EMPLOYEE WHO IS A PARTY TO  
3 THE AGREEMENT IF THE EMPLOYEE ELECTS IN THE EMPLOYEE'S SOLE  
4 DISCRETION TO RESTRICT DISCLOSURE OF THE EMPLOYEE'S IDENTITY, SUCH  
5 FACTS, OR SUCH CIRCUMSTANCES ON SUCH GROUNDS; \_\_\_

6 (II) DATA; INFORMATION, INCLUDING PERSONAL IDENTIFYING  
7 INFORMATION, AS DEFINED IN SECTION 24-74-102 (1); OR MATTERS THAT  
8 ARE REQUIRED TO BE KEPT CONFIDENTIAL BY FEDERAL LAW OR  
9 REGULATIONS, THE STATE CONSTITUTION, OR STATE LAW OR RULES;

10 (III) TRADE SECRETS OR OTHER CONFIDENTIAL OR SENSITIVE  
11 INFORMATION PROVIDED TO OR MADE ACCESSIBLE TO THE EMPLOYEE BY  
12 A CONTRACTOR OR PROSPECTIVE CONTRACTOR OF THE EMPLOYEE'S  
13 EMPLOYER DURING THE PROCUREMENT PROCESS OR WHILE THE  
14 CONTRACTOR IS PROVIDING GOODS OR SERVICES TO THE EMPLOYEE'S  
15 EMPLOYER IF THE PROTECTION OF SUCH INFORMATION IS NEEDED TO  
16 ENSURE SUCCESSFUL PROCUREMENT OR PROVISION OF THE GOODS OR  
17 SERVICES; OR

18 (IV) INFORMATION \_\_\_ BEARING ON THE SPECIALIZED DETAILS OF  
19 SECURITY ARRANGEMENTS OR INVESTIGATIONS.

20 (2) (a) No SCHOOL DISTRICT, BOARD OF COOPERATIVE SERVICES,  
21 PUBLIC SCHOOL, OR DEPARTMENT, INSTITUTION, OR AGENCY OF A SCHOOL  
22 DISTRICT, A BOARD OF COOPERATIVE SERVICES, OR A PUBLIC SCHOOL  
23 SHALL TAKE ANY MATERIALLY ADVERSE EMPLOYMENT-RELATED ACTION,  
24 INCLUDING, WITHOUT LIMITATION, WITHDRAWAL OF AN OFFER OF  
25 EMPLOYMENT, DISCHARGE, SUSPENSION, DEMOTION, DISCRIMINATION IN  
26 THE TERMS, CONDITIONS, OR PRIVILEGES OF EMPLOYMENT, OR OTHER  
27 ADVERSE ACTION AGAINST AN EMPLOYEE ON THE GROUNDS THAT THE

1 EMPLOYEE DOES NOT ENTER INTO A CONTRACT OR AGREEMENT DEEMED  
2 TO BE AGAINST PUBLIC POLICY AND UNENFORCEABLE UNDER SUBSECTION  
3 (1)(b) OF THIS SECTION. THE TAKING OF SUCH A MATERIALLY ADVERSE  
4 EMPLOYMENT-RELATED ACTION AFTER AN EMPLOYEE HAS REFUSED TO  
5 ENTER INTO SUCH A CONTRACT OR AGREEMENT IS PRIMA FACIE EVIDENCE  
6 OF RETALIATION.

7 (b) ANY PERSON WHO ENFORCES OR ATTEMPTS TO ENFORCE A  
8 PROVISION DEEMED TO BE AGAINST PUBLIC POLICY AND UNENFORCEABLE  
9 PURSUANT TO SUBSECTION (1)(b) OF THIS SECTION IS LIABLE FOR THE  
10 EMPLOYEE'S REASONABLE ATTORNEY FEES AND COSTS IN DEFENDING  
11 AGAINST THE ACTION.

12 (c) AN ACTION TO ENFORCE A PROVISION OF THIS SECTION MUST BE  
13 BROUGHT IN THE DISTRICT COURT FOR THE DISTRICT IN WHICH THE  
14 EMPLOYEE IS PRIMARILY EMPLOYED.

15 (3) A SETTLEMENT AGREEMENT BETWEEN AN EMPLOYER THAT IS  
16 A SCHOOL DISTRICT, BOARD OF COOPERATIVE SERVICES, OR PUBLIC  
17 SCHOOL OR A DEPARTMENT, INSTITUTION, OR AGENCY OF A SCHOOL  
18 DISTRICT, A BOARD OF COOPERATIVE SERVICES, OR A PUBLIC SCHOOL AND  
19 AN EMPLOYEE OF THE EMPLOYER MUST BE SIGNED BY BOTH THE EMPLOYER  
20 AND THE EMPLOYEE.

21 (4) A NONDISCLOSURE AGREEMENT MAY NOT PROHIBIT THE  
22 RELEASE OF INFORMATION REQUIRED TO BE RELEASED UNDER THE  
23 "COLORADO OPEN RECORDS ACT", PART 2 OF ARTICLE 72 OF TITLE 24.

24 (5) AS USED IN THIS SECTION:

25 (a) "CONDITION OF EMPLOYMENT" MEANS AN  
26 EMPLOYMENT-RELATED POLICY, PRACTICE, REQUIREMENT, OR  
27 RESTRICTION DICTATED BY AN EMPLOYER THAT AN INDIVIDUAL MUST



1 AGREE TO ABIDE BY IN ORDER TO BE HIRED BY OR RETAIN EMPLOYMENT  
2 WITH THE EMPLOYER.

3 (b) "EMPLOYEE" MEANS AN APPLICANT FOR EMPLOYMENT WITH OR  
4 CURRENT OR PAST EMPLOYEE OF A SCHOOL DISTRICT, BOARD OF  
5 COOPERATIVE SERVICES, OR PUBLIC SCHOOL OR A DEPARTMENT,  
6 INSTITUTION, OR AGENCY OF A SCHOOL DISTRICT, BOARD OF COOPERATIVE  
7 SERVICES, OR PUBLIC SCHOOL.

8 **SECTION 3.** In Colorado Revised Statutes, **add 24-50.5-105.5**  
9 as follows:

10 **24-50.5-105.5. Nondisclosure agreements - protection of state**  
11 **employees - definitions.** (1) (a) NEITHER THE STATE NOR ANY  
12 DEPARTMENT, INSTITUTION, OR AGENCY OF THE STATE SHALL MAKE IT A  
13 CONDITION OF EMPLOYMENT THAT AN EMPLOYEE \_\_\_\_\_ EXECUTES A  
14 CONTRACT OR OTHER FORM OF AGREEMENT THAT PROHIBITS, PREVENTS,  
15 OR OTHERWISE RESTRICTS THE EMPLOYEE \_\_\_ FROM DISCLOSING FACTUAL  
16 CIRCUMSTANCES CONCERNING THE EMPLOYEE'S EMPLOYMENT WITH THE  
17 STATE OR ANY OF ITS DEPARTMENTS, INSTITUTIONS, OR AGENCIES UNLESS  
18 THE PROHIBITION OR RESTRICTION IN THE CONTRACT OR AGREEMENT IS  
19 NECESSARY TO PREVENT DISCLOSURE OF:

20 (I) THE EMPLOYEE'S IDENTITY, FACTS THAT MIGHT LEAD TO THE  
21 DISCOVERY OF THE EMPLOYEE'S IDENTITY, OR FACTUAL CIRCUMSTANCES  
22 RELATING TO THE EMPLOYMENT THAT REASONABLY IMPLICATE  
23 LEGITIMATE PRIVACY INTERESTS OF THE EMPLOYEE WHO IS A PARTY TO  
24 THE AGREEMENT IF THE EMPLOYEE ELECTS IN THE EMPLOYEE'S SOLE  
25 DISCRETION TO RESTRICT DISCLOSURE OF THE EMPLOYEE'S IDENTITY, SUCH  
26 FACTS, OR SUCH CIRCUMSTANCES ON SUCH GROUNDS; \_\_\_\_\_

27 (II) DATA; INFORMATION, INCLUDING PERSONAL IDENTIFYING

1 INFORMATION, AS DEFINED IN SECTION 24-74-102 (1); OR MATTERS THAT  
2 ARE REQUIRED TO BE KEPT CONFIDENTIAL BY FEDERAL LAW OR  
3 REGULATIONS, THE STATE CONSTITUTION, OR STATE LAW OR RULES;

4 (III) NONPUBLIC AND CONFIDENTIAL LABOR RELATIONS POSITIONS  
5 AND STRATEGIES;

6 (IV) ATTORNEY WORK PRODUCT;

7 (V) VENDOR LISTS AND VENDOR PREFERENCES;

8 (VI) STATE BUSINESS-RELATED INFORMATION RECEIVED FROM A  
9 THIRD PARTY THAT THE THIRD PARTY HAS DESIGNATED CONFIDENTIAL;

10 (VII) INFORMATION AND MATTERS RELATED TO STATE ACTIVE  
11 DUTY ORDERS OF NATIONAL GUARD SOLDIERS AND AIRMEN AND  
12 PERSONNEL DISPUTES SUBJECT TO THE JURISDICTION OF THE UNITED  
13 STATES DEPARTMENT OF DEFENSE;

14 (VIII) TRADE SECRETS OR OTHER CONFIDENTIAL OR SENSITIVE  
15 INFORMATION PROVIDED TO OR MADE ACCESSIBLE TO THE EMPLOYEE BY  
16 A CONTRACTOR OR PROSPECTIVE CONTRACTOR OF THE EMPLOYEE'S  
17 EMPLOYER DURING THE PROCUREMENT PROCESS OR WHILE THE  
18 CONTRACTOR IS PROVIDING GOODS OR SERVICES TO THE EMPLOYEE'S  
19 EMPLOYER IF THE PROTECTION OF SUCH INFORMATION IS NEEDED TO  
20 ENSURE SUCCESSFUL PROCUREMENT OR PROVISION OF THE GOODS OR  
21 SERVICES; OR

22 (IX) INFORMATION BEARING ON THE SPECIALIZED DETAILS OF  
23 SECURITY ARRANGEMENTS OR INVESTIGATIONS.

24 (b) ANY PROVISION IN ANY EMPLOYMENT CONTRACT OR  
25 SETTLEMENT AGREEMENT ENTERED INTO BETWEEN AN EMPLOYEE OF THE  
26 STATE OR ANY OF ITS DEPARTMENTS, INSTITUTIONS, OR AGENCIES AND THE  
27 STATE OR ANY OF ITS DEPARTMENTS, INSTITUTIONS, OR AGENCIES THAT

1 HAS THE PURPOSE OR EFFECT OF CONCEALING FACTUAL CIRCUMSTANCES  
2 CONCERNING THE EMPLOYEE'S EMPLOYMENT WITH THE STATE OR ANY OF  
3 ITS DEPARTMENTS, INSTITUTIONS, OR AGENCIES IS PROHIBITED. TO THE  
4 EXTENT THAT AN EMPLOYER INCLUDES ANY SUCH PROVISION IN ANY  
5 EMPLOYMENT CONTRACT OR AGREEMENT, THE PROVISION IS DEEMED TO  
6 BE AGAINST PUBLIC POLICY AND UNENFORCEABLE AGAINST AN EMPLOYEE  
7 WHO IS A PARTY TO THE CONTRACT OR AGREEMENT UNLESS THE  
8 PROVISION IS INTENDED TO PREVENT DISCLOSURE OF:

9 (I) THE EMPLOYEE'S IDENTITY, FACTS THAT MIGHT LEAD TO THE  
10 DISCOVERY OF THE EMPLOYEE'S IDENTITY, OR FACTUAL CIRCUMSTANCES  
11 RELATING TO THE EMPLOYMENT THAT REASONABLY IMPLICATE  
12 LEGITIMATE PRIVACY INTERESTS OF THE EMPLOYEE WHO IS A PARTY TO  
13 THE AGREEMENT IF THE EMPLOYEE ELECTS IN THE EMPLOYEE'S SOLE  
14 DISCRETION TO RESTRICT DISCLOSURE OF THE EMPLOYEE'S IDENTITY, SUCH  
15 FACTS, OR SUCH CIRCUMSTANCES ON SUCH GROUNDS; \_\_\_

16 (II) DATA; INFORMATION, INCLUDING PERSONAL IDENTIFYING  
17 INFORMATION, AS DEFINED IN SECTION 24-74-102 (1); OR MATTERS THAT  
18 ARE REQUIRED TO BE KEPT CONFIDENTIAL BY FEDERAL LAW OR  
19 REGULATIONS, THE STATE CONSTITUTION, OR STATE LAW OR RULES;

20 (III) NONPUBLIC AND CONFIDENTIAL LABOR RELATIONS POSITIONS  
21 AND STRATEGIES;

22 (IV) ATTORNEY WORK PRODUCT;

23 (V) VENDOR LISTS AND VENDOR PREFERENCES;

24 (VI) STATE BUSINESS-RELATED INFORMATION RECEIVED FROM A  
25 THIRD PARTY THAT THE THIRD PARTY HAS DESIGNATED CONFIDENTIAL;

26 (VII) INFORMATION AND MATTERS RELATED TO STATE ACTIVE  
27 DUTY ORDERS OF NATIONAL GUARD SOLDIERS AND AIRMEN AND

1 PERSONNEL DISPUTES SUBJECT TO THE JURISDICTION OF THE UNITED  
2 STATES DEPARTMENT OF DEFENSE;

3 (VIII) TRADE SECRETS OR OTHER CONFIDENTIAL OR SENSITIVE  
4 INFORMATION PROVIDED TO OR MADE ACCESSIBLE TO THE EMPLOYEE BY  
5 A CONTRACTOR OR PROSPECTIVE CONTRACTOR OF THE EMPLOYEE'S  
6 EMPLOYER DURING THE PROCUREMENT PROCESS OR WHILE THE  
7 CONTRACTOR IS PROVIDING GOODS OR SERVICES TO THE EMPLOYEE'S  
8 EMPLOYER IF THE PROTECTION OF SUCH INFORMATION IS NEEDED TO  
9 ENSURE SUCCESSFUL PROCUREMENT OR PROVISION OF THE GOODS OR  
10 SERVICES; OR

11 (IX) INFORMATION BEARING ON THE SPECIALIZED DETAILS OF  
12 SECURITY ARRANGEMENTS OR INVESTIGATIONS.

13 (2) (a) NEITHER THE STATE NOR ANY OF ITS DEPARTMENTS,  
14 INSTITUTIONS, OR AGENCIES SHALL TAKE ANY MATERIALLY ADVERSE  
15 EMPLOYMENT-RELATED ACTION, INCLUDING, WITHOUT LIMITATION,  
16 WITHDRAWAL OF AN OFFER OF EMPLOYMENT, DISCHARGE, SUSPENSION,  
17 DEMOTION, DISCRIMINATION IN THE TERMS, CONDITIONS, OR PRIVILEGES  
18 OF EMPLOYMENT, OR OTHER ADVERSE ACTION AGAINST AN EMPLOYEE ON  
19 THE GROUNDS THAT THE EMPLOYEE DOES NOT ENTER INTO A CONTRACT  
20 OR AGREEMENT DEEMED TO BE AGAINST PUBLIC POLICY AND  
21 UNENFORCEABLE UNDER SUBSECTION (1)(b) OF THIS SECTION. THE TAKING  
22 OF SUCH A MATERIALLY ADVERSE EMPLOYMENT-RELATED ACTION AFTER  
23 AN EMPLOYEE HAS REFUSED TO ENTER INTO SUCH A CONTRACT OR  
24 AGREEMENT IS PRIMA FACIE EVIDENCE OF RETALIATION.

25 (b) ANY PERSON WHO ENFORCES OR ATTEMPTS TO ENFORCE A  
26 PROVISION DEEMED TO BE AGAINST PUBLIC POLICY AND UNENFORCEABLE  
27 PURSUANT TO SUBSECTION (1)(b) OF THIS SECTION IS LIABLE FOR THE

1 EMPLOYEE'S REASONABLE ATTORNEY FEES AND COSTS IN DEFENDING  
2 AGAINST THE ACTION.

3 (c) AN ACTION TO ENFORCE A PROVISION OF THIS SECTION MUST BE  
4 BROUGHT IN THE DISTRICT COURT FOR THE DISTRICT IN WHICH THE  
5 EMPLOYEE IS PRIMARILY EMPLOYED.

6 (3) A SETTLEMENT AGREEMENT BETWEEN AN EMPLOYER THAT IS  
7 THE STATE OR A DEPARTMENT, INSTITUTION, OR AGENCY OF THE STATE  
8 AND AN EMPLOYEE OF THE STATE OR THE DEPARTMENT, INSTITUTION, OR  
9 AGENCY OF THE STATE MUST BE SIGNED BY BOTH THE EMPLOYER AND THE  
10 EMPLOYEE.

11 (4) A NONDISCLOSURE AGREEMENT MUST STATE THAT STATE  
12 EMPLOYEES ARE PROTECTED FROM RETALIATION FOR DISCLOSURE OF  
13 INFORMATION ABOUT STATE AGENCIES THAT ARE WORKING OUTSIDE THE  
14 PUBLIC INTEREST IN ACCORDANCE WITH THE PROVISIONS OF ARTICLE 50.5  
15 OF TITLE 24.

16 (5) A NONDISCLOSURE AGREEMENT MAY NOT PROHIBIT THE  
17 RELEASE OF INFORMATION REQUIRED TO BE RELEASED UNDER THE  
18 "COLORADO OPEN RECORDS ACT", PART 2 OF ARTICLE 72 OF TITLE 24.

19 (6) AS USED IN THIS SECTION:

20 (a) "CONDITION OF EMPLOYMENT" MEANS AN EMPLOYMENT-  
21 RELATED POLICY, PRACTICE, REQUIREMENT, OR RESTRICTION DICTATED BY  
22 AN EMPLOYER THAT AN INDIVIDUAL MUST AGREE TO ABIDE BY IN ORDER  
23 TO BE HIRED BY OR RETAIN EMPLOYMENT WITH THE EMPLOYER.

24 (b) "EMPLOYEE" MEANS AN APPLICANT FOR EMPLOYMENT WITH OR  
25 CURRENT OR PAST EMPLOYEE OF THE STATE OR A DEPARTMENT,  
26 INSTITUTION, OR AGENCY OF THE STATE.

27 (c) "THE STATE" INCLUDES WITHOUT LIMITATION EACH OF THE

1 STATE OFFICERS LISTED IN SECTION 1 OF ARTICLE IV OF THE STATE  
2 CONSTITUTION AS WELL AS THE EXECUTIVE, LEGISLATIVE, AND JUDICIAL  
3 DEPARTMENTS OF THE GOVERNMENT OF THE STATE.

4 **SECTION 4.** In Colorado Revised Statutes, **add** part 16 to article  
5 1 of title 29 as follows:

6 PART 16

7 LOCAL GOVERNMENT NONDISCLOSURE AGREEMENTS

8 **29-1-1601. Nondisclosure agreements - protection of local**  
9 **government employees - definitions.** (1) (a) NEITHER A LOCAL  
10 GOVERNMENT NOR A DEPARTMENT, INSTITUTION, OR AGENCY OF A LOCAL  
11 GOVERNMENT SHALL MAKE IT A CONDITION OF EMPLOYMENT THAT AN  
12 EMPLOYEE     EXECUTES A CONTRACT OR OTHER FORM OF AGREEMENT  
13 THAT PROHIBITS, PREVENTS, OR OTHERWISE RESTRICTS THE EMPLOYEE      
14 FROM DISCLOSING FACTUAL CIRCUMSTANCES CONCERNING THE  
15 EMPLOYEE'S EMPLOYMENT WITH THE LOCAL GOVERNMENT OR ANY OF ITS  
16 DEPARTMENTS, INSTITUTIONS, OR AGENCIES UNLESS THE PROHIBITION OR  
17 RESTRICTION IN THE CONTRACT OR AGREEMENT IS NECESSARY TO PREVENT  
18 DISCLOSURE OF:

19 (I) THE EMPLOYEE'S IDENTITY, FACTS THAT MIGHT LEAD TO THE  
20 DISCOVERY OF THE EMPLOYEE'S IDENTITY, OR FACTUAL CIRCUMSTANCES  
21 RELATING TO THE EMPLOYMENT THAT REASONABLY IMPLICATE  
22 LEGITIMATE PRIVACY INTERESTS OF THE EMPLOYEE WHO IS A PARTY TO  
23 THE AGREEMENT IF THE EMPLOYEE ELECTS IN THE EMPLOYEE'S SOLE  
24 DISCRETION TO RESTRICT DISCLOSURE OF THE EMPLOYEE'S IDENTITY, SUCH  
25 FACTS, OR SUCH CIRCUMSTANCES ON SUCH GROUNDS;    

26 (II) DATA; INFORMATION, INCLUDING PERSONAL IDENTIFYING  
27 INFORMATION, AS DEFINED IN SECTION 24-74-102 (1); OR MATTERS THAT

1 ARE REQUIRED TO BE KEPT CONFIDENTIAL BY FEDERAL LAW OR  
2 REGULATIONS, THE STATE CONSTITUTION, OR STATE LAW OR RULES;

3 (III) TRADE SECRETS OR OTHER CONFIDENTIAL OR SENSITIVE  
4 INFORMATION PROVIDED TO OR MADE ACCESSIBLE TO THE EMPLOYEE BY  
5 A CONTRACTOR OR PROSPECTIVE CONTRACTOR OF THE EMPLOYEE'S  
6 EMPLOYER DURING THE PROCUREMENT PROCESS OR WHILE THE  
7 CONTRACTOR IS PROVIDING GOODS OR SERVICES TO THE EMPLOYEE'S  
8 EMPLOYER IF THE PROTECTION OF SUCH INFORMATION IS NEEDED TO  
9 ENSURE SUCCESSFUL PROCUREMENT OR PROVISION OF THE GOODS OR  
10 SERVICES;

11 (IV) TRADE SECRETS OR OTHER CONFIDENTIAL OR SENSITIVE  
12 INFORMATION PROVIDED TO OR MADE ACCESSIBLE TO THE EMPLOYEE BY  
13 AN EMPLOYER'S CURRENT OR PROSPECTIVE CUSTOMER, CONTRACTOR,  
14 LESSEE, LESSOR, BUSINESS PARTNER, OR AFFILIATE;

15 (V) TRADE SECRETS OR OTHER CONFIDENTIAL OR SENSITIVE  
16 INFORMATION PROVIDED TO OR MADE ACCESSIBLE TO THE EMPLOYEE BY  
17 A PURCHASER OR SELLER OF PROPERTY THAT IS ENGAGED IN  
18 NEGOTIATIONS OR UNDER CONTRACT WITH THE EMPLOYER; OR

19 (VI) INFORMATION BEARING ON THE SPECIALIZED DETAILS OF  
20 SECURITY ARRANGEMENTS OR CRIMINAL INVESTIGATIONS.

21 (b) ANY PROVISION IN ANY EMPLOYMENT CONTRACT OR  
22 SETTLEMENT AGREEMENT ENTERED INTO BETWEEN AN EMPLOYEE OF A  
23 LOCAL GOVERNMENT OR ANY DEPARTMENT, INSTITUTION, OR AGENCY OF  
24 A LOCAL GOVERNMENT AND THE LOCAL GOVERNMENT, DEPARTMENT,  
25 INSTITUTION, OR AGENCY THAT HAS THE PURPOSE OR EFFECT OF  
26 CONCEALING FACTUAL CIRCUMSTANCES CONCERNING THE EMPLOYEE'S  
27 EMPLOYMENT WITH THE LOCAL GOVERNMENT, DEPARTMENT, INSTITUTION,

1 OR AGENCY IS PROHIBITED. TO THE EXTENT THAT AN EMPLOYER INCLUDES  
2 ANY SUCH PROVISION IN ANY EMPLOYMENT CONTRACT OR AGREEMENT,  
3 THE PROVISION IS DEEMED TO BE AGAINST PUBLIC POLICY AND  
4 UNENFORCEABLE AGAINST AN EMPLOYEE WHO IS A PARTY TO THE  
5 CONTRACT OR AGREEMENT UNLESS THE PROVISION IS INTENDED TO  
6 PREVENT DISCLOSURE OF:

7 (I) THE EMPLOYEE'S IDENTITY, FACTS THAT MIGHT LEAD TO THE  
8 DISCOVERY OF THE EMPLOYEE'S IDENTITY, OR FACTUAL CIRCUMSTANCES  
9 RELATING TO THE EMPLOYMENT THAT REASONABLY IMPLICATE  
10 LEGITIMATE PRIVACY INTERESTS OF THE EMPLOYEE WHO IS A PARTY TO  
11 THE AGREEMENT IF THE EMPLOYEE ELECTS IN THE EMPLOYEE'S SOLE  
12 DISCRETION TO RESTRICT DISCLOSURE OF THE EMPLOYEE'S IDENTITY, SUCH  
13 FACTS, OR SUCH CIRCUMSTANCES ON SUCH GROUNDS; \_\_\_

14 (II) DATA; INFORMATION, INCLUDING PERSONAL IDENTIFYING  
15 INFORMATION, AS DEFINED IN SECTION 24-74-102 (1); OR MATTERS THAT  
16 ARE REQUIRED TO BE KEPT CONFIDENTIAL BY FEDERAL LAW OR  
17 REGULATIONS, THE STATE CONSTITUTION, OR STATE LAW OR RULES;

18 (III) TRADE SECRETS OR OTHER CONFIDENTIAL OR SENSITIVE  
19 INFORMATION PROVIDED TO OR MADE ACCESSIBLE TO THE EMPLOYEE BY  
20 A CONTRACTOR OR PROSPECTIVE CONTRACTOR OF THE EMPLOYEE'S  
21 EMPLOYER DURING THE PROCUREMENT PROCESS OR WHILE THE  
22 CONTRACTOR IS PROVIDING GOODS OR SERVICES TO THE EMPLOYEE'S  
23 EMPLOYER IF THE PROTECTION OF SUCH INFORMATION IS NEEDED TO  
24 ENSURE SUCCESSFUL PROCUREMENT OR PROVISION OF THE GOODS OR  
25 SERVICES;

26 (IV) TRADE SECRETS OR OTHER CONFIDENTIAL OR SENSITIVE  
27 INFORMATION PROVIDED TO OR MADE ACCESSIBLE TO THE EMPLOYEE BY



1 AN EMPLOYER'S CURRENT OR PROSPECTIVE CUSTOMER, CONTRACTOR,  
2 LESSEE, LESSOR, BUSINESS PARTNER, OR AFFILIATE;

3 (V) TRADE SECRETS OR OTHER CONFIDENTIAL OR SENSITIVE  
4 INFORMATION PROVIDED TO OR MADE ACCESSIBLE TO THE EMPLOYEE BY  
5 A PURCHASER OR SELLER OF PROPERTY THAT IS ENGAGED IN  
6 NEGOTIATIONS OR UNDER CONTRACT WITH THE EMPLOYER; OR

7 (VI) INFORMATION BEARING ON THE SPECIALIZED DETAILS OF  
8 SECURITY ARRANGEMENTS OR CRIMINAL INVESTIGATIONS.

9 (2) (a) NEITHER A LOCAL GOVERNMENT NOR A DEPARTMENT, AN  
10 INSTITUTION, OR AN AGENCY OF A LOCAL GOVERNMENT SHALL TAKE ANY  
11 MATERIALLY ADVERSE EMPLOYMENT-RELATED ACTION, INCLUDING,  
12 WITHOUT LIMITATION, WITHDRAWAL OF AN OFFER OF EMPLOYMENT,  
13 DISCHARGE, SUSPENSION, DEMOTION, DISCRIMINATION IN THE TERMS,  
14 CONDITIONS, OR PRIVILEGES OF EMPLOYMENT, OR OTHER ADVERSE ACTION  
15 AGAINST AN EMPLOYEE ON THE GROUNDS THAT THE EMPLOYEE DOES NOT  
16 ENTER INTO A CONTRACT OR AGREEMENT DEEMED TO BE AGAINST PUBLIC  
17 POLICY AND UNENFORCEABLE UNDER SUBSECTION (1)(b) OF THIS SECTION.  
18 THE TAKING OF SUCH A MATERIALLY ADVERSE EMPLOYMENT-RELATED  
19 ACTION AFTER AN EMPLOYEE HAS REFUSED TO ENTER INTO SUCH A  
20 CONTRACT OR AGREEMENT IS PRIMA FACIE EVIDENCE OF RETALIATION.

21 (b) ANY PERSON WHO ENFORCES OR ATTEMPTS TO ENFORCE A  
22 PROVISION DEEMED AGAINST PUBLIC POLICY AND UNENFORCEABLE  
23 PURSUANT TO SUBSECTION (1)(b) OF THIS SECTION IS LIABLE FOR THE  
24 EMPLOYEE'S REASONABLE ATTORNEY FEES AND COSTS IN DEFENDING  
25 AGAINST THE ACTION.

26 (c) AN ACTION TO ENFORCE A PROVISION OF THIS SECTION MUST BE  
27 BROUGHT IN THE DISTRICT COURT FOR THE DISTRICT IN WHICH THE

1 EMPLOYEE IS PRIMARILY EMPLOYED.

2 (3) A SETTLEMENT AGREEMENT BETWEEN AN EMPLOYER THAT IS  
3 A LOCAL GOVERNMENT OR A DEPARTMENT, INSTITUTION, OR AGENCY OF  
4 A LOCAL GOVERNMENT AND AN EMPLOYEE OF THE LOCAL GOVERNMENT  
5 OR THE DEPARTMENT, INSTITUTION, OR AGENCY OF THE LOCAL  
6 GOVERNMENT MUST BE SIGNED BY BOTH THE EMPLOYER AND THE  
7 EMPLOYEE.

8 (4) A NONDISCLOSURE AGREEMENT MAY NOT PROHIBIT THE  
9 RELEASE OF INFORMATION REQUIRED TO BE RELEASED UNDER THE  
10 "COLORADO OPEN RECORDS ACT", PART 2 OF ARTICLE 72 OF TITLE 24.

11 (5) AS USED IN THIS SECTION:

12 (a) "CONDITION OF EMPLOYMENT" MEANS AN  
13 EMPLOYMENT-RELATED POLICY, PRACTICE, REQUIREMENT, OR  
14 RESTRICTION DICTATED BY AN EMPLOYER THAT AN INDIVIDUAL MUST  
15 AGREE TO ABIDE BY IN ORDER TO BE HIRED BY OR RETAIN EMPLOYMENT  
16 WITH THE EMPLOYER.

17 (b) "EMPLOYEE" MEANS AN APPLICANT FOR EMPLOYMENT WITH OR  
18 CURRENT OR PAST EMPLOYEE OF A LOCAL GOVERNMENT OR A  
19 DEPARTMENT, INSTITUTION, OR AGENCY OF A LOCAL GOVERNMENT.

20 (c) "LOCAL GOVERNMENT" MEANS A STATUTORY OR HOME RULE  
21 COUNTY, A CITY AND COUNTY, OR A STATUTORY OR HOME RULE  
22 MUNICIPALITY.

23 **SECTION 5. Act subject to petition - effective date -**  
24 **applicability.** (1) This act takes effect at 12:01 a.m. on the day following  
25 the expiration of the ninety-day period after final adjournment of the  
26 general assembly; except that, if a referendum petition is filed pursuant  
27 to section 1 (3) of article V of the state constitution against this act or an

1 item, section, or part of this act within such period, then the act, item,  
2 section, or part will not take effect unless approved by the people at the  
3 general election to be held in November 2024 and, in such case, will take  
4 effect on the date of the official declaration of the vote thereon by the  
5 governor.

6 (2) This act applies to contracts and agreements entered into,  
7 renewed, modified, or amended on or after the applicable effective date  
8 of this act.