

**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,

HOUSE SPONSORSHIP

(None),

Senate Committees

State, Veterans, & Military Affairs

House Committees

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.

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.

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) Public employees are paid with public money, and they and
2 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 government
16 employees or prospective employees that effectively prohibit government
17 employees from disclosing details about their government service
18 obstruct these fundamental principles of government transparency and
19 public accountability. The details of public business should not be hidden
20 from public view by means of nondisclosure agreements imposed on
21 government employees as a condition of their employment or in
22 connection with their leaving government service; and

23 (V) In the absence of legitimate concerns about the protection of
24 the privacy interests of government employees, or to protect against
25 disclosure matters that are truly confidential and sensitive to the public
26 interest, neither the state nor any of its departments, institutions, or
27 agencies should be permitted to silence their employees from being able

1 to speak openly about their government service through the imposition of
2 nondisclosure agreements. Such employees should ordinarily be permitted
3 to speak openly about their government service.

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

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

23 **SECTION 2.** In Colorado Revised Statutes, **add** 22-1-135.5 as
24 follows:

25 **22-1-135.5. Nondisclosure agreements - protection of school**
26 **district, board of cooperative services, and public school employees**
27 **- definition.** (1) (a) NO SCHOOL DISTRICT, BOARD OF COOPERATIVE

1 SERVICES, PUBLIC SCHOOL, OR ANY DEPARTMENT, INSTITUTION, OR
2 AGENCY OF A SCHOOL DISTRICT, BOARD OF COOPERATIVE SERVICES, OR
3 PUBLIC SCHOOL SHALL MAKE IT A CONDITION OF EMPLOYMENT THAT AN
4 EMPLOYEE OR A PROSPECTIVE EMPLOYEE EXECUTES A CONTRACT OR
5 OTHER FORM OF AGREEMENT THAT PROHIBITS, PREVENTS, OR OTHERWISE
6 RESTRICTS THE EMPLOYEE OR PROSPECTIVE EMPLOYEE FROM DISCLOSING
7 FACTUAL CIRCUMSTANCES CONCERNING THE INDIVIDUAL'S EMPLOYMENT
8 WITH THE SCHOOL DISTRICT, BOARD OF COOPERATIVE SERVICES, OR PUBLIC
9 SCHOOL OR ANY OF ITS DEPARTMENTS, INSTITUTIONS, OR AGENCIES
10 UNLESS THE PROHIBITION OR RESTRICTION IN THE CONTRACT OR
11 AGREEMENT IS NECESSARY TO PREVENT DISCLOSURE OF:

12 (I) FACTUAL CIRCUMSTANCES RELATING TO THE EMPLOYMENT
13 THAT REASONABLY IMPLICATE PRIVACY INTERESTS OF THE EMPLOYEE WHO
14 IS A PARTY TO THE AGREEMENT IF THE EMPLOYEE ELECTS IN THE
15 EMPLOYEE'S SOLE DISCRETION TO RESTRICT DISCLOSURE OF SUCH
16 CIRCUMSTANCES ON SUCH GROUNDS; ==

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

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

1 SERVICES; OR

2 (IV) INFORMATION BEARING ON THE SPECIALIZED DETAILS OF
3 SECURITY ARRANGEMENTS OR INVESTIGATIONS.

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

20 (I) FACTUAL CIRCUMSTANCES RELATING TO THE EMPLOYMENT
21 THAT REASONABLY IMPLICATE PRIVACY INTERESTS OF THE EMPLOYEE WHO
22 IS A PARTY TO THE AGREEMENT IF THE EMPLOYEE ELECTS IN THE
23 EMPLOYEE'S SOLE DISCRETION TO RESTRICT DISCLOSURE OF SUCH
24 CIRCUMSTANCES ON SUCH GROUNDS; ==

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

1 REGULATIONS, THE STATE CONSTITUTION, OR STATE LAW OR RULES;

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

10 (IV) INFORMATION BEARING ON THE SPECIALIZED DETAILS OF
11 SECURITY ARRANGEMENTS OR INVESTIGATIONS.

12 (2) (a) No SCHOOL DISTRICT, BOARD OF COOPERATIVE SERVICES,
13 PUBLIC SCHOOL, OR DEPARTMENT, INSTITUTION, OR AGENCY OF A SCHOOL
14 DISTRICT, A BOARD OF COOPERATIVE SERVICES, OR A PUBLIC SCHOOL
15 SHALL TAKE ANY RETALIATORY ACTION, INCLUDING, WITHOUT
16 LIMITATION, FAILURE TO HIRE, DISCHARGE, SUSPENSION, DEMOTION,
17 DISCRIMINATION IN THE TERMS, CONDITIONS, OR PRIVILEGES OF
18 EMPLOYMENT, OR OTHER ADVERSE ACTION AGAINST AN INDIVIDUAL ON
19 THE GROUNDS THAT THE INDIVIDUAL 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.

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

27 (c) AN ACTION TO ENFORCE A PROVISION OF THIS SECTION SHALL

1 BE BROUGHT IN THE DISTRICT COURT FOR THE DISTRICT IN WHICH THE
2 EMPLOYEE IS PRIMARILY EMPLOYED.

3 (3) AS USED IN THIS SECTION, "CONDITION OF EMPLOYMENT"
4 MEANS AN EMPLOYMENT-RELATED POLICY, PRACTICE, REQUIREMENT, OR
5 RESTRICTION DICTATED BY AN EMPLOYER THAT AN INDIVIDUAL MUST
6 AGREE TO ABIDE BY IN ORDER TO BE HIRED BY OR RETAIN EMPLOYMENT
7 WITH THE EMPLOYER.

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 OR A PROSPECTIVE
14 EMPLOYEE EXECUTES A CONTRACT OR OTHER FORM OF AGREEMENT THAT
15 PROHIBITS, PREVENTS, OR OTHERWISE RESTRICTS THE EMPLOYEE OR
16 PROSPECTIVE EMPLOYEE FROM DISCLOSING FACTUAL CIRCUMSTANCES
17 CONCERNING THE INDIVIDUAL'S EMPLOYMENT WITH THE STATE OR ANY OF
18 ITS DEPARTMENTS, INSTITUTIONS, OR AGENCIES UNLESS THE PROHIBITION
19 OR RESTRICTION IN THE CONTRACT OR AGREEMENT IS NECESSARY TO
20 PREVENT DISCLOSURE OF:

21 (I) FACTUAL CIRCUMSTANCES RELATING TO THE EMPLOYMENT
22 THAT REASONABLY IMPLICATE PRIVACY INTERESTS OF THE EMPLOYEE WHO
23 IS A PARTY TO THE AGREEMENT IF THE EMPLOYEE ELECTS IN THE
24 EMPLOYEE'S SOLE DISCRETION TO RESTRICT DISCLOSURE OF SUCH
25 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; OR

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

13 (b) ANY PROVISION IN ANY EMPLOYMENT CONTRACT OR
14 SETTLEMENT AGREEMENT ENTERED INTO BETWEEN AN EMPLOYEE OF THE
15 STATE OR ANY OF ITS DEPARTMENTS, INSTITUTIONS, OR AGENCIES AND THE
16 STATE OR ANY OF ITS DEPARTMENTS, INSTITUTIONS, OR AGENCIES THAT
17 HAS THE PURPOSE OR EFFECT OF CONCEALING FACTUAL CIRCUMSTANCES
18 CONCERNING THE INDIVIDUAL'S EMPLOYMENT WITH THE STATE OR ANY OF
19 ITS DEPARTMENTS, INSTITUTIONS, OR AGENCIES IS PROHIBITED. TO THE
20 EXTENT THAT AN EMPLOYER INCLUDES ANY SUCH PROVISION IN ANY
21 EMPLOYMENT CONTRACT OR AGREEMENT, THE PROVISION IS DEEMED TO
22 BE AGAINST PUBLIC POLICY AND UNENFORCEABLE AGAINST A CURRENT OR
23 FORMER EMPLOYEE WHO IS A PARTY TO THE CONTRACT OR AGREEMENT
24 UNLESS THE PROVISION IS INTENDED TO PREVENT DISCLOSURE OF:

25 (I) FACTUAL CIRCUMSTANCES RELATING TO THE EMPLOYMENT
26 THAT REASONABLY IMPLICATE PRIVACY INTERESTS OF THE EMPLOYEE WHO
27 IS A PARTY TO THE AGREEMENT IF THE EMPLOYEE ELECTS IN THE

1 EMPLOYEE'S SOLE DISCRETION TO RESTRICT DISCLOSURE OF SUCH
2 CIRCUMSTANCES ON SUCH GROUNDS; ==

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

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

15 (IV) INFORMATION BEARING ON THE SPECIALIZED DETAILS OF
16 SECURITY ARRANGEMENTS OR INVESTIGATIONS.

17 (2) (a) NEITHER THE STATE NOR ANY OF ITS DEPARTMENTS,
18 INSTITUTIONS, OR AGENCIES SHALL TAKE ANY RETALIATORY ACTION,
19 INCLUDING, WITHOUT LIMITATION, FAILURE TO HIRE, DISCHARGE,
20 SUSPENSION, DEMOTION, DISCRIMINATION IN THE TERMS, CONDITIONS, OR
21 PRIVILEGES OF EMPLOYMENT, OR OTHER ADVERSE ACTION AGAINST AN
22 INDIVIDUAL ON THE GROUNDS THAT THE INDIVIDUAL DOES NOT ENTER
23 INTO A CONTRACT OR AGREEMENT DEEMED TO BE AGAINST PUBLIC POLICY
24 AND UNENFORCEABLE UNDER SUBSECTION (1)(b) OF THIS SECTION.

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 SHALL
4 BE BROUGHT IN THE DISTRICT COURT FOR THE DISTRICT IN WHICH THE
5 EMPLOYEE IS PRIMARILY EMPLOYED.

6 (3) AS USED IN THIS SECTION:

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

11 (b) "THE STATE" INCLUDES WITHOUT LIMITATION EACH OF THE
12 STATE OFFICERS LISTED IN SECTION 1 OF ARTICLE IV OF THE STATE
13 CONSTITUTION AS WELL AS THE EXECUTIVE, LEGISLATIVE, AND JUDICIAL
14 DEPARTMENTS OF THE GOVERNMENT OF THE STATE.

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

17 PART 16

18 LOCAL GOVERNMENT NONDISCLOSURE AGREEMENTS

19 **29-1-1601. Nondisclosure agreements - protection of local**
20 **government employees - definitions.** (1) (a) NEITHER A LOCAL
21 GOVERNMENT NOR A DEPARTMENT, INSTITUTION, OR AGENCY OF A LOCAL
22 GOVERNMENT SHALL MAKE IT A CONDITION OF EMPLOYMENT THAT AN
23 EMPLOYEE OR A PROSPECTIVE EMPLOYEE EXECUTES A CONTRACT OR
24 OTHER FORM OF AGREEMENT THAT PROHIBITS, PREVENTS, OR OTHERWISE
25 RESTRICTS THE EMPLOYEE OR PROSPECTIVE EMPLOYEE FROM DISCLOSING
26 FACTUAL CIRCUMSTANCES CONCERNING THE INDIVIDUAL'S EMPLOYMENT
27 WITH THE LOCAL GOVERNMENT OR ANY OF ITS DEPARTMENTS,

1 INSTITUTIONS, OR AGENCIES UNLESS THE PROHIBITION OR RESTRICTION IN
2 THE CONTRACT OR AGREEMENT IS NECESSARY TO PREVENT DISCLOSURE
3 OF:

4 (I) FACTUAL CIRCUMSTANCES RELATING TO THE EMPLOYMENT
5 THAT REASONABLY IMPLICATE PRIVACY INTERESTS OF THE EMPLOYEE WHO
6 IS A PARTY TO THE AGREEMENT IF THE EMPLOYEE ELECTS IN THE
7 EMPLOYEE'S SOLE DISCRETION TO RESTRICT DISCLOSURE OF SUCH
8 CIRCUMSTANCES ON SUCH GROUNDS; ==

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

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

21 (IV) INFORMATION BEARING ON THE SPECIALIZED DETAILS OF
22 SECURITY ARRANGEMENTS OR INVESTIGATIONS.

23 (b) ANY PROVISION IN ANY EMPLOYMENT CONTRACT OR
24 SETTLEMENT AGREEMENT ENTERED INTO BETWEEN AN EMPLOYEE OF A
25 LOCAL GOVERNMENT OR ANY DEPARTMENT, INSTITUTION, OR AGENCY OF
26 A LOCAL GOVERNMENT AND THE LOCAL GOVERNMENT, DEPARTMENT,
27 INSTITUTION, OR AGENCY THAT HAS THE PURPOSE OR EFFECT OF

1 CONCEALING FACTUAL CIRCUMSTANCES CONCERNING THE INDIVIDUAL'S
2 EMPLOYMENT WITH THE LOCAL GOVERNMENT, DEPARTMENT, INSTITUTION,
3 OR AGENCY IS PROHIBITED. TO THE EXTENT THAT AN EMPLOYER INCLUDES
4 ANY SUCH PROVISION IN ANY EMPLOYMENT CONTRACT OR AGREEMENT,
5 THE PROVISION IS DEEMED TO BE AGAINST PUBLIC POLICY AND
6 UNENFORCEABLE AGAINST A CURRENT OR FORMER EMPLOYEE WHO IS A
7 PARTY TO THE CONTRACT OR AGREEMENT UNLESS THE PROVISION IS
8 INTENDED TO PREVENT DISCLOSURE OF:

9 (I) FACTUAL CIRCUMSTANCES RELATING TO THE EMPLOYMENT
10 THAT REASONABLY IMPLICATE PRIVACY INTERESTS OF THE EMPLOYEE WHO
11 IS A PARTY TO THE AGREEMENT IF THE EMPLOYEE ELECTS IN THE
12 EMPLOYEE'S SOLE DISCRETION TO RESTRICT DISCLOSURE OF SUCH
13 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; OR

26 (IV) INFORMATION BEARING ON THE SPECIALIZED DETAILS OF
27 SECURITY ARRANGEMENTS OR INVESTIGATIONS.

1 (2) (a) NEITHER A LOCAL GOVERNMENT NOR A DEPARTMENT, AN
2 INSTITUTION, OR AN AGENCY OF A LOCAL GOVERNMENT SHALL TAKE ANY
3 RETALIATORY ACTION, INCLUDING, WITHOUT LIMITATION, FAILURE TO
4 HIRE, DISCHARGE, SUSPENSION, DEMOTION, DISCRIMINATION IN THE
5 TERMS, CONDITIONS, OR PRIVILEGES OF EMPLOYMENT, OR OTHER ADVERSE
6 ACTION AGAINST AN INDIVIDUAL ON THE GROUNDS THAT THE INDIVIDUAL
7 DOES NOT ENTER INTO A CONTRACT OR AGREEMENT DEEMED TO BE
8 AGAINST PUBLIC POLICY AND UNENFORCEABLE UNDER SUBSECTION (1)(b)
9 OF THIS SECTION.

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

15 (c) AN ACTION TO ENFORCE A PROVISION OF THIS SECTION SHALL
16 BE BROUGHT IN THE DISTRICT COURT FOR THE DISTRICT IN WHICH THE
17 EMPLOYEE IS PRIMARILY EMPLOYED.

18 (3) AS USED IN THIS SECTION:

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

24 (b) "LOCAL GOVERNMENT" MEANS A STATUTORY OR HOME RULE
25 COUNTY, A CITY AND COUNTY, OR A STATUTORY OR HOME RULE
26 MUNICIPALITY.

27 **SECTION 5. Act subject to petition - effective date -**

1 **applicability.** (1) This act takes effect at 12:01 a.m. on the day following
2 the expiration of the ninety-day period after final adjournment of the
3 general assembly; except that, if a referendum petition is filed pursuant
4 to section 1 (3) of article V of the state constitution against this act or an
5 item, section, or part of this act within such period, then the act, item,
6 section, or part will not take effect unless approved by the people at the
7 general election to be held in November 2024 and, in such case, will take
8 effect on the date of the official declaration of the vote thereon by the
9 governor.

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