

**First Regular Session
Seventieth General Assembly
STATE OF COLORADO**

PREAMENDED

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

LLS NO. 15-0948.01 Bart Miller x2173

HOUSE BILL 15-1342

HOUSE SPONSORSHIP

Salazar, Esgar, Ginal, Melton

SENATE SPONSORSHIP

(None),

House Committees
Judiciary

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING THE RIGHT OF PRIVATE-SECTOR EMPLOYEES TO INSPECT**
102 **THEIR PERSONNEL FILES.**

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 allows an employee or former employee to request that his or her private-sector employer, except for a financial institution, permit the employee or former employee to inspect or request copies of the employee or former employee's personnel file within 30 days of a written request. Employees or former employees are required to pay reasonable costs of duplication. The bill specifies exceptions to the requirement. The

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.*

bill authorizes an employee or former employee to provide written rebuttal information to the employer or former employer, requires information to be added to the employee or former employee's personnel file, and to accompany any transmittal or disclosure from the file made to a third party. The bill provides remedies to an employee or former employee if an employer or former employer fails to comply with the requirements of the bill.

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

2 **SECTION 1. Legislative declaration.** The general assembly
3 finds, determines, and declares that it is the public policy of this state that
4 an employee have access to his or her personnel files maintained by a
5 current or former employer. The general assembly intends this policy to
6 foster an environment of open communication between employers and
7 employees regarding the employment status of employees and to deter
8 frivolous lawsuits against employers.

9 **SECTION 2.** In Colorado Revised Statutes, **add** 8-2-129 as
10 follows:

11 **8-2-129. Access to personnel files and records - penalties.** (1)
12 AN EMPLOYEE OR FORMER EMPLOYEE MAY REQUEST THAT HIS OR HER
13 EMPLOYER OR FORMER EMPLOYER PERMIT THE EMPLOYEE OR FORMER
14 EMPLOYEE TO INSPECT OR REQUEST COPIES OF HIS OR HER PERSONNEL FILE.
15 THE EMPLOYER SHALL ALLOW THE EMPLOYEE OR FORMER EMPLOYEE
16 ACCESS TO THE PERSONNEL FILE WITHIN THIRTY DAYS AFTER RECEIPT OF
17 A WRITTEN REQUEST.

18 (2) INSPECTION SHALL TAKE PLACE DURING REGULAR BUSINESS
19 HOURS AT A LOCATION AT OR REASONABLY NEAR THE EMPLOYEE'S OR
20 FORMER EMPLOYEE'S PLACE OF EMPLOYMENT.

21 (3) AN EMPLOYER IS NOT REQUIRED TO PERMIT INSPECTION AND
22 COPYING OF AN EMPLOYEE'S OR FORMER EMPLOYEE'S PERSONNEL FILE

1 MORE THAN ONCE IN A CALENDAR YEAR UNLESS:

2 (a) THE EMPLOYEE REQUESTS TO INSPECT OR COPY THE PERSONNEL
3 FILE WITHIN A TWELVE-MONTH PERIOD AFTER SEPARATION FROM
4 EMPLOYMENT WHEN THE EMPLOYEE HAD MADE ANOTHER REQUEST WITHIN
5 THE CALENDAR YEAR WHILE ACTIVELY EMPLOYED; OR

6 (b) IF DISCIPLINARY ACTION HAS BEEN TAKEN AGAINST THE
7 EMPLOYEE OR FORMER EMPLOYEE, AND THE EMPLOYEE'S OR FORMER
8 EMPLOYEE'S PERSONNEL FILE WAS PREVIOUSLY INSPECTED AND COPIED
9 ONCE IN A CALENDAR YEAR, THE EMPLOYER SHALL PERMIT THE EMPLOYEE
10 OR FORMER EMPLOYEE TO INSPECT AND COPY HIS OR HER PERSONNEL FILE.

11 (4) AN EMPLOYEE OR FORMER EMPLOYEE MAY PROVIDE WRITTEN
12 REBUTTAL INFORMATION TO THE EMPLOYER OR FORMER EMPLOYER. THE
13 REBUTTAL INFORMATION SHALL BE ADDED TO, AND RETAINED IN, THE
14 EMPLOYEE'S OR FORMER EMPLOYEE'S PERSONNEL FILE AND SHALL
15 ACCOMPANY ANY TRANSMITTAL OR DISCLOSURE FROM THE FILE MADE TO
16 A THIRD PARTY.

17 (5) THE EMPLOYER MAY REQUIRE AN EMPLOYEE OR FORMER
18 EMPLOYEE WHO REQUESTS COPIES OF MATERIAL UNDER THIS SECTION TO
19 PAY THE REASONABLE COST OF DUPLICATION.

20 (6) THE EMPLOYER SHALL CERTIFY THE ACCURACY OF THE COPIES
21 BY ATTACHING A LETTER TO THAT EFFECT TO THE COPIES.

22 (7) THE EMPLOYER SHALL CERTIFY THAT ALL RESPONSIVE
23 DOCUMENTS HAVE BEEN MADE AVAILABLE TO THE EMPLOYEE OR FORMER
24 EMPLOYEE AND THAT NO ADDITIONAL DOCUMENTS EXIST.

25 (8) THE EMPLOYER MAY CERTIFY THAT THE EMPLOYEE OR FORMER
26 EMPLOYEE CHOSE NOT TO COPY CERTAIN DOCUMENTS.

27 (9) THE FOLLOWING REMEDY SHALL BE AVAILABLE TO AN

1 EMPLOYEE OR FORMER EMPLOYEE IF AN EMPLOYER FAILS TO COMPLY WITH
2 THIS SECTION: PERSONNEL INFORMATION THAT WAS NOT INCLUDED IN THE
3 PERSONNEL FILE AT THE TIME THE EMPLOYEE OR FORMER EMPLOYEE
4 INSPECTED OR COPIED THE PERSONNEL FILE, BUT THAT WAS THE TYPE OF
5 DOCUMENT THAT SHOULD HAVE BEEN INCLUDED IN THE PERSONNEL FILE,
6 SHALL NOT BE USED BY THE EMPLOYER IN A JUDICIAL OR QUASI-JUDICIAL
7 PROCEEDING. RELEVANT MATERIAL THAT SHOULD HAVE BEEN INCLUDED
8 IN THE PERSONNEL FILE MAY BE USED BY THE EMPLOYEE OR FORMER
9 EMPLOYEE, AT HIS OR HER REQUEST.

10



11 (10) AS USED IN THIS SECTION:

12 (a) "EMPLOYEE" MEANS AN EMPLOYEE AS DEFINED IN SECTION
13 8-1-101 (6).

14 (b) "EMPLOYER" MEANS ANY INDIVIDUAL, CORPORATION,
15 PARTNERSHIP, LABOR ORGANIZATION, UNINCORPORATED ASSOCIATION,
16 ANDEVERY OTHER ENTITY EMPLOYING ONE OR MORE PERSONS WITHIN THE
17 STATE; EXCEPT THAT "EMPLOYER" DOES NOT MEAN THE STATE OF
18 COLORADO, ANY AGENCY, INSTITUTION, OR DEPARTMENT OF THE STATE,
19 OR ANY POLITICAL SUBDIVISION OF THE STATE.

20 (c) "FORMER EMPLOYEE" MEANS A PERSON WHO WAS FORMERLY
21 IN THE SERVICE OF AN EMPLOYER, NOT INCLUDING ANY OFFICERS OR
22 ENLISTED PERSONNEL OF THE NATIONAL GUARD OF THE STATE OF
23 COLORADO.

24 (d) "PERSONNEL FILE" MEANS DOCUMENTS OR RECORDS RETAINED
25 BY THE EMPLOYER REGARDING AN EMPLOYEE OR FORMER EMPLOYEE THAT
26 CONCERN QUALIFICATIONS FOR EMPLOYMENT, PROMOTION, TRANSFER,
27 COMPENSATION, TERMINATION, OR DISCIPLINE. "PERSONNEL FILE" DOES

1 NOT INCLUDE DOCUMENTS OR RECORDS REQUIRED TO BE PLACED OR
2 MAINTAINED IN A SEPARATE FILE BY FEDERAL LAW OR REGULATION OR
3 DOCUMENTS OR RECORDS PERTAINING TO AN ACTIVE CRIMINAL
4 INVESTIGATION OR AN ACTIVE DISCIPLINARY INVESTIGATION BY THE
5 EMPLOYER OR A REGULATORY AGENCY.

6 (11) THIS SECTION IS INTENDED TO SUPPLEMENT, NOT SUPPLANT,
7 RIGHTS, CLAIMS, AND EMPLOYMENT-RELATED BENEFITS CONFERRED ON AN
8 EMPLOYEE OR FORMER EMPLOYEE AND DOES NOT DIMINISH ANY RIGHT OR
9 CLAIM ARISING UNDER COLLECTIVE BARGAINING AGREEMENTS, COMMON
10 LAW, OR STATUTE THAT MAY BE PROVIDED BY LAW.

11 (12) NOTHING IN THIS SECTION PROHIBITS AN EMPLOYER FROM
12 GRANTING ADDITIONAL ACCESS OR BENEFITS TO EMPLOYEES OR FORMER
13 EMPLOYEES.

14 (13) FINANCIAL INSTITUTIONS, INCLUDING BANKS, TRUST
15 COMPANIES, SAVINGS INSTITUTIONS, OR CREDIT UNIONS CHARTERED AND
16 SUPERVISED UNDER STATE OR FEDERAL LAW, ARE EXEMPT FROM
17 COMPLIANCE WITH THIS SECTION.

18 **SECTION 3. Act subject to petition - effective date.** This act
19 takes effect January 1, 2016; except that, if a referendum petition is filed
20 pursuant to section 1 (3) of article V of the state constitution against this
21 act or an item, section, or part of this act within the ninety-day period
22 after final adjournment of the general assembly, then the act, item,
23 section, or part will not take effect unless approved by the people at the
24 general election to be held in November 2016 and, in such case, will take
25 effect on the date of the official declaration of the vote thereon by the
26 governor.