

Second Regular Session
Seventieth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 16-0208.01 Bart Miller x2173

SENATE BILL 16-056

SENATE SPONSORSHIP

Lambert,

HOUSE SPONSORSHIP

(None),

Senate Committees
Judiciary

House Committees

A BILL FOR AN ACT

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

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 broadens the protections of the state whistleblower protection law by specifying that no appointing authority or supervisor

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.

may take disciplinary action against a state employee for disclosing information that is not subject to public inspection under the "Colorado Open Records Act", or that is confidential under any other provision of law, to any of the following state entities that are designated as whistleblower review agencies:

- ! The office of legislative legal services;
- ! The state attorney general; or
- ! The commission on judicial discipline.

The bill requires whistleblower review agencies to:

- ! Confer with each other within 30 days of receiving information and agree on whether information disclosed to a whistleblower review agency is confidential under law and, if so, to maintain the confidentiality of information if required by law;
- ! Release information to members of the general assembly and to the public if information is determined to be releasable;
- ! Maintain records of information disclosed to whistleblower review agencies and the decisions of the whistleblower review agencies with respect to the information; and
- ! Designate a person or persons as a point of contact for whistleblower review agency activities and publicize the information.

Within 60 days after receiving any information, 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.

1 *Be it enacted by the General Assembly of the State of Colorado:*
2 **SECTION 1.** In Colorado Revised Statutes, **amend** 24-50.5-101
3 as follows:
4 **24-50.5-101. Legislative declaration.** (1) The general assembly
5 ~~hereby~~ declares that the people of Colorado are entitled to information
6 about the workings of state government in order to reduce the waste and
7 mismanagement of public funds, to reduce abuses in government
8 authority, and to prevent illegal and unethical practices. The general
9 assembly further declares that employees of the state of Colorado are
10 citizens first and have a right and a responsibility to behave as good

1 citizens in our common efforts to provide sound management of
2 governmental affairs. To help achieve these objectives, the general
3 assembly declares that state employees should be encouraged to disclose
4 information on actions of state agencies that are not in the public interest
5 and that legislation is needed to ensure that any employee making such
6 disclosures shall not be subject to disciplinary measures or harassment by
7 any public official.

8 (2) THE GENERAL ASSEMBLY FURTHER DECLARES THAT THE
9 PURPOSE OF THE CREATION OF WHISTLEBLOWER REVIEW AGENCIES IN THIS
10 ARTICLE IS TO PROVIDE A MECHANISM FOR DETERMINING WHETHER
11 INFORMATION ABOUT STATE OPERATIONS OR CONDUCT PROVIDED BY A
12 STATE EMPLOYEE MAY BE MADE PUBLIC BY A STATE EMPLOYEE
13 WHISTLEBLOWER, EITHER TO MEMBERS OF THE GENERAL ASSEMBLY OR
14 ULTIMATELY TO THE PUBLIC, WHILE PROTECTING THAT STATE EMPLOYEE
15 FROM PUNITIVE ACTION AND WHILE MAINTAINING THE CONFIDENTIAL
16 NATURE OF INFORMATION WHERE REQUIRED BY LAW.

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

19 **24-50.5-102. Definitions.** As used in this article, unless the
20 context otherwise requires:

21 (6) "WHISTLEBLOWER REVIEW AGENCY" MEANS THE OFFICE OF
22 LEGISLATIVE LEGAL SERVICES UNDER PART 5 OF ARTICLE 3 OF TITLE 2,
23 C.R.S., THE STATE ATTORNEY GENERAL UNDER ARTICLE 31 OF THIS TITLE,
24 OR THE COMMISSION ON JUDICIAL DISCIPLINE UNDER SECTION 23 OF
25 ARTICLE VI OF THE STATE CONSTITUTION.

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

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

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

10 (b) ~~An employee who discloses~~ Information from public records
11 ~~which~~ THAT are closed to public inspection pursuant to section
12 24-72-204; OR

13 (c) ~~An employee who discloses~~ Information ~~which~~ THAT is
14 confidential under any other provision of law.

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

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

23 (4) (a) UPON RECEIPT OF ANY INFORMATION DISCLOSED UNDER
24 SUBSECTION (3) OF THIS SECTION THAT MAY BE CONFIDENTIAL UNDER
25 LAW, A WHISTLEBLOWER REVIEW AGENCY, WITHIN THIRTY DAYS AFTER
26 RECEIVING THE INFORMATION, SHALL CONSULT WITH EACH OF THE OTHER
27 WHISTLEBLOWER REVIEW AGENCIES AND MAKE A JOINT DETERMINATION,

1 DOCUMENTED IN WRITING, AS TO WHETHER THE INFORMATION IS
2 CONFIDENTIAL UNDER LAW. EACH WHISTLEBLOWER REVIEW AGENCY
3 SHALL MAINTAIN THE CONFIDENTIAL NATURE OF ANY INFORMATION
4 DETERMINED TO BE CONFIDENTIAL UNDER LAW.

5 (b) WITHIN SIXTY DAYS AFTER RECEIVING ANY INFORMATION
6 UNDER SUBSECTION (3) OF THIS SECTION, A WHISTLEBLOWER REVIEW
7 AGENCY MAY CONFER WITH AND TRANSFER THE INFORMATION TO THE
8 ENTITY HAVING JURISDICTION OR AUTHORITY TO INVESTIGATE ANY
9 ALLEGATION OF UNLAWFUL BEHAVIOR.

10 (c) IF A WHISTLEBLOWER REVIEW AGENCY DETERMINES THAT THE
11 INFORMATION OR A PORTION OF THE INFORMATION RECEIVED IS NOT
12 PROHIBITED FROM DISCLOSURE UNDER SECTION 24-72-204 OR IS NOT
13 OTHERWISE CONFIDENTIAL UNDER ANY OTHER PROVISION OF LAW, THAT
14 INFORMATION MAY BE RELEASED TO THE GENERAL ASSEMBLY OR THE
15 PUBLIC UPON REQUEST. EACH WHISTLEBLOWER REVIEW AGENCY SHALL
16 MAINTAIN RECORDS OF INFORMATION DISCLOSED TO THE WHISTLEBLOWER
17 REVIEW AGENCY UNDER SUBSECTION (3) OF THIS SECTION, AND THE
18 ACTION OF THE WHISTLEBLOWER REVIEW AGENCY WITH RESPECT TO EACH
19 DISCLOSURE UNDER SUBSECTION (3) OF THIS SECTION.

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

25 **SECTION 4. Effective date - applicability.** This act takes effect
26 upon passage and applies to any information disclosed by a state
27 employee to a whistleblower review agency on or after said date.

1 **SECTION 5. Safety clause.** The general assembly hereby finds,
2 determines, and declares that this act is necessary for the immediate
3 preservation of the public peace, health, and safety.