

CHAPTER 320

GOVERNMENT - STATE

SENATE BILL 23-053

BY SENATOR(S) Kirkmeyer and Rodriguez, Baisley, Bridges, Buckner, Coleman, Gardner, Ginal, Gonzales, Hansen, Kolker, Liston, Lundeen, Marchman, Moreno, Mullica, Pelton B., Pelton R., Priola, Roberts, Simpson, Smallwood, Van Winkle, Will, Winter F.;

also REPRESENTATIVE(S) Woodrow and Evans, Amabile, Bird, Brown, Hamrick, Jodeh, Lieder, Lindsay, Marshall, Mauro, Michaelson Jenet, Sharbini, Story, Valdez.

AN ACT**CONCERNING RESTRICTIONS ON NONDISCLOSURE AGREEMENTS THAT AFFECT GOVERNMENT EMPLOYEES.**

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

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

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

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

(III) The public has a fundamental interest in transparency concerning the conduct of government, including state government, county government, city and county government, municipal government, and school district government. From the free speech provisions of its founding constitution to the enactment of laws requiring that meetings be conducted in an open manner and that public records be broadly disclosed, the state of Colorado has been at the forefront of efforts to ensure that the formation of public policy is public business that may not be conducted in secret. These constitutional and statutory requirements are intended to provide the

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

public with as much knowledge as possible about how public business is being conducted while it is being conducted;

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

(V) In the absence of legitimate concerns about the protection of the privacy interests of applicants for government employment, government employees, and past government employees, or to protect against disclosure matters that are truly confidential and sensitive to the public interest, neither the state nor any of its departments, institutions, or agencies should be permitted to silence such applicants and employees from being able to speak openly about their prospective, current, or past government service through the imposition of nondisclosure agreements. Such applicants and employees should ordinarily be permitted to speak openly about their prospective, current, or past government service.

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

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

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

22-1-135.5. Nondisclosure agreements - protection of school district, board of cooperative services, and public school employees - definition. (1) (a) NO SCHOOL DISTRICT, BOARD OF COOPERATIVE SERVICES, PUBLIC SCHOOL, OR ANY DEPARTMENT, INSTITUTION, OR AGENCY OF A SCHOOL DISTRICT, BOARD OF COOPERATIVE SERVICES, OR PUBLIC SCHOOL SHALL MAKE IT A CONDITION OF EMPLOYMENT THAT AN EMPLOYEE EXECUTES A CONTRACT OR OTHER FORM OF

AGREEMENT THAT PROHIBITS, PREVENTS, OR OTHERWISE RESTRICTS THE EMPLOYEE FROM DISCLOSING FACTUAL CIRCUMSTANCES CONCERNING THE EMPLOYEE'S EMPLOYMENT WITH THE SCHOOL DISTRICT, BOARD OF COOPERATIVE SERVICES, OR PUBLIC SCHOOL OR ANY OF ITS DEPARTMENTS, INSTITUTIONS, OR AGENCIES UNLESS THE PROHIBITION OR RESTRICTION IN THE CONTRACT OR AGREEMENT IS NECESSARY TO PREVENT DISCLOSURE OF:

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

(II) DATA; INFORMATION, INCLUDING PERSONAL IDENTIFYING INFORMATION, AS DEFINED IN SECTION 24-74-102 (1); OR MATTERS THAT ARE REQUIRED TO BE KEPT CONFIDENTIAL BY FEDERAL LAW OR REGULATIONS, THE STATE CONSTITUTION, STATE LAW, STATE REGULATIONS, OR STATE RULES, OR A COURT OF LAW OR AS ATTORNEY-CLIENT PRIVILEGED COMMUNICATIONS, AS PRIVILEGED WORK PRODUCT, AS COMMUNICATIONS RELATED TO A THREATENED OR PENDING LEGAL OR ADMINISTRATIVE ACTION, OR AS MATERIALS RELATED TO PERSONNEL OR REGULATORY INVESTIGATIONS BY THE EMPLOYER;

(III) TRADE SECRETS OR OTHER CONFIDENTIAL OR SENSITIVE INFORMATION PROVIDED TO OR MADE ACCESSIBLE TO THE EMPLOYEE BY A CURRENT OR PROSPECTIVE CONTRACTOR, VENDOR, GRANTEE OR AS PART OF A PUBLIC-PRIVATE PARTNERSHIP, OR ENTITY WORKING WITH THE STATE AS PART OF AN ECONOMIC DEVELOPMENT ACTIVITY;

(IV) INFORMATION BEARING ON THE SPECIALIZED DETAILS OF SECURITY ARRANGEMENTS OR INVESTIGATIONS INCLUDING SECURITY ARRANGEMENTS FOR OR INVESTIGATIONS INTO ELECTED OFFICIALS OR OTHER INDIVIDUALS, PHYSICAL INFRASTRUCTURE, OR CYBERSECURITY;

(V) INFORMATION DERIVED FROM COMMUNICATIONS OF THE EMPLOYER RELATED TO THREATENED OR PENDING LEGAL OR ADMINISTRATIVE ACTION;

(VI) DISCUSSIONS THAT OCCUR IN AN EXECUTIVE SESSION AUTHORIZED BY SECTION 24-6-402;

(VII) TRADE SECRETS OR INFORMATION DERIVED FROM TRADE SECRETS OR PROPRIETARY INFORMATION OF THE EMPLOYER;

(VIII) INFORMATION AND RECORDS NOT SUBJECT TO DISCLOSURE UNDER THE "COLORADO OPEN RECORDS ACT", PART 2 OF ARTICLE 72 OF TITLE 24; OR

(IX) TRADE SECRETS OWNED BY THE EMPLOYER.

(b) ANY PROVISION IN ANY CONTRACT OR AGREEMENT THAT VIOLATES SUBSECTION (1)(a) OF THIS SECTION IS DEEMED TO BE AGAINST PUBLIC POLICY AND

IS UNENFORCEABLE AGAINST AN EMPLOYEE UNLESS THE PROVISION IS INTENDED TO PREVENT DISCLOSURE OF:

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

(II) DATA; INFORMATION, INCLUDING PERSONAL IDENTIFYING INFORMATION, AS DEFINED IN SECTION 24-74-102 (1); OR MATTERS THAT ARE REQUIRED TO BE KEPT CONFIDENTIAL BY FEDERAL LAW OR REGULATIONS, THE STATE CONSTITUTION, STATE LAW, STATE REGULATIONS, OR STATE RULES, OR A COURT OF LAW OR AS ATTORNEY-CLIENT PRIVILEGED COMMUNICATIONS, AS PRIVILEGED WORK PRODUCT, AS COMMUNICATIONS RELATED TO A THREATENED OR PENDING LEGAL OR ADMINISTRATIVE ACTION, OR AS MATERIALS RELATED TO PERSONNEL OR REGULATORY INVESTIGATIONS BY THE EMPLOYER;

(III) TRADE SECRETS OR OTHER CONFIDENTIAL OR SENSITIVE INFORMATION PROVIDED TO OR MADE ACCESSIBLE TO THE EMPLOYEE BY A CURRENT OR PROSPECTIVE CONTRACTOR, VENDOR, GRANTEE OR AS PART OF A PUBLIC-PRIVATE PARTNERSHIP, OR ENTITY WORKING WITH THE STATE AS PART OF AN ECONOMIC DEVELOPMENT ACTIVITY;

(IV) INFORMATION BEARING ON THE SPECIALIZED DETAILS OF SECURITY ARRANGEMENTS OR INVESTIGATIONS INCLUDING FOR ELECTED OFFICIALS OR OTHER INDIVIDUALS, PHYSICAL INFRASTRUCTURE, OR CYBERSECURITY;

(V) INFORMATION DERIVED FROM COMMUNICATIONS OF THE EMPLOYER RELATED TO THREATENED OR PENDING LEGAL OR ADMINISTRATIVE ACTION;

(VI) DISCUSSIONS THAT OCCUR IN AN EXECUTIVE SESSION AUTHORIZED BY SECTION 24-6-402;

(VII) TRADE SECRETS OR INFORMATION DERIVED FROM TRADE SECRETS OR PROPRIETARY INFORMATION OF THE EMPLOYER;

(VIII) INFORMATION AND RECORDS NOT SUBJECT TO DISCLOSURE UNDER THE "COLORADO OPEN RECORDS ACT", PART 2 OF ARTICLE 72 OF TITLE 24; OR

(IX) TRADE SECRETS OWNED BY THE EMPLOYER.

(2)(a) NO SCHOOL DISTRICT, BOARD OF COOPERATIVE SERVICES, PUBLIC SCHOOL, OR DEPARTMENT, INSTITUTION, OR AGENCY OF A SCHOOL DISTRICT, A BOARD OF COOPERATIVE SERVICES, OR A PUBLIC SCHOOL SHALL TAKE ANY MATERIALLY ADVERSE EMPLOYMENT-RELATED ACTION, INCLUDING, WITHOUT LIMITATION, WITHDRAWAL OF AN OFFER OF EMPLOYMENT, DISCHARGE, SUSPENSION, DEMOTION, DISCRIMINATION IN THE TERMS, CONDITIONS, OR PRIVILEGES OF EMPLOYMENT, OR OTHER ADVERSE ACTION AGAINST AN EMPLOYEE ON THE GROUNDS THAT THE EMPLOYEE DOES NOT ENTER INTO A CONTRACT OR AGREEMENT DEEMED TO BE

AGAINST PUBLIC POLICY AND UNENFORCEABLE UNDER SUBSECTION (1)(b) OF THIS SECTION. THE TAKING OF SUCH A MATERIALLY ADVERSE EMPLOYMENT-RELATED ACTION AFTER AN EMPLOYEE HAS REFUSED TO ENTER INTO SUCH A CONTRACT OR AGREEMENT IS PRIMA FACIE EVIDENCE OF RETALIATION.

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

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

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

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

(5) NOTHING IN THIS SECTION PREVENTS AN EMPLOYER FROM REQUIRING AN EMPLOYEE TO ENTER INTO A NONDISCLOSURE AGREEMENT WITH A THIRD PARTY IN THE EMPLOYEE'S OFFICIAL CAPACITY AND ON BEHALF OF THE EMPLOYER.

(6) AS USED IN THIS SECTION:

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

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

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

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

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

(II) DATA; INFORMATION, INCLUDING PERSONAL IDENTIFYING INFORMATION, AS DEFINED IN SECTION 24-74-102 (1); OR MATTERS THAT ARE REQUIRED TO BE KEPT CONFIDENTIAL BY FEDERAL LAW OR REGULATIONS, THE STATE CONSTITUTION, STATE LAW, STATE REGULATIONS, OR STATE RULES, OR A COURT OF LAW OR AS ATTORNEY-CLIENT PRIVILEGED COMMUNICATIONS, AS PRIVILEGED WORK PRODUCT, AS COMMUNICATIONS RELATED TO A THREATENED OR PENDING LEGAL OR ADMINISTRATIVE ACTION, OR AS MATERIALS RELATED TO PERSONNEL OR REGULATORY INVESTIGATIONS BY THE EMPLOYER;

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

(IV) ATTORNEY WORK PRODUCT;

(V) VENDOR LISTS AND VENDOR PREFERENCES;

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

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

(VIII) TRADE SECRETS OR OTHER CONFIDENTIAL OR SENSITIVE INFORMATION PROVIDED TO OR MADE ACCESSIBLE TO THE EMPLOYEE BY A CURRENT OR PROSPECTIVE CONTRACTOR, VENDOR, GRANTEE OR AS PART OF A PUBLIC-PRIVATE PARTNERSHIP, OR ENTITY WORKING WITH THE STATE AS PART OF AN ECONOMIC DEVELOPMENT ACTIVITY;

(IX) INFORMATION BEARING ON THE SPECIALIZED DETAILS OF SECURITY ARRANGEMENTS OR INVESTIGATIONS INCLUDING FOR ELECTED OFFICIALS OR OTHER INDIVIDUALS, PHYSICAL INFRASTRUCTURE, OR CYBERSECURITY;

(X) INFORMATION DERIVED FROM COMMUNICATIONS OF THE EMPLOYER RELATED TO THREATENED OR PENDING LEGAL OR ADMINISTRATIVE ACTION;

(XI) DISCUSSIONS THAT OCCUR IN AN EXECUTIVE SESSION AUTHORIZED BY SECTION 24-6-402;

(XII) TRADE SECRETS OR INFORMATION DERIVED FROM TRADE SECRETS OR PROPRIETARY INFORMATION OF THE EMPLOYER;

(XIII) INFORMATION AND RECORDS NOT SUBJECT TO DISCLOSURE UNDER THE "COLORADO OPEN RECORDS ACT", PART 2 OF ARTICLE 72 OF TITLE 24; OR

(XIV) TRADE SECRETS OWNED BY THE EMPLOYER.

(b) ANY PROVISION IN ANY CONTRACT OR AGREEMENT THAT VIOLATES SUBSECTION (1)(a) OF THIS SECTION IS DEEMED TO BE AGAINST PUBLIC POLICY AND IS UNENFORCEABLE AGAINST AN EMPLOYEE UNLESS THE PROVISION IS INTENDED TO PREVENT DISCLOSURE OF:

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

(II) DATA; INFORMATION, INCLUDING PERSONAL IDENTIFYING INFORMATION, AS DEFINED IN SECTION 24-74-102 (1); OR MATTERS THAT ARE REQUIRED TO BE KEPT CONFIDENTIAL BY FEDERAL LAW OR REGULATIONS, THE STATE CONSTITUTION, STATE LAW, STATE REGULATIONS, OR STATE RULES, OR A COURT OF LAW OR AS ATTORNEY-CLIENT PRIVILEGED COMMUNICATIONS, AS PRIVILEGED WORK PRODUCT, AS COMMUNICATIONS RELATED TO A THREATENED OR PENDING LEGAL OR ADMINISTRATIVE ACTION, OR AS MATERIALS RELATED TO PERSONNEL OR REGULATORY INVESTIGATIONS BY THE EMPLOYER;

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

(IV) ATTORNEY WORK PRODUCT;

(V) VENDOR LISTS AND VENDOR PREFERENCES;

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

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

(VIII) TRADE SECRETS OR OTHER CONFIDENTIAL OR SENSITIVE INFORMATION PROVIDED TO OR MADE ACCESSIBLE TO THE EMPLOYEE BY A CURRENT OR PROSPECTIVE CONTRACTOR, VENDOR, GRANTEE OR AS PART OF A PUBLIC-PRIVATE PARTNERSHIP, OR ENTITY WORKING WITH THE STATE AS PART OF AN ECONOMIC DEVELOPMENT ACTIVITY;

(IX) INFORMATION BEARING ON THE SPECIALIZED DETAILS OF SECURITY ARRANGEMENTS OR INVESTIGATIONS INCLUDING FOR ELECTED OFFICIALS OR OTHER INDIVIDUALS, PHYSICAL INFRASTRUCTURE, OR CYBERSECURITY;

(X) INFORMATION DERIVED FROM COMMUNICATIONS OF THE EMPLOYER RELATED TO THREATENED OR PENDING LEGAL OR ADMINISTRATIVE ACTION;

(XI) DISCUSSIONS THAT OCCUR IN AN EXECUTIVE SESSION AUTHORIZED BY SECTION 24-6-402;

(XII) TRADE SECRETS OR INFORMATION DERIVED FROM TRADE SECRETS OR PROPRIETARY INFORMATION OF THE EMPLOYER;

(XIII) INFORMATION AND RECORDS NOT SUBJECT TO DISCLOSURE UNDER THE "COLORADO OPEN RECORDS ACT", PART 2 OF ARTICLE 72 OF TITLE 24; OR

(XIV) TRADE SECRETS OWNED BY THE EMPLOYER.

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

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

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

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

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

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

(6) NOTHING IN THIS SECTION PREVENTS AN EMPLOYER FROM REQUIRING AN EMPLOYEE TO ENTER INTO A NONDISCLOSURE AGREEMENT WITH A THIRD PARTY IN THE EMPLOYEE'S OFFICIAL CAPACITY AND ON BEHALF OF THE EMPLOYER.

(7) AS USED IN THIS SECTION:

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

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

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

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

PART 16
LOCAL GOVERNMENT NONDISCLOSURE AGREEMENTS

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

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

(II) DATA; INFORMATION, INCLUDING PERSONAL IDENTIFYING INFORMATION, AS DEFINED IN SECTION 24-74-102 (1); OR MATTERS THAT ARE REQUIRED TO BE KEPT CONFIDENTIAL BY FEDERAL LAW OR REGULATIONS, THE STATE CONSTITUTION, STATE LAW, STATE REGULATIONS, OR STATE RULES, OR A COURT OF LAW OR AS ATTORNEY-CLIENT PRIVILEGED COMMUNICATIONS, AS PRIVILEGED WORK PRODUCT, AS COMMUNICATIONS RELATED TO A THREATENED OR PENDING LEGAL OR ADMINISTRATIVE ACTION, OR AS MATERIALS RELATED TO PERSONNEL OR REGULATORY INVESTIGATIONS BY THE EMPLOYER;

(III) TRADE SECRETS OR OTHER CONFIDENTIAL OR SENSITIVE INFORMATION PROVIDED TO OR MADE ACCESSIBLE TO THE EMPLOYEE BY A CURRENT OR PROSPECTIVE CONTRACTOR, VENDOR, GRANTEE OR AS PART OF A PUBLIC-PRIVATE

PARTNERSHIP, OR ENTITY WORKING WITH THE STATE AS PART OF AN ECONOMIC DEVELOPMENT ACTIVITY;

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

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

(VI) INFORMATION BEARING ON THE SPECIALIZED DETAILS OF SECURITY ARRANGEMENTS OR CRIMINAL INVESTIGATIONS INCLUDING FOR ELECTED OFFICIALS OR OTHER INDIVIDUALS, PHYSICAL INFRASTRUCTURE, OR CYBERSECURITY;

(VII) INFORMATION DERIVED FROM COMMUNICATIONS OF THE EMPLOYER RELATED TO THREATENED OR PENDING LEGAL OR ADMINISTRATIVE ACTION;

(VIII) DISCUSSIONS THAT OCCUR IN AN EXECUTIVE SESSION AUTHORIZED BY SECTION 24-6-402;

(IX) TRADE SECRETS OR INFORMATION DERIVED FROM TRADE SECRETS OR PROPRIETARY INFORMATION OF THE EMPLOYER;

(X) INFORMATION AND RECORDS NOT SUBJECT TO DISCLOSURE UNDER THE "COLORADO OPEN RECORDS ACT", PART 2 OF ARTICLE 72 OF TITLE 24; OR

(XI) TRADE SECRETS OWNED BY THE EMPLOYER.

(b) ANY PROVISION IN ANY CONTRACT OR AGREEMENT THAT VIOLATES SUBSECTION (1)(a) OF THIS SECTION IS DEEMED TO BE AGAINST PUBLIC POLICY AND IS UNENFORCEABLE AGAINST AN EMPLOYEE UNLESS THE PROVISION IS INTENDED TO PREVENT DISCLOSURE OF:

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

(II) DATA; INFORMATION, INCLUDING PERSONAL IDENTIFYING INFORMATION, AS DEFINED IN SECTION 24-74-102 (1); OR MATTERS THAT ARE REQUIRED TO BE KEPT CONFIDENTIAL BY FEDERAL LAW OR REGULATIONS, THE STATE CONSTITUTION, STATE LAW, STATE REGULATIONS, OR STATE RULES, OR A COURT OF LAW OR AS ATTORNEY-CLIENT PRIVILEGED COMMUNICATIONS, AS PRIVILEGED WORK PRODUCT, AS COMMUNICATIONS RELATED TO A THREATENED OR PENDING LEGAL OR ADMINISTRATIVE ACTION, OR AS MATERIALS RELATED TO PERSONNEL OR REGULATORY INVESTIGATIONS BY THE EMPLOYER;

(III) TRADE SECRETS OR OTHER CONFIDENTIAL OR SENSITIVE INFORMATION PROVIDED TO OR MADE ACCESSIBLE TO THE EMPLOYEE BY A CURRENT OR PROSPECTIVE CONTRACTOR, VENDOR, GRANTEE OR AS PART OF A PUBLIC-PRIVATE PARTNERSHIP, OR ENTITY WORKING WITH THE STATE AS PART OF AN ECONOMIC DEVELOPMENT ACTIVITY;

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

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

(VI) INFORMATION BEARING ON THE SPECIALIZED DETAILS OF SECURITY ARRANGEMENTS OR CRIMINAL INVESTIGATIONS INCLUDING FOR ELECTED OFFICIALS OR OTHER INDIVIDUALS, PHYSICAL INFRASTRUCTURE, OR CYBERSECURITY;

(VII) INFORMATION DERIVED FROM COMMUNICATIONS OF THE EMPLOYER RELATED TO THREATENED OR PENDING LEGAL OR ADMINISTRATIVE ACTION;

(VIII) DISCUSSIONS THAT OCCUR IN AN EXECUTIVE SESSION AUTHORIZED BY SECTION 24-6-402;

(IX) TRADE SECRETS OR INFORMATION DERIVED FROM TRADE SECRETS OR PROPRIETARY INFORMATION OF THE EMPLOYER;

(X) INFORMATION AND RECORDS NOT SUBJECT TO DISCLOSURE UNDER THE "COLORADO OPEN RECORDS ACT", PART 2 OF ARTICLE 72 OF TITLE 24; OR

(XI) TRADE SECRETS OWNED BY THE EMPLOYER.

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

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

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

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

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

(5) NOTHING IN THIS SECTION PREVENTS AN EMPLOYER FROM REQUIRING AN EMPLOYEE TO ENTER INTO A NONDISCLOSURE AGREEMENT WITH A THIRD PARTY IN THE EMPLOYEE'S OFFICIAL CAPACITY AND ON BEHALF OF THE EMPLOYER.

(6) AS USED IN THIS SECTION:

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

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

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

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

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

Approved: June 2, 2023