

NOTE: This bill has been prepared for the signatures of the appropriate legislative officers and the Governor. To determine whether the Governor has signed the bill or taken other action on it, please consult the legislative status sheet, the legislative history, or the Session Laws.

An Act

HOUSE BILL 16-1432

BY REPRESENTATIVE(S) Winter, Arndt, Becker K., Court, Duran, Esgar, Fields, Garnett, Kagan, Lontine, Melton, Mitsch Bush, Pettersen, Rosenthal, Ryden, Salazar, Singer, Young;
also SENATOR(S) Kerr, Aguilar, Crowder, Guzman, Heath, Hodge, Jones, Kefalas, Steadman, Todd.

CONCERNING THE RIGHTS OF PRIVATE SECTOR EMPLOYEES TO INSPECT
THEIR PERSONNEL FILES.

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

SECTION 1. Legislative declaration. The general assembly finds, determines, and declares that it is the public policy of this state that an employee have access to his or her personnel files maintained by a current or former employer. The general assembly intends this policy to foster an environment of open communication between employers and employees regarding the employment status of employees and to deter frivolous lawsuits against employers. The general assembly recognizes that this act does not cover public employees because they have access to their personnel files under the "Colorado Open Records Act", part 2 of article 72 of title 24, Colorado Revised Statutes.

SECTION 2. In Colorado Revised Statutes, **add** 8-2-129 as

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

follows:

8-2-129. Access to personnel files and records - definition - exemptions. (1) EVERY EMPLOYER SHALL, AT LEAST ANNUALLY, UPON THE REQUEST OF AN EMPLOYEE, PERMIT THAT EMPLOYEE TO INSPECT AND OBTAIN A COPY OF ANY PART OF HIS OR HER OWN PERSONNEL FILE OR FILES AT THE EMPLOYER'S OFFICE AND AT A TIME CONVENIENT TO BOTH THE EMPLOYER AND THE EMPLOYEE. A FORMER EMPLOYEE MAY MAKE ONE INSPECTION OF HIS OR HER PERSONNEL FILE AFTER TERMINATION OF EMPLOYMENT. AN EMPLOYER MAY RESTRICT THE EMPLOYEE'S OR FORMER EMPLOYEE'S ACCESS TO HIS OR HER FILES TO BE ONLY IN THE PRESENCE OF A PERSON RESPONSIBLE FOR MANAGING PERSONNEL DATA ON BEHALF OF THE EMPLOYER OR ANOTHER EMPLOYEE DESIGNATED BY THE EMPLOYER. THE EMPLOYER MAY REQUIRE THE EMPLOYEE OR FORMER EMPLOYEE TO PAY THE REASONABLE COST OF DUPLICATION OF DOCUMENTS.

(2) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(a) "EMPLOYEE" DOES NOT INCLUDE A PERSON EMPLOYED BY AN ENTITY SUBJECT TO THE "COLORADO OPEN RECORDS ACT", PART 2 OF ARTICLE 72 OF TITLE 24, C.R.S.

(b) "EMPLOYER" DOES NOT INCLUDE ANY ENTITY SUBJECT TO THE "COLORADO OPEN RECORDS ACT", PART 2 OF ARTICLE 72 OF TITLE 24, C.R.S.

(c) "PERSONNEL FILE" MEANS THE PERSONNEL RECORDS OF AN EMPLOYEE, IN THE MANNER MAINTAINED BY THE EMPLOYER AND USING REASONABLE EFFORTS BY THE EMPLOYER TO COLLECT, THAT ARE USED OR HAVE BEEN USED TO DETERMINE THE EMPLOYEE'S QUALIFICATIONS FOR EMPLOYMENT, PROMOTION, ADDITIONAL COMPENSATION, OR EMPLOYMENT TERMINATION OR OTHER DISCIPLINARY ACTION. "PERSONNEL FILE" DOES NOT INCLUDE DOCUMENTS OR RECORDS REQUIRED TO BE PLACED OR MAINTAINED IN A SEPARATE FILE FROM THE REGULAR PERSONNEL FILE BY FEDERAL OR STATE LAW OR RULE; DOCUMENTS OR RECORDS PERTAINING TO CONFIDENTIAL REPORTS FROM PREVIOUS EMPLOYERS OF THE EMPLOYEE; OR AN ACTIVE CRIMINAL INVESTIGATION, AN ACTIVE DISCIPLINARY INVESTIGATION BY THE EMPLOYER, OR AN ACTIVE INVESTIGATION BY A REGULATORY AGENCY. "PERSONNEL FILE" ALSO DOES NOT INCLUDE ANY

INFORMATION IN A DOCUMENT OR RECORD THAT IDENTIFIES ANY PERSON WHO MADE A CONFIDENTIAL ACCUSATION, AS DETERMINED BY THE EMPLOYER, AGAINST THE EMPLOYEE WHO MAKES A REQUEST UNDER SUBSECTION (1) OF THIS SECTION.

(3) NOTHING IN THIS SECTION:

(a) CREATES OR AUTHORIZES A PRIVATE CAUSE OF ACTION BY A PERSON AGGRIEVED BY A VIOLATION OF THIS SECTION;

(b) REQUIRES AN EMPLOYER TO CREATE, MAINTAIN, OR RETAIN A PERSONNEL FILE ON AN EMPLOYEE OR FORMER EMPLOYEE; OR

(c) REQUIRES AN EMPLOYER TO RETAIN ANY DOCUMENTS THAT ARE OR WERE CONTAINED IN AN EMPLOYEE'S OR FORMER EMPLOYEE'S PERSONNEL FILE FOR ANY SPECIFIED PERIOD OF TIME.

(4) THIS SECTION DOES NOT APPLY TO A FINANCIAL INSTITUTION CHARTERED AND SUPERVISED UNDER STATE OR FEDERAL LAW, INCLUDING WITHOUT LIMITATION:

(a) A BANK;

(b) A TRUST COMPANY;

(c) A SAVINGS INSTITUTION; AND

(d) A CREDIT UNION.

SECTION 3. Act subject to petition - effective date. This act takes effect January 1, 2017; 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 the ninety-day period after final adjournment of the general assembly, 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 2016 and, in such case, will take effect on

January 1, 2017, or on the date of the official declaration of the vote thereon by the governor, whichever is later.

Dickey Lee Hullinghorst
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Bill L. Cadman
PRESIDENT OF
THE SENATE

Marilyn Eddins
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

Effie Ameen
SECRETARY OF
THE SENATE

APPROVED _____

John W. Hickenlooper
GOVERNOR OF THE STATE OF COLORADO