

# An Act

HOUSE BILL 12-1263

BY REPRESENTATIVE(S) Levy, Court, Hamner, Hulinghorst, Kefalas, Labuda, Pabon, Ryden, Wilson, Lee, Schafer S., Todd, Vigil;  
also SENATOR(S) Steadman, Aguilar, Boyd, Carroll, Foster, Guzman, Heath, Hodge, Hudak, Newell, Nicholson, Schwartz, Tochtrop, Williams S.

CONCERNING REDUCING BARRIERS TO EMPLOYMENT BY STATE OF COLORADO AGENCIES FOR PEOPLE WITH CRIMINAL RECORDS.

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

**SECTION 1.** In Colorado Revised Statutes, 24-5-101, **amend** (1) (b) (V) and (1) (b) (VI); and **add** (1) (b) (VII), (3), (4), and (5) as follows:

**24-5-101. Effect of criminal conviction on employment rights.**

(1) (b) This subsection (1) shall not apply to:

(V) The employment of persons in public or private correctional facilities pursuant to the provisions of sections 17-1-109.5 and 17-1-202 (1) (a) (I) and (1.5), C.R.S., and the employment of persons in public or private juvenile facilities pursuant to the provisions of sections 19-2-403.3 and 19-2-410 (4), C.R.S.; and

(VI) The employment of persons by the public employees'

retirement association created pursuant to section 24-51-201 who, upon the commencement of that employment, will have access to association investment information, association assets, or financial, demographic, or other information relating to association members or beneficiaries; AND

(VII) THE EMPLOYMENT OF PERSONS BY THE DEPARTMENT OF PUBLIC SAFETY.

(3) (a) UNLESS STATUTE PROHIBITS THE EMPLOYMENT OF A PERSON WITH A SPECIFIC CRIMINAL CONVICTION FOR A PARTICULAR POSITION, AN AGENCY SHALL NOT ADVERTISE THE POSITION WITH A STATEMENT THAT A PERSON WITH A CRIMINAL RECORD MAY NOT APPLY FOR THE POSITION OR PLACE ON THE APPLICATION A STATEMENT THAT A PERSON WITH A CRIMINAL RECORD MAY NOT APPLY FOR THE POSITION.

(b) THE AGENCY SHALL NOT PERFORM A BACKGROUND CHECK UNTIL THE AGENCY DETERMINES THAT AN APPLICANT IS A FINALIST OR MAKES A CONDITIONAL OFFER OF EMPLOYMENT TO THE APPLICANT.

(c) IF, AFTER DETERMINING THAT AN APPLICANT IS A FINALIST OR AFTER MAKING A CONDITIONAL OFFER OF EMPLOYMENT TO AN APPLICANT, THE AGENCY DETERMINES THAT THE APPLICANT HAS BEEN ARRESTED OR CHARGED BUT NOT CONVICTED OF A CRIMINAL OFFENSE AND THE CRIMINAL CASE IS NOT ACTIVELY PENDING, THE AGENCY SHALL NOT USE THAT INFORMATION AS A BASIS FOR NOT MAKING AN OFFER OF EMPLOYMENT OR FOR WITHDRAWING THE CONDITIONAL OFFER OF EMPLOYMENT.

(d) IF, AFTER DETERMINING THAT AN APPLICANT IS A FINALIST OR AFTER MAKING A CONDITIONAL OFFER OF EMPLOYMENT TO AN APPLICANT, THE AGENCY DETERMINES THAT THE APPLICANT HAS HAD A CRIMINAL CONVICTION EXPUNGED OR SEALED FROM HIS OR HER RECORD, RECEIVED A PARDON, OR THAT CHARGES WERE DISMISSED PURSUANT TO SUCCESSFULLY COMPLETING A DEFERRED JUDGMENT OR SENTENCE, THE AGENCY SHALL NOT USE THAT INFORMATION AS A BASIS FOR NOT MAKING AN OFFER OF EMPLOYMENT OR FOR WITHDRAWING THE CONDITIONAL OFFER OF EMPLOYMENT UNLESS, AFTER REVIEWING THE FACTORS IN SUBSECTION (4) OF THIS SECTION, THE AGENCY DETERMINES THAT THE APPLICANT SHOULD BE DISQUALIFIED FOR THE POSITION.

(e) NOTHING IN THIS SECTION PREVENTS AN AGENCY FROM

CONSIDERING CRIMINAL HISTORY INFORMATION THAT THE APPLICANT VOLUNTARILY PROVIDES.

(4) IF, AFTER DETERMINING THAT AN APPLICANT IS A FINALIST OR MAKING A CONDITIONAL OFFER OF EMPLOYMENT TO AN APPLICANT, THE AGENCY DETERMINES THAT THE APPLICANT HAS BEEN CONVICTED OF A CRIME, THE AGENCY SHALL CONSIDER THE FOLLOWING FACTORS WHEN DETERMINING WHETHER THE CONVICTION DISQUALIFIES THE APPLICANT FOR THE POSITION:

(a) THE NATURE OF THE CONVICTION;

(b) WHETHER THERE IS A DIRECT RELATIONSHIP BETWEEN THE CONVICTION AND THE POSITION'S DUTIES AND RESPONSIBILITIES AND THE BEARING, IF ANY, THE CONVICTION MAY HAVE ON THE APPLICANT'S FITNESS OR ABILITY TO PERFORM ONE OR MORE SUCH DUTIES AND RESPONSIBILITIES, INCLUDING WHETHER THE CONVICTION WAS FOR UNLAWFUL SEXUAL BEHAVIOR AS LISTED IN SECTION 16-22-102 (9), C.R.S., AND WHETHER THE DUTIES OF EMPLOYMENT WOULD PLACE A CO-WORKER OR THE PUBLIC IN A VULNERABLE POSITION;

(c) ANY INFORMATION PRODUCED BY THE APPLICANT OR PRODUCED ON HIS OR HER BEHALF REGARDING HIS OR HER REHABILITATION AND GOOD CONDUCT; AND

(d) THE TIME THAT HAS ELAPSED SINCE THE CONVICTION.

(5) NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY, THE PROVISIONS OF THIS SECTION APPLY TO THE OFFICE OF THE GOVERNOR.

**SECTION 2.** In Colorado Revised Statutes, 24-34-102, **add** (8.7) as follows:

**24-34-102. Division of registrations - creation - duties of division and department heads - license, registration, or certification renewal, reinstatement, and endorsement - definitions.** (8.7) UNLESS THERE IS A SPECIFIC STATUTORY DISQUALIFICATION THAT PROHIBITS AN APPLICANT FROM OBTAINING LICENSURE BASED ON A CRIMINAL CONVICTION, IF THE LICENSING ENTITY DETERMINES THAT AN APPLICANT FOR LICENSURE HAS A

CRIMINAL RECORD, THE LICENSING ENTITY IS GOVERNED BY SECTION 24-5-101 FOR PURPOSES OF GRANTING OR DENYING LICENSURE OR PLACING ANY CONDITIONS ON LICENSURE.

**SECTION 3. Act subject to petition - effective date.** 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 (August 8, 2012, if adjournment sine die is on May 9, 2012); 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 2012 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

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Frank McNulty  
SPEAKER OF THE HOUSE  
OF REPRESENTATIVES

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Brandon C. Shaffer  
PRESIDENT OF  
THE SENATE

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Marilyn Eddins  
CHIEF CLERK OF THE HOUSE  
OF REPRESENTATIVES

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Cindi L. Markwell  
SECRETARY OF  
THE SENATE

APPROVED \_\_\_\_\_

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John W. Hickenlooper  
GOVERNOR OF THE STATE OF COLORADO