

Second Regular Session
Sixty-eighth General Assembly
STATE OF COLORADO

REENGROSSED

*This Version Includes All Amendments
Adopted in the House of Introduction*

LLS NO. 12-0644.01 Michael Dohr x4347

HOUSE BILL 12-1263

HOUSE SPONSORSHIP

Levy,

SENATE SPONSORSHIP

Steadman,

House Committees
State, Veterans, & Military Affairs

Senate Committees

A BILL FOR AN ACT

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

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>.)

If an agency requires an applicant's criminal history in the hiring process, the agency may not:

- ! Unless a statute prohibits a person convicted of a specific crime from serving in that position, indicate that a person with a criminal record may not apply; and

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.*

HOUSE
3rd Reading Unamended
March 20, 2012

HOUSE
Amended 2nd Reading
March 19, 2012

! Inquire or determine the applicant's criminal history until the agency makes a conditional offer of employment.

If the applicant has a criminal conviction, the agency must consider the following factors when deciding whether the conviction disqualifies the applicant from the position:

! The nature of the conviction;

! The relationship between the conviction and the specific position for hire and the bearing, if any, the conviction will have on his or her fitness or ability to perform the duties and responsibilities;

! Any information produced by the applicant or produced on his or her behalf regarding his or her rehabilitation and good conduct; and

! The time that has elapsed since the applicant's conviction.

The bill specifies that unless the offense is specifically related to the profession being licensed and was committed within ten years of the application for licensure or unless there is a specific statutory requirement to consider an individual's criminal history when granting a state license, such a consideration is unlawful.

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

2 **SECTION 1.** In Colorado Revised Statutes, 24-5-101, **add** (3),
3 (4), and (5) as follows:

4 **24-5-101. Effect of criminal conviction on employment rights.**

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

11 (b) THE AGENCY SHALL NOT PERFORM A BACKGROUND CHECK
12 UNTIL THE AGENCY MAKES A CONDITIONAL OFFER OF EMPLOYMENT TO THE
13 APPLICANT.

14 (c) IF, AFTER MAKING A CONDITIONAL OFFER OF EMPLOYMENT TO

1 AN APPLICANT, THE AGENCY DETERMINES THAT THE APPLICANT HAS BEEN
2 ARRESTED OR CHARGED BUT NOT CONVICTED OF A CRIMINAL OFFENSE, HAS
3 HAD A CRIMINAL CONVICTION EXPUNGED FROM HIS OR HER RECORD, OR
4 HAS COMPLETED A DEFERRED PROSECUTION OR DEFERRED JUDGMENT, THE
5 AGENCY SHALL NOT USE THAT INFORMATION AS A BASIS FOR
6 WITHDRAWING THE CONDITIONAL OFFER OF EMPLOYMENT.

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

12 (a) THE NATURE OF THE CONVICTION;

13 (b) WHETHER THERE IS A DIRECT RELATIONSHIP BETWEEN THE
14 CONVICTION AND THE POSITION'S DUTIES AND RESPONSIBILITIES AND THE
15 BEARING, IF ANY, THE CONVICTION MAY HAVE ON THE APPLICANT'S
16 FITNESS OR ABILITY TO PERFORM ONE OR MORE SUCH DUTIES AND
17 RESPONSIBILITIES, INCLUDING, BUT NOT LIMITED TO, WHETHER THE
18 CONVICTION WAS FOR UNLAWFUL SEXUAL BEHAVIOR AS LISTED IN SECTION
19 16-22-102 (9), C.R.S., AND WHETHER THE EMPLOYMENT WOULD PLACE
20 THE APPLICANT IN CONTACT WITH VULNERABLE PERSONS;

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

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

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

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

3 **24-34-102. Division of registrations - creation - duties of**
4 **division and department heads - license, registration, or certification**
5 **renewal, reinstatement, and endorsement - definitions.** (8.7) AN
6 APPLICANT'S CRIMINAL HISTORY SHALL NOT BE USED AS GROUNDS TO
7 DENY, REVOKE, OR TAKE DISCIPLINARY ACTION AGAINST THE APPLICANT
8 UNLESS:

9 (a) THE OFFENSE IS SPECIFICALLY RELATED TO THE PROFESSION
10 BEING LICENSED AND WAS COMMITTED WITHIN TEN YEARS OF THE
11 APPLICATION FOR LICENSURE; ■

12 (b) THE OFFENSE WAS FOR UNLAWFUL SEXUAL BEHAVIOR AS
13 LISTED IN SECTION 16-22-102 (9), C.R.S., AND THE POSSIBLE EMPLOYMENT
14 THAT MAY BE ATTAINED THROUGH LICENSURE WOULD PLACE THE
15 APPLICANT IN CONTACT WITH VULNERABLE PERSONS; OR

16 (c) THERE IS A SPECIFIC STATUTORY REQUIREMENT TO THE
17 CONTRARY.

18 **SECTION 3. Act subject to petition - effective date.** This act
19 takes effect at 12:01 a.m. on the day following the expiration of the
20 ninety-day period after final adjournment of the general assembly (August
21 8, 2012, if adjournment sine die is on May 9, 2012); except that, if a
22 referendum petition is filed pursuant to section 1 (3) of article V of the
23 state constitution against this act or an item, section, or part of this act
24 within such period, then the act, item, section, or part will not take effect
25 unless approved by the people at the general election to be held in
26 November 2012 and, in such case, will take effect on the date of the
27 official declaration of the vote thereon by the governor.