HOUSE BILL 12-1263

A BILL FOR AN ACT

CONCERNING REDUCING BARRIERS TO EMPLOYMENT BY STATE OF 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
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.

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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), (4), and (5) as follows:

3 24-5-101. Effect of criminal conviction on employment rights.

4 (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.

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

6 (c) IF, 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, HAS
HAD A CRIMINAL CONVICTION EXPUNGED FROM HIS OR HER RECORD, OR
HAS COMPLETED A DEFERRED PROSECUTION OR DEFERRED JUDGMENT, THE
AGENCY SHALL NOT USE THAT INFORMATION AS A BASIS FOR
WITHDRAWING THE CONDITIONAL OFFER OF EMPLOYMENT.

(4) IF, AFTER 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, BUT NOT LIMITED TO, WHETHER THE
CONVICTION WAS FOR UNLAWFUL SEXUAL BEHAVIOR AS LISTED IN SECTION
16-22-102 (9), C.R.S., AND WHETHER THE EMPLOYMENT WOULD PLACE
THE APPLICANT IN CONTACT WITH VULNERABLE PERSONS;

(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) An applicant's criminal history shall not be used as grounds to deny, revoke, or take disciplinary action against the applicant unless:

(a) The offense is specifically related to the profession being licensed and was committed within ten years of the application for licensure;

(b) The offense was for unlawful sexual behavior as listed in section 16-22-102(9), C.R.S., and the possible employment that may be attained through licensure would place the applicant in contact with vulnerable persons; or

(c) There is a specific statutory requirement to the contrary.

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.