PREAMENDED

This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading

LLS NO. 12-0644.01 Michael Dohr x4347   **HOUSE BILL 12-1263**

HOUSE SPONSORSHIP

Levy,

SENATE SPONSORSHIP

Steadman,

House Committees	Senate Committees
State, Veterans, & Military Affairs	

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

! 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),

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

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.

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.