

Second Regular Session
Sixty-eighth General Assembly
STATE OF COLORADO

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
State, Veterans, & Military Affairs

Senate Committees
Judiciary

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, **amend** (1)
3 **(b) (V) and (1) (b) (VI); and add (1) (b) (VII), (3), (4), and (5) as follows:**

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

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

6 **(V) The employment of persons in public or private correctional**
7 **facilities pursuant to the provisions of sections 17-1-109.5 and 17-1-202**
8 **(1) (a) (I) and (1.5), C.R.S., and the employment of persons in public or**
9 **private juvenile facilities pursuant to the provisions of sections**
10 **19-2-403.3 and 19-2-410 (4), C.R.S.; and**

11 **(VI) The employment of persons by the public employees'**
12 **retirement association created pursuant to section 24-51-201 who, upon**
13 **the commencement of that employment, will have access to association**
14 **investment information, association assets, or financial, demographic, or**

1 other information relating to association members or beneficiaries; AND

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

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

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

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

21 (d) IF, AFTER DETERMINING THAT AN APPLICANT IS A FINALIST OR
22 AFTER MAKING A CONDITIONAL OFFER OF EMPLOYMENT TO AN APPLICANT,
23 THE AGENCY DETERMINES THAT THE APPLICANT HAS HAD A CRIMINAL
24 CONVICTION EXPUNGED OR SEALED FROM HIS OR HER RECORD, RECEIVED
25 A PARDON, OR THAT CHARGES WERE DISMISSED PURSUANT TO
26 SUCCESSFULLY COMPLETING A DEFERRED JUDGMENT OR SENTENCE, THE
27 AGENCY SHALL NOT USE THAT INFORMATION AS A BASIS FOR NOT MAKING

1 AN OFFER OF EMPLOYMENT OR FOR WITHDRAWING THE CONDITIONAL
2 OFFER OF EMPLOYMENT UNLESS, AFTER REVIEWING THE FACTORS IN
3 SUBSECTION (4) OF THIS SECTION, THE AGENCY DETERMINES THAT THE
4 APPLICANT SHOULD BE DISQUALIFIED FOR THE POSITION.

5 (e) NOTHING IN THIS SECTION PREVENTS AN AGENCY FROM
6 CONSIDERING CRIMINAL HISTORY INFORMATION THAT THE APPLICANT
7 VOLUNTARILY PROVIDES.

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

14 (a) THE NATURE OF THE CONVICTION;

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

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

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

27 (5) NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE

1 CONTRARY, THE PROVISIONS OF THIS SECTION APPLY TO THE OFFICE OF THE
2 GOVERNOR.

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

5 **24-34-102. Division of registrations - creation - duties of**
6 **division and department heads - license, registration, or certification**
7 **renewal, reinstatement, and endorsement - definitions.** (8.7) UNLESS
8 THERE IS A SPECIFIC STATUTORY DISQUALIFICATION THAT PROHIBITS AN
9 APPLICANT FROM OBTAINING LICENSURE BASED ON A CRIMINAL
10 CONVICTION, IF THE LICENSING ENTITY DETERMINES THAN AN APPLICANT
11 FOR LICENSURE HAS A CRIMINAL RECORD, THE LICENSING ENTITY IS
12 GOVERNED BY SECTION 24-5-101 FOR PURPOSES OF GRANTING OR DENYING
13 LICENSURE OR PLACING ANY CONDITIONS ON LICENSURE. _____

14 **SECTION 3. Act subject to petition - effective date.** This act
15 takes effect at 12:01 a.m. on the day following the expiration of the
16 ninety-day period after final adjournment of the general assembly (August
17 8, 2012, if adjournment sine die is on May 9, 2012); except that, if a
18 referendum petition is filed pursuant to section 1 (3) of article V of the
19 state constitution against this act or an item, section, or part of this act
20 within such period, then the act, item, section, or part will not take effect
21 unless approved by the people at the general election to be held in
22 November 2012 and, in such case, will take effect on the date of the
23 official declaration of the vote thereon by the governor.