

Second Regular Session  
Seventieth General Assembly  
STATE OF COLORADO

**REENGROSSED**

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

LLS NO. 16-0203.02 Jery Payne x2157

**HOUSE BILL 16-1388**

**HOUSE SPONSORSHIP**

**McCann,** Court, Duran, Foote, Kagan, Lebsock, Lee, Melton, Moreno, Salazar, Tyler

**SENATE SPONSORSHIP**

**Merrifield and Guzman,**

**House Committees**

Judiciary  
Appropriations

**Senate Committees**

**A BILL FOR AN ACT**

101 **CONCERNING THE TIMING OF INQUIRING INTO A JOB APPLICANT'S**  
102 **CRIMINAL HISTORY.**

**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>.)*

The bill generally prohibits an employer from:

- ! Advertising that a person with a criminal history may not apply for a position;
  - ! Placing a statement in an employment application that a person with a criminal history may not apply for a position;
- or

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  
April 27, 2016

HOUSE  
Amended 2nd Reading  
April 25, 2016

! Making an inquiry about a candidate's arrests or criminal convictions until the candidate has been offered an interview or a conditional offer of employment.

An employer is exempt from these restrictions when:

! The law forbids a person from being employed on account of a criminal conviction or requires an employer to consider a candidate's criminal history for the job;

! The employer is participating in a program to encourage employment of people with criminal histories; or

! The job requires a fidelity bond and the criminal history would disqualify the candidate.

An employer must keep applications for 9 months. The department of labor and employment will enforce the section with civil penalties. A violation of the restrictions does not create a private cause of action.

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

2 **SECTION 1.** In Colorado Revised Statutes, **add** 8-2-129 as  
3 follows:

4 **8-2-129. Criminal history - limitations on use in hiring or**  
5 **retention - definitions.** (1) **Advertisements - applications.** AN  
6 EMPLOYER SHALL NOT:

7 (a) STATE IN AN ADVERTISEMENT FOR AN EMPLOYMENT POSITION  
8 THAT A PERSON WITH A CRIMINAL HISTORY MAY NOT APPLY FOR THE  
9 POSITION; OR

10 (b) STATE ON ANY FORM OF APPLICATION, INCLUDING ELECTRONIC  
11 APPLICATIONS, FOR AN EMPLOYMENT POSITION THAT A PERSON WITH A  
12 CRIMINAL HISTORY MAY NOT APPLY FOR THE POSITION.

13 (2) **Arrests and convictions.** AN EMPLOYER SHALL NOT INQUIRE  
14 INTO OR REQUIRE DISCLOSURE OF A CANDIDATE'S CRIMINAL HISTORY ON  
15 AN INITIAL APPLICATION UNTIL THE APPLICANT HAS BEEN DETERMINED  
16 QUALIFIED FOR THE POSITION AND NOTIFIED THAT THE APPLICANT HAS  
17 BEEN SELECTED FOR AN INTERVIEW BY THE EMPLOYER OR EMPLOYMENT

1 AGENCY OR, IF THERE IS NOT AN INTERVIEW, UNTIL AFTER A CONDITIONAL  
2 OFFER OF EMPLOYMENT IS MADE TO THE APPLICANT BY THE EMPLOYER OR  
3 EMPLOYMENT AGENCY.

4 (3) **Exceptions.** THIS SECTION DOES NOT APPLY TO A POSITION  
5 BEING OFFERED OR ADVERTISED IF:

6 (a) FEDERAL, STATE, OR LOCAL LAW PROHIBITS THE EMPLOYMENT  
7 OF A PERSON WITH A SPECIFIC CRIMINAL CONVICTION FOR THE POSITION  
8 AND THE EMPLOYER ADVERTISES ABOUT, MAKES A STATEMENT ABOUT, OR  
9 INQUIRES ABOUT THAT SPECIFIC CONVICTION;

10 (b) FEDERAL, STATE, OR LOCAL LAW REQUIRES THE  
11 CONSIDERATION OF A CANDIDATE'S CRIMINAL CONVICTIONS FOR THE  
12 POSITION;

13 (c) THE POSITION IS DESIGNATED BY THE EMPLOYER TO  
14 PARTICIPATE IN A FEDERAL, STATE, OR LOCAL GOVERNMENT PROGRAM TO  
15 ENCOURAGE THE EMPLOYMENT OF PEOPLE WITH CRIMINAL HISTORIES; OR

16 (d) THE POSITION REQUIRES A FIDELITY BOND OR EQUIVALENT  
17 BOND AND A SPECIFIC CRIMINAL CONVICTION WOULD DISQUALIFY THE  
18 APPLICANT FROM OBTAINING OR BEING COVERED BY THE BOND, AND THE  
19 EMPLOYER ADVERTISES ABOUT, MAKES A STATEMENT ABOUT, OR INQUIRES  
20 ABOUT THAT SPECIFIC CONVICTION.

21 (4) **Records.** AN EMPLOYER SHALL RETAIN ANY COMPLETED  
22 EMPLOYMENT APPLICATION FOR AT LEAST NINE MONTHS AFTER ITS  
23 SUBMISSION TO THE EMPLOYER. WITHIN THREE DAYS AFTER THE  
24 DEPARTMENT REQUESTS ACCESS TO AN EMPLOYMENT APPLICATION, AN  
25 EMPLOYER SHALL ALLOW THE DEPARTMENT TO INSPECT THE APPLICATION  
26 AT A REASONABLE TIME AND PLACE.

27 (5) **Enforcement.** (a) THIS SECTION DOES NOT CREATE OR

1 AUTHORIZE A PRIVATE CAUSE OF ACTION BY A PERSON AGGRIEVED BY A  
2 VIOLATION OF THIS SECTION. THE PENALTIES SET FORTH IN THIS  
3 SUBSECTION (5) ARE THE SOLE REMEDY FOR A VIOLATION OF THIS SECTION.  
4 EVIDENCE THAT A PERSON VIOLATED THIS SECTION IS NOT ADMISSIBLE IN  
5 ANY LEGAL PROCEEDING OTHER THAN A PROCEEDING BROUGHT BY THE  
6 DEPARTMENT TO ENFORCE THIS SECTION.

7 (b) A PERSON WHO IS AGGRIEVED BY A VIOLATION OF THIS SECTION  
8 MAY FILE A COMPLAINT WITH THE DEPARTMENT. IF THE DEPARTMENT  
9 RECEIVES A COMPLAINT WITHIN SIX MONTHS AFTER THE ACT THAT IS  
10 ALLEGED TO VIOLATE THIS SECTION OCCURRED, THE DEPARTMENT SHALL  
11 INVESTIGATE THE COMPLAINT UNLESS THE DEPARTMENT DETERMINES  
12 THAT THE COMPLAINT IS WITHOUT MERIT.

13 (c) AN EMPLOYER WHO VIOLATES THIS SECTION IS LIABLE FOR ONE  
14 OF THE FOLLOWING PENALTIES:

15 (I) IF THE EMPLOYER HAS FOURTEEN OR FEWER EMPLOYEES:

16 (A) FOR THE FIRST VIOLATION, A WARNING AND AN ORDER  
17 REQUIRING COMPLIANCE WITHIN THIRTY DAYS;

18 (B) FOR THE SECOND VIOLATION, A CIVIL PENALTY NOT TO EXCEED  
19 FIVE HUNDRED DOLLARS; OR

20 (C) FOR A THIRD OR SUBSEQUENT VIOLATION, A CIVIL PENALTY  
21 NOT TO EXCEED ONE THOUSAND DOLLARS; OR

22 (II) IF THE EMPLOYER HAS MORE THAN FOURTEEN EMPLOYEES:

23 (A) FOR THE FIRST VIOLATION, A WARNING AND AN ORDER  
24 REQUIRING COMPLIANCE WITHIN THIRTY DAYS;

25 (B) FOR THE SECOND VIOLATION, A CIVIL PENALTY NOT TO EXCEED  
26 ONE THOUSAND DOLLARS; OR

27 (C) FOR A THIRD OR SUBSEQUENT VIOLATION, A CIVIL PENALTY

1 NOT TO EXCEED TWO THOUSAND FIVE HUNDRED DOLLARS.

2 (6) **Definitions.** FOR THE PURPOSES OF THIS SECTION:

3 (a) "CRIMINAL HISTORY" MEANS THE RECORD OF ARRESTS,  
4 CHARGES, PLEAS, OR CONVICTIONS FOR A VIOLATION OF ANY FEDERAL,  
5 STATE, OR LOCAL MISDEMEANOR OR FELONY.

6 (b) "DEPARTMENT" MEANS THE DEPARTMENT OF LABOR AND  
7 EMPLOYMENT.

8 (c) (I) "EMPLOYER" MEANS EVERY PERSON, INCLUDING A PUBLIC  
9 SERVICE CORPORATION, MANAGER, OR ASSIGNEE, ASSOCIATION OF  
10 PERSONS, FIRM, AND PRIVATE CORPORATION WHO HAS FOUR OR MORE  
11 PEOPLE REGULARLY ENGAGED IN THE SAME BUSINESS OR EMPLOYMENT IN  
12 SERVICE UNDER A CONTRACT OF HIRE, EXPRESSED OR IMPLIED.

13 (II) "EMPLOYER" DOES NOT INCLUDE A STATE, LOCAL  
14 GOVERNMENTAL, OR QUASI-GOVERNMENTAL ENTITY OR POLITICAL  
15 SUBDIVISION OF THE STATE.

16 **SECTION 2. Act subject to petition - effective date -**  
17 **applicability.** (1) This act takes effect at 12:01 a.m. on the day following  
18 the expiration of the ninety-day period after final adjournment of the  
19 general assembly (August 10, 2016, if adjournment sine die is on May 11,  
20 2016); except that, if a referendum petition is filed pursuant to section 1  
21 (3) of article V of the state constitution against this act or an item, section,  
22 or part of this act within such period, then the act, item, section, or part  
23 will not take effect unless approved by the people at the general election  
24 to be held in November 2016 and, in such case, will take effect on the  
25 date of the official declaration of the vote thereon by the governor.

26 (2) This act applies to acts committed on or after July 1, 2017.