

DRAFT
10.16.09

Second Regular Session
Sixty-seventh General Assembly
STATE OF COLORADO

BILL 2

LLS NO. 10-0238.02 Jane Ritter

INTERIM COMMITTEE BILL

Economic Opportunity Poverty Reduction Task Force

SHORT TITLE: "Employer Liability Negligent Hiring"

DEADLINES: Finalize by: 02/01/10 File by: 02/03/10

A BILL FOR AN ACT

101 **CONCERNING CLARIFYING CIVIL LIABILITY REGARDING NEGLIGENT**
102 **HIRING PRACTICES FOR AN EMPLOYER THAT HIRES A PERSON**
103 **WITH A CRIMINAL RECORD.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments that may be subsequently adopted.)

Economic Opportunity Poverty Reduction Task Force. The bill prohibits information regarding an employee's criminal history from being introduced as evidence in a civil action against an employer if:

- The nature of the criminal history does not bear a direct relationship to the facts underlying the cause of action;
- A court order sealed any record of a criminal case or a

pardon was issued before the occurrence of the civil action;
or

- The record of an arrest or charge did not result in a criminal conviction.

The bill does not eliminate the requirement for criminal history background checks in hiring for certain employment.

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

2 **SECTION 1. Legislative declaration.** (1) The General
3 Assembly hereby finds that:

4 (a) Employers may be reluctant, in part, to hire employees with a
5 criminal record due to a lack of clarity regarding the employer's risk of
6 liability for such hire;

7 (b) Since there is a direct correlation between employment and
8 reduced recidivism, it is in the public interest to clarify employer liability
9 for employers who hire persons with a criminal conviction.

10 (2) Therefore, it is necessary and appropriate for the General
11 Assembly to reduce unnecessary barriers to employment for persons with
12 a criminal conviction and thereby promote economic opportunity, poverty
13 reduction, and public safety in the state of Colorado.

14 **SECTION 2.** 8-2-201, Colorado Revised Statutes, is amended to
15 read:

16 **8-2-201. Damages - fellow servant rule and abolition thereof**
17 **- limitation on admission of criminal history.** (1) Every corporation
18 or individual who employs agents, servants, or employees, such agents,
19 servants, or employees being in the exercise of due care, shall be liable to
20 respond in damages for injuries or death sustained by any such agent,
21 servant, or employee resulting from the carelessness, omission of duty, or
22 negligence of such employer, or which may have resulted from the

1 carelessness, omission of duty, or negligence of any other agent, servant,
2 or employee of the employer, in the same manner and to the same extent
3 as if the carelessness, omission of duty, or negligence causing the injury
4 or death was that of the employer.

5 (2) (a) INFORMATION REGARDING THE CRIMINAL HISTORY OF AN
6 EMPLOYEE OR FORMER EMPLOYEE MAY NOT BE INTRODUCED AS EVIDENCE
7 IN A CIVIL ACTION AGAINST AN EMPLOYER OR ITS EMPLOYEES OR AGENTS
8 THAT IS BASED ON THE CONDUCT OF THE EMPLOYEE OR FORMER EMPLOYEE
9 IF:

10 (I) THE NATURE OF THE CRIMINAL HISTORY DOES NOT BEAR A
11 DIRECT RELATIONSHIP TO THE FACTS UNDERLYING THE CAUSE OF ACTION;
12 OR

13 (II) BEFORE THE OCCURRENCE OF THE ACT GIVING RISE TO THE
14 CIVIL ACTION, A COURT ORDER SEALED ANY RECORD OF THE CRIMINAL
15 CASE OR THE EMPLOYEE OR FORMER EMPLOYEE RECEIVED A PARDON; OR

16 (III) THE RECORD IS OF AN ARREST OR CHARGE THAT DID NOT
17 RESULT IN A CRIMINAL CONVICTION.

18 (b) THIS SUBSECTION (2) DOES NOT SUPERSEDE ANY STATUTORY
19 REQUIREMENT TO CONDUCT A CRIMINAL HISTORY BACKGROUND
20 INVESTIGATION OR CONSIDER CRIMINAL HISTORY RECORDS IN HIRING FOR
21 PARTICULAR TYPES OF EMPLOYMENT.

22 **SECTION 3. Act subject to petition - effective date.** This act
23 shall take effect at 12:01 a.m. on the day following the expiration of the
24 ninety-day period after final adjournment of the general assembly (August
25 11, 2010, if adjournment sine die is on May 12, 2010); except that, if a
26 referendum petition is filed pursuant to section 1 (3) of article V of the
27 state constitution against this act or an item, section, or part of this act

1 within such period, then the act, item, section, or part shall not take effect
2 unless approved by the people at the general election to be held in
3 November 2010 and shall take effect on the date of the official
4 declaration of the vote thereon by the governor. <{*Does the committee*
5 *want a safety clause on this bill?*>