

**First Regular Session
Seventy-first General Assembly
STATE OF COLORADO**

PREAMENDED

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

LLS NO. 17-0776.01 Christy Chase x2008

HOUSE BILL 17-1305

HOUSE SPONSORSHIP

Foote and Melton,

SENATE SPONSORSHIP

Guzman,

House Committees

Judiciary
Appropriations

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING THE TIMING OF AN INQUIRY 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://leg.colorado.gov>.)

The bill applies to employers with 4 or more employees and prohibits those employers 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;

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.*

or

- ! Making an inquiry about an applicant's criminal history on an initial application.

An employer may obtain a job applicant's criminal background report at any point during the hiring process.

An employer is exempt from the restrictions on advertising and initial employment applications when:

- ! The law prohibits a person who has been convicted of a particular crime from being employed in a particular job; or
- ! The employer is participating in a program to encourage employment of people with criminal histories.

The department of labor and employment is charged with enforcing the requirements of the bill and may issue warnings and orders of compliance for violations and, for second or subsequent violations, impose civil penalties. A violation of the restrictions does not create a private cause of action, and the bill does not create a protected class under employment antidiscrimination laws. The department is directed to adopt rules regarding procedures for handling complaints against employers.

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

2 **SECTION 1. Legislative declaration.** (1) The general assembly
3 hereby finds and declares that:

4 (a) Nearly one in three American adults has a criminal history, and
5 in Colorado more than one million five hundred thousand individuals are
6 included in the state criminal record database;

7 (b) Previous involvement with the criminal justice system often
8 creates a significant barrier to employment in that applicants with
9 criminal histories are less likely to be considered for an available job
10 when that information is included on an initial job application;

11 (c) Additionally, revealing a criminal history on an initial job
12 application often results in an applicant's elimination from consideration;

13 (d) Children and families suffer when people with criminal
14 histories are unable to work or work at jobs that are below their potential
15 given their education and skills; people with criminal histories who

1 experience unemployment or underemployment struggle to provide for
2 their families and are more likely to depend on public assistance; and
3 children are less likely to receive financial support in the form of child
4 support when a parent has a criminal history;

5 (e) Removing job barriers for people with criminal histories helps
6 the economy grow;

7 (f) In 2014, unemployment of people with criminal histories cost
8 the United States economy between seventy-eight and eighty-seven
9 billion dollars in annual gross domestic product;

10 (g) Military veterans who have experienced the criminal justice
11 system often face additional hurdles in rejoining the workforce;

12 (h) Providing employment opportunities for people with criminal
13 histories makes our communities safer because when people with criminal
14 histories are gainfully employed, they are significantly less likely to
15 reoffend; and

16 (i) Society expects adults who can work to seek and maintain
17 employment, so it is vital that Coloradans with criminal histories have a
18 chance to rejoin the workforce and become fully contributing members
19 of their communities.

20 (2) It is the intent of the general assembly in enacting the
21 "Colorado Chance to Compete Act" to:

22 (a) Provide people with criminal records with a more meaningful
23 chance to compete for a job in the workforce and grow Colorado's
24 economy;

25 (b) Promote safer communities;

26 (c) Allow employers to have access to complete information about
27 a candidate's criminal history; and

1 (d) Protect an employer's ability to make whatever hiring decision
2 the employer deems appropriate.

3 **SECTION 2.** In Colorado Revised Statutes, **add** 8-2-130 as
4 follows:

5 **8-2-130. Criminal history - limitations on inquiries in**
6 **applications - exceptions - enforcement - rules - short title -**
7 **definitions.** (1) **Short title.** THE SHORT TITLE OF THIS SECTION IS THE
8 "COLORADO CHANCE TO COMPETE ACT".

9 (2) **Definitions.** AS USED IN THIS SECTION:

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

13 (b) "DEPARTMENT" MEANS THE DEPARTMENT OF LABOR AND
14 EMPLOYMENT.

15 (c) (I) "EMPLOYER" MEANS A PERSON THAT REGULARLY ENGAGES
16 THE SERVICES OF FOUR OR MORE INDIVIDUALS TO PERFORM SERVICES OF
17 ANY NATURE. "EMPLOYER" INCLUDES:

18 (A) AN AGENT, REPRESENTATIVE, OR DESIGNEE OF AN EMPLOYER;
19 AND

20 (B) AN EMPLOYMENT AGENCY, AS DEFINED IN SECTION 24-34-401
21 (4).

22 (II) "EMPLOYER" DOES NOT INCLUDE THE STATE, A LOCAL
23 GOVERNMENT, OR A QUASI-GOVERNMENTAL ENTITY OR POLITICAL
24 SUBDIVISION OF THE STATE.

25 (3) **Criminal history information - limits in advertisements**
26 **and applications - permissible uses.** (a) AN EMPLOYER SHALL NOT:

27 (I) STATE IN AN ADVERTISEMENT FOR AN EMPLOYMENT POSITION

1 THAT A PERSON WITH A CRIMINAL HISTORY MAY NOT APPLY FOR THE
2 POSITION;

3 (II) STATE ON ANY FORM OF APPLICATION, INCLUDING ELECTRONIC
4 APPLICATIONS, FOR AN EMPLOYMENT POSITION THAT A PERSON WITH A
5 CRIMINAL HISTORY MAY NOT APPLY FOR THE POSITION; OR

6 (III) INQUIRE INTO, OR REQUIRE DISCLOSURE OF, AN APPLICANT'S
7 CRIMINAL HISTORY ON AN INITIAL APPLICATION.

8 (b) AN EMPLOYER MAY OBTAIN A CRIMINAL BACKGROUND REPORT
9 OF AN APPLICANT DURING ANY STAGE OF THE HIRING PROCESS.

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

12 (a) FEDERAL, STATE, OR LOCAL LAW OR REGULATION PROHIBITS
13 EMPLOYING FOR THAT POSITION A PERSON WITH A SPECIFIC CRIMINAL
14 HISTORY;

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

18 (c) THE EMPLOYER IS REQUIRED BY FEDERAL, STATE, OR LOCAL
19 LAW OR REGULATION TO CONDUCT A CRIMINAL HISTORY RECORD CHECK
20 FOR THAT POSITION.

21 (5) **Enforcement - notice and records retention rules.** (a) THIS
22 SECTION DOES NOT CREATE OR AUTHORIZE A PRIVATE CAUSE OF ACTION
23 BY A PERSON AGGRIEVED BY A VIOLATION OF THIS SECTION AND DOES NOT
24 CREATE A PROTECTED CLASS UNDER SECTION 24-34-402. THE PENALTIES
25 SET FORTH IN THIS SUBSECTION (5) ARE THE SOLE REMEDY FOR A
26 VIOLATION OF THIS SECTION. THE ISSUANCE OF A WARNING, ORDER, OR
27 PENALTY FOR A VIOLATION OF THIS SECTION IS NOT EVIDENCE OF A

1 VIOLATION OF PART 4 OF ARTICLE 34 OF TITLE 24.

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

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

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

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

13 (B) FOR THE SECOND VIOLATION, AN ORDER REQUIRING
14 COMPLIANCE WITHIN THIRTY DAYS AND A CIVIL PENALTY NOT TO EXCEED
15 FIVE HUNDRED DOLLARS; OR

16 (C) FOR A THIRD OR SUBSEQUENT VIOLATION, AN ORDER
17 REQUIRING COMPLIANCE WITHIN THIRTY DAYS AND A CIVIL PENALTY NOT
18 TO EXCEED ONE THOUSAND DOLLARS; OR

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

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

22 (B) FOR THE SECOND VIOLATION, AN ORDER REQUIRING
23 COMPLIANCE WITHIN THIRTY DAYS AND A CIVIL PENALTY NOT TO EXCEED
24 ONE THOUSAND DOLLARS; OR

25 (C) FOR A THIRD OR SUBSEQUENT VIOLATION, AN ORDER
26 REQUIRING COMPLIANCE WITHIN THIRTY DAYS AND A CIVIL PENALTY NOT
27 TO EXCEED TWO THOUSAND FIVE HUNDRED DOLLARS.

1 (d) AN EMPLOYER IS NOT SUBJECT TO PENALTIES FOR A SECOND OR
2 SUBSEQUENT VIOLATION UNDER SUBSECTION (5)(c) OF THIS SECTION
3 UNLESS THE EMPLOYER:

4 (I) FAILED TO COMPLY WITH AN ORDER REQUIRING COMPLIANCE
5 WITHIN THIRTY DAYS AFTER THE DATE OF THE ORDER; OR

6 (II) COMPLIED WITH AN ORDER REQUIRING COMPLIANCE WITHIN
7 THIRTY DAYS THEN COMMITS A VIOLATION OF THIS SECTION MORE THAN
8 THIRTY DAYS AFTER THE ISSUANCE OF THE ORDER.

9 (e) THE DEPARTMENT SHALL ADOPT RULES REGARDING
10 PROCEDURES FOR HANDLING COMPLAINTS FILED AGAINST EMPLOYERS
11 ALLEGING A VIOLATION OF THIS SECTION, INCLUDING:

12 (I) REQUIREMENTS FOR PROVIDING NOTICE TO AN EMPLOYER
13 ALLEGED TO HAVE VIOLATED THIS SECTION; AND

14 (II) REQUIREMENTS FOR RETAINING AND MAINTAINING RELEVANT
15 EMPLOYMENT RECORDS DURING A PENDING INVESTIGATION.

16 **SECTION 3. Act subject to petition - effective date -**
17 **applicability.** (1) This act takes effect January 1, 2018; 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 the ninety-day period after final adjournment of the general
21 assembly, then the act, item, section, or part will not take effect unless
22 approved by the people at the general election to be held in November
23 2018 and, in such case, will take effect on the date of the official
24 declaration of the vote thereon by the governor.

25 (2) This act applies to acts committed on or after July 1, 2018.