

Second Regular Session
Seventy-first General Assembly
STATE OF COLORADO

REREVISED

*This Version Includes All Amendments
Adopted in the Second House*

LLS NO. 18-1124.01 Jerry Barry x4341

HOUSE BILL 18-1418

HOUSE SPONSORSHIP

Weissman,

SENATE SPONSORSHIP

Coram and Kagan,

House Committees
Judiciary

Senate Committees
Finance

A BILL FOR AN ACT

101 **CONCERNING THE USE OF CRIMINAL CONVICTIONS IN EMPLOYMENT.**

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>.)

Current law specifies which public employment positions and public or private professions a person may be denied employment with or licensure of solely because of a criminal conviction. The bill adds professions involving direct contact with persons subject to abuse or mistreatment.

Current law directs a state or local agency, when deciding whether to issue a license or permit, to consider an individual's criminal record in determining whether the individual is of good moral character. The bill

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
*Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.*

SENATE
3rd Reading Unamended
May 8, 2018

SENATE
Amended 2nd Reading
May 7, 2018

HOUSE
3rd Reading Unamended
May 3, 2018

HOUSE
Amended 2nd Reading
May 2, 2018

changes the determination to consider whether the individual is qualified. The bill also prohibits a state or local agency from taking adverse action concerning a license or permit or not extending an offer of employment if an individual has been arrested but not charged, or has been convicted but pardoned, had the conviction record sealed, or had a collateral order entered concerning the conviction.

The bill authorizes the department of regulatory agencies (department) to issue a conditional license to a person who has a criminal conviction and requires the department to delete and keep confidential the conditional designation if the person has no subsequent conviction when applying for renewal or within 2 years unless the department determines that the conditional designation remains necessary.

For sunset review hearings conducted after review by the department, the bill requires the collection of data concerning licensing and registration action taken due to specified criminal justice actions.

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

2 **SECTION 1.** In Colorado Revised Statutes, 24-5-101, **amend**
3 (1)(b)(VII), (2), (3)(c), (4) introductory portion, and (4)(b); repeal (3)(d)
4 and (3)(e) ___ as follows:

5 **24-5-101. Effect of criminal conviction on employment**
6 **rights.** (1) (b) This subsection (1) shall not apply to:

7 (VII) The employment of persons by the department of public
8 safety, and the department of corrections, AND THE DEPARTMENT OF
9 REVENUE.

10 (2) (a) Whenever any state or local agency is required to make a
11 finding that an applicant for a license, certification, permit, or registration
12 is a person of good moral character as a condition to the issuance thereof,
13 OR EVALUATE THE IMPACT OF AN APPLICANT'S CRIMINAL RECORD, the fact
14 that such applicant has, at some time prior thereto, been convicted of a
15 felony or other offense involving moral turpitude, and pertinent
16 circumstances connected with such conviction, shall be given
17 consideration in determining whether, in fact, the applicant is a person of

1 ~~good moral character at the time of the application~~ QUALIFIED. The intent
2 of this section is to expand employment opportunities for persons who,
3 notwithstanding that fact of conviction of an offense, have been
4 rehabilitated and are ready to accept the responsibilities of a law-abiding
5 and productive member of society.

6 (b) IN EVALUATING AN APPLICANT, AN AGENCY SHALL COMPLY
7 WITH SUBSECTION (4) OF THIS SECTION AND SHALL NOT USE THE
8 DETERMINATION OF THE FOLLOWING INFORMATION AS A BASIS FOR DENIAL
9 OR TAKING ADVERSE ACTION AGAINST ANY APPLICANT OTHERWISE
10 QUALIFIED:

11 (I) THE APPLICANT HAS BEEN ARRESTED FOR OR CHARGED WITH
12 BUT NOT CONVICTED OF A CRIMINAL OFFENSE AND THE CRIMINAL CASE IS
13 NOT ACTIVELY PENDING; EXCEPT THAT, AN AGENCY MAY CONSIDER THE
14 CONDUCT UNDERLYING THE ARREST;

15 (II) THE APPLICANT HAS BEEN CONVICTED OF A CRIMINAL OFFENSE
16 BUT PARDONED;

17 (III) THE APPLICANT HAS BEEN CONVICTED OF A CRIMINAL
18 OFFENSE BUT RECORDS OF THE CONVICTION HAVE BEEN SEALED OR
19 EXPUNGED; OR

20 (IV) A COURT HAS ISSUED AN ORDER OF COLLATERAL RELIEF
21 SPECIFIC TO THE CREDENTIAL SOUGHT BY THE APPLICANT.

22 (3) (c) If, after determining that an applicant is a finalist or after
23 making a conditional offer of employment to an applicant, the agency
24 determines that the applicant has ~~been arrested or charged but not~~
25 ~~convicted of a criminal offense and the criminal case is not actively~~
26 ~~pending~~ A CRIMINAL HISTORY, the agency SHALL COMPLY WITH
27 SUBSECTION (4) OF THIS SECTION AND shall not use ~~that~~ THE

1 DETERMINATION OF THE FOLLOWING information as a basis for not making
2 an offer of employment or for withdrawing the conditional offer of
3 employment:

4 (I) THE APPLICANT HAS BEEN ARRESTED FOR OR CHARGED WITH
5 BUT NOT CONVICTED OF A CRIMINAL OFFENSE AND THE CRIMINAL CASE IS
6 NOT ACTIVELY PENDING;

7 (II) THE APPLICANT HAS BEEN CONVICTED OF A CRIMINAL OFFENSE
8 BUT PARDONED;

9 (III) THE APPLICANT HAS BEEN CONVICTED OF A CRIMINAL
10 OFFENSE BUT RECORDS OF THE CONVICTION HAVE BEEN SEALED OR
11 EXPUNGED; OR

12 (IV) A COURT HAS ISSUED AN ORDER OF COLLATERAL RELIEF
13 SPECIFIC TO THE EMPLOYMENT SOUGHT BY THE APPLICANT.

14 ~~(d) If, after determining that an applicant is a finalist or after~~
15 ~~making a conditional offer of employment to an applicant, the agency~~
16 ~~determines that the applicant has had a criminal conviction expunged or~~
17 ~~sealed from his or her record, received a pardon, or that charges were~~
18 ~~dismissed pursuant to successfully completing a deferred judgment or~~
19 ~~sentence, the agency shall not use that information as a basis for not~~
20 ~~making an offer of employment or for withdrawing the conditional offer~~
21 ~~of employment unless, after reviewing the factors in subsection (4) of this~~
22 ~~section, the agency determines that the applicant should be disqualified~~
23 ~~for the position.~~

24 (e) ~~Nothing in this section prevents an agency from considering~~
25 ~~criminal history information that the applicant voluntarily provides.~~

26 (4) Except as provided in subsection (6) of this section, WHEN
27 CONSIDERING AN APPLICANT FOR A LICENSE, CERTIFICATION, PERMIT, OR

1 REGISTRATION PURSUANT TO SUBSECTION (2) OF THIS SECTION OR, if, after
2 determining that an applicant is a finalist or making a conditional offer of
3 employment to an applicant, the agency determines that the applicant has
4 ~~been convicted of a crime~~ A CONVICTION OTHER THAN AS DESCRIBED IN
5 SUBSECTION (2)(b) OR (3)(c) OF THIS SECTION, the agency shall consider
6 the following factors when determining whether the conviction
7 disqualifies the applicant: ~~for the position:~~

8 (b) Whether there is a direct relationship between the conviction
9 and the position's duties and responsibilities and the bearing, if any, the
10 conviction may have on the applicant's fitness or ability to perform one
11 or more such duties and responsibilities, including whether the conviction
12 was for unlawful sexual behavior as listed in section 16-22-102 (9);
13 ~~C.R.S.~~, and whether the duties of employment would place a coworker or
14 the public in a vulnerable position; AND WHETHER THE APPLICANT WILL
15 BE DIRECTLY RESPONSIBLE FOR THE CARE OF INDIVIDUALS SUSCEPTIBLE TO
16 ABUSE OR MISTREATMENT BECAUSE OF THE INDIVIDUAL'S
17 CIRCUMSTANCES, INCLUDING THE INDIVIDUAL'S AGE, DISABILITY, FRAILITY,
18 MENTAL HEALTH DISORDER, DEVELOPMENTAL DISABILITY, OR ILL HEALTH;

19 **SECTION 2.** In Colorado Revised Statutes, 24-34-104, **amend**
20 (6)(b)(IX) as follows:

21 **24-34-104. General assembly review of regulatory agencies**
22 **and functions for repeal, continuation, or reestablishment - legislative**
23 **declaration - repeal.** (6) (b) In the hearings, the determination as to
24 whether an agency has demonstrated a public need for the continued
25 existence of the agency or function and for the degree of regulation it
26 practices is based on the following factors, among others:

27 (IX) Whether the agency through its licensing or certification

1 process imposes any SANCTIONS OR disqualifications on applicants based
2 on past criminal history and, if so, whether the SANCTIONS OR
3 disqualifications serve public safety or commercial or consumer
4 protection interests. To assist in considering this factor, the analysis
5 prepared pursuant to ~~paragraph (a) of subsection (5)~~ SUBSECTION (5)(a)
6 of this section must include data on the number of licenses or
7 certifications that the agency denied BASED ON THE APPLICANT'S CRIMINAL
8 HISTORY, THE NUMBER OF CONDITIONAL LICENSES OR CERTIFICATIONS
9 ISSUED BASED UPON THE APPLICANT'S CRIMINAL HISTORY, AND THE
10 NUMBER OF LICENSES OR CERTIFICATIONS revoked or suspended based on
11 ~~a disqualification and the basis for the disqualification~~ AN INDIVIDUAL'S
12 CRIMINAL CONDUCT. FOR EACH SET OF DATA, THE ANALYSIS MUST
13 INCLUDE THE CRIMINAL OFFENSES THAT LED TO THE SANCTION OR
14 DISQUALIFICATION.

15 **SECTION 3.** In Colorado Revised Statutes, 24-34-107, **add** (5)
16 as follows:

17 **24-34-107. Applications for licenses - authority to suspend**
18 **licenses - rules.** (5) (a) WHEN ANY DIVISION, BOARD, OR AGENCY OF THE
19 DEPARTMENT OF REGULATORY AGENCIES DETERMINES THAT AN
20 INDIVIDUAL APPLYING FOR A LICENSE HAS BEEN CONVICTED OF A CRIME
21 PRIOR TO THE APPLICATION BEING SUBMITTED, IT MAY, SUBJECT TO THE
22 PROVISIONS OF SECTION 24-5-101, ISSUE A CONDITIONAL LICENSE TO THAT
23 INDIVIDUAL.

24 (b) THE INDIVIDUAL MAY REQUEST THAT THE CONDITIONAL
25 DESIGNATION OR ANY RELATED ADVERSE ACTION BE REMOVED A YEAR
26 AFTER THE ISSUANCE OF THE CONDITIONAL LICENSE OR WHEN THE
27 INDIVIDUAL APPLIES FOR RENEWAL OF THE LICENSE, WHICHEVER IS LATER:

1 (I) IF THE INDIVIDUAL REMAINS FREE OF ANY SUBSEQUENT
2 CRIMINAL CONVICTION OR LICENSING SANCTION AFTER THE CONDITIONAL
3 LICENSE IS ISSUED; AND

4 (II) IF THE INDIVIDUAL IS NO LONGER SERVING ANY TERM OF
5 PROBATION OR PAROLE IMPOSED FOR THE CRIMINAL CONVICTION.

6 (c) THE DIVISION, BOARD, OR AGENCY SHALL GRANT THE REQUEST
7 UNLESS IT DETERMINES THAT, UNDER THE PROVISIONS OF SECTION
8 24-5-101, THE CONDITIONAL DESIGNATION REMAINS NECESSARY.

9 (d) IF THE DIVISION, BOARD, OR AGENCY REMOVES THE
10 CONDITIONAL DESIGNATION, IT SHALL MAKE THE ORIGINAL CONDITIONAL
11 DESIGNATION CONFIDENTIAL AND REMOVE FROM THE INDIVIDUAL'S
12 PROFESSIONAL HISTORY ANY REFERENCE TO CRIMES COMMITTED BEFORE
13 THE APPLICATION FOR LICENSURE WAS SUBMITTED, UNLESS THE REMOVAL
14 OR DESIGNATION AS CONFIDENTIAL VIOLATES ANY FEDERAL REPORTING
15 LAW.

16 **SECTION 4. Effective date.** This act takes effect upon passage;
17 except that section 2 of the act takes effect November 1, 2018.

18 **SECTION 5. Safety clause.** The general assembly hereby finds,
19 determines, and declares that this act is necessary for the immediate
20 preservation of the public peace, health, and safety.