

Second Regular Session
Seventy-first General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 18-1124.01 Jerry Barry x4341

HOUSE BILL 18-1418

HOUSE SPONSORSHIP

Weissman,

SENATE SPONSORSHIP

(None),

House Committees
Judiciary

Senate Committees

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.

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) introductory portion, (1)(b)(VI), (1)(b)(VII), (2), (3)(c), and (4)
4 introductory portion; **repeal** (3)(d) and (3)(e); and **add** (1)(b)(VIII) as
5 follows:

6 **24-5-101. Effect of criminal conviction on employment rights.**

7 (1) (b) This subsection (1) ~~shall~~ DOES not apply to:

8 (VI) The employment of persons by the public employees'
9 retirement association created pursuant to section 24-51-201 who, upon
10 the commencement of that employment, will have access to association
11 investment information, association assets, or financial, demographic, or
12 other information relating to association members or beneficiaries; ~~and~~

13 (VII) The employment of persons by the department of public
14 safety and the department of corrections; AND

15 (VIII) THE LICENSURE, CERTIFICATION, PERMITTING, OR
16 REGISTRATION OF PERSONS FOR PROFESSIONS INVOLVING DIRECT CONTACT
17 WITH INDIVIDUALS SUSCEPTIBLE TO ABUSE OR MISTREATMENT BECAUSE

1 OF THE INDIVIDUAL'S CIRCUMSTANCES, INCLUDING BUT NOT LIMITED TO
2 THE INDIVIDUAL'S AGE, DISABILITY, FRAILITY, MENTAL HEALTH DISORDER,
3 DEVELOPMENTAL DISABILITY, OR ILL HEALTH.

4 (2) (a) Whenever any state or local agency is required to make a
5 finding that an applicant for a license, certification, permit, or registration
6 is a person of good moral character as a condition to the issuance thereof,
7 OR EVALUATE THE IMPACT OF AN APPLICANT'S CRIMINAL RECORD, the fact
8 that such applicant has, at some time prior thereto, been convicted of a
9 felony or other offense involving moral turpitude, and pertinent
10 circumstances connected with such conviction, shall be given
11 consideration in determining whether, in fact, the applicant is ~~a person of~~
12 ~~good moral character at the time of the application~~ QUALIFIED. The intent
13 of this section is to expand employment opportunities for persons who,
14 notwithstanding that fact of conviction of an offense, have been
15 rehabilitated and are ready to accept the responsibilities of a law-abiding
16 and productive member of society.

17 (b) IN EVALUATING AN APPLICANT, AN AGENCY SHALL COMPLY
18 WITH SUBSECTION (4) OF THIS SECTION AND SHALL NOT USE THE
19 DETERMINATION OF THE FOLLOWING INFORMATION AS A BASIS FOR DENIAL
20 OR TAKING ADVERSE ACTION AGAINST ANY APPLICANT OTHERWISE
21 QUALIFIED:

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

25 (II) THE APPLICANT HAS BEEN CONVICTED OF A CRIMINAL OFFENSE
26 BUT PARDONED;

27 (III) THE APPLICANT HAS BEEN CONVICTED OF A CRIMINAL

1 OFFENSE BUT RECORDS OF THE CONVICTION HAVE BEEN SEALED OR
2 EXPUNGED; OR

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

5 (3) (c) If, after determining that an applicant is a finalist or after
6 making a conditional offer of employment to an applicant, the agency
7 determines that the applicant has ~~been arrested or charged but not~~
8 ~~convicted of a criminal offense and the criminal case is not actively~~
9 ~~pending~~ A CRIMINAL HISTORY, the agency SHALL COMPLY WITH
10 SUBSECTION (4) OF THIS SECTION AND shall not use ~~that~~ THE
11 DETERMINATION OF THE FOLLOWING information as a basis for not making
12 an offer of employment or for withdrawing the conditional offer of
13 employment:

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

17 (II) THE APPLICANT HAS BEEN CONVICTED OF A CRIMINAL OFFENSE
18 BUT PARDONED;

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

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

24 (d) ~~If, after determining that an applicant is a finalist or after~~
25 ~~making a conditional offer of employment to an applicant, the agency~~
26 ~~determines that the applicant has had a criminal conviction expunged or~~
27 ~~sealed from his or her record, received a pardon, or that charges were~~

1 ~~dismissed pursuant to successfully completing a deferred judgment or~~
2 ~~sentence, the agency shall not use that information as a basis for not~~
3 ~~making an offer of employment or for withdrawing the conditional offer~~
4 ~~of employment unless, after reviewing the factors in subsection (4) of this~~
5 ~~section, the agency determines that the applicant should be disqualified~~
6 ~~for the position.~~

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

9 (4) Except as provided in subsection (6) of this section, WHEN
10 CONSIDERING AN APPLICANT FOR A LICENSE, CERTIFICATION, PERMIT, OR
11 REGISTRATION PURSUANT TO SUBSECTION (2) OF THIS SECTION OR, if, after
12 determining that an applicant is a finalist or making a conditional offer of
13 employment to an applicant, the agency determines that the applicant has
14 ~~been convicted of a crime~~ A CONVICTION OTHER THAN AS DESCRIBED IN
15 SUBSECTION (2)(b) OR (3)(c) OF THIS SECTION, the agency shall consider
16 the following factors when determining whether the conviction
17 disqualifies the applicant: ~~for the position.~~

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

20 **24-34-104. General assembly review of regulatory agencies**
21 **and functions for repeal, continuation, or reestablishment - legislative**
22 **declaration - repeal.** (6) (b) In the hearings, the determination as to
23 whether an agency has demonstrated a public need for the continued
24 existence of the agency or function and for the degree of regulation it
25 practices is based on the following factors, among others:

26 (IX) Whether the agency through its licensing or certification
27 process imposes any SANCTIONS OR disqualifications on applicants based

1 on past criminal history and, if so, whether the SANCTIONS OR
2 disqualifications serve public safety or commercial or consumer
3 protection interests. To assist in considering this factor, the analysis
4 prepared pursuant to ~~paragraph (a) of subsection (5)~~ SUBSECTION (5)(a)
5 of this section must include data on the number of licenses or
6 certifications that the agency denied BASED ON THE APPLICANT'S CRIMINAL
7 HISTORY, THE NUMBER OF CONDITIONAL LICENSES OR CERTIFICATIONS
8 ISSUED BASED UPON THE APPLICANT'S CRIMINAL HISTORY, AND THE
9 NUMBER OF LICENSES OR CERTIFICATIONS revoked or suspended based on
10 ~~a disqualification and the basis for the disqualification~~ AN INDIVIDUAL'S
11 CRIMINAL CONDUCT. FOR EACH SET OF DATA, THE ANALYSIS MUST
12 INCLUDE THE CRIMINAL OFFENSES THAT LED TO THE SANCTION OR
13 DISQUALIFICATION AND WHETHER IT IS APPROPRIATE TO CHANGE ANY
14 MANDATORY COLLATERAL SANCTIONS, AS DEFINED IN SECTION
15 18-1.3-107, TO DISCRETIONARY DISQUALIFICATIONS.

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

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

25 (b) THE INDIVIDUAL MAY REQUEST THAT THE CONDITIONAL
26 DESIGNATION OR ANY RELATED ADVERSE ACTION BE REMOVED A YEAR
27 AFTER THE ISSUANCE OF THE CONDITIONAL LICENSE OR WHEN THE

1 INDIVIDUAL APPLIES FOR RENEWAL OF THE LICENSE, WHICHEVER IS LATER:

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

5 (II) IF THE INDIVIDUAL SUCCESSFULLY COMPLETES ANY TERM OF
6 PROBATION OR PAROLE IMPOSED FOR THE CRIMINAL CONVICTION.

7 (c) THE DIVISION, BOARD, OR AGENCY SHALL GRANT THE REQUEST
8 UNLESS IT DETERMINES THAT, UNDER THE PROVISIONS OF SECTION
9 24-5-101, THE CONDITIONAL DESIGNATION REMAINS NECESSARY.

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

17 **SECTION 4. Safety clause.** The general assembly hereby finds,
18 determines, and declares that this act is necessary for the immediate
19 preservation of the public peace, health, and safety.