

CHAPTER 352

GOVERNMENT - STATE

HOUSE BILL 18-1418

BY REPRESENTATIVE(S) Weissman, Buckner, Coleman, Exum, Herod, Hooton, Jackson, Kennedy, Lee, Lontine, Michaelson Jenet, Pettersen, Roberts, Rosenthal, Salazar, Singer, Young, Duran, Becker J., Gray; also SENATOR(S) Coram and Kagan, Aguilar, Court, Crowder, Donovan, Fenberg, Fields, Garcia, Jones, Kefalas, Merrifield, Moreno, Williams A.

AN ACT**CONCERNING THE USE OF CRIMINAL CONVICTIONS IN EMPLOYMENT.**

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

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

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

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

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

(b) ~~INEVALUATING AN APPLICANT, AN AGENCY SHALL COMPLY WITH SUBSECTION (4) OF THIS SECTION AND SHALL NOT USE THE DETERMINATION OF THE FOLLOWING~~

Capital letters or bold & italic numbers indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

INFORMATION AS A BASIS FOR DENIAL OR TAKING ADVERSE ACTION AGAINST ANY APPLICANT OTHERWISE QUALIFIED:

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

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

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

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

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

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

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

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

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

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

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

(4) Except as provided in subsection (6) of this section, WHEN CONSIDERING AN

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Approved: May 30, 2018