

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

ENGROSSED

*This Version Includes All Amendments Adopted
on Second Reading in the House of Introduction*

LLS NO. 19-0167.01 Yelana Love x2295

HOUSE BILL 19-1025

HOUSE SPONSORSHIP

Melton and Herod,

SENATE SPONSORSHIP

Foote and Rodriguez,

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, AND, IN CONNECTION THEREWITH, MAKING**
103 **AN APPROPRIATION.**

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 prohibits 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 or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.*

HOUSE
Amended 2nd Reading
February 26, 2019

or

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

An employer may obtain a job applicant's criminal history at any time.

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

- ! The law prohibits a person who has a particular criminal history from being employed in a particular job;
- ! The employer is participating in a program to encourage employment of people with criminal histories; or
- ! The employer is required by law to conduct a criminal history record check for the particular position.

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 anti-discrimination 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 history 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

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

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

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

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

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

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

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

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

26 (b) Promote safer communities;

27 (c) Allow employers to have access to complete information about

1 a candidate's criminal history; and

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

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

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

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

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

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

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

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

21 (B) AN EMPLOYMENT AGENCY, AS DEFINED IN SECTION 24-34-401
22 (4).

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

26 (3) **Criminal history information - limits on advertisements**
27 **and applications - permissible uses.** (a) ON AND AFTER SEPTEMBER 1,

1 2019, AN EMPLOYER WITH ELEVEN OR MORE EMPLOYEES, AND ON AND
2 AFTER SEPTEMBER 1, 2021, ALL EMPLOYERS SHALL NOT:

3 (I) STATE IN AN ADVERTISEMENT FOR AN EMPLOYMENT POSITION
4 THAT A PERSON WITH A CRIMINAL HISTORY MAY NOT APPLY FOR THE
5 POSITION;

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

9 (III) INQUIRE INTO, OR REQUIRE DISCLOSURE OF, AN APPLICANT'S
10 CRIMINAL HISTORY ON AN INITIAL WRITTEN OR ELECTRONIC APPLICATION
11 FORM.

12 (b) AN EMPLOYER MAY OBTAIN THE PUBLICLY AVAILABLE
13 CRIMINAL BACKGROUND REPORT OF AN APPLICANT AT ANY TIME.

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

16 (a) FEDERAL, STATE, OR LOCAL LAW OR REGULATION PROHIBITS
17 EMPLOYING FOR THAT POSITION A PERSON WITH A SPECIFIC CRIMINAL
18 HISTORY;

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

22 (c) THE EMPLOYER IS REQUIRED BY FEDERAL, STATE, OR LOCAL
23 LAW OR REGULATION TO CONDUCT A CRIMINAL HISTORY RECORD CHECK
24 FOR THAT POSITION, REGARDLESS OF WHETHER THE POSITION IS FOR AN
25 EMPLOYEE OR AN INDEPENDENT CONTRACTOR.

26 (5) **Enforcement - notice and records retention rules.** (a) THIS
27 SECTION DOES NOT CREATE OR AUTHORIZE A PRIVATE CAUSE OF ACTION

1 BY A PERSON AGGRIEVED BY A VIOLATION OF THIS SECTION AND DOES NOT
2 CREATE A PROTECTED CLASS UNDER SECTION 24-34-402. THE PENALTIES
3 SET FORTH IN THIS SUBSECTION (5) ARE THE SOLE REMEDY FOR A
4 VIOLATION OF THIS SECTION. THE ISSUANCE OF A WARNING, ORDER, OR
5 PENALTY FOR A VIOLATION OF THIS SECTION IS NOT EVIDENCE OF A
6 VIOLATION OF PART 4 OF ARTICLE 34 OF TITLE 24.

7 (b) A PERSON WHO IS AGGRIEVED BY A VIOLATION OF THIS SECTION
8 MAY FILE A COMPLAINT WITH THE DEPARTMENT. IF THE DEPARTMENT
9 RECEIVES A COMPLAINT WITHIN TWELVE MONTHS AFTER THE ACT THAT IS
10 ALLEGED TO VIOLATE THIS SECTION OCCURRED, THE DEPARTMENT SHALL
11 INVESTIGATE THE COMPLAINT UNLESS THE DEPARTMENT DETERMINES
12 THAT THE COMPLAINT IS WITHOUT MERIT.

13 (c) AN EMPLOYER THAT VIOLATES THIS SECTION IS LIABLE FOR ONE
14 OF THE FOLLOWING PENALTIES:

15 (I) FOR THE FIRST VIOLATION, A WARNING AND AN ORDER
16 REQUIRING COMPLIANCE WITHIN THIRTY DAYS;

17 (II) FOR THE SECOND VIOLATION, AN ORDER REQUIRING
18 COMPLIANCE WITHIN THIRTY DAYS AND A CIVIL PENALTY NOT TO EXCEED
19 ONE THOUSAND DOLLARS; OR

20 (III) FOR A THIRD OR SUBSEQUENT VIOLATION, AN ORDER
21 REQUIRING COMPLIANCE WITHIN THIRTY DAYS AND A CIVIL PENALTY NOT
22 TO EXCEED TWO THOUSAND FIVE HUNDRED DOLLARS.

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

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

1 (II) COMPLIED WITH AN ORDER REQUIRING COMPLIANCE WITHIN
2 THIRTY DAYS BUT THEN COMMITTED A VIOLATION OF THIS SECTION MORE
3 THAN THIRTY DAYS AFTER THE ISSUANCE OF THE ORDER.

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

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

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

11 **SECTION 3. Appropriation.** For the 2019-20 state fiscal year,
12 \$38,113 is appropriated to the department of labor and employment for
13 use by the division of labor standards and statistics. This appropriation is
14 from the employment support fund created in section 8-77-109 (1)(b)(I),
15 C.R.S., and is based on an assumption that the division will require an
16 additional 0.6 FTE. To implement this act, the division may use this
17 appropriation for program costs related to labor standards.

18 **SECTION 4. Act subject to petition - effective date -**
19 **applicability.** (1) This act takes effect at 12:01 a.m. on the day following
20 the expiration of the ninety-day period after final adjournment of the
21 general assembly (August 2, 2019, if adjournment sine die is on May 3,
22 2019); except that, if a referendum petition is filed pursuant to section 1
23 (3) of article V of the state constitution against this act or an item, section,
24 or part of this act within such period, then the act, item, section, or part
25 will not take effect unless approved by the people at the general election
26 to be held in November 2020 and, in such case, will take effect on the
27 date of the official declaration of the vote thereon by the governor.

- 1 (2) This act applies to acts committed on or after the applicable
- 2 effective date of this act.