

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

REVISED

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

LLS NO. 19-0405.02 Conrad Imel x2313

SENATE BILL 19-170

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A BILL FOR AN ACT

101 **CONCERNING AN INQUIRY INTO A COLLEGE APPLICANT'S**
102 **NONACADEMIC CONDUCT PRIOR TO ADMISSION.**

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 a state institution of higher education (institution) from inquiring about an applicant's criminal history, or disciplinary history at an elementary, secondary, or postsecondary institution (disciplinary history), prior to admission; except that the institution may inquire about any pending criminal charges against the applicant and an applicant's prior convictions or disciplinary history for

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
2nd Reading Unamended
April 18, 2019

SENATE
3rd Reading Unamended
April 8, 2019

SENATE
Amended 2nd Reading
April 5, 2019

stalking, sexual assault, and domestic violence.

An institution that accepts a form of application that may be used to apply to other institutions of higher education is prohibited from considering any criminal or disciplinary history information provided on that application that the institution is prohibited from inquiring into on its own application. An institution that accepts a form of application that is designed by a national application service, tailored for admission to a specific degree program, and used in other states may consider criminal history information provided on that application.

An institution's review of an otherwise qualified applicant's disclosed criminal history or disciplinary history must be made in a reasonable amount of time. An institution must provide an appeals process for an otherwise qualified applicant denied admission based on the applicant's criminal or disciplinary history.

An institution is required to post its policies regarding inquiries into an applicant's criminal and disciplinary history on its website and file such policies with the Colorado commission on higher education (commission). An institution must notify the commission at least 30 days before making any changes to such policies.

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

2 **SECTION 1. Short title.** The short title of this act is the
3 **"Ensuring Access to Higher Education Act"**.

4 **SECTION 2.** In Colorado Revised Statutes, **add** 23-5-106.5 as
5 follows:

6 **23-5-106.5. Authority of governing boards - student**
7 **applications - criminal and disciplinary history inquiry - exceptions**
8 **- definitions.** (1) FOR THE PURPOSES OF THIS SECTION, UNLESS THE
9 CONTEXT OTHERWISE REQUIRES:

10 (a) "ACADEMIC INSTITUTION" MEANS ANY ELEMENTARY OR
11 SECONDARY SCHOOL OR ANY POSTSECONDARY EDUCATION INSTITUTION.

12 (b) "CONVICTION" MEANS A CONVICTION BY A JURY VERDICT OR
13 BY ENTRY OF A VERDICT OR ACCEPTANCE OF A GUILTY PLEA OR A PLEA OF
14 NOLO CONTENDERE BY A COURT. "CONVICTION" DOES NOT INCLUDE A

1 PLEA TO A DEFERRED JUDGMENT AND SENTENCE UNTIL THE DEFERRED
2 JUDGMENT AND SENTENCE IS REVOKED.

3 (c) "STATE INSTITUTION OF HIGHER EDUCATION" MEANS A STATE
4 INSTITUTION OF HIGHER EDUCATION AS DEFINED IN SECTION 23-18-102
5 (10).

6 (2) (a) EXCEPT AS PROVIDED IN SUBSECTION (3) OF THIS SECTION,
7 THE GOVERNING BOARD OF ANY STATE INSTITUTION OF HIGHER
8 EDUCATION SHALL NOT INQUIRE INTO, OR REQUIRE DISCLOSURE OF, AN
9 APPLICANT'S CRIMINAL HISTORY, OR DISCIPLINARY HISTORY AT ANOTHER
10 ACADEMIC INSTITUTION, ON ANY FORM OF APPLICATION, INCLUDING
11 ELECTRONIC APPLICATIONS, FOR ADMISSION TO THE STATE INSTITUTION OF
12 HIGHER EDUCATION.

13 (b) THE APPLICATION OR INSTRUCTIONS FOR THE APPLICATION FOR
14 ADMISSION TO A STATE INSTITUTION OF HIGHER EDUCATION MUST INFORM
15 AN APPLICANT OF THE APPLICANT'S RIGHTS PURSUANT TO THIS SECTION,
16 INCLUDING THE RIGHT TO APPEAL A DECISION MADE BASED ON ANY
17 INFORMATION REQUIRED TO BE DISCLOSED PURSUANT TO SUBSECTION (3)
18 OF THIS SECTION, AND THAT, PURSUANT TO SECTION 24-72-702, THE
19 APPLICANT IS NOT REQUIRED TO DISCLOSE ANY INFORMATION CONTAINED
20 IN SEALED RECORDS.

21 (c) (I) A STATE INSTITUTION OF HIGHER EDUCATION THAT ACCEPTS
22 A FORM OF APPLICATION THAT MAY ALSO BE USED TO APPLY FOR
23 ADMISSION TO ANY OTHER INSTITUTION OF HIGHER EDUCATION SHALL NOT
24 CONSIDER ANY INFORMATION PROVIDED BY THE STUDENT ON THAT
25 APPLICATION THAT THE STATE INSTITUTION OF HIGHER EDUCATION IS
26 PROHIBITED FROM INQUIRING INTO PURSUANT TO THIS SECTION.

27 (II) NOTWITHSTANDING ANY PROVISION OF THIS SECTION, A STATE

1 INSTITUTION OF HIGHER EDUCATION MAY CONSIDER CRIMINAL CONVICTION
2 HISTORY IF INFORMATION PERTAINING TO SUCH HISTORY IS PROVIDED ON
3 AN APPLICATION THAT IS DESIGNED BY A NATIONAL APPLICATION SERVICE,
4 TAILORED FOR ADMISSION TO A SPECIFIC DEGREE PROGRAM, AND USED BY
5 POSTSECONDARY EDUCATION INSTITUTIONS IN OTHER STATES. AN
6 APPLICANT DENIED ADMISSION BASED ON INFORMATION PROVIDED ON AN
7 APPLICATION PURSUANT TO THIS SUBSECTION (2)(c)(II) THAT AN
8 INSTITUTION WOULD OTHERWISE BE PROHIBITED FROM INQUIRING INTO
9 PURSUANT TO THIS SECTION HAS THE RIGHT TO APPEAL THAT DECISION
10 PURSUANT TO SUBSECTION (4)(b) OF THIS SECTION.

11 (d) EXCEPT AS AUTHORIZED PURSUANT TO ANY OTHER SECTION OF
12 LAW, THE GOVERNING BOARD OF ANY STATE INSTITUTION OF HIGHER
13 EDUCATION MAY NOT OBTAIN THE CRIMINAL HISTORY, OR DISCIPLINARY
14 HISTORY AT ANOTHER ACADEMIC INSTITUTION, OF AN APPLICANT AT ANY
15 TIME PRIOR TO ADMITTING THE APPLICANT.

16 (e) A STATE INSTITUTION OF HIGHER EDUCATION MAY NOT USE AS
17 THE BASIS FOR REJECTION OF AN APPLICANT ANY INFORMATION THAT THE
18 INSTITUTION IS PROHIBITED FROM COLLECTING PURSUANT TO THIS
19 SECTION, REGARDLESS OF HOW THAT INFORMATION IS OBTAINED.

20 (3) NOTWITHSTANDING ANY REQUIREMENT IN THIS SECTION, THE
21 GOVERNING BOARD OF A STATE INSTITUTION OF HIGHER EDUCATION, ON
22 ANY FORM OF APPLICATION FOR ADMISSION, MAY INQUIRE INTO ANY OF
23 THE FOLLOWING:

24 (a) AN APPLICANT'S PRIOR CONVICTIONS FOR STALKING, SEXUAL
25 ASSAULT, AND DOMESTIC VIOLENCE;

26 (b) AN APPLICANT'S PRIOR CONVICTIONS, WITHIN FIVE YEARS
27 BEFORE SUBMITTING THE APPLICATION, FOR ASSAULT, KIDNAPPING,

1 VOLUNTARY MANSLAUGHTER, OR MURDER;

2 (c) AN APPLICANT'S PRIOR DISCIPLINARY HISTORY AT ANOTHER
3 ACADEMIC INSTITUTION FOR STALKING, SEXUAL ASSAULT, AND DOMESTIC
4 VIOLENCE;

5 (d) ANY CRIMINAL CHARGES PENDING AGAINST THE APPLICANT;
6 AND

7 (e) AN APPLICANT'S EDUCATIONAL RECORDS RELATED TO
8 ACADEMIC PERFORMANCE.

9 (4) (a) ANY ADDITIONAL REVIEW BY A STATE INSTITUTION OF
10 HIGHER EDUCATION OF AN OTHERWISE QUALIFIED APPLICANT BASED ON
11 INFORMATION PROVIDED BY THE APPLICANT PURSUANT TO SUBSECTION (3)
12 OF THIS SECTION MUST BE COMPLETED WITHIN A REASONABLE PERIOD OF
13 TIME.

14 (b) AN APPLICANT DENIED ADMISSION BASED ON INFORMATION
15 PROVIDED BY THE APPLICANT PURSUANT TO SUBSECTION (2)(c)(II) OR (3)
16 OF THIS SECTION HAS THE RIGHT TO APPEAL THAT DECISION WITHIN THE
17 STATE INSTITUTION OF HIGHER EDUCATION. THE GOVERNING BOARD OF
18 EACH STATE INSTITUTION OF HIGHER EDUCATION SHALL ADOPT POLICIES
19 AND PROCEDURES FOR APPEALS MADE PURSUANT TO THIS SECTION.

20 (5) EACH STATE INSTITUTION OF HIGHER EDUCATION SHALL
21 PUBLISH ANY POLICY ENACTED PURSUANT TO THIS SECTION ON THE
22 INSTITUTION'S PUBLICLY ACCESSIBLE WEBSITE AND SHALL FILE SUCH
23 POLICIES WITH THE COMMISSION. A STATE INSTITUTION OF HIGHER
24 EDUCATION SHALL NOTIFY THE COMMISSION AT LEAST THIRTY DAYS
25 BEFORE ENACTING ANY CHANGE TO A POLICY FILED WITH THE
26 COMMISSION.

27 (6) NOTHING IN THIS SECTION PROHIBITS A STATE INSTITUTION OF

1 HIGHER EDUCATION FROM PROVIDING AN APPLICANT WITH INFORMATION
2 OR COUNSELING CONCERNING LICENSURE IN A PROFESSION THAT MAY
3 RESULT FROM A COURSE OF STUDY.

4 (7) A STATE INSTITUTION OF HIGHER EDUCATION MAY INQUIRE
5 INTO AN ADMITTED APPLICANT'S CRIMINAL HISTORY WHEN OBTAINING
6 INFORMATION PERTAINING TO PARTICIPATION IN CAMPUS LIFE OR STUDENT
7 HOUSING. IF AN INSTITUTION ELECTS TO MAKE SUCH INQUIRIES, THE
8 INSTITUTION SHALL CONSIDER THE FOLLOWING:

9 (a) THE NATURE AND GRAVITY OF ANY CRIMINAL CONDUCT AND
10 WHETHER IT BEARS A DIRECT RELATIONSHIP TO A PARTICULAR ASPECT OF
11 A STUDENT'S PARTICIPATION IN CAMPUS LIFE, INCLUDING BUT NOT LIMITED
12 TO CAMPUS RESIDENCY AND CAMPUS ACTIVITIES;

13 (b) THE TIME THAT HAS PASSED SINCE THE OCCURRENCE OF ANY
14 CRIMINAL CONDUCT;

15 (c) THE AGE OF THE STUDENT AT THE TIME OF THE CONDUCT
16 UNDERLYING A CRIMINAL CONVICTION;

17 (d) ANY EVIDENCE OF REHABILITATION OR GOOD CONDUCT
18 PRODUCED BY THE STUDENT; AND

19 (e) THE BENEFIT TO THE STUDENT OF PARTICIPATING IN CAMPUS
20 LIFE.

21 **SECTION 3. Act subject to petition - effective date.** This act
22 takes effect May 1, 2020; except that, if a referendum petition is filed
23 pursuant to section 1 (3) of article V of the state constitution against this
24 act or an item, section, or part of this act within the ninety-day period
25 after final adjournment of the general assembly, then the act, item,
26 section, or part will not take effect unless approved by the people at the

1 general election to be held in November 2020 and, in such case, will take
2 effect on the date of the official declaration of the vote thereon by the
3 governor.