



Legislative
Council Staff

Nonpartisan Services for Colorado's Legislature

HB 19-1025

**FINAL
FISCAL NOTE**

Drafting Number:	LLS 19-0167	Date:	August 19, 2019
Prime Sponsors:	Rep. Melton; Herod Sen. Foote; Rodriguez	Bill Status:	Signed into Law
		Fiscal Analyst:	Clare Pramuk 303-866-2677 clare.pramuk@state.co.us

Bill Topic: LIMITS ON JOB APPLICANT CRIMINAL HISTORY INQUIRIES

Summary of Fiscal Impact:	<input checked="" type="checkbox"/> State Revenue (<i>minimal</i>)	<input checked="" type="checkbox"/> TABOR Refund (<i>minimal</i>)
	<input checked="" type="checkbox"/> State Expenditure	<input type="checkbox"/> Local Government
	<input type="checkbox"/> State Transfer	<input type="checkbox"/> Statutory Public Entity

This bill prohibits an employer from preventing a person with a criminal history from applying for a job or from requiring disclosure of an applicant's criminal history on an initial application. The bill increases revenue and expenditures for the Department of Labor and Employment on an ongoing basis.

Appropriation Summary: For FY 2019-20, the bill requires an appropriation of \$38,114 to the Department of Labor and Employment.

Fiscal Note Status: The fiscal note reflects the enacted bill.

**Table 1
State Fiscal Impacts Under HB 19-1025**

		FY 2019-20	FY 2020-21
Revenue		-	-
Expenditures	Cash Funds	\$38,114	\$28,661
	Centrally Appropriated	\$8,314	\$7,003
	Total	\$46,428	\$35,664
	Total FTE	0.6 FTE	0.5 FTE
Transfers		-	-
TABOR Refund		-	-

Summary of Legislation

Beginning September 1, 2019, for an employer with eleven or more employees, and September 1, 2021, for all employers, this bill prohibits an employer from stating in a job posting or on any form of application that a person with a criminal history may not apply. It also prohibits an employer from inquiring into or requiring disclosure of an applicant's criminal history on an initial application. These rules do not apply if an employer is advertising a position that federal, state, or local law prohibits individuals with specific criminal convictions from holding. The bill does not apply to the state, a local government, or a quasi-governmental entity, or a political subdivision of the state. The bill also exempts any employer hiring as part of a program to encourage the employment of people with criminal histories. An employer may continue to obtain a criminal background report during any stage of the hiring process.

The bill does not create a protected class under employment anti-discrimination laws or a private cause of action. All complaints alleging a violation of these rules must be filed with the Colorado Department of Labor and Employment (CDLE). CDLE must investigate any complaint received within 12 months of the alleged violation, unless the department deems the complaint to be without merit. An employer who violates the law is subject to an order requiring compliance within 30 days and the following penalties:

- first violation: a warning;
- second violation: a civil penalty of up to \$1,000; and
- third or subsequent violation: a civil penalty of up to \$2,500.

CDLE must adopt rules regarding procedures for handling complaints filed against employers, including rules for providing notice to employers and requirements for retaining and maintaining relevant employment records during an investigation.

State Revenue

This bill may increase revenue from penalties levied against employers that do not comply with a compliance order for a second violation or subsequent violations. No fund is identified for deposit of fines collected, so the fiscal note assumes that any revenue will be deposited into the General Fund. Fine revenue collected will be subject to TABOR.

State Expenditures

This bill will increase expenditures for the CDLE by \$46,428 and 0.6 FTE in FY 2019-20 and \$35,664 and 0.5 FTE in FY 2020-21 and thereafter from the Employment Support Fund to implement and enforce the provisions of the bill. These costs are shown in Table 2 and described below.

Department of Labor and Employment. The fiscal note assumes that the Division of Labor Standards and Statistics in the CDLE will see an increase of between 10 to 20 complaints per month. Because the bill applies to actions committed on or after the effective date, the division will need to develop rules in a compressed time frame in order to have policies in place for addressing complaints. The fiscal note includes one-time funding for 0.1 FTE of a compliance investigator II. CDLE will require 20 hours of legal services for rulemaking, provided by the Department of Law. This minimal increase in legal services costs will be accounted for through the annual budget process, with the Department of Law billing CDLE based on its historical utilization of legal

services. The division requires 0.5 FTE of a compliance investigator I beginning in FY 2019-20 to investigate and resolve complaints. The costs have been prorated to reflect the bill's effective date and includes standard operating and first-year capital outlay costs.

Table 2
Expenditures Under HB 19-1025

	FY 2019-20	FY 2020-21
Department of Labor and Employment		
Personal Services	\$32,841	\$28,186
Operating Expenses and Capital Outlay	\$5,273	\$475
Centrally Appropriated Costs*	\$8,314	\$7,003
Total Cost	\$46,428	\$35,664
Total FTE	0.6 FTE	0.5 FTE

* Centrally appropriated costs are not included in the bill's appropriation.

TABOR refund. To the extent this bill increases fines paid by employer, the bill will increase state General Fund obligations for TABOR refunds in FY 2019-20. Under current law and the December 2018 forecast, the bill will correspondingly increase the amount refunded to taxpayers via sales tax refunds on income tax returns for tax year 2020. The state is not expected to collect a TABOR surplus in FY 2020-21.

Centrally appropriated costs. Pursuant to a Joint Budget Committee policy, certain costs associated with this bill are addressed through the annual budget process and centrally appropriated in the Long Bill or supplemental appropriations bills, rather than in this bill. These costs, which include employee insurance and supplemental employee retirement payments, are estimated to be \$8,314 in FY 2019-20 and \$7,003 in FY 2020-21.

Effective Date

The bill was signed into law by the Governor on May 28, 2019, and took effect August 2, 2019.

State Appropriations

For FY 2019-20, the bill requires an appropriation of \$38,114 from the Employment Support Fund and an allocation of 0.6 FTE to the Department of Labor and Employment.

Departmental Difference

The CDLE estimates that this bill requires 0.8 FTE beginning in FY 2019-20 to investigate a greater number of new complaints as a result of this bill than assumed by the fiscal note. The fiscal note estimate is based on the complexity of complaints and the number of complaints received in other states with similar laws in place. The difference in expenditures is an additional \$18,879 in FY 2019-20 and \$18,323 in FY 2020-21. If the number of complaints exceed those that can be processed by the 0.5 FTE compliance investigator included in the fiscal note, it is expected that CDLE will request additional funding during the annual budget process.

State and Local Government Contacts

Information Technology Labor Law