

Second Regular Session
Seventy-third General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 22-0422.02 Kristen Forrestal x4217

HOUSE BILL 22-1098

HOUSE SPONSORSHIP

Bird and Bacon,

SENATE SPONSORSHIP

(None),

House Committees
Business Affairs & Labor

Senate Committees

A BILL FOR AN ACT

101 CONCERNING THE ELIMINATION OF BARRIERS TO OBTAINING
102 AUTHORITY TO PRACTICE AN OCCUPATION BASED ON AN
103 INDIVIDUAL'S CRIMINAL HISTORY RECORD.

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 requires the director of the division of professions and occupations (director) in the department of regulatory agencies (division) to complete an audit of the regulated professions and occupations and the regulation of various professions and occupations by regulators of a specific profession or occupation (regulator) to determine what barriers

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.

exist for licensing, certification, and registration of individuals with criminal history records and report the findings to the general assembly.

The bill limits the authority of a regulator to deny a license, certification, or registration based on an applicant's criminal history record to circumstances when the regulator determines that the applicant's criminal history record jeopardizes the applicant's ability to competently, safely, and honestly practice the regulated profession or occupation as authorized under the applicable practice act or issuance of the credential would not serve public safety or commercial or consumer protection interests. A regulator is required to specify the reasons for any denial based on a criminal history record.

The bill allows a regulator to grant a conditional license, certification, or registration to an applicant if the regulator determines that the applicant will have appropriate oversight provided by the applicant's employer.

Upon request of an individual with a criminal history record, the bill requires a regulator to issue a pre-determination letter to the individual advising the individual if the criminal history may prevent the individual from receiving a license, certification, or registration to practice an occupation or profession. A regulator may charge a reasonable fee for the pre-determination letter.

The director is required to compile de-identified information regarding the reasons why a license, certification, or registration was denied and make this information available to the public on the division's website.

The bill requires state and local agencies responsible for issuing occupational or professional credentials (occupational agency), before making a final determination that an applicant's criminal conviction disqualifies the applicant from receiving a license, certification, permit, or registration, to provide a written notice to the applicant specifying the reason for the disqualification and the right of the applicant to submit additional evidence for the occupational agency to consider before making a final determination. A final determination to disqualify an applicant based on a criminal conviction must be issued in writing and include notice of the applicant's right to appeal the determination and the earliest date on which the applicant may reapply.

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

2 **SECTION 1.** In Colorado Revised Statutes, **add** 12-20-205 as
3 follows:

4 **12-20-205. Director - audit of practice acts - barriers to**

1 **practice - criminal history records - report - denial of license,**
2 **certification, registration - pre-determination based on criminal**
3 **history.** (1) ON OR BEFORE FEBRUARY 1, 2023, THE DIRECTOR SHALL
4 COMPLETE AN AUDIT OF THE PRACTICE ACTS IN THIS TITLE 12 AND THE
5 REGULATION OF VARIOUS PROFESSIONS AND OCCUPATIONS BY
6 REGULATORS PURSUANT TO THIS TITLE 12 TO DETERMINE WHETHER A
7 BARRIER TO PROFESSIONAL LICENSING, CERTIFICATION, OR REGISTRATION
8 EXISTS DUE TO AN APPLICANT'S CRIMINAL HISTORY RECORD. THE
9 DIRECTOR SHALL REPORT THE FINDINGS TO THE SENATE BUSINESS, LABOR,
10 AND TECHNOLOGY COMMITTEE AND THE HOUSE OF REPRESENTATIVES
11 BUSINESS AFFAIRS AND LABOR COMMITTEE, OR THEIR SUCCESSOR
12 COMMITTEES. THE REPORT SHALL INCLUDE:

13 (a) THE BARRIERS THAT EXIST TO LICENSING, CERTIFICATION, OR
14 REGISTRATION DUE TO A CRIMINAL HISTORY RECORD;

15 (b) LEGISLATIVE RECOMMENDATIONS REGARDING WHETHER ANY
16 BARRIERS SHOULD BE REMOVED OR CHANGED PURSUANT TO A BILL OF THE
17 GENERAL ASSEMBLY; AND

18 (c) THE NUMBER OF LICENSES, CERTIFICATIONS, OR REGISTRATIONS
19 THAT WERE DENIED IN THE PRIOR CALENDAR YEAR DUE TO A CRIMINAL
20 HISTORY RECORD AND THE SPECIFIC REASONS FOR EACH DENIAL.

21 (2) (a) A REGULATOR MAY ONLY DENY A LICENSE, CERTIFICATION,
22 OR REGISTRATION BASED ON AN APPLICANT'S CRIMINAL HISTORY RECORD
23 IF THE REGULATOR DETERMINES THAT:

24 (I) THE APPLICANT'S CRIMINAL HISTORY RECORD JEOPARDIZES THE
25 APPLICANT'S ABILITY TO COMPETENTLY, SAFELY, AND HONESTLY PRACTICE
26 THE REGULATED PROFESSION OR OCCUPATION AS AUTHORIZED UNDER THE
27 APPLICABLE PRACTICE ACT; OR

1 (II) DUE TO THE APPLICANT'S CRIMINAL HISTORY RECORD, THE
2 ISSUANCE OF THE CREDENTIAL WOULD NOT SERVE PUBLIC SAFETY OR
3 COMMERCIAL OR CONSUMER PROTECTION INTERESTS.

4 (b) IF THE REGULATOR DENIES A LICENSE, CERTIFICATION, OR
5 REGISTRATION BASED ON THE APPLICANT'S CRIMINAL HISTORY RECORD,
6 THE REGULATOR SHALL DOCUMENT THE RATIONALE FOR THE DENIAL AND
7 RECOMMENDATIONS, IF ANY, THAT THE REGULATOR HAS FOR THE
8 APPLICANT TO CHANGE THE OUTCOME OF THE APPLICATION AND SUBMIT
9 THE RATIONALE IN WRITING TO THE APPLICANT.

10 (c) A REGULATOR MAY GRANT A CONDITIONAL LICENSE,
11 CERTIFICATION, OR REGISTRATION TO AN APPLICANT WITH A CRIMINAL
12 HISTORY RECORD IF THE APPLICANT WILL HAVE APPROPRIATE OVERSIGHT
13 PROVIDED BY THE APPLICANT'S EMPLOYER, AS DETERMINED BY THE
14 REGULATOR.

15 (3) UPON REQUEST OF AN INDIVIDUAL WHO HAS A CRIMINAL
16 HISTORY RECORD, A REGULATOR SHALL PROVIDE THE INDIVIDUAL WITH A
17 PRE-DETERMINATION LETTER THAT ADVISES THE INDIVIDUAL AS TO
18 WHETHER THE INDIVIDUAL WOULD QUALIFY FOR LICENSURE,
19 CERTIFICATION, OR REGISTRATION BASED UPON THE INDIVIDUAL'S
20 CRIMINAL HISTORY RECORD IF THE INDIVIDUAL WILL BE ABLE TO MEET ALL
21 OTHER REQUIREMENTS FOR LICENSURE, CERTIFICATION, OR REGISTRATION
22 AT THE TIME OF THE INDIVIDUAL'S APPLICATION. THE ASSESSMENT SHALL
23 INCLUDE WHAT BARRIERS EXIST, IF ANY, AND IF THERE IS ANY ACTION THE
24 INDIVIDUAL MAY TAKE TO REMOVE THE BARRIERS. EACH REGULATOR MAY
25 CHARGE A REASONABLE FEE AS DETERMINED BY THE APPLICABLE
26 REGULATOR FOR THE COSTS OF MAKING A DETERMINATION.

27 (4) THE DIRECTOR SHALL COMPILE DE-IDENTIFIED INFORMATION

1 REGARDING THE REASONS WHY A LICENSE, CERTIFICATION, OR
2 REGISTRATION WAS DENIED, IF THE REASON WAS DUE TO THE APPLICANT'S
3 CRIMINAL HISTORY RECORD, AND MAKE THIS INFORMATION AVAILABLE TO
4 THE PUBLIC ON THE DIVISION'S WEBSITE.

5 **SECTION 2.** In Colorado Revised Statutes, 24-5-101, **add** (7),
6 (8), and (9) as follows:

7 **24-5-101. Effect of criminal conviction on employment rights**
8 **- fee - determination.** (7) BEFORE A STATE OR LOCAL AGENCY MAKES A
9 FINAL DETERMINATION THAT A CRIMINAL CONVICTION DISQUALIFIES AN
10 APPLICANT FROM RECEIVING A LICENSE, CERTIFICATION, PERMIT, OR
11 REGISTRATION, THE AGENCY SHALL PROVIDE THE APPLICANT WITH
12 WRITTEN NOTICE THAT DESCRIBES:

13 (a) THE SPECIFIC CONVICTION THAT IS THE BASIS FOR THE
14 DISQUALIFICATION;

15 (b) THE REASONS THE CONVICTION WAS DETERMINED TO BE
16 DISQUALIFYING, INCLUDING FINDINGS FOR EACH OF THE FACTORS IN
17 SUBSECTION (4) OF THIS SECTION THAT THE AGENCY DEEMED RELEVANT
18 TO THE DETERMINATION; AND

19 (c) THE RIGHT TO SUBMIT ADDITIONAL EVIDENCE RELEVANT TO
20 EACH OF THE FACTORS LISTED IN SUBSECTION (4) OF THIS SECTION WITHIN
21 THIRTY DAYS, WHICH A STATE OR LOCAL AGENCY SHALL CONSIDER BEFORE
22 ISSUING A FINAL DETERMINATION.

23 (8) A STATE OR LOCAL AGENCY THAT MAKES A FINAL
24 DETERMINATION THAT A CRIMINAL CONVICTION WILL PREVENT AN
25 APPLICANT FROM RECEIVING A LICENSE, CERTIFICATION, PERMIT, OR
26 REGISTRATION SHALL ISSUE THE DETERMINATION IN WRITING AND SHALL
27 INCLUDE NOTICE OF THE RIGHT TO APPEAL THE DETERMINATION AND

1 NOTICE OF THE EARLIEST DATE THE APPLICANT MAY REAPPLY FOR THE
2 CREDENTIAL.

3 (9) IF A STATE OR LOCAL AGENCY IS REQUIRED TO MAKE A FINDING
4 THAT AN APPLICANT FOR A LICENSE, CERTIFICATION, PERMIT, OR
5 REGISTRATION IS A PERSON OF GOOD MORAL CHARACTER AS A CONDITION
6 TO THE ISSUANCE OF A LICENSE OR TO EVALUATE THE IMPACT OF AN
7 APPLICANT'S CRIMINAL RECORD, A PERSON CONVICTED OF A CRIME MAY,
8 AT ANY TIME, PETITION THE STATE OR LOCAL AGENCY FOR A
9 DETERMINATION AS TO WHETHER ONE OR MORE CRIMINAL CONVICTIONS
10 WILL DISQUALIFY THE PERSON FROM RECEIVING A LICENSE,
11 CERTIFICATION, PERMIT, OR REGISTRATION. THE AGENCY MAY CHARGE A
12 REASONABLE FEE NOT TO EXCEED FIFTY DOLLARS FOR THE COSTS OF
13 MAKING A DETERMINATION. A DETERMINATION MADE PURSUANT TO THIS
14 SUBSECTION (9) IS BINDING UPON THE AGENCY UNLESS, AFTER A FULL
15 APPLICATION FOR A CREDENTIAL IS SUBMITTED, THE APPLICANT IS
16 SUBSEQUENTLY CONVICTED OF A CRIME, HAS PENDING CRIMINAL
17 CHARGES, OR HAS PREVIOUSLY UNDISCLOSED CRIMINAL CONVICTIONS.

18 **SECTION 3.** 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, OR
27 REGISTRATION process imposes any sanctions or disqualifications on

1 applicants based on past criminal history and, if so, whether the sanctions
2 or disqualifications serve public safety or commercial or consumer
3 protection interests. To assist in considering this factor, the analysis
4 prepared pursuant to subsection (5)(a) of this section must include data
5 on the number of licenses, ~~or~~ certifications, OR REGISTRATIONS that the
6 agency denied based on the applicant's criminal history, the number of
7 conditional licenses, ~~or~~ certifications, OR REGISTRATIONS issued based
8 upon the applicant's criminal history, and the number of licenses, ~~or~~
9 certifications, OR REGISTRATIONS revoked or suspended based on an
10 individual's criminal conduct. For each set of data, the analysis must
11 include the criminal offenses that led to the sanction or disqualification.

12 **SECTION 4. Act subject to petition - effective date.** This act
13 takes effect at 12:01 a.m. on the day following the expiration of the
14 ninety-day period after final adjournment of the general assembly; except
15 that, if a referendum petition is filed pursuant to section 1 (3) of article V
16 of the state constitution against this act or an item, section, or part of this
17 act within such period, then the act, item, section, or part will not take
18 effect unless approved by the people at the general election to be held in
19 November 2022 and, in such case, will take effect on the date of the
20 official declaration of the vote thereon by the governor.