

CHAPTER 36

LABOR AND INDUSTRY

HOUSE BILL 11-1148

BY REPRESENTATIVE(S) Labuda and Nikkel, Summers, Acree, Kagan, Barker, Fields, Gerou, Kerr J., Murray, Pace, Schafer S., Scott, Stephens, Todd;
also SENATOR(S) Boyd, Guzman, Newell, Williams S.

AN ACT

CONCERNING THE DISCLOSURE OF EMPLOYMENT INFORMATION TO AN EMPLOYER REGARDING A HEALTH CARE WORKER, AND, IN CONNECTION THEREWITH, GRANTING IMMUNITY FROM CIVIL LIABILITY FOR THE DISCLOSURE OF INFORMATION AND CREATING AN EXCEPTION FROM THE PROHIBITION AGAINST BLACKLISTING FOR THE DISCLOSURE OF INFORMATION.

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

SECTION 1. Part 1 of article 2 of title 8, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

8-2-111.6. Health care employers - immunity from civil liability - requirements - exception to blacklisting prohibition - legislative declaration.

(1) THE GENERAL ASSEMBLY HEREBY FINDS, DETERMINES, AND DECLARES THAT THE INTENT AND PURPOSE OF SECTIONS 8-2-110 AND 8-2-111, WHICH PROHIBIT THE MAINTENANCE OR USE OF BLACKLISTS, IS TO PROTECT EMPLOYEES FROM RETRIBUTION AND HARASSMENT IN THE PURSUIT OF THEIR LAWFUL ACTIVITIES. THE GENERAL ASSEMBLY FURTHER FINDS, DETERMINES, AND DECLARES THAT, IN THE AREA OF HEALTH CARE, THESE PROHIBITIONS AGAINST BLACKLISTING HAVE IN SOME INSTANCES BEEN ABUSED AND HAVE BEEN USED AS A SHIELD BY PERSONS RESPONSIBLE FOR DRUG VIOLATIONS OR FOR PATIENT ENDANGERMENT.

(2) IN RESPONSE TO A REQUEST BY A PROSPECTIVE OR CURRENT EMPLOYER OF A HEALTH CARE WORKER, IT IS NEITHER UNLAWFUL NOR A VIOLATION OF THE PROHIBITIONS AGAINST BLACKLISTING SPECIFIED IN SECTIONS 8-2-110 AND 8-2-111 FOR AN EMPLOYER, WHEN ACTING IN GOOD FAITH, TO DISCLOSE INFORMATION KNOWN ABOUT ANY INVOLVEMENT IN DRUG DIVERSION, DRUG TAMPERING, PATIENT ABUSE, VIOLATION OF DRUG OR ALCOHOL POLICIES OF THE EMPLOYER, OR CRIMES OF VIOLENCE AS LISTED IN SECTION 18-1.3-406 (2) (a), C.R.S., BY THE HEALTH CARE

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

WORKER WHO IS AN EMPLOYEE OR A FORMER EMPLOYEE OF THE RESPONDING EMPLOYER.

(3) (a) (I) AN EMPLOYER WHO PROVIDES INFORMATION IN ACCORDANCE WITH SUBSECTION (2) OF THIS SECTION IS IMMUNE FROM CIVIL LIABILITY FOR PROVIDING THE INFORMATION OR FOR ANY CONSEQUENCES THAT RESULT FROM THE DISCLOSURE OF THE INFORMATION UNLESS THE HEALTH CARE WORKER SHOWS BY A PREPONDERANCE OF THE EVIDENCE THAT THE INFORMATION IS FALSE AND THE EMPLOYER PROVIDING THE INFORMATION KNEW OR REASONABLY SHOULD HAVE KNOWN THAT THE INFORMATION IS FALSE.

(II) THE PROVISION OF EMPLOYMENT INFORMATION IN ACCORDANCE WITH SUBSECTION (2) OF THIS SECTION DOES NOT CONSTITUTE BLACKLISTING UNDER SECTION 8-2-110 OR 8-2-111, NOR DOES IT CONSTITUTE AN UNFAIR LABOR PRACTICE IN VIOLATION OF ARTICLE 3 OF THIS TITLE.

(b) THIS SUBSECTION (3) APPLIES TO ANY EMPLOYEE, AGENT, OR OTHER REPRESENTATIVE OF THE RESPONDING EMPLOYER WHO IS AUTHORIZED TO PROVIDE AND PROVIDES INFORMATION TO AN EMPLOYER IN ACCORDANCE WITH SUBSECTION (2) OF THIS SECTION.

(4) AN EMPLOYER OR ANY OFFICER, DIRECTOR, EMPLOYEE, OR REPRESENTATIVE OF THE EMPLOYER WHO DISCLOSES INFORMATION UNDER THIS SECTION SHALL BE PRESUMED TO BE ACTING IN GOOD FAITH UNLESS IT IS SHOWN BY A PREPONDERANCE OF THE EVIDENCE THAT THE FACILITY, OFFICER, DIRECTOR, EMPLOYEE, OR REPRESENTATIVE OF THE EMPLOYER INTENTIONALLY OR RECKLESSLY DISCLOSED FALSE INFORMATION ABOUT THE EMPLOYEE OR FORMER EMPLOYEE.

(5) FOR THE PURPOSES OF THIS SECTION, "HEALTH CARE WORKER" MEANS ANY PERSON REGISTERED, CERTIFIED, OR LICENSED PURSUANT TO ARTICLE 22 OF TITLE 12, C.R.S., ARTICLES 29.5 TO 43.2 OF TITLE 12, C.R.S., AND ARTICLE 3.5 OF TITLE 25, C.R.S., OR ANY PERSON WHO INTERACTS DIRECTLY WITH A PATIENT OR ASSISTS WITH THE PATIENT CARE PROCESS, WHO IS CURRENTLY EMPLOYED BY, OR IS A PROSPECTIVE EMPLOYEE OF, THE EMPLOYER MAKING THE INQUIRY.

SECTION 2. Effective date. This act shall take effect July 1, 2011.

SECTION 3. 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: March 21, 2011