

Second Regular Session
Seventy-third General Assembly
STATE OF COLORADO

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

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
Finance

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.** (1) ON OR BEFORE JUNE 1, 2023, THE
3 DIRECTOR SHALL COMPLETE AN AUDIT OF THE PRACTICE ACTS IN THIS
4 TITLE 12 AND THE REGULATION OF VARIOUS PROFESSIONS AND
5 OCCUPATIONS BY REGULATORS PURSUANT TO THIS TITLE 12 TO DETERMINE
6 WHETHER A BARRIER TO PROFESSIONAL LICENSING, CERTIFICATION, OR
7 REGISTRATION EXISTS DUE TO AN APPLICANT'S CRIMINAL HISTORY
8 RECORD. ON OR BEFORE JULY 1, 2023, THE DIRECTOR SHALL REPORT THE
9 FINDINGS TO THE SENATE BUSINESS, LABOR, AND TECHNOLOGY
10 COMMITTEE AND THE HOUSE OF REPRESENTATIVES BUSINESS AFFAIRS AND
11 LABOR COMMITTEE, OR THEIR SUCCESSOR COMMITTEES. THE REPORT
12 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;

18 (c) RECOMMENDATIONS FOR SOLUTIONS TO ANY BARRIERS,
19 INCLUDING A PROCESS TO ADVISE INDIVIDUALS AS TO WHETHER AN
20 INDIVIDUAL WOULD QUALIFY FOR LICENSURE, CERTIFICATION, OR
21 REGISTRATION BASED ON THE INDIVIDUAL'S CRIMINAL HISTORY RECORD IF
22 THE INDIVIDUAL MEETS ALL OTHER REQUIREMENTS FOR LICENSURE,
23 CERTIFICATION, OR REGISTRATION AT THE TIME OF THE INDIVIDUAL'S
24 APPLICATION; AND

25 (d) THE NUMBER OF LICENSES, CERTIFICATIONS, OR REGISTRATIONS
26 THAT WERE DENIED IN THE PRIOR CALENDAR YEAR DUE TO A CRIMINAL
27 HISTORY RECORD AND THE SPECIFIC REASONS FOR EACH DENIAL.

1 (2) (a) A REGULATOR MAY ONLY DENY A LICENSE, CERTIFICATION,
2 OR REGISTRATION BASED ON AN APPLICANT'S CRIMINAL HISTORY RECORD
3 CONSISTENT WITH SECTION 24-4-105 (4).

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 GROUNDS FOR DENIAL AND
7 SUBMIT THE GROUNDS IN WRITING TO THE APPLICANT.

8 (c) A REGULATOR MAY GRANT, CONSISTENT WITH SECTION
9 24-34-107 (5), A CONDITIONAL LICENSE, CERTIFICATION, OR REGISTRATION
10 TO AN APPLICANT WITH A CRIMINAL HISTORY RECORD.

11 (4) THE DIRECTOR SHALL COMPILE DE-IDENTIFIED AGGREGATE
12 INFORMATION REGARDING THE REASONS WHY A LICENSE, CERTIFICATION,
13 OR REGISTRATION WAS DENIED, IF THE REASON WAS DUE TO THE
14 APPLICANT'S CRIMINAL HISTORY RECORD, AND MAKE THIS INFORMATION
15 AVAILABLE TO THE PUBLIC ON THE DIVISION'S WEBSITE.

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

18 **24-5-101. Effect of criminal conviction on employment rights**
19 **- fee - determination.** (7) BEFORE A STATE OR LOCAL AGENCY MAKES A
20 FINAL DETERMINATION THAT A CRIMINAL CONVICTION DISQUALIFIES AN
21 APPLICANT FROM RECEIVING A LICENSE, CERTIFICATION, PERMIT, OR
22 REGISTRATION, THE AGENCY SHALL PROVIDE THE APPLICANT WITH
23 WRITTEN NOTICE THAT DESCRIBES:

24 (a) THE SPECIFIC CONVICTION THAT IS THE BASIS FOR THE
25 DISQUALIFICATION;

26 (b) THE REASONS THE CONVICTION WAS DETERMINED TO BE
27 DISQUALIFYING, INCLUDING FINDINGS FOR EACH OF THE FACTORS IN

1 SUBSECTION (4) OF THIS SECTION THAT THE AGENCY DEEMED RELEVANT
2 TO THE DETERMINATION; AND

3 (c) THE RIGHT TO SUBMIT ADDITIONAL EVIDENCE RELEVANT TO
4 EACH OF THE FACTORS LISTED IN SUBSECTION (4) OF THIS SECTION,
5 CONSISTENT WITH SECTION 24-4-104.

6 (8) A STATE OR LOCAL AGENCY THAT MAKES A FINAL
7 DETERMINATION THAT A CRIMINAL CONVICTION WILL PREVENT AN
8 APPLICANT FROM RECEIVING A LICENSE, CERTIFICATION, PERMIT, OR
9 REGISTRATION SHALL ISSUE THE DETERMINATION IN WRITING AND SHALL
10 INCLUDE NOTICE OF THE RIGHT TO APPEAL THE DETERMINATION AND
11 NOTICE OF THE EARLIEST DATE THE APPLICANT MAY REAPPLY FOR THE
12 CREDENTIAL IN ACCORDANCE WITH SECTION 24-4-106.

13
14 **SECTION 3.** In Colorado Revised Statutes, 24-34-104, **amend**
15 (6)(b)(IX) as follows:

16 **24-34-104. General assembly review of regulatory agencies**
17 **and functions for repeal, continuation, or reestablishment - legislative**
18 **declaration - repeal.** (6) (b) In the hearings, the determination as to
19 whether an agency has demonstrated a public need for the continued
20 existence of the agency or function and for the degree of regulation it
21 practices is based on the following factors, among others:

22 (IX) Whether the agency through its licensing, ~~or~~ certification, OR
23 REGISTRATION process imposes any sanctions or disqualifications on
24 applicants based on past criminal history and, if so, whether the sanctions
25 or disqualifications serve public safety or commercial or consumer
26 protection interests. To assist in considering this factor, the analysis
27 prepared pursuant to subsection (5)(a) of this section must include data

1 on the number of licenses, ~~or~~ certifications, OR REGISTRATIONS that the
2 agency denied based on the applicant's criminal history, the number of
3 conditional licenses, ~~or~~ certifications, OR REGISTRATIONS issued based
4 upon the applicant's criminal history, and the number of licenses, ~~or~~
5 certifications, OR REGISTRATIONS revoked or suspended based on an
6 individual's criminal conduct. For each set of data, the analysis must
7 include the criminal offenses that led to the sanction or disqualification.

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