



Colorado Chance to Compete Act

HB17-1305: Sponsored by Rep. Mike Foote, Rep. Jovan Melton, and Sen. Lucia Guzman

What does this legislative proposal do?

By expanding Colorado's "ban the box" law, this proposal would allow most job applicants to apply for positions without having to disclose their criminal history on an initial application.

Why is it needed?

There are more than 1.5 million Coloradans listed on the state criminal record database. For many of these people, involvement with the justice system has led to perpetual unemployment and income instability for themselves and their families.¹

- **Employment:** Several studies have demonstrated that removing "the box" helps employers see beyond their past to find a well-qualified job applicant they may have otherwise overlooked.
- **Public Safety:** Research also indicates that enabling consistent employment is the best method for lowering recidivism.²
- **Family Security:** Experts estimate that half of the children in the U.S. have at least one parent with a criminal record. In Colorado, an estimated 60,000 children have experienced the incarceration of a parent. This bill would expand economic opportunities to the families and children of justice-involved residents.
- **Veterans:** This policy would help justice-involved veterans, who often face additional hurdles in rejoining the workforce.

Do other states have this policy?

Yes, nine states have already enacted similar legislation— often with bipartisan support. Connecticut, Hawaii, Illinois, Massachusetts, Minnesota, New Jersey, Rhode Island, Oregon, and Vermont have all adopted private sector "ban the box" legislation. Unlike these states, however, this proposal would allow employers to ask about criminal history *before* conducting an interview.

Responsible Re-Entry Legislation allows people with a criminal record to be considered on their merits without compromising safety on the job or exposing the employer to potential liability.

- Employers may still conduct criminal background checks at any point in the hiring process.
- Under state law, private employers can still consider criminal records to whatever extent they deem appropriate.
- Any positions that legally require exclusion of people with certain records are **exempted** from this bill.
- This policy has been endorsed as a best practice by the U.S. Equal Employment Opportunity Commission and is supported by the Colorado Society for Human Resource Management.

¹ Michele Natividad Rodriguez and Maurice Emsellem, *65 Million 'Need Not Apply': The Case for Reforming Criminal Background Checks for Employment*. The National Employment Law Project, March 2011, http://www.nelp.org/page/-/SCLP/2011/65_Million_Need_Not_Apply.pdf?nocdn=1

² Anastasia Christman and Michele Natividad Rodriguez, *Research Supports Fair Chance Policies*. The National Employment Law Project, April 2015, <http://www.nelp.org/content/uploads/Fair-Chance-Ban-the-Box-Research.pdf>

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OPINION > EDITORIALS

Questions about criminal history don't belong on job applications

By THE DENVER POST EDITORIAL BOARD |

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Colorado House Bill 1035 would require employers to delay questions about criminal convictions and arrests until the second step of the hiring process.

Generally speaking, a society that makes it easier for reformed lawbreakers to return to productive lives is the better and stronger and more prosperous for it. A bill getting a late start in the Colorado General Assembly seeks to bolster that observation through regulation that strikes us as reasonable — especially given the benefits that would follow.

House Bill 1035, touted by advocates as the Colorado Chance to Compete, would require employers to delay questions about criminal convictions and arrests until the second step of the hiring process. An earlier version of this effort surfaced last year and was known as Ban the Box. As with the name change, the intent of the new bill is to make it friendlier for business owners worried its implementation would harm the hiring process.

Under the language of this year's bill, companies wouldn't be able to say in job listings that those with criminal histories need not apply. Employers also would be prevented from including on their applications questions about convictions or arrests. The spirit of the prohibitions is simply to acknowledge that an otherwise qualified candidate trying to seek legitimate employment shouldn't be automatically skipped over.

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Those requirements met, employers may do all of the things employers already do. They can ask applicants about their criminal or arrest histories. They can conduct criminal background checks. HB 1035 would not override laws that prevent those with certain convictions from working in jobs whose convictions make them an unacceptable risk.

Also, Chance to Compete advocates included language meant to make clear that should the bill become law, its language could not be used to create a protected class of convicts that must be considered for employment. The bill makes clear that violation of its core limitations doesn't count as evidence of discrimination.

Proponents point to studies that suggest that the criminal-histories stigma costs the nation's gross domestic product tens of billions of dollars a year. They note that difficulty in getting a job is a key reason some who have completed prison sentences return to a life of crime. Many families, especially those with children, who have already dealt with a conviction are further harmed by companies that too quickly reject candidates with bad records. Given that about 1.5 million Coloradans have convictions in their past, the strain on the safety net for automatic rejections is likely substantial.

In recent years, many large companies — from Walmart to Target — have voluntarily dropped initial questions about past convictions. Nine states have laws that bar the questions at the first stage of the application process.

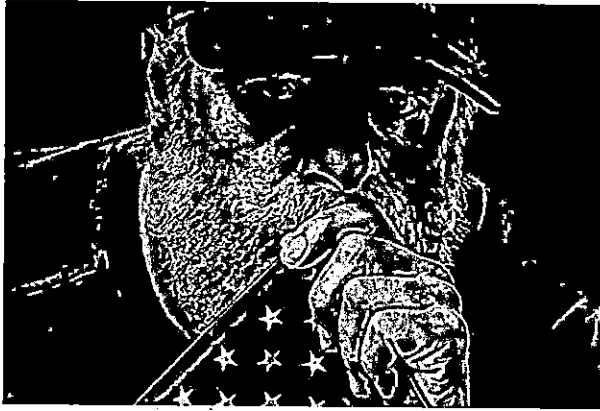
We get it that HB 1035 would add another layer of regulation for businesses and that, ideally, companies would opt for the change voluntarily. Tony Gagliardi, the Colorado director for the National Federation of Independent Business, says the bill would prove onerous to small-business owners and that its requirements aren't necessary. But Gagliardi also says most small business owners — who often need to make hiring decisions quickly — already give applicants who check the box follow-up chances to explain. If that's the case, then it would seem the Chance to Compete measure wouldn't violate actual practice.

We like this measure, and hope to see it become law. It would seem backers may have waited too long this year to realize success. If so, that's a shame. If HB 1035 doesn't get traction this year, we hope advocates are prepared next year to try it again.

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Give all Coloradans a chance to compete

In theory, every Coloradan should be able to participate in the state's booming economy. In practice, however, that's not necessarily the case. Many Coloradans in the state's criminal-records database continue to encounter permanent unemployment or under-

employment and unstable incomes. Unfortunately, those Coloradans face a significant barrier to employment - in the form of a common question on job applications regarding past arrests and convictions. Though every employer has a right to conduct a criminal background check or to ask about one's criminal history, this method for preliminary screening can prevent many Coloradans from having a chance to compete for a job.

Several studies show that removing "the criminal-history box" from an application helps employers better evaluate candidates on their merits. In many cases, by removing this inquiry from initial applications, employers could end up hiring hard-working, highly motivated employees they might have otherwise overlooked.

The Embassy Suites by Hilton Denver Downtown and Sage Hospitality provides hospitality services in a competitive environment, and must present



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the best public face possible while keeping the safety and security of our guests as our No. 1 priority. Our policy has long been to look beyond an applicant's history and see them for the people they are today. We have found that philosophy to be entirely consistent with our high standards for customer service. As one example, we hired an employee with a criminal record because he was genuine and eager to get his life on track and start working again. The employee turned out to be a hardworking and positive contributor to our staff, despite past mistakes.

Clearing the way for every Coloradan to compete for a job makes our economy stronger and is good for our bottom line. That's why we are joining other businesses and the community in support of House Bill 1305, the Colorado Chance to Compete Act.

HB 1305 doesn't change our day-to-day business operations or our personnel decisions. The legislation simply prohibits employers from asking about criminal history on an application. Indeed, many applicants might not even apply for a job if they see "the box" because of the assumption they'll be ruled out by the prospective employer - even for a minor transgression in the distant past.

As far as safety and security are concerned, businesses that rely on the box aren't gaining genuine protection because only a background check will reliably reveal an applicant's criminal record. As a blanket screening device, including the inquiry on an application may actually expose an employer to federal civil rights liability.

Employers can still ask about a criminal history prior to a job interview, conduct a thorough background check and decline to hire an applicant with a criminal record. That's what we do - evaluate each candidate as an individual, taking into account their history, and (if applicable) rehabilitation and readiness to succeed in the work environment. HB 1305 would simply give such applicants a chance to get their "foot in the door" and be considered on their merits.

As the Chance to Compete Act

opens up employment opportunities for the 1.5 million Coloradans with criminal records, employers will be able to build a more diverse workforce and broaden the applicant pool in an increasingly tight labor market.

Nine states have already enacted similar legislation - often with bipartisan support. Unlike those states, however, HB 1305 would allow employers to ask about criminal history before conducting an interview and in no way intrudes into hiring decisions.

Clearly, Colorado's economy would reap the benefits from the Chance to Compete Act. In Colorado, an estimated 60,000 children have experienced the incarceration of a parent. This bill would expand economic opportunities to the families and children of ex-offenders looking to get a fresh start and a source of income to support their families.

HB 1305 does no harm to businesses, but it could do a whole lot of good for Coloradans who haven't been able to participate in the state's economic growth because of their past history. As an employer dedicated to making Colorado a better place, we support this bill that could make a big difference in the lives of Coloradans.



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Everyone deserves a chance to compete in the job market

In 2000, Pope John Paul II proclaimed that, "we are still a long way from the time when our conscience can be certain of having done everything possible...to offer



JENNY KRASKA

Guest Column

Jenny Kraska is the executive director of the Colorado Catholic Conference.

In this statement, His Holiness reminded us that our faith requires us

those who commit crimes a way of redeeming themselves and making a positive return to society."

to ensure that our neighbors who sin receive both justice and mercy, not just the former.

Fast forward 17 years, re-entry into society is still both a daunting and discouraging task for too many formerly incarcerated individuals. The stigma of a criminal record – no matter how petty the offense – follows people for life, as they try to support their families, realize their full potential and become fully contributing members of society. Perhaps nowhere is this stigma more prominent for an individual than in the search for a decent-paying job.

Nationally, only 40 percent of

formerly incarcerated individuals report finding a job one year after their release. For those who can find meaningful employment, they often earn substantially less than those without a criminal background. For the 1.5 million Coloradans on the state criminal data base, these facts hold profound implications for the course of their lives.

We agree with, and our faith calls for, reasonable punishment when one commits a sin against society. But our faith also calls for mercy and the vast majority of those who have completed their punishment return home wishing to provide and care for their

families. The fact that those among us who have been involved with the criminal justice system are often unable to compete in the workforce is a stain on our social fabric. When our neighbors are unable to work, their children suffer and our communities remain vulnerable to criminal acts. As the United States Conference of Catholic Bishops notes: "We are all sinners, and our response to sin and failure should not be abandonment and despair, but rather justice, contrition, reparation, and return or reintegration of all into the community."

Reasonable steps can be taken to help these individuals compete in

the workforce and reintegrate into society. Studies consistently show that a key barrier to employment for an individual with a criminal record is when a job application requests information on their involvement with the justice system. When someone checks the box indicating they have been charged or convicted of a crime, their application is often discarded immediately. This "box" on an initial application prevents many individuals, who would otherwise be considered qualified for the position, from having a face-to-face interview with a potential employer. This prevents individuals with a criminal

background from having the opportunity to adequately explain the offense as well the steps they have taken to rehabilitate themselves.

This year at the state legislature, the Colorado Chance to Compete Act seeks to foster more of those face to face conversations and employment by removing inquiries into an applicant's criminal history on most private sector job applications. Commonly known as "ban-the-box" legislation around the country, this bill allows employers to fulfill the sentiment outlined in the Lord's Prayer: "Forgive us our trespasses as we forgive those who trespass against us."

We all commit sins throughout our lives, but by the mercy of God's justice, we can move on with our lives and care for our families. If enacted, the Colorado Chance to Compete Act will rectify an immoral aspect of our approach to criminal justice and help countless Coloradans realize the mercy of God's grace and re-enter society.

The national conversation on criminal justice reform is heavily focused on the living conditions of prisoners and the laws that put people behind bars. But, and as Pope Francis has acknowledged, this conversation is not complete without "the Institutions' concrete commitment to

bring about an effective reintegration into society. When this objective is neglected, the implementation of the penalty degenerates into an instrument of punishment alone and of social retaliation, which in turn is detrimental to the individual and society. And God does not do this with us, God, when He forgives us, He accompanies us and helps us along the way... This is the love of God, and we must imitate it! Society must imitate it."

We wholeheartedly support the Colorado Chance to Compete Act and implore you to contact your state legislator and voice your support for this legislation.