

CHAPTER 323

LABOR AND INDUSTRY

SENATE BILL 23-058

BY SENATOR(S) Danielson and Jaquez Lewis, Buckner, Cutter, Ginal, Gonzales, Kolker, Marchman, Priola, Sullivan, Winter F.; also REPRESENTATIVE(S) Willford and Young, Bacon, Boesenecker, Brown, deGruy Kennedy, Epps, Garcia, Joseph, Lieder, Lindsay, Story.

AN ACT

CONCERNING REQUIRED DISCLOSURES OF AGE-RELATED INFORMATION ON JOB APPLICATIONS, AND, IN CONNECTION THEREWITH, MAKING AN APPROPRIATION.

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

SECTION 1. In Colorado Revised Statutes, **add** 8-2-131 as follows:

8-2-131. Age of job applicants - limits on applications - exceptions - enforcement - rules - short title - definitions. (1) **Short title.** THE SHORT TITLE OF THIS SECTION IS THE "JOB APPLICATION FAIRNESS ACT".

(2) **Definitions.** AS USED IN THIS SECTION:

(a) "DEPARTMENT" MEANS THE DEPARTMENT OF LABOR AND EMPLOYMENT.

(b) "EMPLOYER" MEANS A PERSON ENGAGED IN A BUSINESS, INDUSTRY, PROFESSION, TRADE, OR OTHER ENTERPRISE IN THE STATE OR A UNIT OF STATE OR LOCAL GOVERNMENT. "EMPLOYER" INCLUDES AN AGENT, A REPRESENTATIVE, OR A DESIGNEE OF THE EMPLOYER.

(3) **Job applicant's age - limits on applications.** (a) ON AND AFTER JULY 1, 2024, AN EMPLOYER SHALL NOT REQUEST OR REQUIRE AN INDIVIDUAL TO INCLUDE THE INDIVIDUAL'S AGE, DATE OF BIRTH, OR DATES OF ATTENDANCE AT OR DATE OF GRADUATION FROM AN EDUCATIONAL INSTITUTION ON AN INITIAL EMPLOYMENT APPLICATION.

(b) AN EMPLOYER MAY REQUEST OR REQUIRE AN INDIVIDUAL TO PROVIDE ADDITIONAL APPLICATION MATERIALS, INCLUDING COPIES OF CERTIFICATIONS,

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

TRANSCRIPTS, AND OTHER MATERIALS CREATED BY THIRD PARTIES, AT THE TIME OF AN INITIAL EMPLOYMENT APPLICATION, IF THE EMPLOYER NOTIFIES THE INDIVIDUAL THAT THE INDIVIDUAL MAY REDACT INFORMATION THAT IDENTIFIES THEIR AGE, DATE OF BIRTH, OR DATES OF ATTENDANCE AT OR GRADUATION FROM AN EDUCATIONAL INSTITUTION.

(4) Verification permitted. (a) THE EMPLOYER MAY REQUEST AN INDIVIDUAL TO VERIFY COMPLIANCE WITH AGE REQUIREMENTS IMPOSED PURSUANT TO OR REQUIRED BY:

(I) A BONA FIDE OCCUPATIONAL QUALIFICATION PERTAINING TO PUBLIC OR OCCUPATIONAL SAFETY;

(II) A FEDERAL LAW OR REGULATION; OR

(III) A STATE OR LOCAL LAW OR REGULATION BASED ON A BONA FIDE OCCUPATIONAL QUALIFICATION.

(b) VERIFICATION REQUESTS MADE UNDER THIS SUBSECTION (4) MUST NOT REQUIRE DISCLOSURE OF AN INDIVIDUAL'S SPECIFIC AGE, DATE OF BIRTH, OR DATES OF ATTENDANCE AT OR DATE OF GRADUATION FROM AN EDUCATIONAL INSTITUTION ON AN INITIAL EMPLOYMENT APPLICATION.

(5) Enforcement - notice and records retention rules. (a) THIS SECTION DOES NOT CREATE OR AUTHORIZE A PRIVATE CAUSE OF ACTION BY A PERSON AGGRIEVED BY A VIOLATION OF THIS SECTION. THE PENALTIES SET FORTH IN THIS SUBSECTION (5) ARE THE SOLE REMEDY FOR A VIOLATION OF THIS SECTION. THE ISSUANCE OF A WARNING, ORDER, OR PENALTY FOR A VIOLATION OF THIS SECTION IS NOT EVIDENCE OF A VIOLATION OF PART 4 OF ARTICLE 34 OF TITLE 24.

(b) A PERSON WHO IS AGGRIEVED BY A VIOLATION OF THIS SECTION MAY FILE A COMPLAINT WITH THE DEPARTMENT. IF THE DEPARTMENT RECEIVES A COMPLAINT WITHIN TWELVE MONTHS AFTER THE ACT THAT IS ALLEGED TO VIOLATE THIS SECTION OCCURRED, THE DEPARTMENT SHALL INVESTIGATE THE COMPLAINT UNLESS THE DEPARTMENT DETERMINES THAT THE COMPLAINT IS WITHOUT MERIT.

(c) AN EMPLOYER THAT VIOLATES THIS SECTION IS LIABLE FOR ONE OF THE FOLLOWING PENALTIES:

(I) FOR THE FIRST VIOLATION, A WARNING AND AN ORDER REQUIRING COMPLIANCE WITHIN FIFTEEN BUSINESS DAYS;

(II) FOR THE SECOND VIOLATION, AN ORDER REQUIRING COMPLIANCE WITHIN FIFTEEN BUSINESS DAYS AND A CIVIL PENALTY NOT TO EXCEED ONE THOUSAND DOLLARS; OR

(III) FOR A THIRD OR SUBSEQUENT VIOLATION, AN ORDER REQUIRING COMPLIANCE WITHIN FIFTEEN BUSINESS DAYS AND A CIVIL PENALTY NOT TO EXCEED TWO THOUSAND FIVE HUNDRED DOLLARS.

(d) AN EMPLOYER IS NOT SUBJECT TO PENALTIES FOR A SECOND OR SUBSEQUENT VIOLATION UNDER SUBSECTION (5)(c) OF THIS SECTION UNLESS THE EMPLOYER:

(I) FAILED TO COMPLY WITH AN ORDER REQUIRING COMPLIANCE WITHIN FIFTEEN BUSINESS DAYS AFTER THE DATE OF THE ORDER; OR

(II) COMPLIED WITH AN ORDER REQUIRING COMPLIANCE WITHIN FIFTEEN BUSINESS DAYS BUT THEN COMMITTED A VIOLATION OF THIS SECTION MORE THAN FIFTEEN BUSINESS DAYS AFTER THE ISSUANCE OF THE ORDER.

(e) EACH DISTINCT JOB POSTING VIOLATING THIS SECTION CONSTITUTES A SEPARATE VIOLATION UNDER SUBSECTION (5)(c) OF THIS SECTION. EACH INSTANCE OF AN INDIVIDUAL RESPONDING TO A JOB POSTING DOES NOT CONSTITUTE A VIOLATION UNDER SUBSECTION (5)(c) OF THIS SECTION.

(f) THE DEPARTMENT SHALL ADOPT RULES REGARDING PROCEDURES FOR HANDLING COMPLAINTS FILED AGAINST EMPLOYERS ALLEGING A VIOLATION OF THIS SECTION, INCLUDING:

(I) REQUIREMENTS FOR PROVIDING NOTICE TO AN EMPLOYER ALLEGED TO HAVE VIOLATED THIS SECTION; AND

(II) REQUIREMENTS FOR RETAINING AND MAINTAINING RELEVANT EMPLOYMENT RECORDS DURING A PENDING INVESTIGATION.

SECTION 2. Appropriation. (1) For the 2023-24 state fiscal year, \$56,468 is appropriated to the department of labor and employment for use by the division of labor standards and statistics. This appropriation is from the general fund and is based on an assumption that the department will require an additional 0.5 FTE. To implement this act, the department may use this appropriation for program costs related to labor standards.

SECTION 3. Act subject to petition - effective date. This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly; except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2024 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

Approved: June 2, 2023