



## Interpretive Notice & Formal Opinion (“INFO”) # 9C:

### Limits on Criminal History Screening of Applicants: Colorado Chance to Compete Act

#### **Overview**

- This INFO addresses employee and employer rights and responsibilities under the “Colorado Chance to Compete Act” (“CTC,” [HB 19-1025](#), C.R.S. § 8-2-130) — also known as a “ban the box” law, because it restricts what is often a check-box on a job application requiring applicants to disclose any criminal record.
- As stated in the legislative declaration, CTC was enacted to provide those with criminal records more meaningful chances to compete for jobs, and to provide for themselves and their families, while supporting Colorado’s workforce and economy. At the same time, CTC protects employer ability to make their own hiring decisions — because CTC doesn’t require hiring candidates with criminal records; it requires only giving them a chance to compete, by letting them apply without being screened out due to criminal records.

#### **Covered Employers**

- CTC covers employers of all sizes, and in all industries, except it excludes government agencies, quasi-governmental entities, and political subdivisions of the state.
- CTC defines “employer” as a person (including a business entity) engaging individuals for services of any nature, including an employer’s agent, representative, or designee, as well as employment agencies.

#### **Prohibited Practices**

- In any form of job application or advertisement, printed or electronic, CTC prohibits employers from:
  - (1) stating in a job application or advertisement that a person with a criminal history may not apply;
  - (2) asking about an applicant’s criminal history on an initial job application; or
  - (3) requiring the applicant to report their criminal history on an initial job application.
- An employer’s contract (with a customer, supplier, etc.) prohibiting it from using or hiring workers with criminal histories are not exceptions to CTC.
- Job postings that don’t expressly prohibit an application, but say an applicant “must pass a background check” or have “no prior felonies,” are not exceptions to CTC. However, employers still can:
  - inform potential applicants that a background check may be conducted upon a conditional offer of employment, with the specific criteria and factors that would be used in making a hiring decision; and
  - obtain publicly available criminal background reports on applicants at any time.

#### **Complaints and Employer Responses**

- This Division accepts complaints (using the the form on the Division [Chance to Compete webpage](#)) from any person who believes they witnessed, suffered from, or were injured by a CTC violation — including anonymous persons, or persons who decide not to apply for a job after seeing a posting or application.
- An employer that receives a Notice of Complaint from the Division should review it carefully, respond with the requested documentation, and contact the assigned investigator with any questions.

**Employer Recordkeeping Requirements**

- Employers must, for 18 months or (if longer) the duration of a Division investigation, keep copies of all job advertisements or applications (printed or electronic) with any question, inquiry, or request on any aspect of “criminal history” (defined by C.R.S. § 8-2-130; see [Colorado Chance to Compete Act Rules](#), Rule 3.1).

**Exceptions to CTC Requirements**

- CTC requirements do not apply to a job if:
  - (1) for the particular position, federal, state, or local law (statutes or rules) either
    - (a) prohibit employing a person with a “specific criminal history” or
    - (b) require the employer to conduct a criminal history record check; or
  - (2) the employer is participating in a federal, state, or local government program to encourage the employment of people with criminal histories.
- If the first exception applies, the job advertisement or application must be reasonably specific as to what criminal records, if any, will disqualify an applicant.

**Example:** Employers employing truck drivers may have to follow applicable laws prohibiting the hiring of someone found guilty of driving under the influence of drugs or alcohol. But the employer’s job posting may not broadly state “no felonies” in order to qualify for the exception. Instead, the employer’s job posting must reasonably specify what offenses will disqualify an applicant.

**Consequences and Remedies for Violations**

- Employers who are found to have violated CTC may be subject to the following consequences:

**1st Violations:**

- compliance orders — to bring the offending application, advertisement, or other document or practice into compliance; and
- informational orders — to produce evidence that the violations are remedied and will not recur.

**2nd or Later Violations:** The same orders as for a first violation, but also, depending on the facts,

- fines of up to \$1,000 per violation, or \$2,500 for third or later violations;
  - fines for each day the employer continues to be in violation of any compliance or informational orders on the prior violation;<sup>1</sup> and
  - additional compliance orders, and orders to produce additional information, tailored to the problem of the repeated violation.
- The Division also may investigate future job postings to assess whether the employer remains compliant.

**For More Information:** Visit the Division [website](#), call 303-318-8441, or email [cdle\\_labor\\_standards@state.co.us](mailto:cdle_labor_standards@state.co.us).

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<sup>1</sup> E.g., C.R.S. § 8-1-117 (for a party that fails to provide information they were ordered to provide to the Division, “a penalty of not less than fifty dollars for each day that such failure, neglect, or refusal continues”); C.R.S. § 8-1-140(2) (for a party that “fails, refuses, or neglects to perform any duty lawfully enjoined within the time prescribed by the director or fails, neglects, or refuses to obey any lawful order made by the director or any judgment or decree made by any court as provided in this article, for each such violation, such employer, employee, or any other person shall pay a penalty of not less than one hundred dollars for each day such violation, failure, neglect, or refusal continues”).