

**First Regular Session
Sixty-eighth General Assembly
STATE OF COLORADO**

PREAMENDED

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

LLS NO. 11-0530.01 Kristen Forrestal

HOUSE BILL 11-1148

HOUSE SPONSORSHIP

Labuda and Nikkel, Summers, Acree, Kagan

SENATE SPONSORSHIP

Boyd,

House Committees

Health and Environment

Senate Committees

A BILL FOR AN ACT

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

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://www.leg.state.co.us/billsummaries>.)

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

The bill allows current and former employers to disclose certain information about a health care worker in response to a request from a prospective employer of the health care worker. The disclosing employer is granted immunity from civil liability for the good faith disclosure of information. The bill also creates an exception to the current prohibitions against blacklisting for the disclosure of information.

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

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

5 **8-2-111.6. Health care employers - immunity from civil**
6 **liability - requirements - exception to blacklisting prohibition -**
7 **legislative declaration.** (1) THE GENERAL ASSEMBLY HEREBY FINDS,
8 DETERMINES, AND DECLARES THAT THE INTENT AND PURPOSE OF SECTIONS
9 8-2-110 AND 8-2-111, WHICH PROHIBIT THE MAINTENANCE OR USE OF
10 BLACKLISTS, IS TO PROTECT EMPLOYEES FROM RETRIBUTION AND
11 HARASSMENT IN THE PURSUIT OF THEIR LAWFUL ACTIVITIES. THE
12 GENERAL ASSEMBLY FURTHER FINDS, DETERMINES, AND DECLARES THAT,
13 IN THE AREA OF HEALTH CARE, THESE PROHIBITIONS AGAINST
14 BLACKLISTING HAVE IN SOME INSTANCES BEEN ABUSED AND HAVE BEEN
15 USED AS A SHIELD BY PERSONS RESPONSIBLE FOR DRUG VIOLATIONS OR
16 FOR PATIENT ENDANGERMENT.

17 (2) IN RESPONSE TO A REQUEST BY A PROSPECTIVE OR CURRENT
18 EMPLOYER OF A HEALTH CARE WORKER, IT IS NEITHER UNLAWFUL NOR A
19 VIOLATION OF THE PROHIBITIONS AGAINST BLACKLISTING SPECIFIED IN
20 SECTIONS 8-2-110 AND 8-2-111 FOR AN EMPLOYER, WHEN ACTING IN GOOD
21 FAITH, TO DISCLOSE INFORMATION KNOWN ABOUT ANY INVOLVEMENT IN
22 DRUG DIVERSION, DRUG TAMPERING, PATIENT ABUSE, VIOLATION OF DRUG

1 OR ALCOHOL POLICIES OF THE EMPLOYER, OR CRIMES OF VIOLENCE AS
2 LISTED IN SECTION 18-1.3-406 (2) (a), C.R.S., BY THE HEALTH CARE
3 WORKER WHO IS AN EMPLOYEE OR A FORMER EMPLOYEE OF THE
4 RESPONDING EMPLOYER.

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

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

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

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

1 THE EMPLOYEE OR FORMER EMPLOYEE.

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

9 **SECTION 2. Effective date.** This act shall take effect July 1,
10 2011.

11 **SECTION 3. Safety clause.** The general assembly hereby finds,
12 determines, and declares that this act is necessary for the immediate
13 preservation of the public peace, health, and safety.