

HOUSE BILL REPORT

HB 1701

As Reported by House Committee On: Labor & Workplace Standards

Title: An act relating to prohibiting employers from asking about arrests or convictions before an applicant is determined otherwise qualified for a position.

Brief Description: Prohibiting employers from asking about arrests or convictions before an applicant is determined otherwise qualified for a position.

Sponsors: Representatives Moscoso, Walsh, Haler, Jinkins, Reykdal, S. Hunt, Blake, Riccelli, Ortiz-Self, Walkinshaw, Tharinger, Appleton, Sells, Gregerson, Santos, Farrell and Ormsby.

Brief History:

Committee Activity:

Labor & Workplace Standards: 2/9/15, 2/17/15 [DPS], 1/26/16 [DP2S].

Brief Summary of Second Substitute Bill

- Prohibits an employer from excluding an applicant from an initial interview solely because of a criminal record.
- Exempts certain employers from the prohibitions.
- Authorizes the Attorney General's Office to investigate violations and impose penalties.

HOUSE COMMITTEE ON LABOR & WORKPLACE STANDARDS

Majority Report: The second substitute bill be substituted therefor and the second substitute bill do pass. Signed by 4 members: Representatives Sells, Chair; Gregerson, Vice Chair; Moeller and Ormsby.

Minority Report: Do not pass. Signed by 3 members: Representatives Manweller, Ranking Minority Member; G. Hunt, Assistant Ranking Minority Member; McCabe.

Staff: Trudes Tango (786-7384).

Background:

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Under the Washington Law Against Discrimination, the Human Rights Commission has issued, in rule, a preemployment inquiry guide. The rule provides that inquiries concerning arrests must include whether charges are still pending, have been dismissed, or led to conviction of a crime involving behavior that would adversely affect job performance, and the arrest occurred within the last 10 years. Inquiries about convictions may be justified by business necessity if the crimes inquired about reasonably relate to the job duties and the convictions occurred within the last 10 years.

Exempt from the rule are law enforcement agencies as well as state agencies, school districts, businesses, and other organizations that have a direct responsibility for the supervision of children, persons with disabilities, and vulnerable adults.

Summary of Second Substitute Bill:

This act is known as the Washington Fair Chance Act. It is unlawful for an employer to exclude an applicant from an initial interview solely because of a criminal record. An employer excludes an applicant from an initial interview if the employer:

- requires the applicant to disclose a criminal record on an employment application;
- requires the applicant to disclose a criminal record prior to an initial interview;
- relies on a criminal background check to exclude an applicant from an initial interview; or
- if no interview is conducted, requires the applicant to disclose a criminal record prior to making a conditional offer of employment.

It is also unlawful for an employer to advertise openings in a way that excludes people with arrests or convictions from applying.

Subject to the above restrictions and any other applicable law, nothing prohibits an employer from considering an applicant's criminal record prior to making a hiring decision.

The prohibitions do not apply to:

- an employer hiring a person who will have unsupervised access to children under age 18 or vulnerable individuals;
- an employer that is a law enforcement agency or in the criminal justice system;
- an employer that is required under federal or state law, or corresponding rules, to consider an applicant's criminal record; and
- an employer seeking a nonemployee volunteer.

The legislation may not be interpreted to:

- interfere with any provision in a collective bargaining agreement;
- interfere with local government laws that provide greater protections;
- diminish or conflict with any requirements of state or federal law;
- obligate an employer to provide accommodations or job modifications for employing a person with a criminal record or who is facing pending charges;
- discourage or prohibit an employer or local government from adopting greater protections; or

- create a private right of action to seek damages or remedies.

The exclusive remedy available for enforcement is through the Attorney General's Office (AG). The AG has authority to investigate violations on its own initiative or in response to complaints. The AG may pursue administrative sanctions or a lawsuit. The AG may adopt rules to enforce the prohibitions and specify applicable penalties. The AG must use a stepped enforcement approach. Maximum penalties are: notice of violation and an offer of assistance for the first violation; a penalty of up to \$750 for a second violation; and a penalty of up to \$1,000 for each subsequent violation.

Definitions for certain terms are provided.

Second Substitute Bill Compared to Original Bill:

The original bill had provisions that: (1) prohibited an employer from inquiring into or obtaining information about an applicant's arrests or convictions before having initially determined that the applicant is otherwise qualified for the position; (2) exempted employers, including financial institutions, that are permitted or required under federal or state law, to inquire into or arrest or conviction records; (3) created a private cause of action; and (4) provided authority for the creation of an advisory committee.

Appropriation: None.

Fiscal Note: Requested on January 27, 2016.

Effective Date of Second Substitute Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

See House Bill Report in the 2015 Legislative Session.

Persons Testifying: See House Bill Report in the 2015 Legislative Session.

Persons Signed In To Testify But Not Testifying: None.