

HOUSE BILL REPORT

2SHB 1298

As Passed Legislature

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: House Committee on Labor & Workplace Standards (originally sponsored by Representatives Ortiz-Self, Manweller, Haler, Sells, Kilduff, Frame, Gregerson, Kagi, Tarleton, Jinkins, Stanford, Appleton, Ormsby, Senn, McBride, Santos, Lovick, Bergquist, Farrell and Young).

Brief History:

Committee Activity:

Labor & Workplace Standards: 1/24/17, 1/30/17 [DP], 1/9/18 [DP2S];
Appropriations: 2/16/17, 2/22/17 [DPS].

Floor Activity:

Passed House: 3/1/17, 68-30.
Passed House: 2/7/18, 52-46.
Senate Amended.
Passed Senate: 2/28/18, 33-16.
House Concurred.
Passed House: 3/3/18, 52-44.
Passed Legislature.

Brief Summary of Second Substitute Bill

- Prohibits an employer from, among other things, including any question on an application or inquiring into an applicant's criminal background until after the employer initially determines that the applicant is otherwise qualified for the position.
- Exempts certain employers from the prohibition.
- Authorizes the Attorney General to enforce the provisions and impose penalties.

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.

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; Doglio and Frame.

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

Staff: Trudes Tango (786-7384).

Background:

Under the Washington Law Against Discrimination, the Human Rights Commission has issued, in rule, a preemployment inquiry guide that provides examples of fair and unfair inquiries of job applicants. Inquiries concerning arrests will generally be considered fair if the inquiry is limited to arrests within the last 10 years and includes whether charges are pending, have been dismissed, or led to conviction of a crime involving behavior that would adversely affect job performance. Inquiries about convictions will generally be considered fair and justified by business necessity if the inquiry is limited to crimes that reasonably relate to the job duties and that have occurred within the last 10 years.

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

At least 24 states have adopted laws that limit an employer's ability to inquire into a job applicant's criminal history during the application stage. There are several local jurisdictions that have adopted similar policies. For example, Seattle's ordinance, which went into effect in 2013, limits criminal history questions on job applications and criminal background checks until after an employer conducts an initial screening to eliminate unqualified applicants.

Summary of Second Substitute Bill:

An employer may not:

- include any question on an application for employment, inquire either orally or in writing, receive information through a criminal history background check, or obtain information about an applicant's criminal record until after the employer initially determines that the applicant is otherwise qualified for the position (meaning the applicant meets the basic criteria for the position as stated in the advertisement or job description). Once the employer has initially determined that the applicant is otherwise qualified, the employer may inquire into or obtain information about criminal records;
- advertise job openings in a way that excludes people with criminal records from applying. Ads that state "no felons" or "no criminal background" or convey similar messages are prohibited; or

- implement any policy or practice that automatically or categorically excludes individuals with a criminal record from consideration prior to an initial determination that the applicant is otherwise qualified for the position. Prohibited practices include rejecting an applicant for failure to disclose a criminal record prior to initially determining the applicant is otherwise qualified.

The prohibitions do not apply to:

- employers hiring a person who will or may have unsupervised access to children under 18 years of age, a vulnerable adult, or a vulnerable person;
- any employer, including a financial institution, who is expressly permitted or required under federal or state law to inquire into or consider information about an applicant's criminal record for employment purposes;
- employment by a general or limited authority law enforcement agency or by certain criminal justice agencies;
- employers seeking nonemployee volunteers; or
- any entity required to comply with the regulations of self-regulatory organizations under the Securities and Exchange Act.

The act may not be construed or interpreted to:

- interfere with, impede, or diminish any provision in a collective bargaining agreement;
- diminish or conflict with any requirements of state or federal laws, including the federal Civil Rights Act of 1964, the federal Fair Credit Reporting Act, the state Fair Credit Reporting Act, and state laws regarding unsupervised access to children and vulnerable persons;
- impose an obligation on an employer to provide accommodations or job modifications to facilitate the continued employment of an applicant or employee with a criminal record or who is facing pending charges;
- discourage or prohibit an employer from adopting more protective policies;
- interfere with local laws that provide additional protections to applicants (local laws that provide lesser protections may not be enforced); or
- create a private right of action for damages or remedies of any kind.

The Office of the Attorney General (AG) must enforce the provisions of this act. The AG may: (1) investigate violations on its own initiative or in response to a complaint; (2) pursue administrative sanctions or file a lawsuit for penalties, costs, and attorneys' fees; and (3) adopt rules to implement the provisions.

In exercising its enforcement powers, the AG must use a stepped enforcement approach as follows:

- first violation – a notice of violation and offer of agency assistance;
- second violation – monetary penalty up to \$750; and
- subsequent violations – monetary penalty of up to \$1,000 for each subsequent violation.

"Criminal record" includes any record about a citation or arrest for criminal conduct. It includes records relating to probable cause to arrest and records of juvenile cases filed with any court, regardless of whether the case resulted in a finding of guilt.

The act is known as the Washington Fair Chance Act.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed. However, the bill is null and void unless funded in the budget.

Staff Summary of Public Testimony:

See House Bill Report in the 2017 Legislative Session.

Persons Testifying:

See House Bill Report in the 2017 Legislative Session.

Persons Signed In To Testify But Not Testifying:

See House Bill Report in the 2017 Legislative Session.