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**SENATE BILL 5608**

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**State of Washington 64th Legislature 2015 Regular Session**

**By** Senators Miloscia, Conway, Keiser, Darneille, and Hasegawa

AN ACT Relating to prohibiting employers from asking about arrests or convictions before an applicant is determined otherwise qualified for a position; adding new sections to chapter 49.44 RCW; creating new sections; and prescribing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

NEW SECTION. **Sec.**  The legislature finds that many employers ask job applicants if they have ever been arrested or convicted of a crime, then refuse to consider any applicant who checks the box responding "yes." This practice often creates lifetime barriers to employment and harms applicants, their families, and society.

The legislature further finds that "banning the box" gives applicants a fair chance at employment opportunities. Stopping employers from asking about arrests or convictions before determining the applicant is otherwise qualified for the position provides applicants a fair chance to be considered on the merits of their qualifications, merits that would otherwise be disregarded due to an applicant's arrest or conviction record.

The legislature further finds that RCW 9.96A.010, enacted in 1973, articulates Washington's long-standing public policy, "to encourage and contribute to the rehabilitation of felons and to assist them in the assumption of the responsibilities of citizenship, and the opportunity to secure employment or to pursue, practice or engage in a meaningful and profitable trade, occupation, vocation, profession or business is an essential ingredient to rehabilitation and the assumption of responsibilities of citizenship."

Therefore, the legislature finds that exclusion of applicants from consideration for employment opportunities based on arrest or conviction records prior to a determination that a person is otherwise qualified for the job causes harm in the form of economic instability, a lifetime of reduced employment opportunities, and reduced earning potential. In contrast, the legislature finds "banning the box" is good for business, safety, the economy, and the state budget, with studies showing that employment significantly reduces recidivism.

Additionally, the legislature finds that by "banning the box," the state promotes important public interests, including increasing self-sufficiency and earnings for individuals and families, increasing tax revenue, conserving scarce governmental resources by reducing reliance on public benefits, reducing recidivism, and mitigating racial disparities in the criminal justice system.

In categories of employment where the law provides a special exception permitting an inquiry about arrests or convictions before determining the applicant is otherwise qualified, this act preserves an employer's ability to conduct that inquiry. Outside these categories, this act preserves employers' discretion to choose the best person for the job and their ability to ask about arrests or convictions and conduct a background check after an applicant has been determined otherwise qualified for the position. It is the legislature's intent to increase employers' awareness that excluding a person with an arrest or conviction record from a job because of his or her record unfairly excludes people who may turn out to be the most successful at performing the position.

Consistent with this intent, employers are encouraged to consider the following in order to give applicants a fair chance to gain employment:

(1) Giving an otherwise qualified applicant an opportunity to explain why he or she should be hired despite a record, in a face-to-face setting if feasible;

(2) Evidence of work experience, education, rehabilitation, and how long ago an arrest or conviction occurred, as the likelihood of recidivism declines over time; and

(3) Whether the arrest or conviction record is in fact relevant to performance of the job at issue.

The legislature recognizes that numerous jurisdictions in the United States, including the states of California, Colorado, Connecticut, Delaware, Hawaii, Illinois, Maryland, Massachusetts, Minnesota, Nebraska, New Jersey, New Mexico, and Rhode Island, the city of Seattle, and more than sixty other cities and counties in the United States, have adopted some form of "ban the box" policy and that the city of Spokane is implementing a "ban the box" policy. In addition, recognizing the numerous benefits of a "ban the box" policy, some of the largest retailers in the United States, Target and Wal-Mart, have adopted a policy prohibiting asking a prospective employee about his or her criminal record in initial job applications.

Therefore, the legislature finds that this act is a necessary step toward giving people a fair chance to work and be productive members of our communities.

NEW SECTION. **Sec.**  The definitions in this section apply throughout this section and sections 1, 3, 4, and 5 of this act.

(1) The term "arrest or conviction" includes any record about a citation or arrest for criminal conduct, including records relating to probable cause to arrest, and includes any record about a criminal or juvenile case filed with any court, whether or not such case resulted in a finding of guilt.

(2) "Employer" includes public agencies, private individuals, businesses and corporations, contractors, temporary staffing agencies, training and apprenticeship programs, and job placement, referral, and employment agencies.

(3) "Otherwise qualified" means that the applicant meets the basic criteria for the position as set out in the advertisement or job description.

NEW SECTION. **Sec.**  (1) An employer may not include any question on any application for employment, inquire either orally or in writing, receive information through a criminal history background check, or otherwise obtain information about an applicant’s arrests or convictions before having determined that the applicant is otherwise qualified for the position.

(2) An employer may not advertise employment openings in a way that excludes people with arrests or convictions from applying. Ads that state "no felons," "no criminal background," or otherwise convey similar messages are prohibited.

(3) An employer may not implement any policy or practice that automatically or categorically excludes individuals with an arrest or conviction record from consideration prior to a determination that the applicant is otherwise qualified for the position. Prohibited policies and practices include rejecting an applicant for failure to disclose an arrest or conviction prior to determining the applicant is otherwise qualified for the position.

(4) This section does not apply to:

(a) Any employer hiring a person who will have unsupervised access to children under the age of eighteen, a vulnerable adult as defined in chapter 74.34 RCW, or a vulnerable person as defined in RCW 9.96A.060;

(b) Any employer, including a financial institution, who is expressly permitted or required under any federal or state law to inquire into, consider, or rely on information about an applicant's or employee's arrest or conviction record for employment purposes; and

(c) Employment by a general or limited authority Washington law enforcement agency as defined in RCW 10.93.020.

NEW SECTION. **Sec.**  (1) This act may not be construed to interfere with, impede, or in any way diminish any provision in a collective bargaining agreement or the right of employees to bargain collectively with their employers through representatives of their own choosing concerning wages, standards, and conditions of employment.

(2) This act may not be interpreted or applied to diminish or conflict with any requirements of state or federal law, including Title VII of the civil rights act of 1964; the federal fair credit reporting act, 15 U.S.C. Sec. 1681; the Washington state fair credit reporting act, chapter 19.182 RCW; and state laws regarding unsupervised access to children or vulnerable persons, RCW 43.43.830 through 43.43.845.

(3) This act may not be interpreted or applied as imposing an obligation on the part of an employer to provide accommodations or job modifications in order to facilitate the employment or continued employment of an applicant or employee with an arrest or conviction record or who is facing pending criminal charges.

(4) This act may not be construed to discourage or prohibit an employer from adopting employment policies that are more generous to employees and job applicants than the requirements of this chapter.

(5) This act may not be construed to interfere with local government laws that provide additional protections to applicants with criminal records, nor does it prohibit local governments from enacting greater protections in the future. Local government laws that provide lesser protections to job applicants with criminal records than this act conflict with this act and may not be enforced.

NEW SECTION. **Sec.**  A right of action to enforce this act is authorized. It is presumed that damages to the applicant are equal to the cost of the application, if any, plus five hundred dollars. Costs of the suit may be recovered, but any additional economic damages must be proven. This right of action is in addition to, and not in derogation of, any other rights and remedies an applicant may have under any other law.

NEW SECTION. **Sec.**  (1) The state is authorized to educate the public about this act and disseminate information about it as widely as possible in a cost-effective manner and within available funds.

(2) The state is authorized to form an advisory body representing the views of a broad variety of stakeholders to provide recommendations regarding improved enforcement of the act, including recommending adoption of administrative rules, if necessary. The advisory body is a class one group under RCW 43.03.220.

NEW SECTION. **Sec.**  If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. **Sec.**  If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state, the conflicting part of this act is inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and this finding does not affect the operation of the remainder of this act in its application to the agencies concerned. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state.

NEW SECTION. **Sec.**  Sections 1 through 6 of this act are each added to chapter 49.44 RCW.

NEW SECTION. **Sec.**  This act may be known and cited as the Washington fair chance act.

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