

ESSB 5312 - H COMM AMD

By Committee on Labor & Workplace Standards

NOT CONSIDERED 01/05/2018

1 Strike everything after the enacting clause and insert the  
2 following:

3 NEW SECTION. **Sec. 1.** The definitions in this section apply  
4 throughout this chapter unless the context clearly requires  
5 otherwise.

6 (1) "Criminal record" includes any record about a citation or  
7 arrest for criminal conduct, including records relating to probable  
8 cause to arrest, and includes any record about a criminal or juvenile  
9 case filed with any court, whether or not the case resulted in a  
10 finding of guilt.

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

15 (3) "Otherwise qualified" means that the applicant meets the  
16 basic criteria for the position as set out in the advertisement or  
17 job description without consideration of a criminal record.

18 NEW SECTION. **Sec. 2.** (1) An employer may not include any  
19 question on any application for employment, inquire either orally or  
20 in writing, receive information through a criminal history background  
21 check, or otherwise obtain information about an applicant's criminal  
22 record until after the employer initially determines that the  
23 applicant is otherwise qualified for the position. Once the employer  
24 has initially determined that the applicant is otherwise qualified,  
25 the employer may inquire into or obtain information about a criminal  
26 record and consider an applicant's criminal record in a hiring  
27 decision.

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

1 (3) An employer may not implement any policy or practice that  
2 automatically or categorically excludes individuals with a criminal  
3 record from consideration prior to an initial determination that the  
4 applicant is otherwise qualified for the position. Prohibited  
5 policies and practices include rejecting an applicant for failure to  
6 disclose a criminal record prior to initially determining the  
7 applicant is otherwise qualified for the position.

8 (4) This section does not apply to:

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

13 (b) Any employer who is hiring for a position that includes:

14 (i) Services to be performed at or in a residential property,  
15 excluding all persons certified or licensed under Title 18 or 19 RCW;

16 (ii) Solicitation at or in a residential property of products or  
17 services; or

18 (iii) Residential delivery services;

19 (c) Any employer, including a financial institution, who is  
20 expressly permitted or required under any federal or state law to  
21 inquire into, consider, or rely on information about an applicant's  
22 or employee's criminal record for employment purposes;

23 (d) Employment by a general or limited authority Washington law  
24 enforcement agency as defined in RCW 10.93.020 or by a criminal  
25 justice agency as defined in RCW 10.97.030(5)(b); or

26 (e) To an employer seeking a nonemployee volunteer.

27 NEW SECTION. **Sec. 3.** (1) This chapter may not be interpreted or  
28 applied to diminish or conflict with any requirements of state or  
29 federal law, including Title VII of the civil rights act of 1964; the  
30 federal fair credit reporting act, 15 U.S.C. Sec. 1681; the  
31 Washington state fair credit reporting act, chapter 19.182 RCW; and  
32 state laws regarding unsupervised access to children or vulnerable  
33 persons, RCW 43.43.830 through 43.43.845.

34 (2) This chapter may not be interpreted or applied as imposing an  
35 obligation on the part of an employer to provide accommodations or  
36 job modifications in order to facilitate the employment or continued  
37 employment of an applicant or employee with a criminal record or who  
38 is facing pending criminal charges.

1 (3) This chapter may not be construed to prohibit an employer  
2 from declining to hire an applicant with a criminal record or from  
3 terminating the employment of an employee with a criminal record.

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

8 (5) This chapter may not be construed to create a private right  
9 of action to seek damages or remedies of any kind. The exclusive  
10 remedy available under this chapter is enforcement described in  
11 section 4 of this act. This chapter does not create any additional  
12 liability for employers beyond that enumerated in this chapter.

13 NEW SECTION. **Sec. 4.** (1) The state attorney general's office  
14 shall enforce this chapter. Its powers to enforce this chapter  
15 include the authority to:

- 16 (a) Investigate violations of this chapter on its own initiative;  
17 (b) Investigate violations of this chapter in response to  
18 complaints and seek remedial relief for the complainant;  
19 (c) Educate the public about how to comply with this chapter;  
20 (d) Issue written civil investigative demands for pertinent  
21 documents, answers to written interrogatories, or oral testimony as  
22 required to enforce this chapter;  
23 (e) Adopt rules implementing this chapter including rules  
24 specifying applicable penalties; and  
25 (f) Pursue administrative sanctions or a lawsuit in the courts  
26 for penalties, costs, and attorneys' fees.

27 (2) In exercising its powers, the attorney general's office shall  
28 utilize a stepped enforcement approach, by first educating violators,  
29 then warning them, then taking legal, including administrative,  
30 action. Maximum penalties are as follows: A notice of violation and  
31 offer of agency assistance for the first violation, which must allow  
32 a ninety-day period to correct the violation before a second  
33 violation is assessed; a monetary penalty of up to seven hundred  
34 fifty dollars for the second violation; and a monetary penalty of up  
35 to one thousand dollars for each subsequent violation.

36 NEW SECTION. **Sec. 5.** If any provision of this act or its  
37 application to any person or circumstance is held invalid, the

1 remainder of the act or the application of the provision to other  
2 persons or circumstances is not affected.

3 NEW SECTION. **Sec. 6.** If any part of this act is found to be in  
4 conflict with federal requirements that are a prescribed condition to  
5 the allocation of federal funds to the state, the conflicting part of  
6 this act is inoperative solely to the extent of the conflict and with  
7 respect to the agencies directly affected, and this finding does not  
8 affect the operation of the remainder of this act in its application  
9 to the agencies concerned. Rules adopted under this act must meet  
10 federal requirements that are a necessary condition to the receipt of  
11 federal funds by the state.

12 NEW SECTION. **Sec. 7.** Sections 1 through 4, 6, and 8 of this act  
13 constitute a new chapter in Title 49 RCW.

14 NEW SECTION. **Sec. 8.** This act may be known and cited as the  
15 Washington fair chance act."

16 Correct the title.

EFFECT: Removes the preemption provision.

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