

**2SHB 1298** - S COMM AMD

By Committee on Labor & Commerce

ADOPTED 02/28/2018

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.

27 (2) An employer may not advertise employment openings in a way  
28 that excludes people with criminal records from applying. Ads that  
29 state "no felons," "no criminal background," or otherwise convey  
30 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, including a financial institution, who is  
14 expressly permitted or required under any federal or state law to  
15 inquire into, consider, or rely on information about an applicant's  
16 or employee's criminal record for employment purposes;

17 (c) Employment by a general or limited authority Washington law  
18 enforcement agency as defined in RCW 10.93.020 or by a criminal  
19 justice agency as defined in RCW 10.97.030(5)(b);

20 (d) An employer seeking a nonemployee volunteer; or

21 (e) Any entity required to comply with the rules or regulations  
22 of a self-regulatory organization, as defined in section 3(a)(26) of  
23 the securities and exchange act of 1934, 15 U.S.C. 78c(a)(26).

24 NEW SECTION. **Sec. 3.** (1) This chapter may not be construed to  
25 interfere with, impede, or in any way diminish any provision in a  
26 collective bargaining agreement or the right of employees to bargain  
27 collectively with their employers through representatives of their  
28 own choosing concerning wages, standards, and conditions of  
29 employment.

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

37 (3) This chapter may not be interpreted or applied as imposing an  
38 obligation on the part of an employer to provide accommodations or  
39 job modifications in order to facilitate the employment or continued

1 employment of an applicant or employee with a criminal record or who  
2 is facing pending criminal charges.

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

7 (5) This chapter may not be construed to interfere with local  
8 government laws that provide additional protections to applicants or  
9 employees with criminal records, nor does it prohibit local  
10 governments from enacting greater protections for such applicants or  
11 employees in the future. Local government laws that provide lesser  
12 protections to job applicants with criminal records than this chapter  
13 conflict with this chapter and may not be enforced.

14 (6) This chapter may not be construed to create a private right  
15 of action to seek damages or remedies of any kind. The exclusive  
16 remedy available under this chapter is enforcement described in  
17 section 4 of this act. This chapter does not create any additional  
18 liability for employers beyond that enumerated in this chapter.

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

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

33 (2) In exercising its powers, the attorney general's office shall  
34 utilize a stepped enforcement approach, by first educating violators,  
35 then warning them, then taking legal, including administrative,  
36 action. Maximum penalties are as follows: A notice of violation and  
37 offer of agency assistance for the first violation; a monetary  
38 penalty of up to seven hundred fifty dollars for the second

1 violation; and a monetary penalty of up to one thousand dollars for  
2 each subsequent violation.

3 NEW SECTION. **Sec. 5.** If any provision of this act or its  
4 application to any person or circumstance is held invalid, the  
5 remainder of the act or the application of the provision to other  
6 persons or circumstances is not affected.

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

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

18 NEW SECTION. **Sec. 8.** This act may be known and cited as the  
19 Washington fair chance act.

20 NEW SECTION. **Sec. 9.** If specific funding for the purposes of  
21 this act, referencing this act by bill or chapter number, is not  
22 provided by June 30, 2018, in the omnibus appropriations act, this  
23 act is null and void."

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24 On page 1, line 3 of the title, after "position;" strike the  
25 remainder of the title and insert "adding a new chapter to Title 49  
26 RCW; creating a new section; and prescribing penalties."

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