

FINAL BILL REPORT

2SHB 1298

C 38 L 18
Synopsis as Enacted

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).

House Committee on Labor & Workplace Standards
House Committee on Appropriations
Senate Committee on Commerce, Labor & Sports
Senate Committee on Labor & Commerce
Senate Committee on Ways & Means

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. In addition, local jurisdictions have adopted similar policies. For example, Seattle's ordinance limits criminal history questions on job applications and criminal background checks until after an employer conducts an initial screening to eliminate unqualified applicants.

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.

Summary:

An employer may not include any question relating to criminal history on an application for employment, inquire about an applicant's criminal history, 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. In addition an employer may not:

- 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, vulnerable adults, or vulnerable persons;
- employers, including financial institutions, who are expressly permitted or required under federal or state law to inquire into or consider information about an applicant's criminal record for employment purposes;
- general or limited authority law enforcement agencies or certain criminal justice agencies;
- employers seeking nonemployee volunteers; or
- entities 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 and 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 – 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.

Votes on Final Passage:

House	68	30	
House	52	46	
Senate	33	16	(Senate amended)
House	52	44	(House concurred)

Effective: June 7, 2018