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**SUBSTITUTE SENATE BILL 6110**

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**State of Washington**

**65th Legislature**

**2018 Regular Session**

**By** Senate Ways & Means (originally sponsored by Senators Saldaña, Walsh, Darneille, Frockt, Zeiger, Van De Wege, Keiser, Hunt, Kuderer, Pedersen, Hasegawa, and Billig)

READ FIRST TIME 02/06/18.

1       AN ACT Relating to prohibiting employers from asking about  
2 arrests or convictions before an applicant is determined otherwise  
3 qualified for a position; adding a new chapter to Title 49 RCW;  
4 creating a new section; and prescribing penalties.

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

6       NEW SECTION.   **Sec. 1.** The definitions in this section apply  
7 throughout this chapter unless the context clearly requires  
8 otherwise.

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

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

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

1        NEW SECTION.     **Sec. 2.**     (1) An employer may not include any  
2 question on any application for employment, inquire either orally or  
3 in writing, receive information through a criminal history background  
4 check, or otherwise obtain information about an applicant's criminal  
5 record until after the employer initially determines that the  
6 applicant is otherwise qualified for the position. Once the employer  
7 has initially determined that the applicant is otherwise qualified,  
8 the employer may inquire into or obtain information about a criminal  
9 record.

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

14        (3) An employer may not implement any policy or practice that  
15 automatically or categorically excludes individuals with a criminal  
16 record from consideration prior to an initial determination that the  
17 applicant is otherwise qualified for the position. Prohibited  
18 policies and practices include rejecting an applicant for failure to  
19 disclose a criminal record prior to initially determining the  
20 applicant is otherwise qualified for the position.

21        (4) This section does not apply to:

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

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

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

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

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

37        NEW SECTION.     **Sec. 3.**     (1) This chapter may not be construed to  
38 interfere with, impede, or in any way diminish any provision in a  
39 collective bargaining agreement or the right of employees to bargain

1 collectively with their employers through representatives of their  
2 own choosing concerning wages, standards, and conditions of  
3 employment.

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

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

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

20 (5) This chapter may not be construed to interfere with local  
21 government laws that provide additional protections to applicants or  
22 employees with criminal records, nor does it prohibit local  
23 governments from enacting greater protections for such applicants or  
24 employees in the future. Local government laws that provide lesser  
25 protections to job applicants with criminal records than this chapter  
26 conflict with this chapter and may not be enforced.

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

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

- 35 (a) Investigate violations of this chapter on its own initiative;  
36 (b) Investigate violations of this chapter in response to  
37 complaints and seek remedial relief for the complainant;  
38 (c) Educate the public about how to comply with this chapter;

1 (d) Issue written civil investigative demands for pertinent  
2 documents, answers to written interrogatories, or oral testimony as  
3 required to enforce this chapter;

4 (e) Adopt rules implementing this chapter including rules  
5 specifying applicable penalties; and

6 (f) Pursue administrative sanctions or a lawsuit in the courts  
7 for penalties, costs, and attorneys' fees.

8 (2) In exercising its powers, the attorney general's office shall  
9 utilize a stepped enforcement approach, by first educating violators,  
10 then warning them, then taking legal, including administrative,  
11 action. Maximum penalties are as follows: A notice of violation and  
12 offer of agency assistance for the first violation; a monetary  
13 penalty of up to seven hundred fifty dollars for the second  
14 violation; and a monetary penalty of up to one thousand dollars for  
15 each subsequent violation.

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

20 NEW SECTION. **Sec. 6.** If any part of this act is found to be in  
21 conflict with federal requirements that are a prescribed condition to  
22 the allocation of federal funds to the state, the conflicting part of  
23 this act is inoperative solely to the extent of the conflict and with  
24 respect to the agencies directly affected, and this finding does not  
25 affect the operation of the remainder of this act in its application  
26 to the agencies concerned. Rules adopted under this act must meet  
27 federal requirements that are a necessary condition to the receipt of  
28 federal funds by the state.

29 NEW SECTION. **Sec. 7.** (1) In order to facilitate any  
30 investigation into allegations of violating this chapter, employers  
31 shall retain the following records for three years:

32 (a) All hiring policies effective at any time during the three  
33 years preceding the charge;

34 (b) Any and all policies and procedures regarding conducting or  
35 using criminal background checks; and

1 (c) All job postings, and each version of any job applications  
2 utilized. Applications of individuals hired shall serve as a  
3 representative sample of the application for each position.

4 (2) No local government may adopt more stringent record retention  
5 requirements, for ordinances dealing with the subject matter of this  
6 chapter, except that any such local government ordinance or  
7 regulation in existence on the effective date of this section is not  
8 affected.

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

11 NEW SECTION. **Sec. 9.** This act may be known and cited as the  
12 Washington fair chance act.

13 NEW SECTION. **Sec. 10.** If specific funding for the purposes of  
14 this act, referencing this act by bill or chapter number, is not  
15 provided by June 30, 2018, in the omnibus appropriations act, this  
16 act is null and void.

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