

2SHB 1701 - H AMD 644

By Representative Manweller

Strike everything after the enacting clause and insert the following:

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

(1) "Criminal record" 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 the 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 without consideration of a criminal record.

NEW SECTION. **Sec. 2.** (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 criminal record until after the employer initially determines that the applicant is otherwise qualified for the position. Once the employer has initially determined that the applicant is otherwise qualified, the employer may inquire into or obtain information about a criminal record.

(2) An employer may not advertise employment openings in a way that excludes people with criminal records from applying. Ads that state "no felons," "no criminal background," or otherwise convey 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); or

20 (d) To an employer seeking a nonemployee volunteer.

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

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

34 (3) 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.

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

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

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

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

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

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

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

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

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

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

18 Correct the title.

EFFECT: Strikes provisions prohibiting an employer from: (1)
Excluding an applicant from an initial interview solely because of an
applicant's criminal record; and (2) requiring an applicant to
disclose a criminal record prior to an initial interview or requiring
disclosure before making a conditional offer, if no interview is
conducted. Instead, prohibits an employer from including any question
on an application about an applicant's criminal record, inquiring
either orally or in writing about an applicant's criminal record, or
obtaining information from a criminal background check, until after
the employer initially determines that the applicant is otherwise
qualified. Defines "otherwise qualified" to mean the applicant meets
the basic criteria for the position as set out in the advertisement
or job description without consideration of arrests or convictions.
Provides that an employer may not implement any policy or practice
that categorically excludes people with criminal records from
consideration prior to an initial determination that the applicant is
otherwise qualified. Exempts employers that are expressly permitted
(not just required) by state or federal laws to consider an
applicant's criminal background. Exempts criminal justice agencies,
except for the courts (as opposed to "employers in the criminal
justice system").

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