HB 1747 - H AMD **240**
By Representative Ortiz-Self

ADOPTED 03/11/2025

Strike everything after the enacting clause and insert the following:

"Sec. 1. RCW 49.94.005 and 2018 c 38 s 1 are each amended to read as follows:

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Adult conviction record" means any record of or information about criminal conduct resulting in an adult criminal conviction, finding of guilt, or other finding adverse to the subject, including an acquittal due to a finding of not guilty by reason of insanity, a dismissal by reason of incompetency, or a dismissal entered after a period of probation, suspension, or deferral of sentence. It also includes information related to the conviction or other finding adverse to the subject including, but not limited to, any citation, arrest record, or probable cause statement.

(2) "Arrest record" means any record of or information about an arrest or pending charge for criminal conduct without a conviction, adjudication, finding of guilt, or other finding adverse to the subject.

(3) "Criminal record" includes any record of or information about a citation or arrest for criminal conduct, including records relating to probable cause to arrest, and includes any record about ((~~a~~)) an adult criminal or juvenile case filed with any court, whether or not the case resulted in a finding of guilt.

((~~(2)~~)) (4) "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)~~)) (5) "Juvenile conviction record" means any record of or information about a juvenile adjudication or other finding of guilt pursuant to Title 13 RCW or other juvenile court system. It also includes information related to the conviction or other finding

adverse to the subject including, but not limited to, any citation, arrest record, or probable cause statement.

(6) "Legitimate business reason" means that, based on information known to the employer at the time the employer makes the decision regarding a tangible adverse employment action, the employer believes in good faith that the nature of the criminal conduct underlying the adult conviction record will:

(a) Have a negative impact on the employee's or applicant's fitness or ability to perform the position sought or held; or

(b) Harm or cause injury to people, property, business reputation, or business assets, and the employer has considered the following factors, and documented as such in accordance with RCW 49.94.010:

(i) The seriousness of the conduct underlying the adult conviction record;

(ii) The number and types of convictions;

(iii) The time that has elapsed since the conviction, excluding periods of incarceration;

(iv) Any verifiable information related to the individual's rehabilitation, good conduct, work experience, education, and training, as provided by the individual;

(v) The specific duties and responsibilities of the position sought or held; and

(vi) The place and manner in which the position will be performed.

(7) "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.

(8) "Tangible adverse employment action" means a decision by an employer to reject an otherwise qualified job applicant, or to terminate, suspend, discipline, demote, or deny a promotion to an employee.

Sec. 2. RCW 49.94.010 and 2018 c 38 s 2 are each amended to read as follows:

(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~~)) and makes an offer of employment conditioned on obtaining the applicant's 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.

(3) An employer may not 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~~)) any employment position. ((~~Prohibited policies and practices include rejecting~~)) An employer may not reject an applicant for failure to disclose a criminal record prior to ((~~initially determining the applicant is otherwise qualified for the position~~)) receiving a conditional offer of employment.

(4)(a) An employer may not carry out a tangible adverse employment action based on an applicant's or employee's arrest record or juvenile conviction record.

(b) This subsection does not apply to an adult arrest in which an individual is out on bail or released on their own personal recognizance pending trial.

(5)(a) An employer may not carry out a tangible adverse employment action solely based on an applicant's or employee's adult conviction record, unless the employer has a legitimate business reason for taking such action.

(b) Before carrying out any tangible adverse employment action under this subsection, the employer shall notify the applicant or employee and identify to the applicant or employee the record on which the employer is relying for purposes of assessing its legitimate business reason. The employer shall hold open the position for a minimum of two business days to provide the applicant or employee a reasonable opportunity to correct or explain the record or provide information on the applicant's or employee's rehabilitation, good conduct, work experience, education, and training.

(c) If an employer makes a tangible adverse employment decision following the reasonable opportunity under (b) of this subsection, the employer shall provide the applicant or employee with a written

decision, including specific documentation as to its reasoning and assessment of each of the relevant factors, including the impact of the conviction on the position or business operations, and its consideration of the applicant's or employee's rehabilitation, good conduct, work experience, education, and training.

(6) An employer may not carry out any tangible adverse employment action against any employee because the employee, or a person acting on behalf of the employee, makes a good faith report, orally or in writing, to the employer, the attorney general, a labor organization, or others of a violation or suspected violation of this section or otherwise informs others of the requirements of this section.

(7) This section does not apply to:

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

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

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

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

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

(f) Any employer with respect to a position entailing work under a federal contract that specifically prohibits people with criminal records from working under that contract.

(8)(a) Nothing in this section prohibits:

(i) An employer from accurately disclosing to the applicant that the position is subject to a background check after a conditional offer of employment; or

(ii) An applicant from voluntarily disclosing, without solicitation by the employer, information about the applicant's criminal record during an interview.

(b) If an employer or an applicant makes a disclosure under (a) of this subsection, the employer must immediately:

(i) Inform the applicant in writing of the requirements of subsections (1), (3), (4), and (5) of this section; and

(ii) Provide the applicant the attorney general's Washington fair chance act guide for employers and job applicants.

Sec. 3. RCW 49.94.030 and 2018 c 38 s 4 are each amended to read as follows:

(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.~~)) (a) For purposes of administrative sanctions, the attorney general's office may waive penalties for first time or de minimis violations of this chapter, and instead provide education and a warning to deter future noncompliance. The attorney general's office may impose administrative sanctions and pursue appropriate legal action for second and subsequent violations.

(b) Maximum monetary penalties for administrative sanctions 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.~~))

(i) $1,500 for the first violation, except where a waiver has been granted under this section;

(ii) $3,000 for the second violation;

(iii) $15,000 for each subsequent violation.

(c) A penalty under (b) of this subsection must be imposed per aggrieved job applicant, employee, or party for each violation. The

penalty accrues for the benefit of and is payable to the job applicant, employee, or other aggrieved party. If there is no identifiable job applicant, employee, or aggrieved person for the violation, the penalty is retained by the attorney general.

(d) The attorney general may pursue legal action to obtain unpaid wages, unpaid administrative penalties, damages, and reasonable attorneys' fees and costs.

NEW SECTION. **Sec. 4.** (1) This act applies to employers with 15 or more employees beginning July 1, 2026.

(2) This act applies to employers with fewer than 15 employees beginning January 1, 2027."

Correct the title.

EFFECT: Allows an employer to carry out a tangible adverse employment action based on an adult arrest in which an individual is out on bail or released on their own personal recognizance pending trial. Allows an employer to accurately disclose to an applicant that a position is subject to a background check after a conditional offer of employment. Allows an applicant to voluntarily disclose, without solicitation from the employer, information about the applicant's criminal record during an interview. Requires, if such a disclosure is made by an employer or an applicant, the employer to immediately disclose written information regarding when a criminal record may be requested and under what circumstances the employer may reject the applicant. Requires the Attorney General's Fair Chance Act Guide for Employers and Job Applicants to also be provided to the applicant. Clarifies that the Attorney General's Office's enforcement authority for second and subsequent violations is discretionary, not mandatory. Applies the act to employers with 15 or more employees beginning July 1, 2026, and to all other employers on January 1, 2027.

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