Washington State
House of Representatives
Office of Program Research

BILL ANALYSIS

Labor & Workplace Standards Committee

HB 1747

Brief Description: Expanding protections for applicants and employees under the Washington fair chance act.

Sponsors: Representatives Ortiz-Self, Berry, Scott, Obras, Fosse, Goodman, Farivar, Taylor, Fitzgibbon, Reed, Gregerson, Ormsby, Parshley, Cortes, Hill, Pollet and Ramel.

Brief Summary of Bill

- Changes the circumstances under which an employer is prohibited from obtaining information about an applicant's criminal history record under the Washington Fair Chance Act.
- Limits an employer's ability to pursue a tangible adverse employment action against an employee or applicant based on criminal history information under certain circumstances.
- Changes enforcement procedures and monetary penalties under the Washington Fair Chance Act.
- Exempts certain federal contractors from the Washington Fair Chance Act.

Hearing Date: 2/11/25

Staff: Jim Morishima (786-7191).

Background:

Under the Washington Fair Chance Act (WFCA), an employer is prohibited from obtaining any

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information about an applicant's criminal record until the employer determines that the applicant is otherwise qualified for the position. Further, the employer may not implement any policy or practice that automatically or categorically excludes an applicant with a criminal record from consideration from a position prior to an initial determination that the applicant is otherwise qualified. This includes rejecting an applicant for failure to disclose a criminal record prior to initially determining the applicant is otherwise qualified.

Certain types of employers are exempt from the WFCA, including:
- employers hiring individuals who have unsupervised access to children or vulnerable adults;
- employers who are expressly allowed or required to consider an applicant's criminal record under state or federal law; and
- law enforcement and criminal justice agencies.

The Attorney General's Office (AGO) enforces the WFCA. The AGO is authorized to pursue administrative sanctions and must use a stepped enforcement approach as follows:
- For a first violation, the AGO may provide a notice of violation and offer agency assistance.
- For a second violation, the AGO may impose a monetary penalty of up to $750.
- For a third and subsequent violations, the AGO may impose a monetary penalty of up to $1,000.

Summary of Bill:

Criminal Record Inquiries.

An employer may not automatically or categorially exclude an individual with a criminal record from any employment position. The employer must make a conditional offer of employment prior to obtaining information about an applicant's criminal record or rejecting an employee for failure to disclose a criminal record.

Tangible Adverse Employment Actions.

An employer's ability to carry out a tangible adverse employment action based on an applicant's or employees criminal history is limited. "Tangible adverse employment action" is defined as 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. The scope of the limitation varies depending on whether the criminal history is an adult conviction or whether the criminal history is an arrest record or a juvenile conviction.

An employer is entirely prohibited from carrying out a tangible adverse employment action based on an applicant's or employee's arrest record or juvenile conviction record.

An employer may carry out a tangible adverse employment action based on an applicant's or

employee's adult conviction record only if the employer has a legitimate business reason for doing so. The employer has a legitimate business reason if the employer believes in good faith that the nature of the criminal conduct in the conviction record will:

- have a negative impact on the employee's or applicant's fitness or ability to perform the position sought or held; or
- harm or cause injury to people, property, business reputation, or business assets and the employer has considered factors including the seriousness of the conduct in the record, the number and types of convictions, the time that has elapsed since the conviction (excluding incarceration), specific duties of the position, the place and manner in which the position will be performed, and any verifiable information related to the individual's rehabilitation, good conduct, work experience, education, and training, as provided by the individual.

Prior to carrying out a tangible adverse employment action based on an adult conviction record, the employer must notify the applicant or employee and identify the record on which the employer is relying to assess the legitimate business reason. The employer must hold the position open for at least two business days to give the applicant or employee a reasonable opportunity to correct or explain the record or to provide information of rehabilitation, good conduct, work experience, education, and training. If the employer makes the tangible adverse employment decision, the employer must provide the applicant or employee with a written decision that must include specific documentation of its reasoning and an assessment of relevant factors, including the impact of the conviction on the position or business operations and the employer's consideration of the applicant's or employee's rehabilitation, good conduct, work experience, education, and training.

An employer is prohibited from carrying 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 to the employer, the Attorney General's Office (AGO), a labor organization, or others of a violation of the requirements relating to tangible adverse employment action or otherwise informs others of the requirements.

Penalties.

For purposes of administrative sanctions, the AGO may waive penalties for first time or de minimis violations of the Washington Fair Chance Act (WFCA) and instead provide education and a warning to deter future non-compliance. The AGO must impose administrative sanctions and pursue appropriate legal action for second and subsequent violations. The specific requirement for the AGO to use a stepped enforcement approach is eliminated.

The AGO is authorized to impose a monetary penalty for a first violation of the WFCA of $1,500 unless the penalty is waived. The maximum penalty amount for a second violation is increased from $750 to $3,000. The maximum penalty amount for a third and subsequent violation is increased from $1,000 to $1,500.

The monetary penalties 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, the penalty is retained by the AGO. The AGO may also pursue legal action to obtain unpaid wages, unpaid administrative penalties, damages, and reasonable attorneys' fees and costs.

Exemptions.

An employer is exempt from the WFCA with respect to a position entailing work under a federal contract that specifically prohibits people with criminal records from working under the contract.

Appropriation: None.

Fiscal Note: Requested on February 6, 2025.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.