SENATE BILL REPORT
EHB 1747

As of March 21, 2025

Title: An act relating to expanding protections for applicants and employees under the Washington fair chance act.

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 History: Passed House: 3/11/25, 56-40.
Committee Activity: Labor & Commerce: 3/24/25.

Brief Summary of Bill

- Modifies 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.
- Changes enforcement procedures and monetary penalties under the Washington Fair Chance Act.

SENATE COMMITTEE ON LABOR & COMMERCE

Staff: Susan Jones (786-7404)

Background: Prohibited Actions Under Washington Fair Chance Act. Under the Washington Fair Chance Act (WFCA), an employer may not include any question on any application for employment, inquire either orally or in writing, receive information through

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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.

An employer may not advertise employment openings in a way that excludes people with criminal records from applying. 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 position.

Exemptions from Washington Fair Chance Act. 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;
- law enforcement and criminal justice agencies;
- employers seeking nonemployee volunteers; and
- certain entities subject to the Securities and Exchange Act.

Enforcement of Washington Fair Chance Act. The Attorney General's Office (AGO) enforces the WFCA. The AGO may pursue administrative sanctions, with a stepped enforcement approach, as follows:

- for a first violation—provide a notice of violation and offer agency assistance;
- for a second violation—impose a monetary penalty of up to $750; and
- for a third and subsequent violations—impose a monetary penalty of up to $1,000.

Summary of Bill: Excluding a Candidate and Requesting Information. An employer may not automatically exclude an individual with a criminal record from any employment position. The employer must make a conditional offer of employment prior to requesting or obtaining information about an applicant's criminal record or rejecting an employee for failure to disclose a criminal record.

Adverse Employment Action. An employer's ability to carry out a tangible adverse employment action based on an applicant's or employee's criminal history is limited, depending on whether the criminal history is an adult or juvenile conviction or an arrest record. 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.

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

does not apply to an adult arrest in which the individual is out on bail or released on the individual's own personal recognizance pending trial.

An employer may take 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. A legitimate business reason exists 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.

Before carrying out any tangible adverse employment action, the employer must notify the applicant or employee and identify the record the employer is relying upon for purposes of assessing its legitimate business reason. The employer must hold open the position for at least two business days to allow the applicant or employee to correct or explain the record, or provide information on the applicant's or employee's rehabilitation, good conduct, work experience, education, and training.

If an employer makes a tangible adverse employment decision following the two or more business days, the employer must 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.

Retaliation Prohibited. 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, to the employer, AGO, a labor organization, or others of a violation or suspected violation or otherwise informs others of the requirements.

Allowable Actions. An employer is not prohibited from accurately disclosing to the applicant that the position is subject to a background check after a conditional offer of employment. An applicant is not prohibited from voluntarily disclosing, without solicitation by the employer, information about the applicant's criminal record during an interview. If such a disclosure is made by either party, the employer must immediately inform the applicant in writing of the certain WFCA requirements and provide the applicant a copy of the AGO's Fair Chance Act Guide for Employers and Job Applicants.

Penalty Increases. For purposes of administrative sanctions, the AGO may waive penalties for first time or de minimis WFCA violations and instead provide education and a warning to deter future noncompliance. The AGO may 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 maximum penalties for WFCA violations are:

- $1,500 for a first violation unless waived;
- $3,000 for a second violation—increased from up to $750; and
- $15,000 for a third and subsequent violation—increased from up to $1,000.

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.

Additional Exemption. 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.

Application. The act applies:

- beginning July 1, 2026, to employers with 15 or more employees; and
- beginning January 1, 2027, to employers with fewer than 15 employees.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: The bill contains several effective dates. Please refer to the bill.