SENATE BILL REPORT
EHB 1747

As Passed Senate, April 10, 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, 3/28/25 [DP, DNP].
Floor Activity: Passed Senate: 4/10/25, 27-22.

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

Majority Report: Do pass.
Signed by Senators Saldaña, Chair; Conway, Vice Chair; Alvarado, Ramos and Stanford.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Minority Report: Do not pass.
Signed by Senators King, Ranking Member; Braun, MacEwen and Schoesler.

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 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.

Staff Summary of Public Testimony: PRO: This bill was worked heavily with the business community. We tried to make it as business- and worker-friendly as possible. A

lot of the state is already doing this exact bill. However, there are inconsistencies that this bill will clarify. This bill protects businesses if, in good faith, they think this will hurt their business. If you can prove that it will harm your business, even your reputation, it is included in the bill. The bill also gives people a fair chance and allows people to sell themselves to really put their best foot forward. It allows them that opportunity. Businesses can still turn down applicants. The bill will allow consistency across the state of Washington.

One of the primary causes of homelessness includes employment. In 2017, Spokane passed a ban the box law to address fair chance hiring by helping people, who have an arrest record or minor conviction, to find employment. This legislation incorporates the law. We support the provisions in this bill that require an employer to wait until a conditional offer of employment to run a background check. We are allowing for more expansive opportunities our state needs. It will help boost our economy, reduce biased hiring, and strengthen our communities.

An employer provided that they hired about 3000 people with criminal records because the records had no bearing on the job requirement. To achieve this, they made changes in our hiring and recruitment practices and are actively encouraging other companies to do the same. This measure could help bolster the state's economy by more fully tapping the talents of thousands of people who are currently underemployed or unemployed because of their record.

We have been a second chance employer for many years. These employees perform well, and they are important to our talent pool. The bill promotes hiring consistency that is good for employers and job candidates. We conduct background checks once a conditional offer is made. It is not worth spending money for a background report unless the job candidate is really the person we want.

The legitimate business reason analysis provides every business the same factors to consider when deciding whether to go forward with an offer or rescind it. Standardizing the process across industries makes the hiring process more fair and efficient. Providing employers guidance relieves them from having to figure out what is appropriate to ask candidates with conviction history. It helps with the evaluation of employment risk and reduces confusion and bias. Nothing in the bill requires an employer to hire a person with a conviction history.

A formally incarcerated person expressed strong support for the bill, providing that they know what it means to have the skills, credentials, drive, and determination to succeed only to have doors slammed shut because of the past conviction. After serving time, they are ready to rebuild their lives, contribute to the community, and provide for their families, but they face rejection. This is not because they are not qualified but because of the record. No one saw the hardworking, loyal, and committed employee, only their past.

The bill is just about fairness. It ensures that employers consider who the people are today

before judging. Studies show that employees with conviction histories are more loyal, stay on the job longer, and work harder when given a real chance. Many major companies were already following these best practices.

Since Washington first banned the box in 2018, the national landscape of fair chance hiring has evolved. Since then, at least 11 states and even more localities have strengthened their protections for workers with records. Unfortunately, Washington's existing law fails to incorporate several best practices that are now widely recognized. The bill delays background checks until a conditional job offer. This simple change in timing is crucial to transparency about why a person is rejected and enables more effective and efficient enforcement. The bill requires a legitimate business reason for employers to reject a worker based on their conviction records. A similar job-related analysis is already required by at least 15 other states and the federal government for its own hiring.

The bill helps to widen the talent pool for Washington State employers. This helps mitigate the risks around talent shortages both now and in the future. Secondly, it promotes fair hiring practices. Conducting this kind of analysis enables employers to make better informed decisions based on data, instead of potential bias or confusion or even fear. The analysis is simple and straightforward, and it standardizes the process. These decisions can have a profound impact on the lives of job seekers.

A fair chance to work is crucial for the success of Washington's workforce. One in five workers in Washington have a conviction or arrest record. They have served their time, and many will have participated in training, education, and workforce development programs while incarcerated. Providing economic opportunities for the formerly incarcerated reduces recidivism.

This bill passed out of the House with bipartisan support. It was shaped through collaboration and a negotiated agreement with the business community resulting in a neutral position. It includes discretionary enforcement, no private right of action, and a phase-in period for small businesses. These are common sense guardrails that reflect fairness and flexibility for employers.

CON: The $5,000 average expense for vetting and hiring a new employee may not be a problem for a $4 trillion asset multinational bank, but for some of our smaller financial institutions that's a significant cost. When you are entrusted with the public's money, it is similar to when you are entrusted with their children or their elderly. Both categories of businesses have been exempted from the provisions of this bill. It is difficult for us to get permission from the FDIC to hire people with particular convictions. We know in advance essentially what is going to be rejected by the FDIC. It does not make sense to make us ignore those characteristics at the point where we're interviewing people and get their hopes up. It would be like ignoring a history of DUIs for a position that required a commercial driver's license. We ask the committee to consider exempting community banks from this in the same way that we do businesses that would handle child care or senior care.

Persons Testifying: PRO: Representative Lillian Ortiz-Self, Prime Sponsor; Nan Gibson, JP Morgan Chase; Jim Campbell, Rainier Club; Catherine Goetz; Sophia Thomas; Beth Avery, National Employment Law Project; Kelly Olson, Civil Survival ; Paul Dillon, City of Spokane / Council President Pro Tem; Christoph Mair, Washington State Labor Council, AFL-CIO.

CON: Brad Tower, Community Bankers of Washington.

Persons Signed In To Testify But Not Testifying: No one.