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**SENATE BILL 5549**

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**State of Washington                      69th Legislature                      2025 Regular Session**

**By** Senators Saldaña, Frame, Hasegawa, Nobles, and C. Wilson

Read first time 01/28/25. Referred to Committee on Labor & Commerce.

1            AN ACT Relating to expanding protections for applicants and  
2 employees under the Washington fair chance act; amending RCW  
3 49.94.005, 49.94.010, and 49.94.030; and prescribing penalties.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

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

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

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

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

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

6       ~~((2))~~ (4) "Employer" includes public agencies, private  
7 individuals, businesses and corporations, contractors, temporary  
8 staffing agencies, training and apprenticeship programs, and job  
9 placement, referral, and employment agencies.

10       ~~((3))~~ (5) "Juvenile conviction record" means any record of or  
11 information about a juvenile adjudication or other finding of guilt  
12 pursuant to Title 13 RCW or other juvenile court system. It also  
13 includes information related to the conviction or other finding  
14 adverse to the subject including, but not limited to, any citation,  
15 arrest record, or probable cause statement.

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

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

23       (b) Harm or cause injury to people, property, business  
24 reputation, or business assets, and the employer has considered the  
25 following factors, and documented as such in accordance with RCW  
26 49.94.010:

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

29       (ii) The number and types of convictions;

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

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

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

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

1        (7) "Otherwise qualified" means that the applicant meets the  
2 basic criteria for the position as set out in the advertisement or  
3 job description without consideration of a criminal record.

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

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

10        (1) An employer may not include any question on any application  
11 for employment, inquire either orally or in writing, receive  
12 information through a criminal history background check, or otherwise  
13 obtain information about an applicant's criminal record until after  
14 the employer initially determines that the applicant is otherwise  
15 qualified for the position (~~((. Once the employer has initially~~  
16 ~~determined that the applicant is otherwise qualified, the employer~~  
17 ~~may inquire into or obtain information about a)) and makes an offer~~  
18 of employment conditioned on obtaining the applicant's criminal  
19 record.

20        (2) An employer may not advertise employment openings in a way  
21 that excludes people with criminal records from applying. Ads that  
22 state "no felons," "no criminal background," or otherwise convey  
23 similar messages are prohibited.

24        (3) An employer may not implement any policy or practice that  
25 automatically or categorically excludes individuals with a criminal  
26 record from (~~(consideration prior to an initial determination that~~  
27 ~~the applicant is otherwise qualified for the)) any employment~~  
28 position. ((Prohibited policies and practices include rejecting)) An  
29 employer may not reject an applicant for failure to disclose a  
30 criminal record prior to (~~(initially determining the applicant is~~  
31 ~~otherwise qualified for the position)) receiving a conditional offer~~  
32 of employment.

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

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

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

10 (c) If an employer makes a tangible adverse employment decision  
11 following the reasonable opportunity under (b) of this subsection,  
12 the employer shall provide the applicant or employee with a written  
13 decision, including specific documentation as to its reasoning and  
14 assessment of each of the relevant factors, including the impact of  
15 the conviction on the position or business operations, and its  
16 consideration of the applicant's or employee's rehabilitation, good  
17 conduct, work experience, education, and training.

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

24 (7) This section does not apply to:

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

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

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

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

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

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

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

6 (1) The state attorney general's office shall enforce this  
7 chapter. Its powers to enforce this chapter include the authority to:

8 (a) Investigate violations of this chapter on its own initiative;

9 (b) Investigate violations of this chapter in response to  
10 complaints and seek remedial relief for the complainant;

11 (c) Educate the public about how to comply with this chapter;

12 (d) Issue written civil investigative demands for pertinent  
13 documents, answers to written interrogatories, or oral testimony as  
14 required to enforce this chapter;

15 (e) Adopt rules implementing this chapter including rules  
16 specifying applicable penalties; and

17 (f) Pursue administrative sanctions or a lawsuit in the courts  
18 for penalties, costs, and attorneys' fees.

19 (2) ~~((In exercising its powers, the attorney general's office~~  
20 ~~shall utilize a stepped enforcement approach, by first educating~~  
21 ~~violators, then warning them, then taking legal, including~~  
22 ~~administrative, action.))~~ (a) For purposes of administrative  
23 sanctions, the attorney general's office may waive penalties for  
24 first time or de minimis violations of this chapter, and instead  
25 provide education and a warning to deter future noncompliance. The  
26 attorney general's office shall impose administrative sanctions and  
27 pursue appropriate legal action for second and subsequent violations.

28 (b) Maximum monetary penalties for administrative sanctions are  
29 as follows: ((A notice of violation and offer of agency assistance  
30 for the first violation; a monetary penalty of up to seven hundred  
31 fifty dollars for the second violation; and a monetary penalty of up  
32 to one thousand dollars for each subsequent violation.))

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

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

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

37 (c) A penalty under (b) of this subsection must be imposed per  
38 aggrieved job applicant, employee, or party for each violation. The  
39 penalty accrues for the benefit of and is payable to the job

1 applicant, employee, or other aggrieved party. If there is no  
2 identifiable job applicant, employee, or aggrieved person for the  
3 violation, the penalty is retained by the attorney general.

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

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