
Labor & Workforce Development Committee

HB 2545

Brief Description: Prohibiting employers from asking about or using nonconviction information in initial applications for employment.

Sponsors: Representatives Moscoso, Reykdal, Appleton, Sells, Roberts, Goodman, Pollet and Freeman.

Brief Summary of Bill

- Prohibits an employer from: (1) inquiring about nonconviction information on any application of employment before determining whether the applicant is qualified for the position; (2) advertising job openings in a way that excludes people with nonconviction records from applying; or (3) implementing any policy or practice that automatically or categorically excludes all individuals with a nonconviction record from any employment position.
- Provides exceptions to the prohibition for certain employment positions and creates a cause of action.

Hearing Date: 1/30/14

Staff: Trudes Tango (786-7384).

Background:

Criminal History Record Information: Under the Washington State Criminal Records Privacy Act, "criminal history record information" means information contained in records collected by criminal justice agencies, other than courts, and consists of identifiable descriptions and notations of arrests, detentions, indictments, information, and other formal criminal charges, and any dispositions, including acquittals, dismissals, sentences, and release. The Washington State Patrol may disseminate unrestricted criminal history record information to criminal justice agencies for certain limited purposes.

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

The public may request and receive criminal history record information, but information is generally limited to conviction information only and arrests that occurred within the last 12 months if the disposition is still pending.

"Nonconviction data" consists of all criminal history record information relating to an incident which has not led to a conviction or other disposition adverse to the subject and for which proceedings are no longer actively pending. There is a rebuttable presumption that proceedings are no longer actively pending if more than one-year has elapsed since arrest, citation, charge, or service of warrant and no disposition has been entered.

Preemployment Inquires: Pursuant to the Washington Law Against Discrimination, the Human Rights Commission has issued, in rule, a preemployment inquiry guide. With respect to arrests, the rule provides that "because statistical studies regarding arrests have shown a disparate impact on some racial and ethnic minorities, and an arrest by itself is not a reliable indication of criminal behavior, inquiries concerning arrests must include whether charges are still pending, have been dismissed, or led to conviction of a crime involving behavior that would adversely affect job performance, and the arrest occurred within the last 10 years." Exempt from the rule are law enforcement agencies and state agencies, school districts, businesses, and other organizations that have a direct responsibility for the supervision of children, persons with disabilities and vulnerable adults.

Seattle Ordinance: The city of Seattle adopted an ordinance, effective November 2013, that prohibits employers from advertising, publicizing, or implementing any policy or practice that automatically or categorically excludes all individuals with any arrest or conviction record from any job position that will be performed in at least 50 percent of the time within the city of Seattle. The employer may conduct a criminal background check on a job applicant, but only after the employer has completed an initial screening of applications to eliminate unqualified applicants. The ordinance does not apply to individuals whose job duties include law enforcement, policing, crime prevention, security, criminal justice, or private investigation services, or to anyone who may have unsupervised access to children under 16 years old, developmentally disabled persons, or vulnerable adults during the course of employment. The ordinance also does not apply to the United States government, the state, or any county or local government other than the city of Seattle.

An applicant may file a complaint with the Seattle Office for Civil Rights. If an employer is found to have violated the ordinance, the employer will be sent a notice of infraction and an offer of assistance by the Office for Civil Rights, for the first violation. For a second violation, the employer will be required to pay \$750 to the applicant. Third and subsequent violations result in a \$1,000 penalty to be paid to the applicant. The ordinance does not create a private cause of action.

Summary of Bill:

Legislative Findings and Intent: Numerous findings are made regarding the impacts on the economy, individuals, and government services when individuals are excluded from employment considerations based solely on nonconviction information. The Legislature finds that by removing the barrier to employment opportunities posed by nonconviction information, the state

promotes important public interests, such as encouraging self-sufficiency, increasing tax revenue, and reducing reliance on public benefits and reducing recidivism. The Legislature recognizes numerous jurisdictions that have enacted similar laws and intends to provide a step toward giving people a fair chance to work.

Prohibited Acts: An employer may not:

- include a question on any application for employment or inquire either orally or in writing, or receive information through a criminal history background check or otherwise, about nonconviction information, before having determined the applicant is otherwise qualified for the position;
- advertise job openings in a way that excludes people with nonconviction records from applying; or
- implement any policy or practice that automatically or categorically excludes all individuals with a nonconviction record from any employment position.

Exceptions: The prohibition does not apply to:

- any employer hiring a person who will care for children under 18 years of age, a "vulnerable adult" or "vulnerable person" as those terms are defined under current law;
- any employer who is expressly permitted or required under federal or state law to inquire into, consider, or rely on information about an applicant's or employee's arrest record for employment purposes; or
- jobs that include law enforcement, policing, crime prevention, security, criminal justice, or private investigation services.

Remedy: A right of action is created for an aggrieved applicant to enforce the provision. It is presumed that damages to the applicant are equal to the cost of the application, if any, plus \$200. Fees and costs may be recovered, but additional damages must be proven. This right of action is in addition to any other rights and remedies an applicant may have under any other law.

Definitions: "Employer" includes public agencies, private individuals, businesses and corporations, contractors, training and apprenticeship programs, and placement agencies.

"Nonconviction information" means information about a citation, arrest, or criminal case that does not result in a finding of guilt, or where a finding of guilt has subsequently been vacated or dismissed. This includes: (1) nonconviction data as defined under the Criminal Records Privacy Act; and (2) information contained in law enforcement records or records collected by the courts related to such things as probable cause hearings, citations, certain service of warrants, certain charges that have been dismissed or vacated, convictions that have been pardoned, and charges dismissed under a stipulated order of continuance or similar agreements.

Other: The legislation is not to be construed to interfere with, impede, or diminish any provision in a collective bargaining agreement. In addition, the legislation may not be interpreted or applied to diminish or conflict with any requirements of state or federal law.

The legislation does not impose an obligation on an employer to provide accommodations or job modifications in order to facilitate the employment or continued employment of an applicant or employee with a conviction records or who is facing pending criminal charges.

The legislation is called the Washington Jobs Assistance Act.

Appropriation: None.

Fiscal Note: Requested on January 28, 2014.

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