

# HOUSE BILL REPORT

## HB 2545

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### As Reported by House Committee On: Labor & Workforce Development

**Title:** An act relating to prohibiting employers from asking about or using nonconviction information in initial applications for employment.

**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 History:**

##### **Committee Activity:**

Labor & Workforce Development: 1/30/14, 2/4/14 [DP].

#### **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.

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### HOUSE COMMITTEE ON LABOR & WORKFORCE DEVELOPMENT

**Majority Report:** Do pass. Signed by 8 members: Representatives Sells, Chair; Reykdal, Vice Chair; Manweller, Ranking Minority Member; Condotta, Assistant Ranking Minority Member; Green, G. Hunt, Moeller and Ormsby.

**Minority Report:** Do not pass. Signed by 1 member: Representative Christian.

**Staff:** Trudes Tango (786-7384).

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*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.*

## **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 releases. The Washington State Patrol may disseminate unrestricted criminal history record information to criminal justice agencies for certain limited purposes.

The public may request and receive criminal history record information, but information is generally limited to conviction information 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 Inquiries.* 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 contains exceptions for certain job positions and provides a remedy through the Seattle Office for Civil Rights.

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## **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 a "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 interpreted or construed to: (1) 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 record or who is facing pending criminal charges; (2) impede, or diminish any provision in a

collective bargaining agreement; or (3) diminish or conflict with any requirements of state or federal law.

The legislation is called the Washington Jobs Assistance Act.

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**Appropriation:** None.

**Fiscal Note:** Available.

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

**Staff Summary of Public Testimony:**

(In support) This bill is good for jobs. It allows workers to be considered based on their qualifications and not on whether they had a prior arrest that did not lead to conviction. It is good public policy. Target and Walmart have adopted similar policies. It has exemptions for law enforcement and other appropriate jobs. Greater employment opportunities will reduce recidivism. This is about fairness. There is long-standing racial disparity in who gets arrested. It is a simple step towards helping thousands of people. Numerous other states have these laws. About half of the people who get arrested for misdemeanors are never convicted or they have their charges dismissed. People who have been arrested deserve a chance to get a foot in the door for gainful employment. Employers can still consider actual convictions and consider arrests after doing an initial screening of applicants. Employers are not completely denied this information. The bill provides a very modest remedy. Ultimately if people cannot find employment, they will be on public assistance.

(Opposed) Employers need to protect themselves. Customers are vulnerable and employers have a responsibility to find out as much information on an applicant. There are many people without arrest records who are not getting jobs in this economy. Employers should not be denied any information that might mitigate risk to their customers.

**Persons Testifying:** (In support) Representative Moscoso, prime sponsor; Mark Muenster, Washington Association of Criminal Defense Lawyers; Kim Gordon, Washington Defender Association; Alex Hur, Pioneer Human Services and Statewide Poverty Action Network; Andrew Taylor; and Bob Cooper, Washington State Association of Drug Court Professionals.

(Opposed) Brad Tower, Community Bankers of Washington.

**Persons Signed In To Testify But Not Testifying:** None.