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## Labor Committee

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### HB 1701

**Brief Description:** Prohibiting employers from asking about arrests or convictions before an applicant is determined otherwise qualified for a position.

**Sponsors:** Representatives Moscoso, Walsh, Haler, Jenkins, Reykdal, S. Hunt, Blake, Riccelli, Ortiz-Self, Walkinshaw, Tharinger, Appleton, Sells, Gregerson, Santos, Farrell and Ormsby.

#### Brief Summary of Bill

- Prohibits an employer from: (1) inquiring about an applicant's arrest or conviction history before determining whether the applicant is otherwise qualified for the position; (2) advertising job openings in a way that excludes people with arrests or convictions; and (3) implementing policies that automatically and categorically exclude people with an arrest or conviction record from consideration.
- Provides exceptions for certain employment positions and creates a cause of action.

**Hearing Date:** 2/9/15

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

#### Background:

Under the Washington Law Against Discrimination, the Human Rights Commission has issued, in rule, a preemployment inquiry guide. The rule provides that 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. Inquiries about convictions may be justified by business necessity if the crimes inquired about reasonably relate to the job duties, and if the convictions 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.

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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.*

Various state laws allow or require employers or licensing agencies to conduct criminal background checks on applicants. Examples include: school districts hiring people who will have regularly scheduled unsupervised access to children; the Department of Health for purposes of licensing certain health care professionals; applicants for a mortgage lender's license; and applicants for positions with the Department of Early Learning who will or may have unsupervised access to children.

### **Summary of Bill:**

An employer is prohibited from:

- inquiring, either orally or in writing, or obtaining information about an applicant's arrests or convictions before having determined that the applicant is otherwise qualified for the position;
- advertising openings in a way that excludes people with arrests or convictions from applying; and
- implementing a policy or practice that automatically or categorically excludes people with an arrest or conviction from consideration prior to determining that the applicant is otherwise qualified.

The prohibitions do not apply to:

- Any employer hiring a person who will have unsupervised access to children under the age of 18 or vulnerable individuals;
- Any employer, including a financial institution, 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 or conviction record for employment purposes; and
- Employment by general or limited law enforcement agencies.

The legislation may not be construed to or interpreted to:

- interfere with, impede, or diminish any provision in a collective bargaining agreement;
- diminish or conflict with any requirements of state or federal law, including the federal Civil Rights Act, Fair Credit Reporting Act, and laws regarding unsupervised access to children and vulnerable individuals;
- obligate an employer to provide accommodations or job modifications for employing a person with an arrest or conviction record or who is facing pending charges; or
- discourage or prohibit an employer or local government from adopting greater protections.

A right of action is created. It is presumed that damages to the applicant are equal to the cost of application, if any, plus \$500. Costs of the suit may also be recovered, but any additional economic damages must be proven.

The state may form an advisory committee to provide recommendations to improve these provisions, including recommendations for rule-making, if necessary.

Definitions for certain terms are provided. The act may be known as the Washington Fair Chance Act.

**Appropriation:** None.

**Fiscal Note:** Not requested.

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