

HOUSE BILL REPORT

HB 1701

As Reported by House Committee On: Labor

Title: An act relating to prohibiting employers from asking about arrests or convictions before an applicant is determined otherwise qualified for a position.

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, Jinkins, Reykdal, S. Hunt, Blake, Riccelli, Ortiz-Self, Walkinshaw, Tharinger, Appleton, Sells, Gregerson, Santos, Farrell and Ormsby.

Brief History:

Committee Activity:

Labor: 2/9/15, 2/17/15 [DPS].

Brief Summary of Substitute Bill

- Prohibits an employer from: (1) inquiring about an applicant's arrest or conviction history before initially 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 arrests or convictions before making an initial determination about a person's qualifications.
- Provides exceptions for certain employment positions and creates a cause of action.

HOUSE COMMITTEE ON LABOR

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 5 members: Representatives Sells, Chair; Gregerson, Vice Chair; Manweller, Ranking Minority Member; Moeller and Ormsby.

Minority Report: Do not pass. Signed by 2 members: Representatives G. Hunt, Assistant Ranking Minority Member; McCabe.

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.

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.

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 Substitute Bill:

An employer is prohibited from:

- inquiring, either orally or in writing, or obtaining information about an applicant's arrests or convictions before having initially 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 initially determining that the applicant is otherwise qualified.

Once the employer has initially determined that the applicant is otherwise qualified, the employer may inquire into or obtain information about arrests and convictions.

The prohibitions do not apply to:

- any employer hiring a person who will have unsupervised access to children under age 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 and by criminal justice agencies other than courts.

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.

Substitute Bill Compared to Original Bill:

The substitute bill: (1) adds language making it explicit that once an employer has initially determined that the applicant is otherwise qualified, the employer may inquire into or obtain information about arrests and convictions; (2) specifies that the prohibition against policies or practices that automatically or categorically exclude persons with arrests or convictions applies prior to an "initial" determination that the applicant is otherwise qualified; and (3) exempts certain criminal justice agencies from the prohibitions.

Appropriation: None.

Fiscal Note: Not requested.

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

Staff Summary of Public Testimony:

(In support) The best way to reduce recidivism is to give people jobs. Background checks are a barrier to reintegration because of people's knee-jerk reactions to arrests and convictions. Employers can ask about arrests and convictions at stage two of the process, just not at the first screening. Any employer who is required to ask about criminal history can still do that. This allows qualified applicants to explain their situation in person. Without this chance, employers will not see the whole person. A person's criminal

background negates years of education, experience, and rehabilitation. Helping ex-offenders helps entire families and society.

(Opposed) The bill could create undue hardship for small businesses in certain industries where workers go into other people's homes. The language in the bill is unclear whether an employer can ask during an interview or not. It is unfair to both the applicant and employer to have to go through a lengthy hiring process when the applicant would ultimately not be hired because of criminal history.

(Other) Criminal justice agencies should be added to the exemption to include regional justice agencies.

Persons Testifying: (In support) Bob Cooper, Washington Association of Criminal Defense Lawyers; Lissa James, Hama Hama Oyster Company; Eric Shallow, Green Diamond Resource Company; Bill Keizer, I Did the Time; Madeline Neighly, Columbia Legal Services; and Nick Federici, Pioneer Human Services.

(Opposed) Patrick Conner, National Federation of Independent Business.

(Other) Mitch Barker, Washington Association of Sheriffs and Police Chiefs.

Persons Signed In To Testify But Not Testifying: None.