

SENATE BILL REPORT

SB 5608

As of February 16, 2015

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: Senators Miloscia, Conway, Keiser, Darneille and Hasegawa.

Brief History:

Committee Activity: Commerce & Labor: 2/13/15.

SENATE COMMITTEE ON COMMERCE & LABOR

Staff: Susan Jones (786-7404)

Background: Job applicants with arrests or criminal backgrounds may face barriers to employment. Some employers ask job applicants about arrests and convictions and exclude those applicants from the interview process. Some employers post employment ads stating that felons or those with criminal backgrounds should not apply.

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 if the arrest occurred within the last ten 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 ten 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 for certain positions; the Department of Health for purposes of licensing certain health care professionals; mortgage lender's license applicants; and applicants for positions with the Department of Early Learning with unsupervised access to children.

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.

Summary of Bill: Washington Fair Chance Act. Under the Washington Fair Chance Act, an employer may not:

- include any question on a job application, inquire either orally or in writing, receive information through a criminal history background check, or otherwise obtain information about an applicant's arrests or convictions before determining that the applicant is otherwise qualified for the position;
- advertise job openings in a way that excludes people with arrests or convictions from applying, including ads that state no felons or no criminal background; or
- implement any policy or practice that automatically or categorically excludes individuals with an arrest or conviction record from consideration prior to a determination that the applicant is otherwise qualified for the position.

Exceptions. There are exceptions for employment involving unsupervised access to minors or vulnerable individuals; certain law enforcement; and employers expressly permitted or required by federal or state law to inquire about or consider arrests or convictions.

Damages. There is a right of action. Presumed damages are the cost of the application, if any, plus \$500. Costs of the suit are recoverable. Additional economic damage must be proven.

Conflicts and Interpretation. The act may not be as follows:

- construed to interfere or conflict with collective bargaining agreements or certain state or federal laws, such as the civil rights act, fair credit reporting acts, and laws regarding unsupervised access to children or vulnerable adults;
- interpreted as imposing an obligation to provide accommodation or job modification to facilitate employment of those with arrest or conviction records;
- construed to discourage or prohibit employers from adopting more generous employment policies; or
- interfere with local laws providing additional protections to applicants with criminal records.

State Role. The state may educate the public about the act, disseminate information, and form an advisory board to make recommendations on improved enforcement of the act and adoption of rules.

The act includes legislative findings and intent provisions.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: Statistics are clear that when people work crime goes down. We put a lot of time and money into rehabilitation. The best anti-recidivism mechanism is a job. Our country has created a subculture of felons. Employers

may have concerns about arrest or felony records but the right has never been unconditional – a number of questions may not be asked. The current Seattle ordinance regarding this issue has had overwhelming success. Employers need to get past the knee-jerk reaction. The box on the application has prevented many people from obtaining jobs; they often cannot get past the box to get an interview. Some have been told that the employer’s policy is not to hire felons. Some employers throw the application away if the box is checked. Some employers never ask about the type of felony. The bill gives the applicant the opportunity to explain their situation and the employers the opportunity to determine if the applicants are qualified for the positions. Some convictions do not relate to the job but the employer does not ask about the conviction. The bill just offers these people a second chance and does not prejudge them. You can lift a whole family up by giving the primary wage earner job opportunities. The bill will help employers find undiscovered talent. Many people who have a past can be valuable employees. This does not take away from the employers’ right to choose not to hire those with criminal records.

CON: This bill adds one more regulation on small businesses. It adds time, cost, and complexity to the interview process. It subjects employers to the prospect of additional litigation just because they are trying to do business in the state of Washington. A lot of small employers use a standard form from the office supply store or downloaded off the Internet. In periods of high unemployment, the employer can get hundreds of applications and if the employer has to wait until later in the process, there is additional time, delay, and added cost. If it was truly about the box or advertising that would be one thing but the intent section is long, which tends to cause litigation. There are potential problems with determination of otherwise qualified and inquire orally or in writing. The blanket statement about not having a policy of hiring those with arrests or convictions is a problem. There are a variety of reasons why an employer may not want to hire someone with an arrest or conviction record for a position. Employers need to be able to make decisions that keep their employees and customers safe.

Persons Testifying: PRO: Bruce Harrell, Seattle City Council; Layne Peavy, Dom Felix, I Did The Time; Bob Cooper, WA Defender Assn., WA Assn of Criminal Defense Lawyers; Glenna Awbry, Successful Transition and Reentry Project; Chris Rankin, Rankin Equipment; Eric Schallon, Green Diamond Resources; Miranda Ries, National Fish & Oyster Co.

CON: Carolyn Logue, WA Food Industry Assn.; Connor Patrick, National Federation of Independent Business.