
SECOND SUBSTITUTE HOUSE BILL 1701

State of Washington

64th Legislature

2016 Regular Session

By House Labor & Workplace Standards (originally sponsored by Representatives Moscoso, Walsh, Haler, Jenkins, Reykdal, S. Hunt, Blake, Riccelli, Ortiz-Self, Walkinshaw, Tharinger, Appleton, Sells, Gregerson, Santos, Farrell, and Ormsby)

READ FIRST TIME 01/29/16.

1 AN ACT Relating to prohibiting employers from asking about
2 arrests or convictions before an applicant is determined otherwise
3 qualified for a position; adding a new chapter to Title 49 RCW; and
4 prescribing penalties.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 NEW SECTION. **Sec. 1.** The definitions in this section apply
7 throughout this chapter unless the context clearly requires
8 otherwise.

9 (1) "Criminal record" includes any record about a citation or
10 arrest for criminal conduct, including records relating to probable
11 cause to arrest, and includes any record about a criminal or juvenile
12 case filed with any court, whether or not such case resulted in a
13 finding of guilt.

14 (2) "Employer" includes public agencies, private individuals,
15 businesses and corporations, contractors, temporary staffing
16 agencies, training and apprenticeship programs, and job placement,
17 referral, and employment agencies.

18 NEW SECTION. **Sec. 2.** (1) It is unlawful for an employer to
19 exclude an applicant from an initial interview solely because of a
20 criminal record as defined in section 1 of this act.

1 (2) An employer excludes an applicant from an initial interview
2 if the employer:

3 (a) Requires an applicant to disclose on an employment
4 application a criminal record;

5 (b) Requires an applicant to disclose, prior to an initial
6 interview, a criminal record;

7 (c) Relies on a criminal background check to exclude an applicant
8 from an initial interview; or

9 (d) If no interview is conducted, requires an applicant to
10 disclose, prior to making a conditional offer of employment, a
11 criminal record.

12 (3) It is unlawful for an employer to advertise employment
13 openings in a way that excludes people with a criminal record from
14 applying. Advertising that states "no felons," "no criminal
15 background," or otherwise conveying similar messages are prohibited.

16 (4) Subject to subsections (1) and (2) of this section and any
17 other applicable law or regulation, nothing in this section prohibits
18 an employer from considering an applicant's criminal record prior to
19 making a hiring decision.

20 (5) Subsections (1), (2), and (3) of this section do not apply:

21 (a) If federal or state law, including corresponding rules and
22 regulations, requires the consideration of an applicant's criminal
23 record;

24 (b) To an employer that is a law enforcement agency as defined in
25 RCW 10.93.020;

26 (c) To an employer in the criminal justice system;

27 (d) To an employer hiring a person who will have unsupervised
28 access to children under the age of eighteen, a vulnerable adult as
29 defined in chapter 74.34 RCW, or a vulnerable person as defined in
30 RCW 9.96A.060; or

31 (e) To an employer seeking a nonemployee volunteer.

32 NEW SECTION. **Sec. 3.** (1) This chapter may not be construed to
33 interfere with, impede, or in any way diminish any provision in a
34 collective bargaining agreement or the right of employees to bargain
35 collectively with their employers through representatives of their
36 own choosing concerning wages, standards, and conditions of
37 employment.

38 (2) This chapter may not be interpreted or applied to diminish or
39 conflict with any requirements of state or federal law, including

1 Title VII of the civil rights act of 1964; the federal fair credit
2 reporting act, 15 U.S.C. Sec. 1681; the Washington state fair credit
3 reporting act, chapter 19.182 RCW; and state laws regarding
4 unsupervised access to children or vulnerable persons, RCW 43.43.830
5 through 43.43.845.

6 (3) This chapter may not be interpreted or applied as imposing an
7 obligation on the part of an employer to provide accommodations or
8 job modifications in order to facilitate the employment or continued
9 employment of an applicant or employee with a criminal record or who
10 is facing pending criminal charges.

11 (4) This chapter may not be construed to discourage or prohibit
12 an employer from adopting employment policies that are more
13 protective of employees and job applicants than the requirements of
14 this chapter.

15 (5) This chapter may not be construed to interfere with local
16 government laws that provide additional protections to applicants or
17 employees with criminal records, nor does it prohibit local
18 governments from enacting greater protections for such applicants or
19 employees in the future. Local government laws that provide lesser
20 protections to job applicants with criminal records than this chapter
21 conflict with this chapter and may not be enforced.

22 (6) This chapter may not be construed to create a private right
23 of action to seek damages or remedies of any kind. The exclusive
24 remedy available under this chapter is enforcement described in
25 section 4 of this act. This chapter does not create any additional
26 liability for employers beyond that enumerated in this chapter.

27 NEW SECTION. **Sec. 4.** (1) The state attorney general's office
28 shall enforce this chapter. Its powers to enforce this chapter
29 include the authority to:

- 30 (a) Investigate violations of this chapter on its own initiative;
- 31 (b) Investigate violations of this chapter in response to
32 complaints and seek remedial relief for the complainant;
- 33 (c) Educate the public about how to comply with this chapter;
- 34 (d) Issue written civil investigative demands for pertinent
35 documents, answers to written interrogatories, or oral testimony as
36 required to enforce this chapter;
- 37 (e) Adopt rules implementing this chapter including rules
38 specifying applicable penalties; and

1 (f) Pursue administrative sanctions or a lawsuit in the courts
2 for penalties, costs, and attorneys' fees.

3 (2) In exercising its powers, the attorney general's office shall
4 utilize a stepped enforcement approach, by first educating violators,
5 then warning them, then taking legal, including administrative,
6 action. Maximum penalties are as follows: A notice of violation and
7 offer of agency assistance for the first violation; a monetary
8 penalty of up to seven hundred fifty dollars for the second
9 violation; and a monetary penalty of up to one thousand dollars for
10 each subsequent violation.

11 NEW SECTION. **Sec. 5.** If any provision of this act or its
12 application to any person or circumstance is held invalid, the
13 remainder of the act or the application of the provision to other
14 persons or circumstances is not affected.

15 NEW SECTION. **Sec. 6.** If any part of this act is found to be in
16 conflict with federal requirements that are a prescribed condition to
17 the allocation of federal funds to the state, the conflicting part of
18 this act is inoperative solely to the extent of the conflict and with
19 respect to the agencies directly affected, and this finding does not
20 affect the operation of the remainder of this act in its application
21 to the agencies concerned. Rules adopted under this act must meet
22 federal requirements that are a necessary condition to the receipt of
23 federal funds by the state.

24 NEW SECTION. **Sec. 7.** Sections 1 through 4, 6, and 8 of this act
25 constitute a new chapter in Title 49 RCW.

26 NEW SECTION. **Sec. 8.** This act may be known and cited as the
27 Washington fair chance act.

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