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HOUSE BILL 1701

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

Read first time 01/27/15. Referred to Committee on Labor.

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 new sections to chapter 49.44 RCW;  
4 creating new sections; and prescribing penalties.

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

6 NEW SECTION. **Sec. 1.** The legislature finds that many employers  
7 ask job applicants if they have ever been arrested or convicted of a  
8 crime, then refuse to consider any applicant who checks the box  
9 responding "yes." This practice often creates lifetime barriers to  
10 employment and harms applicants, their families, and society.

11 The legislature further finds that "banning the box" gives  
12 applicants a fair chance at employment opportunities. Stopping  
13 employers from asking about arrests or convictions before determining  
14 the applicant is otherwise qualified for the position provides  
15 applicants a fair chance to be considered on the merits of their  
16 qualifications, merits that would otherwise be disregarded due to an  
17 applicant's arrest or conviction record.

18 The legislature further finds that RCW 9.96A.010, enacted in  
19 1973, articulates Washington's long-standing public policy, "to  
20 encourage and contribute to the rehabilitation of felons and to  
21 assist them in the assumption of the responsibilities of citizenship,

1 and the opportunity to secure employment or to pursue, practice or  
2 engage in a meaningful and profitable trade, occupation, vocation,  
3 profession or business is an essential ingredient to rehabilitation  
4 and the assumption of responsibilities of citizenship."

5 Therefore, the legislature finds that exclusion of applicants  
6 from consideration for employment opportunities based on arrest or  
7 conviction records prior to a determination that a person is  
8 otherwise qualified for the job causes harm in the form of economic  
9 instability, a lifetime of reduced employment opportunities, and  
10 reduced earning potential. In contrast, the legislature finds  
11 "banning the box" is good for business, safety, the economy, and the  
12 state budget, with studies showing that employment significantly  
13 reduces recidivism.

14 Additionally, the legislature finds that by "banning the box,"  
15 the state promotes important public interests, including increasing  
16 self-sufficiency and earnings for individuals and families,  
17 increasing tax revenue, conserving scarce governmental resources by  
18 reducing reliance on public benefits, reducing recidivism, and  
19 mitigating racial disparities in the criminal justice system.

20 In categories of employment where the law provides a special  
21 exception permitting an inquiry about arrests or convictions before  
22 determining the applicant is otherwise qualified, this act preserves  
23 an employer's ability to conduct that inquiry. Outside these  
24 categories, this act preserves employers' discretion to choose the  
25 best person for the job and their ability to ask about arrests or  
26 convictions and conduct a background check after an applicant has  
27 been determined otherwise qualified for the position. It is the  
28 legislature's intent to increase employers' awareness that excluding  
29 a person with an arrest or conviction record from a job because of  
30 his or her record unfairly excludes people who may turn out to be the  
31 most successful at performing the position.

32 Consistent with this intent, employers are encouraged to consider  
33 the following in order to give applicants a fair chance to gain  
34 employment:

35 (1) Giving an otherwise qualified applicant an opportunity to  
36 explain why he or she should be hired despite a record, in a face-to-  
37 face setting if feasible;

38 (2) Evidence of work experience, education, rehabilitation, and  
39 how long ago an arrest or conviction occurred, as the likelihood of  
40 recidivism declines over time; and

1 (3) Whether the arrest or conviction record is in fact relevant  
2 to performance of the job at issue.

3 The legislature recognizes that numerous jurisdictions in the  
4 United States, including the states of California, Colorado,  
5 Connecticut, Delaware, Hawaii, Illinois, Maryland, Massachusetts,  
6 Minnesota, Nebraska, New Jersey, New Mexico, and Rhode Island, the  
7 city of Seattle, and more than sixty other cities and counties in the  
8 United States, have adopted some form of "ban the box" policy and  
9 that the city of Spokane is implementing a "ban the box" policy. In  
10 addition, recognizing the numerous benefits of a "ban the box"  
11 policy, some of the largest retailers in the United States, Target  
12 and Wal-Mart, have adopted a policy prohibiting asking a prospective  
13 employee about his or her criminal record in initial job  
14 applications.

15 Therefore, the legislature finds that this act is a necessary  
16 step toward giving people a fair chance to work and be productive  
17 members of our communities.

18 NEW SECTION. **Sec. 2.** The definitions in this section apply  
19 throughout this section and sections 1, 3, 4, and 5 of this act.

20 (1) The term "arrest or conviction" includes any record about a  
21 citation or arrest for criminal conduct, including records relating  
22 to probable cause to arrest, and includes any record about a criminal  
23 or juvenile case filed with any court, whether or not such case  
24 resulted in a finding of guilt.

25 (2) "Employer" includes public agencies, private individuals,  
26 businesses and corporations, contractors, temporary staffing  
27 agencies, training and apprenticeship programs, and job placement,  
28 referral, and employment agencies.

29 (3) "Otherwise qualified" means that the applicant meets the  
30 basic criteria for the position as set out in the advertisement or  
31 job description.

32 NEW SECTION. **Sec. 3.** (1) An employer may not include any  
33 question on any application for employment, inquire either orally or  
34 in writing, receive information through a criminal history background  
35 check, or otherwise obtain information about an applicant's arrests  
36 or convictions before having determined that the applicant is  
37 otherwise qualified for the position.

1 (2) An employer may not advertise employment openings in a way  
2 that excludes people with arrests or convictions from applying. Ads  
3 that state "no felons," "no criminal background," or otherwise convey  
4 similar messages are prohibited.

5 (3) An employer may not implement any policy or practice that  
6 automatically or categorically excludes individuals with an arrest or  
7 conviction record from consideration prior to a determination that  
8 the applicant is otherwise qualified for the position. Prohibited  
9 policies and practices include rejecting an applicant for failure to  
10 disclose an arrest or conviction prior to determining the applicant  
11 is otherwise qualified for the position.

12 (4) This section does not apply to:

13 (a) Any employer hiring a person who will have unsupervised  
14 access to children under the age of eighteen, a vulnerable adult as  
15 defined in chapter 74.34 RCW, or a vulnerable person as defined in  
16 RCW 9.96A.060;

17 (b) Any employer, including a financial institution, who is  
18 expressly permitted or required under any federal or state law to  
19 inquire into, consider, or rely on information about an applicant's  
20 or employee's arrest or conviction record for employment purposes;  
21 and

22 (c) Employment by a general or limited authority Washington law  
23 enforcement agency as defined in RCW 10.93.020.

24 NEW SECTION. **Sec. 4.** (1) This act may not be construed to  
25 interfere with, impede, or in any way diminish any provision in a  
26 collective bargaining agreement or the right of employees to bargain  
27 collectively with their employers through representatives of their  
28 own choosing concerning wages, standards, and conditions of  
29 employment.

30 (2) This act may not be interpreted or applied to diminish or  
31 conflict with any requirements of state or federal law, including  
32 Title VII of the civil rights act of 1964; the federal fair credit  
33 reporting act, 15 U.S.C. Sec. 1681; the Washington state fair credit  
34 reporting act, chapter 19.182 RCW; and state laws regarding  
35 unsupervised access to children or vulnerable persons, RCW 43.43.830  
36 through 43.43.845.

37 (3) This act may not be interpreted or applied as imposing an  
38 obligation on the part of an employer to provide accommodations or  
39 job modifications in order to facilitate the employment or continued

1 employment of an applicant or employee with an arrest or conviction  
2 record or who is facing pending criminal charges.

3 (4) This act may not be construed to discourage or prohibit an  
4 employer from adopting employment policies that are more generous to  
5 employees and job applicants than the requirements of this chapter.

6 (5) This act may not be construed to interfere with local  
7 government laws that provide additional protections to applicants  
8 with criminal records, nor does it prohibit local governments from  
9 enacting greater protections in the future. Local government laws  
10 that provide lesser protections to job applicants with criminal  
11 records than this act conflict with this act and may not be enforced.

12 NEW SECTION. **Sec. 5.** A right of action to enforce this act is  
13 authorized. It is presumed that damages to the applicant are equal to  
14 the cost of the application, if any, plus five hundred dollars. Costs  
15 of the suit may be recovered, but any additional economic damages  
16 must be proven. This right of action is in addition to, and not in  
17 derogation of, any other rights and remedies an applicant may have  
18 under any other law.

19 NEW SECTION. **Sec. 6.** (1) The state is authorized to educate the  
20 public about this act and disseminate information about it as widely  
21 as possible in a cost-effective manner and within available funds.

22 (2) The state is authorized to form an advisory body representing  
23 the views of a broad variety of stakeholders to provide  
24 recommendations regarding improved enforcement of the act, including  
25 recommending adoption of administrative rules, if necessary. The  
26 advisory body is a class one group under RCW 43.03.220.

27 NEW SECTION. **Sec. 7.** If any provision of this act or its  
28 application to any person or circumstance is held invalid, the  
29 remainder of the act or the application of the provision to other  
30 persons or circumstances is not affected.

31 NEW SECTION. **Sec. 8.** If any part of this act is found to be in  
32 conflict with federal requirements that are a prescribed condition to  
33 the allocation of federal funds to the state, the conflicting part of  
34 this act is inoperative solely to the extent of the conflict and with  
35 respect to the agencies directly affected, and this finding does not  
36 affect the operation of the remainder of this act in its application

1 to the agencies concerned. Rules adopted under this act must meet  
2 federal requirements that are a necessary condition to the receipt of  
3 federal funds by the state.

4 NEW SECTION. **Sec. 9.** Sections 1 through 6 of this act are each  
5 added to chapter 49.44 RCW.

6 NEW SECTION. **Sec. 10.** This act may be known and cited as the  
7 Washington fair chance act.

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