

HOUSE BILL REPORT

SHB 1298

As Passed House:

March 1, 2017

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: House Committee on Appropriations (originally sponsored by Representatives Ortiz-Self, Manweller, Haler, Sells, Kilduff, Frame, Gregerson, Kagi, Tarleton, Jinkins, Stanford, Appleton, Ormsby, Senn, McBride, Santos, Lovick, Bergquist, Farrell and Young).

Brief History:

Committee Activity:

Labor & Workplace Standards: 1/24/17, 1/30/17 [DP];
Appropriations: 2/16/17, 2/22/17 [DPS].

Floor Activity:

Passed House: 3/1/17, 68-30.

Brief Summary of Substitute Bill

- Prohibits an employer from, among other things, including any question on an application or inquiring into an applicant's criminal background until after the employer initially determines that the applicant is otherwise qualified for the position.
- Exempts certain employers from the prohibition.
- Authorizes the Attorney General to enforce the provisions and impose penalties.

HOUSE COMMITTEE ON LABOR & WORKPLACE STANDARDS

Majority Report: Do pass. Signed by 4 members: Representatives Sells, Chair; Gregerson, Vice Chair; Doglio and Frame.

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.

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

Minority Report: Without recommendation. Signed by 1 member: Representative Manweller, Ranking Minority Member.

Staff: Trudes Tango (786-7384).

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 20 members: Representatives Ormsby, Chair; Robinson, Vice Chair; Bergquist, Cody, Fitzgibbon, Hansen, Hudgins, Jinkins, Kagi, Lytton, Manweller, Pettigrew, Pollet, Sawyer, Senn, Springer, Stanford, Sullivan, Tharinger and Wilcox.

Minority Report: Do not pass. Signed by 12 members: Representatives Chandler, Ranking Minority Member; MacEwen, Assistant Ranking Minority Member; Stokesbary, Assistant Ranking Minority Member; Buys, Caldier, Condotta, Haler, Harris, Schmick, Taylor, Vick and Volz.

Minority Report: Without recommendation. Signed by 1 member: Representative Nealey.

Staff: Meghan Morris (786-7119).

Background:

Under the Washington Law Against Discrimination, the Human Rights Commission has issued, in rule, a preemployment inquiry guide that provides examples of fair and unfair inquiries of job applicants. Inquiries concerning arrests will generally be considered fair if the inquiry is limited to arrests within the last 10 years and includes whether charges are pending, have been dismissed, or led to conviction of a crime involving behavior that would adversely affect job performance. Inquiries about convictions will generally be considered fair and justified by business necessity if the inquiry is limited to crimes that reasonably relate to the job duties and that have occurred within the last 10 years.

Exempt from the rule are law enforcement agencies, state agencies, school districts, businesses, and other organizations that have a direct responsibility for the supervision of children, persons with disabilities, and vulnerable adults.

At least 24 states have adopted laws that limit an employer's ability to inquire into a job applicant's criminal history during the application stage. There are several local jurisdictions that have adopted similar policies. For example, Seattle's ordinance, which went into effect in 2013, limits criminal history questions on job applications and criminal background checks until after an employer conducts an initial screening to eliminate unqualified applicants.

Summary of Substitute Bill:

An employer may not:

- include any question on an application for employment, inquire either orally or in writing, receive information through a criminal history background check, or obtain information about an applicant's criminal record until after the employer initially determines that the applicant is otherwise qualified for the position (meaning the applicant meets the basic criteria for the position as stated in the advertisement or job description). Once the employer has initially determined that the applicant is otherwise qualified, the employer may inquire into or obtain information about criminal records;
- advertise job openings in a way that excludes people with criminal records from applying. Ads that state "no felons" or "no criminal background" or convey similar messages are prohibited; or
- implement any policy or practice that automatically or categorically excludes individuals with a criminal record from consideration prior to an initial determination that the applicant is otherwise qualified for the position. Prohibited practices include rejecting an applicant for failure to disclose a criminal record prior to initially determining the applicant is otherwise qualified.

The prohibitions do not apply to:

- employers hiring a person who will or may have unsupervised access to children under 18 years of age, a vulnerable adult, or a vulnerable person;
- any employer, including a financial institution, who is expressly permitted or required under federal or state law to inquire into or consider information about an applicant's criminal record for employment purposes;
- employment by a general or limited authority law enforcement agency or by certain criminal justice agencies; or
- employers seeking nonemployee volunteers.

The act may not be construed 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 laws, including the federal Civil Rights Act of 1964, the federal Fair Credit Reporting Act, the state Fair Credit Reporting Act, and state laws regarding unsupervised access to children and vulnerable persons;
- impose an obligation on an employer to provide accommodations or job modifications to facilitate the continued employment of an applicant or employee with a criminal record or who is facing pending charges;
- discourage or prohibit an employer from adopting more protective policies;
- interfere with local laws that provide additional protections to applicants (local laws that provide lesser protections may not be enforced); and
- create a private right of action for damages or remedies of any kind.

The Office of the Attorney General (AG) must enforce the provisions of this act. The AG may: investigate violations on its own initiative or in response to a complaint; pursue administrative sanctions or file a lawsuit for penalties, costs, and attorneys' fees; and adopt rules to implement the act.

In exercising its enforcement powers, the AG must use a stepped enforcement approach as follows:

- first violation - a notice of violation and offer of agency assistance;
- second violation - monetary penalty up to \$750; and
- subsequent violations - monetary penalty of up to \$1,000 for each subsequent violation.

"Criminal record" includes any record about a citation or arrest for criminal conduct. It includes records relating to probable cause to arrest and records of juvenile cases filed with any court, regardless of whether the case resulted in a finding of guilt.

The act is known as the Washington Fair Chance Act.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed. However, the bill is null and void unless funded in the budget.

Staff Summary of Public Testimony (Labor & Workplace Standards):

(In support) This bill allows employers the opportunity to get to know the applicant and allows applicants with criminal record to tell their individual stories. It gives people a chance to earn a living. It will also help reduce recidivism in the state and save in prison costs. Currently 29 states and over 100 local jurisdictions already have some form of "Ban the Box" policy. Offenders need to find employment in order to pay off their legal financial obligations and support their families. Having a criminal record is a barrier to employment. Once offenders have paid their debt to society, they should be allowed the same opportunities for success as other folks. Employers would still be able to not hire someone because of their criminal record.

(Opposed) None.

(Other) There should be a preemption clause in the bill so that employers do not have to figure out the different laws in different jurisdictions.

Staff Summary of Public Testimony (Appropriations):

(In support) It is important to give people a fair chance to rejoin society after they have paid their debt to society. People with a criminal record need a chance to show how they have changed, gain jobs, become self-sufficient, and become taxpayers. A few people shared stories with the Labor and Workforce Standards Committee about jumping the hurdle of checking the box on applications that asks, "Have you ever been arrested or convicted?" House Bill 1298 will help reduce recidivism and the costs of recidivism, as well as dependencies on the state.

When it comes to enforcement, stakeholders designed methods to help businesses comply. The Office of the Attorney General has estimated minimal costs for enforcement efforts. The object is not to punish businesses; the object is to help people get past automatic rejections for a conviction. Convictions can range from shoplifting to killing people. When you check a box, there is no way to know what that person did or how they have changed. House Bill 1298 allows employers to reject an applicant once they find out more about the applicant's specific conviction. The change could also help prevent legal action against businesses. A straight rejection could initiate legal action for racial discrimination with the racial disproportionality in the criminal justice system.

(Opposed) None.

Persons Testifying (Labor & Workplace Standards): (In support) Representative Ortiz-Self, prime sponsor; Lisa Kurek; Deighton Boyce; Eric Schallon, Green Diamond Resources; Nick Federici, Pioneer Human Services; Bob Cooper, Washington Association of Criminal Defense Lawyers and Washington Defender Association; and Larry Stevens, Mechanical Contractors Association of Western Washington and National Electrical Contractors Association.

(Other) Bob Battles, Association of Washington Business; and Cary Retlin, Statewide Reentry Council.

Persons Testifying (Appropriations): Bob Cooper, Washington Fair Chance Coalition.

Persons Signed In To Testify But Not Testifying (Labor & Workplace Standards): None.

Persons Signed In To Testify But Not Testifying (Appropriations): None.