
ENGROSSED SUBSTITUTE SENATE BILL 5312

State of Washington

65th Legislature

2017 Regular Session

By Senate Commerce, Labor & Sports (originally sponsored by Senators Baumgartner, Saldaña, Walsh, Billig, Angel, Hasegawa, Keiser, Chase, Zeiger, Rolfes, Ranker, Fain, Frockt, Conway, Wellman, Darneille, Pedersen, and Miloscia)

READ FIRST TIME 02/06/17.

1 AN ACT Relating to prohibiting certain employers from including
2 any question on an application about an applicant's criminal record,
3 inquiring either orally or in writing about an applicant's criminal
4 records, or obtaining information from a criminal background check,
5 until after the employer initially determines that the applicant is
6 otherwise qualified; adding a new chapter to Title 49 RCW; and
7 prescribing penalties.

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

9 NEW SECTION. **Sec. 1.** The definitions in this section apply
10 throughout this chapter unless the context clearly requires
11 otherwise.

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

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

1 (3) "Otherwise qualified" means that the applicant meets the
2 basic criteria for the position as set out in the advertisement or
3 job description without consideration of a criminal record.

4 NEW SECTION. **Sec. 2.** (1) An employer may not include any
5 question on any application for employment, inquire either orally or
6 in writing, receive information through a criminal history background
7 check, or otherwise obtain information about an applicant's criminal
8 record until after the employer initially determines that the
9 applicant is otherwise qualified for the position. Once the employer
10 has initially determined that the applicant is otherwise qualified,
11 the employer may inquire into or obtain information about a criminal
12 record and consider an applicant's criminal record in a hiring
13 decision.

14 (2) An employer may not advertise employment openings in a way
15 that excludes people with criminal records from applying. Ads that
16 state "no felons," "no criminal background," or otherwise convey
17 similar messages are prohibited.

18 (3) An employer may not implement any policy or practice that
19 automatically or categorically excludes individuals with a criminal
20 record from consideration prior to an initial determination that the
21 applicant is otherwise qualified for the position. Prohibited
22 policies and practices include rejecting an applicant for failure to
23 disclose a criminal record prior to initially determining the
24 applicant is otherwise qualified for the position.

25 (4) This section does not apply to:

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

30 (b) Any employer who is hiring for a position that includes:

31 (i) Services to be performed at or in a residential property,
32 excluding all persons certified or licensed under Title 18 or 19 RCW;

33 (ii) Solicitation at or in a residential property of products or
34 services; or

35 (iii) Residential delivery services;

36 (c) Any employer, including a financial institution, who is
37 expressly permitted or required under any federal or state law to
38 inquire into, consider, or rely on information about an applicant's
39 or employee's criminal record for employment purposes;

1 (d) Employment by a general or limited authority Washington law
2 enforcement agency as defined in RCW 10.93.020 or by a criminal
3 justice agency as defined in RCW 10.97.030(5)(b); or

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

5 NEW SECTION. **Sec. 3.** (1) This chapter may not be interpreted or
6 applied to diminish or conflict with any requirements of state or
7 federal law, including Title VII of the civil rights act of 1964; the
8 federal fair credit reporting act, 15 U.S.C. Sec. 1681; the
9 Washington state fair credit reporting act, chapter 19.182 RCW; and
10 state laws regarding unsupervised access to children or vulnerable
11 persons, RCW 43.43.830 through 43.43.845.

12 (2) This chapter may not be interpreted or applied as imposing an
13 obligation on the part of an employer to provide accommodations or
14 job modifications in order to facilitate the employment or continued
15 employment of an applicant or employee with a criminal record or who
16 is facing pending criminal charges.

17 (3) This chapter may not be construed to prohibit an employer
18 from declining to hire an applicant with a criminal record or from
19 terminating the employment of an employee with a criminal record.

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

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

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

32 (a) Investigate violations of this chapter on its own initiative;

33 (b) Investigate violations of this chapter in response to
34 complaints and seek remedial relief for the complainant;

35 (c) Educate the public about how to comply with this chapter;

36 (d) Issue written civil investigative demands for pertinent
37 documents, answers to written interrogatories, or oral testimony as
38 required to enforce this chapter;

1 (e) Adopt rules implementing this chapter including rules
2 specifying applicable penalties; and

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

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

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

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

27 NEW SECTION. **Sec. 7.** The state of Washington fully occupies and
28 preempts the entire field of employment laws related to criminal
29 records and other matters covered within this chapter within the
30 boundaries of the state. Cities, towns, and counties or other
31 municipalities may enact only those laws and ordinances relating to
32 employment laws related to criminal records and other matters covered
33 within this chapter that are specifically authorized by state law and
34 are consistent with this chapter. Local laws and ordinances in
35 existence on the effective date of this section that are inconsistent
36 with this chapter are preempted and repealed, regardless of the

1 nature of the code, charter, or home rule status of such a city,
2 town, county, or municipality.

3 NEW SECTION. **Sec. 8.** Sections 1 through 4, 6, 7, and 9 of this
4 act constitute a new chapter in Title 49 RCW.

5 NEW SECTION. **Sec. 9.** This act may be known and cited as the
6 Washington fair chance act.

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