
SECOND SUBSTITUTE HOUSE BILL 1298

AS AMENDED BY THE SENATE

Passed Legislature - 2018 Regular Session

State of Washington **65th Legislature** **2018 Regular Session**

By House Labor & Workplace Standards (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)

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;
4 creating a new section; and 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 the 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 (3) "Otherwise qualified" means that the applicant meets the
19 basic criteria for the position as set out in the advertisement or
20 job description without consideration of a criminal record.

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

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

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

21 (4) This section does not apply to:

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

26 (b) Any employer, including a financial institution, who is
27 expressly permitted or required under any federal or state law to
28 inquire into, consider, or rely on information about an applicant's
29 or employee's criminal record for employment purposes;

30 (c) Employment by a general or limited authority Washington law
31 enforcement agency as defined in RCW 10.93.020 or by a criminal
32 justice agency as defined in RCW 10.97.030(5)(b);

33 (d) An employer seeking a nonemployee volunteer; or

34 (e) Any entity required to comply with the rules or regulations
35 of a self-regulatory organization, as defined in section 3(a)(26) of
36 the securities and exchange act of 1934, 15 U.S.C. 78c(a)(26).

37 NEW SECTION. **Sec. 3.** (1) This chapter may not be construed to
38 interfere with, impede, or in any way diminish any provision in a
39 collective bargaining agreement or the right of employees to bargain

1 collectively with their employers through representatives of their
2 own choosing concerning wages, standards, and conditions of
3 employment.

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

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

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

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

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

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

- 35 (a) Investigate violations of this chapter on its own initiative;
36 (b) Investigate violations of this chapter in response to
37 complaints and seek remedial relief for the complainant;
38 (c) Educate the public about how to comply with this chapter;

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

4 (e) Adopt rules implementing this chapter including rules
5 specifying applicable penalties; and

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

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

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

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

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

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

33 NEW SECTION. **Sec. 9.** If specific funding for the purposes of
34 this act, referencing this act by bill or chapter number, is not

1 provided by June 30, 2018, in the omnibus appropriations act, this
2 act is null and void.

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