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SENATE BILL 5341

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State of Washington                      63rd Legislature                      2013 Regular Session

By Senators Darneille, Benton, Harper, Kohl-Welles, and Kline

Read first time 01/28/13. Referred to Committee on Law & Justice.

1            AN ACT Relating to nonconviction records; adding a new chapter to  
2 Title 10 RCW; and creating a new section.

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

4            NEW SECTION.    **Sec. 1.** The legislature recognizes that the openness  
5 of court proceedings and court records is an important hallmark of our  
6 justice system and a strong tenet of our Constitution. Openness serves  
7 a number of public interests, including the interest in judicial  
8 transparency and public oversight of the judicial system. However, the  
9 legislature finds that, in a global and increasingly electronic  
10 environment, unintended harmful consequences can result from unlimited  
11 public access to nonconviction records. Permanent, online, worldwide  
12 public access to nonconviction court and law enforcement records, used  
13 to deny employment and housing, was not contemplated at the time the  
14 Constitution or the criminal records privacy act, chapter 10.97 RCW,  
15 was adopted. Once nonconviction records are disseminated and no longer  
16 in the government's control, however, accusations of wrongdoing can be  
17 and are used inappropriately to exclude applicants from consideration  
18 for employment and housing opportunities despite the legal presumption  
19 of innocence. While public safety benefits may be realized when

1 employment and housing decisions are based on accurate, up-to-date, and  
2 complete government records regarding criminal history, such benefits  
3 are not realized through consideration of nonconviction records.

4 The legislature finds that exclusion of applicants from  
5 consideration for employment or housing opportunities based solely on  
6 nonconviction records is particularly unjust when an individual was  
7 never convicted of the crime for which the records still exist. The  
8 harmful effect of nonconviction records, including a lifetime of  
9 reduced earning potential, continues indefinitely, despite the fact  
10 that the person is legally presumed innocent of the offense at issue,  
11 or in the case of a vacated conviction, has been given the right under  
12 a court order pursuant to long-standing statutes to state that he or  
13 she has not been convicted of that offense. Additionally, the  
14 legislature finds that by removing the barrier to housing and  
15 employment posed by nonconviction records, the state promotes important  
16 public interests, including the interest in conserving scarce  
17 governmental resources, keeping individuals and families out of  
18 poverty, and reducing the effects of racial disparities in the criminal  
19 justice system.

20 Both our legislature and our supreme court have determined that  
21 some interests are sufficiently significant to outweigh the presumption  
22 of openness of court records. Therefore, the legislature finds that  
23 privacy, safety, and other significant individual and public interests  
24 constitute compelling circumstances that justify the provisions of this  
25 chapter.

26 NEW SECTION. **Sec. 2.** The Washington supreme court is respectfully  
27 requested to implement the public policy interests outlined in section  
28 1 of this act by adopting court rules authorizing courts to:

29 (1) Redact or seal nonconviction court records, including redacting  
30 the public court index, or replacing the charge in all publicly  
31 accessible records with the label "nonconviction," or both, in  
32 individual cases, to the extent necessary to prevent harm to the  
33 individual as described in section 1 of this act; and

34 (2) At such time as it may be technologically and economically  
35 feasible within the judicial information system, provide a process for  
36 removing from public access, while retaining for law enforcement and

1 court purposes, information about nonconviction court records in public  
2 court indices.

3 NEW SECTION. **Sec. 3.** For the purposes of this chapter,  
4 "nonconviction records" means:

5 (1) Information contained in records collected by the courts  
6 relating to:

7 (a) Arrest, probable cause hearings, citation, charge, and service  
8 of warrant relating to an incident that did not lead to a conviction  
9 and for which proceedings are no longer actively pending. There must  
10 be a rebuttable presumption that proceedings are no longer actively  
11 pending if more than one year has elapsed since the arrest, citation,  
12 charge, or service of warrant and no disposition has been entered;

13 (b) Charges resulting in a dismissal, excluding dismissals based on  
14 incompetency or following the completion of a deferred prosecution  
15 pursuant to chapter 10.05 RCW;

16 (c) Charges resulting in acquittal other than insanity acquittals;

17 (d) Convictions after a pardon on that conviction has been granted;

18 (e) Charges dismissed under a stipulated order of continuance or  
19 similar agreement;

20 (f) Charges dismissed pursuant to completion of a deferred sentence  
21 under RCW 3.50.320, 9.95.240, 35.20.255, or chapter 3.66 RCW;

22 (g) Charges dismissed following vacation of the conviction under  
23 RCW 9.94A.640, 9.95.240, or 9.96.060; and

24 (h) Charges resolved by forfeiture of bail other than in traffic,  
25 hunting, and fishing cases; or

26 (2) Nonconviction data as defined in chapter 10.97 RCW.

27 In cases where charges are reduced or dismissed pursuant to a plea  
28 bargain, whether as part of a single or multiple cause numbers, the  
29 parts of records that relate to charges that satisfy the definition of  
30 nonconviction records must be treated as nonconviction records.

31 NEW SECTION. **Sec. 4.** (1) An employer may not include a question  
32 on any application for employment, or inquire either orally or in  
33 writing, or receive information through a criminal history background  
34 check, about nonconviction records.

35 (2) An employer may not reject an applicant for employment on the  
36 basis of nonconviction records.

1 (3) This section does not apply to:

2 (a) Any employer hiring a person who will care for children under  
3 the age of eighteen, a vulnerable adult under chapter 74.34 RCW, or a  
4 vulnerable person as defined in RCW 9.96A.060; or

5 (b) Any employer who is expressly permitted or required under any  
6 federal or state law to inquire into, consider, or rely on information  
7 about an applicant or employee's arrest record for employment purposes.

8 NEW SECTION. **Sec. 5.** (1) Landlords may not include a question on  
9 any rental application, inquire either orally or in writing, or receive  
10 information through a criminal history background check, about  
11 nonconviction records of a prospective tenant.

12 (2) A landlord may not reject an applicant for tenancy on the basis  
13 of nonconviction records.

14 (3) This section does not apply to any landlord who is specifically  
15 permitted by other provisions of law to consider or reject tenants  
16 based on nonconviction court records.

17 NEW SECTION. **Sec. 6.** A right of action to enforce this chapter is  
18 authorized. It is presumed that damages to the applicant are equal to  
19 the cost of the application, if any, plus one hundred dollars. Fees  
20 and costs may be recovered, but additional damages must be proved.

21 NEW SECTION. **Sec. 7.** Sections 1 and 3 through 6 of this act  
22 constitute a new chapter in Title 10 RCW.

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