
HOUSE BILL 2545

State of Washington

63rd Legislature

2014 Regular Session

By Representatives Moscoso, Reykdal, Appleton, Sells, Roberts, Goodman, Pollet, and Freeman

Read first time 01/21/14. Referred to Committee on Labor & Workforce Development.

1 AN ACT Relating to prohibiting employers from asking about or using
2 nonconviction information in initial applications for employment;
3 adding new sections to chapter 49.44 RCW; creating new sections; and
4 prescribing penalties.

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

6 NEW SECTION. **Sec. 1.** The legislature finds that unfairly harmful
7 consequences result from employers considering nonconviction
8 information in initial screening of employment applications, including
9 such practices as asking applicants if they have ever been arrested,
10 and then refusing to consider all applicants who check the box
11 responding "yes." This act is intended to reduce the harm of such
12 employment practices by banning the box; in other words, stopping
13 employers from asking about or otherwise using nonconviction
14 information in initial screening, before determining the applicant is
15 otherwise qualified for the position. Banning the box gives applicants
16 a fair chance to be considered on the merits of their qualifications,
17 merits that would otherwise be disregarded due to information that is
18 not a finding of guilt.

1 The legislature further finds that exclusion of applicants from
2 consideration for employment opportunities based solely on
3 nonconviction information causes harm in the form of economic
4 instability, a lifetime of reduced employment opportunities, and
5 reduced earning potential. Additionally, the legislature finds that by
6 removing the barrier to employment opportunities posed by nonconviction
7 information, the state promotes important public interests, including
8 the interest in increasing self-sufficiency, increasing tax revenue,
9 conserving scarce governmental resources by reducing reliance on public
10 benefits, reducing recidivism, keeping individuals and families out of
11 poverty, and reducing the effects of racial disparities in the criminal
12 justice system.

13 RCW 9.96A.010, enacted in 1973, articulates Washington's long-
14 standing public policy of "encouraging and contributing to the
15 rehabilitation of felons and to assist them in the assumption of the
16 responsibilities of citizenship, and the opportunity to secure
17 employment or to pursue, practice or engage in a meaningful and
18 profitable trade, occupation, vocation, profession or business is an
19 essential ingredient to rehabilitation and the assumption of
20 responsibilities of citizenship." WAC 162-12-140 has long stated that
21 preemployment inquiries about arrests are an unfair practice. Nothing
22 in this act is inconsistent with the provisions of RCW 9.96A.010,
23 9.96A.020, 9.96A.030, 9.96A.050, or 9.96A.060, but enforcement powers
24 beyond those in RCW 9.96A.040 and in WAC 162-12-140, as provided in
25 this act, are necessary to address the harms described in this section.

26 The legislature recognizes that numerous jurisdictions in the
27 United States, including the states of California, Colorado,
28 Connecticut, Hawaii, Illinois, Maryland, Massachusetts, Minnesota, New
29 Mexico, and Rhode Island, as well as the city of Seattle and forty-nine
30 other cities in the United States, have adopted some form of ban the
31 box legislation. In addition, recognizing the numerous benefits of a
32 ban the box policy, one of the largest retailers in the United States,
33 the Target corporation, recently adopted a policy prohibiting asking
34 prospective employees about their criminal records in initial job
35 applications. America's largest retailer, Wal-Mart, removed the box
36 from its employment applications in 2010. This act provides more
37 modest ban the box protection than other jurisdictions, and is a
38 necessary step toward giving people a fair chance to work.

1 NEW SECTION. **Sec. 2.** (1) An employer may not include a question
2 on any application for employment, or inquire either orally or in
3 writing, or receive information through a criminal history background
4 check or otherwise, about nonconviction information, before having
5 determined the applicant is otherwise qualified for the position.

6 (2) An employer may not advertise employment openings in a way that
7 excludes people with nonconviction records from applying.

8 (3) An employer may not implement any policy or practice that
9 automatically or categorically excludes all individuals with a
10 nonconviction record from any employment position. Prohibited policies
11 and practices include rejecting an applicant for failure to disclose
12 nonconviction information.

13 (4) This section does not apply to:

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

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

21 (c) Jobs that include law enforcement, policing, crime prevention,
22 security, criminal justice, or private investigation services.

23 (5) For the purposes of this section:

24 (a) "Employer" includes public agencies, private individuals,
25 businesses and corporations, contractors, training and
26 apprenticeship programs, and placement agencies.

27 (b) "Nonconviction information" means information about a citation,
28 arrest, or criminal case that does not result in a finding of guilt, or
29 where a finding of guilt has subsequently been vacated or dismissed,
30 and includes:

31 (i) Nonconviction data as defined in chapter 10.97 RCW; and

32 (ii) Information contained in law enforcement records or records
33 collected by the courts relating to:

34 (A) Arrests, detentions, probable cause hearings, citations,
35 charges, and service of warrants relating to an incident that did not
36 lead to a conviction and for which proceedings are no longer actively
37 pending. There shall be a rebuttable presumption that proceedings are

1 no longer actively pending if more than one year has elapsed since
2 arrest, citation, charge, or service of warrant and no disposition has
3 been entered;

4 (B) Diversions;

5 (C) Charges resulting in a dismissal, excluding dismissals based on
6 incompetency or following completion of a deferred prosecution pursuant
7 to chapter 10.05 RCW;

8 (D) Charges resulting in acquittal other than insanity acquittals;

9 (E) Convictions after a pardon on that conviction has been granted;

10 (F) Charges dismissed under a stipulated order of continuance or
11 similar agreement;

12 (G) Charges dismissed pursuant to completion of a deferred sentence
13 under RCW 9.95.240, 35.20.255, or 3.50.320, chapter 3.66 RCW, or
14 pursuant to a deferred disposition under chapter 13.50 RCW;

15 (H) Charges dismissed following vacation of the conviction pursuant
16 to RCW 9.94A.640, 9.95.240, or 9.96.060;

17 (I) Charges vacated under chapter 13.50 RCW; and

18 (J) Charges resolved by forfeiture of bail other than in traffic,
19 hunting, and fishing cases.

20 In cases where charges are reduced or dismissed pursuant to a plea
21 bargain, whether as part of a single or multiple cause numbers, the
22 parts of records that relate to charges that satisfy the definition of
23 nonconviction information shall be treated as nonconviction
24 information.

25 NEW SECTION. **Sec. 3.** (1) This act shall not be:

26 (a) Construed to interfere with, impede, or in any way diminish any
27 provision in a collective bargaining agreement or the right of
28 employees to bargain collectively with their employers through
29 representatives of their own choosing concerning wages or standards or
30 conditions of employment;

31 (b) Interpreted or applied to diminish or conflict with any
32 requirements of state or federal law, including Title VII of the civil
33 rights act of 1964, the federal fair credit reporting act, 15 U.S.C.
34 1681, as amended, the Washington state fair credit reporting act,
35 chapter 19.182 RCW, as amended, the Washington state criminal records
36 privacy act, chapter 10.97 RCW, as amended, or state laws regarding

1 criminal background checks, including those related to individuals with
2 access to children or vulnerable persons, RCW 43.43.830, et seq., as
3 amended; and

4 (c) Interpreted or applied as imposing an obligation on the part of
5 an employer to provide accommodations or job modifications in order to
6 facilitate the employment or continued employment of an applicant or
7 employee with a conviction record or who is facing pending criminal
8 charges.

9 (2) Nothing in this act shall be construed to discourage or
10 prohibit an employer from adopting employment policies that are more
11 generous to employees and job applicants than the requirements of this
12 chapter.

13 NEW SECTION. **Sec. 4.** A right of action to enforce this act is
14 authorized. It shall be presumed that damages to the applicant are
15 equal to the cost of the application, if any, plus two hundred dollars.
16 Fees and costs may be recovered, but additional damages must be proven.
17 This right of action shall be in addition to and not in derogation of
18 any other rights and remedies an applicant may have under any other
19 law.

20 NEW SECTION. **Sec. 5.** If any provision of this act or its
21 application to any person or circumstance is held invalid, the
22 remainder of the act or the application of the provision to other
23 persons or circumstances is not affected.

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

33 NEW SECTION. **Sec. 7.** This act may be known and cited as the
34 Washington jobs assistance act.

1 NEW SECTION. **Sec. 8.** Sections 2 through 4 of this act are each
2 added to chapter 49.44 RCW.

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