

By: Rose

H.B. No. 2542

A BILL TO BE ENTITLED

AN ACT

relating to considering criminal history in employment decisions;
providing an administrative penalty.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Title 3, Labor Code, is amended by adding Chapter
106 to read as follows:

CHAPTER 106. CRIMINAL HISTORY CONSIDERATION IN
EMPLOYMENT DECISIONS

Sec. 106.001. DEFINITIONS. In this chapter:

(1) "Adverse action" means a refusal to hire, a
refusal to promote, or the revocation of an offer of employment or
promotion.

(2) "Application" means a written or oral expression
of interest in an employment position by an individual made in
compliance with the employer's established criteria for receiving
expressions of interest.

(3) "Commission" means the Texas Workforce
Commission.

(4) "Conditional employment offer" means an oral or
written offer by an employer to employ an individual in an
employment position, or a classification or referral by an
employment agency or labor union, that may be conditioned on:

(A) the employer's evaluation of the individual's
criminal history; or

1 (B) any preemployment medical examination
2 authorized under the Americans with Disabilities Act (42 U.S.C.
3 Section 12101 et seq.).

4 (5) "Criminal history" means information collected
5 about an individual by a criminal justice agency that consists of
6 identifiable descriptions and notations of arrests, detentions,
7 indictments, informations, and other formal criminal charges and
8 their disposition. The term does not include a record pertaining to
9 a misdemeanor punishable by fine only.

10 (6) "Employer" means a person who employs at least 15
11 individuals in this state for each working day in at least 20 or
12 more calendar weeks in the current or preceding calendar year. The
13 term does not include a governmental body as defined by Section
14 552.003, Government Code.

15 (7) "Employment" means to work for an employer for pay
16 and includes full-time work, part-time work, temporary or seasonal
17 work, contract work, casual or contingent work, work through the
18 services of a temporary or other employment agency, and
19 participation in a vocational, apprenticeship, or educational
20 training program.

21 (8) "Employment agency" and "labor organization" have
22 the meanings assigned by Section 21.002.

23 Sec. 106.002. APPLICABILITY. This chapter does not apply
24 to an employment position for which an individual may be
25 disqualified based on the individual's criminal history under a
26 federal, state, or local law or in compliance with a legally
27 mandated insurance or bond requirement.

1 Sec. 106.003. INDIVIDUAL ASSESSMENT. An employer may
2 evaluate an individual's suitability for an employment position by
3 performing an assessment of the individual's criminal history. The
4 assessment performed under this section must include an evaluation
5 of the:

6 (1) nature and gravity of any offense in the
7 individual's criminal history;

8 (2) length of time that has elapsed since the date:

9 (A) the offense was committed; and

10 (B) the individual fully discharged the
11 individual's sentence; and

12 (3) nature and duties of the employment position for
13 which the individual has applied.

14 Sec. 106.004. FAIR CHANCE HIRING PRACTICES. (a) An
15 employer may not publish or cause to be published information about
16 an employment position that states or implies that an individual's
17 criminal history automatically disqualifies the individual from
18 consideration for the position.

19 (b) An employer may not solicit or otherwise inquire about
20 the criminal history of an individual in an application for an
21 employment position.

22 (c) An employer may not solicit criminal history record
23 information about an individual or consider an individual's
24 criminal history unless the employer has first made a conditional
25 employment offer to the individual. An employer may explain to an
26 applicant, in writing, the assessment system under Section 106.003
27 that the employer uses to consider criminal history.

1 (d) An employer may not refuse to make a conditional
2 employment offer to an individual solely because the individual did
3 not provide criminal history record information before an offer was
4 made.

5 (e) An employer may not take an adverse action against an
6 individual because of the individual's criminal history unless the
7 employer has determined that the individual is unsuitable for the
8 employment position based on an assessment conducted by the
9 employer under Section 106.003.

10 (f) An employer who takes an adverse action against an
11 individual based on the individual's criminal history shall inform
12 the individual in writing that the adverse action was based on the
13 individual's criminal history.

14 Sec. 106.005. EMPLOYMENT AGENCIES AND LABOR ORGANIZATIONS.
15 An employment agency or labor organization may solicit criminal
16 history record information about an individual and make an
17 assessment of an individual's criminal history only after the
18 employment agency or labor organization has identified an
19 employment position for which the employment agency or labor
20 organization intends to classify or refer the individual.

21 Sec. 106.006. COMMISSION DUTIES. (a) The commission
22 shall:

23 (1) administer this chapter; and
24 (2) adopt rules as necessary to implement this
25 chapter.

26 (b) The commission may require reports, conduct
27 investigations, and take other action the commission considers

1 necessary to implement this chapter.

2 Sec. 106.007. ADMINISTRATIVE PENALTY. (a) The commission
3 may assess an administrative penalty against an employer in an
4 amount not to exceed \$500 for each employment position posting or
5 adverse action that violates this chapter.

6 (b) On an employer's first violation, the commission may
7 issue a warning notice to the employer in lieu of assessing the
8 administrative penalty and provide training materials to the
9 employer about compliance with this chapter.

10 SECTION 2. (a) In this section, "adverse action" and
11 "employer" have the meanings assigned by Section 106.001, Labor
12 Code, as added by this Act.

13 (b) The changes in law made by this Act apply only to an
14 adverse action taken by an employer on or after the effective date
15 of this Act. An adverse action taken before that date is governed
16 by the law in effect on the date the action was taken, and the former
17 law is continued in effect for that purpose.

18 SECTION 3. This Act takes effect September 1, 2021.