

Amend CSHB 2730 (Senate committee printing) by adding the following appropriately numbered ARTICLE to the bill and renumbering subsequent ARTICLES of the bill accordingly:

ARTICLE \_\_\_\_ . CRIMINAL HISTORY BACKGROUND CHECKS FOR CERTAIN  
EMPLOYEES OF INSTITUTIONS OF HIGHER EDUCATION

SECTION \_\_\_\_ .01. Subchapter B, Chapter 51, Education Code, is amended to read as follows:

SUBCHAPTER B. CRIMINAL HISTORY BACKGROUND CHECKS FOR POTENTIAL AND CURRENT EMPLOYEES [~~GENERAL PROPERTY DEPOSITS: INVESTMENT AND USES~~]

Sec. 51.051. DEFINITIONS. In this subchapter:

(1) "National criminal history record information" means criminal history record information obtained from the Department of Public Safety under Subchapter F, Chapter 411, Government Code, and the Federal Bureau of Investigation under Section 411.087, Government Code.

(2) "Governing board" and "institution of higher education" have the meanings assigned by Section 61.003.

Sec. 51.052. APPLICABILITY. This subchapter does not apply to an applicant for employment at or employee of an institution of higher education who is or will be a student enrolled in the institution during the person's employment. This section does not prohibit an institution from conducting a criminal history background check of a student applicant for a security-sensitive position at the institution.

Sec. 51.053. ACCESS TO NATIONAL CRIMINAL HISTORY RECORD INFORMATION BY INSTITUTION. (a) An institution of higher education shall subscribe to the criminal history clearinghouse as provided by Section 411.0845, Government Code.

(b) An institution may obtain from a law enforcement or criminal justice agency any criminal history record information, including information contained in a closed criminal investigation file, that relates to a specific applicant for employment with or an employee of the institution.

Sec. 51.054. PREEMPLOYMENT NATIONAL CRIMINAL HISTORY BACKGROUND CHECKS; RESTRICTIONS ON EMPLOYMENT. (a) An institution of higher education shall condition an offer of employment on obtaining acceptable national criminal history record information

under Section 51.053.

(b) An institution of higher education shall reject an application for employment if:

(1) the applicant fails to consent to a national criminal history background check or provide fingerprints necessary to obtain national criminal history record information;  
or

(2) the applicant's national criminal history record information indicates that the applicant has been convicted of:

(A) a felony of the second degree, a felony of the first degree, or a capital felony under the laws of this state or of an equivalent offense under the laws of another jurisdiction; or

(B) an offense for which registration as a sex offender is required under Chapter 62, Code of Criminal Procedure.

(c) If an applicant's national criminal history record information indicates that the applicant has been convicted of an offense, other than an offense listed under Subsection (b)(2), or arrested for any offense, the institution of higher education shall conduct an analysis under Section 51.058 to determine whether to employ the applicant.

(d) After an analysis under Section 51.058, an institution of higher education may employ an applicant whose national criminal history record information indicates that the applicant has been convicted of a felony, other than an offense listed under Subsection (b)(2), only if employment of the applicant is:

(1) recommended by the person in charge of the department or division to which the applicant has applied; and

(2) approved by the chief executive officer of the institution or the officer's designee.

Sec. 51.055. POST-EMPLOYMENT NATIONAL CRIMINAL HISTORY BACKGROUND CHECKS; TERMINATION OF EMPLOYMENT FOR FAILURE TO PROVIDE INFORMATION. (a) An institution of higher education shall conduct a national criminal history background check of an employee on promotion or transfer of the employee within the institution if the institution has not previously conducted a national criminal history background check of the employee. An institution may conduct additional criminal history background checks as necessary

to maintain the integrity of the institution's faculty and staff.

(b) The institution of higher education shall require that every employee of the institution provide the identification information and fingerprints necessary to conduct a national criminal history background check. The institution may immediately terminate the employment of an employee who fails to provide the information or fingerprints.

Sec. 51.056. FALSIFICATION OF CRIMINAL HISTORY; DISCIPLINARY AND OTHER ACTION. (a) An institution of higher education shall reject an application for employment if the applicant knowingly fails to provide or falsifies criminal history record information on an application.

(b) An institution of higher education may take disciplinary action, including termination of employment, against an employee if the employee knowingly failed to provide or falsified criminal history record information on the employee's application for employment, a promotion, or a transfer.

(c) An institution of higher education may make a decision to reject an application for employment under Subsection (a) or take disciplinary action against an employee under Subsection (b) without conducting an analysis under Section 51.058.

Sec. 51.057. INFORMATION REQUIRED TO BE REPORTED BY APPLICANTS AND EMPLOYEES; DISCIPLINARY ACTION. (a) An institution of higher education shall require:

(1) an applicant for employment to report an arrest made after the applicant has submitted the application to the institution and before the institution has notified the applicant of a decision about employment of the applicant; and

(2) an employee to report to a supervisor, within 24 hours of the arrest, charge, or conviction, or at the earliest practicable opportunity after that 24-hour period, the employee's criminal arrest, charge, or conviction, other than for a misdemeanor traffic offense punishable by a fine only.

(b) A supervisor who receives a report from an employee under Subsection (a)(2) shall report the information to the person in charge of the department or division to which the employee is assigned and to the institution's human resources department.

(c) An institution of higher education may take disciplinary action, including termination of employment, against an employee who fails to report as required by Subsection (a)(2).

(d) An institution of higher education's human resources department or, in the case of a faculty member, the provost or provost's designee shall conduct an analysis under Section 51.058 and assist the department or division to which the employee is assigned in determining, for an arrest, charge, or conviction reported under Subsection (a)(2), the appropriate disciplinary action to take against the employee, which may include termination of employment.

(e) An institution of higher education, on learning of an arrest, charge, or conviction reported under Subsection (a)(2), may immediately suspend with pay the employee pending the outcome of an administrative review under Subsection (d).

Sec. 51.058. ANALYSIS OF CRIMINAL HISTORY RECORD INFORMATION AND SUBSEQUENT ACTIONS. (a) Except as provided by Section 51.054(b)(2), before rejecting an application for employment or taking disciplinary action against an employee on the basis of a criminal conviction, an institution of higher education must:

(1) consider the following factors:

(A) the nature and gravity of the offense;

(B) the amount of time that has passed since:

(i) the conviction; and

(ii) the completion of a sentence imposed

based on the conviction;

(C) the nature of the job sought or held;

(D) the number of convictions; and

(E) the institution's interest in protecting the

safety and welfare of its employees, the general public, state property, and the integrity of the institution; and

(2) determine that:

(A) the conviction is job-related; and

(B) the rejection of the application or

disciplinary action against the employee is necessary to properly administer the institution.

(b) Before rejecting an application for employment or taking disciplinary action against an employee on the basis of a criminal arrest, an institution of higher education must:

(1) consider the following factors:

(A) the nature and gravity of the activity resulting in the arrest;

(B) the amount of time that has passed since the arrest;

(C) the nature of the job sought or held;

(D) the number of arrests;

(E) the institution's interest in protecting the safety and welfare of its employees, the general public, state property, and the integrity of the institution;

(F) an explanation of the arrest by the applicant or employee; and

(G) whether the reason for arrest violates an institutional rule, policy, or procedure, regardless of whether the arrest resulted in a conviction; and

(2) determine that:

(A) the alleged misconduct is job-related;

(B) the rejection of an application or disciplinary action is necessary to properly administer the institution; and

(C) the applicant or employee is likely to have engaged in the misconduct that caused the arrest.

Sec. 51.059. APPEALS; DETERMINATION. (a) An applicant for employment may appeal a decision of an institution of higher education under this subchapter to refuse to employ the applicant only on the basis that the institution discriminated against the applicant for an unlawful reason, including the applicant's race, color, national origin, religion, sex, disability, or age.

(b) An applicant alleging unlawful discrimination by the institution of higher education must, not later than the 10th business day after the date an application is rejected, present written data or documentation of the specific actions or basis of the allegation to the appropriate institution employee responsible for equal employment opportunity or the employee's designee.

(c) On receiving the data or documentation, the employee responsible for equal employment opportunity or the employee's designee shall investigate the complaint and issue a written report of findings to the chief executive officer of the institution or the officer's designee.

(d) If the chief executive officer or the officer's designee approves the report under Subsection (b), the officer or designee shall provide a copy of the report to the rejected applicant not later than the 14th day after the date the report is approved.

(e) The governing board of an institution of higher education may adopt a separate appeals process under this section or may use an existing process regarding employee discipline and termination of employment.

Sec. 51.060. USE AND DESTRUCTION OF NATIONAL CRIMINAL HISTORY RECORD INFORMATION. An institution of higher education shall:

(1) use national criminal history record information obtained under this subchapter exclusively to verify employability; and

(2) destroy all national criminal history record information obtained under this subchapter as soon as practicable, consistent with the following:

(A) for an applicant for employment, after the position for which the applicant applied has been filled and the applicant that was hired reports for the first day of work; or

(B) for an employee, after the national criminal history record information has been analyzed and any resulting administrative action has been taken.

Sec. 51.061. POLICIES. Each governing board of an institution of higher education shall adopt policies as necessary for the institution to comply with this subchapter.

Sec. 51.062. NAME-BASED CRIMINAL HISTORY BACKGROUND CHECKS. (a) An institution of higher education may, in lieu of obtaining information under Section 51.053, contract with a private vendor to conduct name-based criminal history background checks on any current employee for which the institution has not previously conducted a national criminal history background check for the sole

purpose of verifying continued employability.

(b) An institution of higher education shall destroy name-based criminal history background check information obtained under Subsection (a) as soon as practicable after the information has been analyzed and any resulting administrative action has been taken.

SECTION \_\_\_\_ .02. Section 411.081(i), Government Code, is amended to read as follows:

(i) A criminal justice agency may disclose criminal history record information that is the subject of an order of nondisclosure to the following noncriminal justice agencies or entities only:

- (1) the State Board for Educator Certification;
- (2) a school district, charter school, private school, regional education service center, commercial transportation company, or education shared service arrangement;
- (3) the Texas Medical Board;
- (4) the Texas School for the Blind and Visually Impaired;
- (5) the Board of Law Examiners;
- (6) the State Bar of Texas;
- (7) a district court regarding a petition for name change under Subchapter B, Chapter 45, Family Code;
- (8) the Texas School for the Deaf;
- (9) the Department of Family and Protective Services;
- (10) the Texas Youth Commission;
- (11) the Department of Assistive and Rehabilitative Services;
- (12) the Department of State Health Services, a local mental health service, a local mental retardation authority, or a community center providing services to persons with mental illness or retardation;
- (13) the Texas Private Security Board;
- (14) a municipal or volunteer fire department;
- (15) the Texas Board of Nursing;
- (16) a safe house providing shelter to children in harmful situations;
- (17) a public or nonprofit hospital or hospital

district;

(18) the Texas Juvenile Probation Commission;

(19) the securities commissioner, the banking commissioner, the savings and mortgage lending commissioner, or the credit union commissioner;

(20) the Texas State Board of Public Accountancy;

(21) the Texas Department of Licensing and Regulation;

(22) the Health and Human Services Commission;

(23) the Department of Aging and Disability Services;

[and]

(24) the Texas Education Agency; and

(25) an institution of higher education, as defined by Section 411.094(a)(1)(A).

SECTION \_\_\_\_.03. Section 411.094, Government Code, is amended by adding Subsection (f) to read as follows:

(f) Notwithstanding Subsection (c), an institution of higher education, as defined by Subsection (a)(1)(A), is entitled to obtain from the department criminal history record information maintained by the department that relates to a person who is employed by or is an applicant for employment at the institution, to the extent the information is necessary for the institution to administer the institution's duties under Subchapter B, Chapter 51, Education Code.

SECTION \_\_\_\_.04. Section 51.215, Education Code, is repealed.

SECTION \_\_\_\_.05. As soon as practicable after the effective date of this Act, the governing board of a public institution of higher education shall adopt policies required by Section 51.061, Education Code, as added by this article.