

## **BILL ANALYSIS**

C.S.S.B. 2046  
By: Williams  
Higher Education  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Recent incidents of violence at colleges and universities across the country have brought increased attention to the security and safety protocols currently in place at institutions of higher education. In 2006, Texas' 35 general academic institutions reported approximately 1,100 crimes committed on or around their campuses. These crimes ranged from burglaries to aggravated assaults and sex offenses, and while institutions have taken steps to prepare for emergency situations and provide students and staff with a safe and secure environment, there are still additional steps to be taken. This legislation is an attempt to mitigate risks at institutions of higher education and provide students, higher education employees, and their families an added sense of security.

C.S.S.B. 2046 requires an institution of higher education to obtain criminal history record information for all prospective employees, as well as current employees upon transfer or promotion within the institution.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

C.S.S.B. 2046 amends the Education Code to require an institution of higher education to subscribe to the criminal history clearinghouse as provided by state law or to obtain from a private vendor that offers services comparable to the criminal history record information services offered by the Department of Public Safety (DPS) all criminal history record information required for the institution to comply with the bill's provisions. The bill authorizes an institution to 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. The bill establishes that provisions relating to criminal history background checks do not apply to an applicant for employment at or an employee of an institution of higher education who is or will be a student enrolled in the institution during the person's employment, nor do they prohibit an institution from conducting a criminal history background check of a student applicant for a security-sensitive position at the institution.

C.S.S.B. 2046 requires an institution of higher education to condition an offer of employment on obtaining acceptable criminal history record information and to reject an application for employment if the applicant fails to consent to a background check or provide fingerprints necessary to obtain criminal history record information or if the applicant's criminal history record information indicates that the applicant has been convicted of a first or second degree felony or a capital felony under state law or of an equivalent offense under the laws of another jurisdiction, or an offense for which state law requires registration as a sex offender. The bill requires the institution, if an applicant's criminal history record information indicates that the

applicant has been convicted of an offense, other than an offense listed above, or arrested for any offense, to conduct an analysis to determine whether to employ the applicant. The bill authorizes an institution, after an analysis, to employ an applicant whose criminal history record information indicates that the applicant has been convicted of a felony, other than those listed above, only if applicant's employment is recommended by the person in charge of the department or division to which the applicant has applied and approved by the institution's chief executive officer or the officer's designee.

C.S.S.B. 2046 requires an institution of higher education to conduct a 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 criminal history background check of the employee and authorizes an institution to conduct additional criminal history background checks as necessary to maintain the integrity of the institution's faculty and staff. The bill requires the institution to require that every employee of the institution provide the identification information and fingerprints necessary to conduct a background check and authorizes the institution to terminate immediately the employment of an employee who fails to provide the information or fingerprints.

C.S.S.B. 2046 requires an institution of higher education to reject an application for employment if the applicant knowingly fails to provide or falsifies criminal history record information on an application and authorizes an institution to 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. The bill authorizes an institution to make a decision to reject an application or take disciplinary action without conducting an analysis.

C.S.S.B. 2046 requires an institution of higher education to require 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 and to require 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. The bill requires a supervisor who receives a report from an employee to 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 and authorizes an institution to take disciplinary action, including termination, against an employee who fails to report as required. The bill requires an institution's human resources department or, in the case of a faculty member, the provost or provost's designee to conduct an analysis and assist the department or division to which the employee is assigned in determining, for a reported arrest, charge, or conviction, the appropriate disciplinary action to take against the employee. The bill authorizes an institution, on learning of a reported arrest, charge, or conviction to suspend immediately with pay the employee pending the outcome of an administrative review.

C.S.S.B. 2046 requires an institution of higher education, except as otherwise provided and before rejecting an application for employment or taking disciplinary action on the basis of a criminal conviction, to consider certain relevant factors and determine that the conviction is job-related and the rejection of the application or disciplinary action is necessary to properly administer the institution. The bill requires an institution, before rejecting an application for employment or taking disciplinary action on the basis of a criminal arrest, to consider certain mitigating factors and determine that the alleged misconduct is job-related, the rejection of an application or disciplinary action is necessary to properly administer the institution, and the applicant or employee is likely to have engaged in the misconduct that caused the arrest.

C.S.S.B. 2046 authorizes an applicant for employment to appeal a decision of an institution of higher education 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. The bill requires the applicant alleging unlawful discrimination, not later than the 10th business day after the date of rejection, to 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. The bill requires the employee responsible or the employee's designee, on receiving the data or documentation, to investigate the complaint and issue a written report of findings to the chief executive officer of the institution or the officer's designee and requires the officer or designee, if the chief executive officer or the officer's designee approves the report, to provide a copy of the report to the rejected applicant not later than the 14th day after the date the report is approved. The bill authorizes an institution's governing board to adopt a separate appeals process or to use an existing process regarding employee discipline and termination of employment.

C.S.S.B. 2046 requires an institution of higher education to use criminal history record information obtained under these provisions exclusively to verify employability and to destroy all obtained criminal history record information as soon as practicable, consistent with the following: 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 for an employee, after the criminal history record information has been analyzed and any resulting administrative action has been taken. The bill requires each institution's governing board to adopt policies as necessary for the institution to comply with these provisions.

C.S.S.B. 2046 amends the Government Code to include an institution of higher education among the entities to which a criminal justice agency may disclose criminal history record information that is the subject of an order of nondisclosure and to entitle an institution, other provisions notwithstanding, to obtain from DPS criminal history record information maintained by DPS 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 provisions relating to criminal background checks for potential and current employees.

C.S.S.B. 2046 requires the governing board of a public institution of higher education to adopt policies required above as soon as practicable after September 1, 2009, and defines "criminal history record information," "governing board," and "institution of higher education."

C.S.S.B. 2046 repeals Section 51.215, Education Code, relating to access to police records of employment applicants by an institution of higher education.

### **EFFECTIVE DATE**

September 1, 2009.

### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

C.S.S.B. 2046 differs from the original by expanding the definition of "criminal history record information" to include criminal history record information obtained from a private vendor, in addition to information obtained from the Department of Public Safety (DPS) or the Federal Bureau of Investigation as in the original. The substitute adds provisions not in the original establishing that provisions relating to criminal history background checks do not apply to an applicant for employment at or an employee of an institution of higher education who is or will be a student enrolled in the institution during the person's employment and that they do not prohibit an institution from conducting a criminal history background check of a student applicant for a security-sensitive position at the institution.

C.S.S.B. 2046 differs from the original by requiring an institution of higher education either to subscribe to the criminal history clearinghouse or to obtain from a private vendor that offers services comparable to the criminal history record information services offered by DPS all criminal history record information required for the institution to comply with state law, whereas

the original requires such institution only to subscribe to the clearinghouse.

C.S.S.B. 2046 differs from the original by specifying that an institution is required to conduct a criminal history background check of an employee on promotion or internal transfer if the institution has not previously conducted a background check on the employee, whereas the original does not condition the requirement to conduct a criminal history background check of an employee on promotion or internal transfer.

C.S.S.B. 2046 removes a provision in the original establishing that the bill's provisions do not make an appropriation and that a provision that creates a new governmental program, creates a new entitlement, or imposes a new duty on a governmental entity is not mandatory during a fiscal period for which the legislature has not made a specific appropriation to implement the provision.