

By: Williams

S.B. No. 2046

A BILL TO BE ENTITLED

AN ACT

relating to requiring criminal history background checks for employees of public institutions of higher education.

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

SECTION 1. Subchapter B, Chapter 51, Education Code, is amended to read as follows:

SUBCHAPTER B. [~~GENERAL PROPERTY DEPOSITS: INVESTMENT AND USES~~]

CRIMINAL HISTORY BACKGROUND CHECKS FOR POTENTIAL AND CURRENT EMPLOYEES

Sec. 51.051. DEFINITIONS. In this subchapter:

(1) "Criminal history record information" means criminal history record information obtained from the Department of Public Safety under Subchapter F, Chapter 411, Government Code, or from 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. ACCESS TO 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 of higher education may obtain from a law enforcement or criminal justice agency any criminal history record information, including information contained in a closed criminal

1 investigation file, that relates to a specific applicant for
2 employment with or an employee of the institution.

3 Sec. 51.053. PREEMPLOYMENT CRIMINAL HISTORY BACKGROUND
4 CHECKS; RESTRICTIONS ON EMPLOYMENT. (a) An institution of higher
5 education shall condition an offer of employment on obtaining
6 acceptable criminal history record information under Section
7 51.052.

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

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

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

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

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

20 (c) If an applicant's criminal history record information
21 indicates that the applicant has been convicted of an offense,
22 other than an offense listed under Subsection (b)(2), or arrested
23 for any offense, the institution of higher education shall conduct
24 an analysis under Section 51.057 to determine whether to employ the
25 applicant.

26 (d) After an analysis under Section 51.057, an institution
27 of higher education may employ an applicant whose criminal history

1 record information indicates that the applicant has been convicted
2 of a felony, other than an offense listed under Subsection (b)(2),
3 only if employment of the applicant is:

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

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

8 Sec. 51.054. POSTEMPLOYMENT CRIMINAL HISTORY BACKGROUND
9 CHECKS; TERMINATION OF EMPLOYMENT FOR FAILURE TO PROVIDE
10 INFORMATION. (a) An institution of higher education shall conduct
11 a criminal history background check of an employee on promotion or
12 transfer of the employee within the institution. An institution
13 may conduct additional criminal history background checks as
14 necessary to maintain the integrity of the institution's faculty
15 and staff.

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

22 Sec. 51.055. FALSIFICATION OF CRIMINAL HISTORY;
23 DISCIPLINARY AND OTHER ACTION. (a) An institution of higher
24 education shall reject an application for employment if the
25 applicant knowingly fails to provide or falsifies criminal history
26 record information on an application.

27 (b) An institution of higher education may take

1 disciplinary action, including termination of employment, against
2 an employee if the employee knowingly failed to provide or
3 falsified criminal history record information on the employee's
4 application for employment, a promotion, or a transfer.

5 (c) An institution of higher education may make a decision
6 to reject an application for employment under Subsection (a) or
7 take disciplinary action against an employee under Subsection (b)
8 without conducting an analysis under Section 51.057.

9 Sec. 51.056. INFORMATION REQUIRED TO BE REPORTED BY
10 APPLICANTS AND EMPLOYEES; DISCIPLINARY ACTION. (a) An
11 institution of higher education shall require:

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

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

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

26 (c) An institution of higher education may take
27 disciplinary action, including termination of employment, against

1 an employee who fails to report as required by Subsection (a)(2).

2 (d) An institution of higher education's human resources
3 department or, in the case of a faculty member, the provost or
4 provost's designee shall conduct an analysis under Section 51.057
5 and assist the department or division to which the employee is
6 assigned in determining, for an arrest, charge, or conviction
7 reported under Subsection (a)(2), the appropriate disciplinary
8 action to take against the employee, which may include termination
9 of employment.

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

14 Sec. 51.057. ANALYSIS OF CRIMINAL HISTORY RECORD
15 INFORMATION AND SUBSEQUENT ACTIONS. (a) Except as provided by
16 Section 51.053(b)(2), before rejecting an application for
17 employment or taking disciplinary action against an employee on the
18 basis of a criminal conviction, an institution of higher education
19 must:

- 20 (1) consider the following factors:
- 21 (A) the nature and gravity of the offense;
 - 22 (B) the amount of time that has passed since:
 - 23 (i) the conviction; and
 - 24 (ii) the completion of a sentence imposed
 - 25 based on the conviction;
 - 26 (C) the nature of the job sought or held;
 - 27 (D) the number of convictions; and

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

4 (2) determine that:

5 (A) the conviction is job-related; and

6 (B) the rejection of the application or
7 disciplinary action against the employee is necessary to properly
8 administer the institution.

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

12 (1) consider the following factors:

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

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

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

18 (D) the number of arrests;

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

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

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

27 (2) determine that:

1 (A) the alleged misconduct is job-related;

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

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

7 Sec. 51.058. APPEALS; DETERMINATION. (a) An applicant for
8 employment may appeal a decision of an institution of higher
9 education under this subchapter to refuse to employ the applicant
10 only on the basis that the institution discriminated against the
11 applicant for an unlawful reason, including the applicant's race,
12 color, national origin, religion, sex, disability, or age.

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

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

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

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

5 Sec. 51.059. USE AND DESTRUCTION OF CRIMINAL HISTORY RECORD
6 INFORMATION. An institution of higher education shall:

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

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

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

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

18 Sec. 51.060. POLICIES. Each governing board of an
19 institution of higher education shall adopt policies as necessary
20 for the institution to comply with this subchapter.

21 SECTION 2. Subsection (i), Section 411.081, Government
22 Code, is amended to read as follows:

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

26 (1) the State Board for Educator Certification;

27 (2) a school district, charter school, private school,

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

1 commissioner, the savings and mortgage lending commissioner, or the
2 credit union commissioner;

3 (20) the Texas State Board of Public Accountancy;

4 (21) the Texas Department of Licensing and Regulation;

5 (22) the Health and Human Services Commission;

6 (23) the Department of Aging and Disability Services;

7 [~~and~~]

8 (24) the Texas Education Agency; and

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

11 SECTION 3. Section 411.094, Government Code, is amended by
12 adding Subsection (f) to read as follows:

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

21 SECTION 4. Section 51.215, Education Code, is repealed.

22 SECTION 5. As soon as practicable after the effective date
23 of this Act, the governing board of a public institution of higher
24 education shall adopt policies required by Section 51.060,
25 Education Code, as added by this Act.

26 SECTION 6. This Act does not make an appropriation. A
27 provision in this Act that creates a new governmental program,

1 creates a new entitlement, or imposes a new duty on a governmental
2 entity is not mandatory during a fiscal period for which the
3 legislature has not made a specific appropriation to implement the
4 provision.

5 SECTION 7. This Act takes effect September 1, 2009.