

By: Williams

S.B. No. 2046

Substitute the following for S.B. No. 2046:

By: Patrick

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

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, from the Federal Bureau of Investigation under Section 411.087, Government Code, or from a private vendor.

(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 CRIMINAL HISTORY RECORD INFORMATION

1 BY INSTITUTION. (a) An institution of higher education shall:

2 (1) subscribe to the criminal history clearinghouse as
3 provided by Section 411.0845, Government Code; or

4 (2) obtain from a private vendor that offers services
5 comparable to the criminal history record information services
6 offered by the Department of Public Safety all criminal history
7 record information required for the institution to comply with
8 Sections 51.054 and 51.055.

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

14 Sec. 51.054. PREEMPLOYMENT CRIMINAL HISTORY BACKGROUND
15 CHECKS; RESTRICTIONS ON EMPLOYMENT. (a) An institution of higher
16 education shall condition an offer of employment on obtaining
17 acceptable criminal history record information under Section
18 51.053.

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

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

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

26 (A) a felony of the second degree, a felony of the
27 first degree, or a capital felony under the laws of this state or of

1 an equivalent offense under the laws of another jurisdiction; or

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

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

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

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

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

19 Sec. 51.055. POST-EMPLOYMENT CRIMINAL HISTORY BACKGROUND
20 CHECKS; TERMINATION OF EMPLOYMENT FOR FAILURE TO PROVIDE
21 INFORMATION. (a) An institution of higher education shall conduct
22 a criminal history background check of an employee on promotion or
23 transfer of the employee within the institution if the institution
24 has not previously conducted a criminal history background check of
25 the employee. An institution may conduct additional criminal
26 history background checks as necessary to maintain the integrity of
27 the institution's faculty and staff.

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

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

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

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

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

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

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

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

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

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

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

25 Sec. 51.058. ANALYSIS OF CRIMINAL HISTORY RECORD
26 INFORMATION AND SUBSEQUENT ACTIONS. (a) Except as provided by
27 Section 51.054(b)(2), before rejecting an application for

1 employment or taking disciplinary action against an employee on the
2 basis of a criminal conviction, an institution of higher education
3 must:

4 (1) consider the following factors:

5 (A) the nature and gravity of the offense;

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

7 (i) the conviction; and

8 (ii) the completion of a sentence imposed

9 based on the conviction;

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

11 (D) the number of convictions; and

12 (E) the institution's interest in protecting the

13 safety and welfare of its employees, the general public, state

14 property, and the integrity of the institution; and

15 (2) determine that:

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

17 (B) the rejection of the application or

18 disciplinary action against the employee is necessary to properly

19 administer the institution.

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

23 (1) consider the following factors:

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

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

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

2 (D) the number of arrests;

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

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

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

11 (2) determine that:

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

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

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

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

24 (b) An applicant alleging unlawful discrimination by the
25 institution of higher education must, not later than the 10th
26 business day after the date an application is rejected, present
27 written data or documentation of the specific actions or basis of

1 the allegation to the appropriate institution employee responsible
2 for equal employment opportunity or the employee's designee.

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

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

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

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

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

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

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

26 (B) for an employee, after the criminal history
27 record information has been analyzed and any resulting

1 administrative action has been taken.

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

5 SECTION 2. Section 411.081(i), Government Code, is amended
6 to read as follows:

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

- 10 (1) the State Board for Educator Certification;
- 11 (2) a school district, charter school, private school,
12 regional education service center, commercial transportation
13 company, or education shared service arrangement;
- 14 (3) the Texas Medical Board;
- 15 (4) the Texas School for the Blind and Visually
16 Impaired;
- 17 (5) the Board of Law Examiners;
- 18 (6) the State Bar of Texas;
- 19 (7) a district court regarding a petition for name
20 change under Subchapter B, Chapter 45, Family Code;
- 21 (8) the Texas School for the Deaf;
- 22 (9) the Department of Family and Protective Services;
- 23 (10) the Texas Youth Commission;
- 24 (11) the Department of Assistive and Rehabilitative
25 Services;
- 26 (12) the Department of State Health Services, a local
27 mental health service, a local mental retardation authority, or a

1 community center providing services to persons with mental illness
2 or retardation;

3 (13) the Texas Private Security Board;

4 (14) a municipal or volunteer fire department;

5 (15) the Texas Board of Nursing;

6 (16) a safe house providing shelter to children in
7 harmful situations;

8 (17) a public or nonprofit hospital or hospital
9 district;

10 (18) the Texas Juvenile Probation Commission;

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

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

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

16 (22) the Health and Human Services Commission;

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

18 [~~and~~]

19 (24) the Texas Education Agency; and

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

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

24 (f) Notwithstanding Subsection (c), an institution of
25 higher education, as defined by Subsection (a)(1)(A), is entitled
26 to obtain from the department criminal history record information
27 maintained by the department that relates to a person who is

1 employed by or is an applicant for employment at the institution, to
2 the extent the information is necessary for the institution to
3 administer the institution's duties under Subchapter B, Chapter 51,
4 Education Code.

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

6 SECTION 5. As soon as practicable after the effective date
7 of this Act, the governing board of a public institution of higher
8 education shall adopt policies required by Section 51.061,
9 Education Code, as added by this Act.

10 SECTION 6. This Act takes effect September 1, 2009.