

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 may obtain from a law enforcement or criminal justice agency any criminal history record information, including information contained in a closed criminal investigation

1 file, that relates to a specific applicant for employment with or an  
2 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. POST-EMPLOYMENT 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 institution  
11 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's human resources department.

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

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

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

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

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

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

3 (2) determine that:

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

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

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

11 (1) consider the following factors:

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

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

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

17 (D) the number of arrests;

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

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

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

26 (2) determine that:

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

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

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

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

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

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

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

27           (e) The governing board of an institution of higher

1 education may adopt a separate appeals process under this section  
2 or may use an existing process regarding employee discipline and  
3 termination of employment.

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

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

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

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

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

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

20 SECTION 2. Section 51.215, Education Code, is repealed.

21 SECTION 3. As soon as practicable after the effective date  
22 of this Act, the governing board of a public institution of higher  
23 education shall adopt policies required by Section 51.060,  
24 Education Code, as added by this Act.

25 SECTION 4. This Act takes effect September 1, 2009.