

1-1 By: Williams S.B. No. 2046
1-2 (In the Senate - Filed March 12, 2009; March 31, 2009, read
1-3 first time and referred to Committee on Criminal Justice;
1-4 April 20, 2009, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 6, Nays 0; April 20, 2009,
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 2046 By: Patrick

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to requiring criminal history background checks for
1-11 employees of public institutions of higher education.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Subchapter B, Chapter 51, Education Code, is
1-14 amended to read as follows:

1-15 SUBCHAPTER B. [~~GENERAL PROPERTY DEPOSITS; INVESTMENT AND USES~~]
1-16 CRIMINAL HISTORY BACKGROUND CHECKS FOR POTENTIAL AND CURRENT
1-17 EMPLOYEES

1-18 Sec. 51.051. DEFINITIONS. In this subchapter:

1-19 (1) "Criminal history record information" means
1-20 criminal history record information obtained from the Department of
1-21 Public Safety under Subchapter F, Chapter 411, Government Code, or
1-22 from the Federal Bureau of Investigation under Section 411.087,
1-23 Government Code.

1-24 (2) "Governing board" and "institution of higher
1-25 education" have the meanings assigned by Section 61.003.

1-26 Sec. 51.052. ACCESS TO CRIMINAL HISTORY RECORD INFORMATION
1-27 BY INSTITUTION. (a) An institution of higher education shall
1-28 subscribe to the criminal history clearinghouse as provided by
1-29 Section 411.0845, Government Code.

1-30 (b) An institution of higher education may obtain from a law
1-31 enforcement or criminal justice agency any criminal history record
1-32 information, including information contained in a closed criminal
1-33 investigation file, that relates to a specific applicant for
1-34 employment with or an employee of the institution.

1-35 Sec. 51.053. PREEMPLOYMENT CRIMINAL HISTORY BACKGROUND
1-36 CHECKS; RESTRICTIONS ON EMPLOYMENT. (a) An institution of higher
1-37 education shall condition an offer of employment on obtaining
1-38 acceptable criminal history record information under Section
1-39 51.052.

1-40 (b) An institution of higher education shall reject an
1-41 application for employment if:

1-42 (1) the applicant fails to consent to a criminal
1-43 history background check or provide fingerprints necessary to
1-44 obtain criminal history record information; or

1-45 (2) the applicant's criminal history record
1-46 information indicates that the applicant has been convicted of:

1-47 (A) a felony of the second degree, a felony of the
1-48 first degree, or a capital felony under the laws of this state or of
1-49 an equivalent offense under the laws of another jurisdiction; or

1-50 (B) an offense for which registration as a sex
1-51 offender is required under Chapter 62, Code of Criminal Procedure.

1-52 (c) If an applicant's criminal history record information
1-53 indicates that the applicant has been convicted of an offense,
1-54 other than an offense listed under Subsection (b)(2), or arrested
1-55 for any offense, the institution of higher education shall conduct
1-56 an analysis under Section 51.057 to determine whether to employ the
1-57 applicant.

1-58 (d) After an analysis under Section 51.057, an institution
1-59 of higher education may employ an applicant whose criminal history
1-60 record information indicates that the applicant has been convicted
1-61 of a felony, other than an offense listed under Subsection (b)(2),
1-62 only if employment of the applicant is:

1-63 (1) recommended by the person in charge of the

2-1 department or division to which the applicant has applied; and
2-2 (2) approved by the chief executive officer of the
2-3 institution or the officer's designee.

2-4 Sec. 51.054. POSTEMPLOYMENT CRIMINAL HISTORY BACKGROUND
2-5 CHECKS; TERMINATION OF EMPLOYMENT FOR FAILURE TO PROVIDE
2-6 INFORMATION. (a) An institution of higher education shall conduct
2-7 a criminal history background check of an employee on promotion or
2-8 transfer of the employee within the institution. An institution
2-9 may conduct additional criminal history background checks as
2-10 necessary to maintain the integrity of the institution's faculty
2-11 and staff.

2-12 (b) The institution of higher education shall require that
2-13 every employee of the institution provide the identification
2-14 information and fingerprints necessary to conduct a criminal
2-15 history background check. The institution may immediately
2-16 terminate the employment of an employee who fails to provide the
2-17 information or fingerprints.

2-18 Sec. 51.055. FALSIFICATION OF CRIMINAL HISTORY;
2-19 DISCIPLINARY AND OTHER ACTION. (a) An institution of higher
2-20 education shall reject an application for employment if the
2-21 applicant knowingly fails to provide or falsifies criminal history
2-22 record information on an application.

2-23 (b) An institution of higher education may take
2-24 disciplinary action, including termination of employment, against
2-25 an employee if the employee knowingly failed to provide or
2-26 falsified criminal history record information on the employee's
2-27 application for employment, a promotion, or a transfer.

2-28 (c) An institution of higher education may make a decision
2-29 to reject an application for employment under Subsection (a) or
2-30 take disciplinary action against an employee under Subsection (b)
2-31 without conducting an analysis under Section 51.057.

2-32 Sec. 51.056. INFORMATION REQUIRED TO BE REPORTED BY
2-33 APPLICANTS AND EMPLOYEES; DISCIPLINARY ACTION. (a) An
2-34 institution of higher education shall require:

2-35 (1) an applicant for employment to report an arrest
2-36 made after the applicant has submitted the application to the
2-37 institution and before the institution has notified the applicant
2-38 of a decision about employment of the applicant; and

2-39 (2) an employee to report to a supervisor, within 24
2-40 hours of the arrest, charge, or conviction, or at the earliest
2-41 practicable opportunity after that 24-hour period, the employee's
2-42 criminal arrest, charge, or conviction, other than for a
2-43 misdemeanor traffic offense punishable by a fine only.

2-44 (b) A supervisor who receives a report from an employee
2-45 under Subsection (a)(2) shall report the information to the person
2-46 in charge of the department or division to which the employee is
2-47 assigned and to the institution of higher education's human
2-48 resources department.

2-49 (c) An institution of higher education may take
2-50 disciplinary action, including termination of employment, against
2-51 an employee who fails to report as required by Subsection (a)(2).

2-52 (d) An institution of higher education's human resources
2-53 department or, in the case of a faculty member, the provost or
2-54 provost's designee shall conduct an analysis under Section 51.057
2-55 and assist the department or division to which the employee is
2-56 assigned in determining, for an arrest, charge, or conviction
2-57 reported under Subsection (a)(2), the appropriate disciplinary
2-58 action to take against the employee, which may include termination
2-59 of employment.

2-60 (e) An institution of higher education, on learning of an
2-61 arrest, charge, or conviction reported under Subsection (a)(2), may
2-62 immediately suspend with pay the employee pending the outcome of an
2-63 administrative review under Subsection (d).

2-64 Sec. 51.057. ANALYSIS OF CRIMINAL HISTORY RECORD
2-65 INFORMATION AND SUBSEQUENT ACTIONS. (a) Except as provided by
2-66 Section 51.053(b)(2), before rejecting an application for
2-67 employment or taking disciplinary action against an employee on the
2-68 basis of a criminal conviction, an institution of higher education
2-69 must:

3-1 (1) consider the following factors:
 3-2 (A) the nature and gravity of the offense;
 3-3 (B) the amount of time that has passed since:
 3-4 (i) the conviction; and
 3-5 (ii) the completion of a sentence imposed
 3-6 based on the conviction;
 3-7 (C) the nature of the job sought or held;
 3-8 (D) the number of convictions; and
 3-9 (E) the institution's interest in protecting the
 3-10 safety and welfare of its employees, the general public, state
 3-11 property, and the integrity of the institution; and

3-12 (2) determine that:
 3-13 (A) the conviction is job-related; and
 3-14 (B) the rejection of the application or
 3-15 disciplinary action against the employee is necessary to properly
 3-16 administer the institution.

3-17 (b) Before rejecting an application for employment or
 3-18 taking disciplinary action against an employee on the basis of a
 3-19 criminal arrest, an institution of higher education must:

3-20 (1) consider the following factors:
 3-21 (A) the nature and gravity of the activity
 3-22 resulting in the arrest;
 3-23 (B) the amount of time that has passed since the
 3-24 arrest;
 3-25 (C) the nature of the job sought or held;
 3-26 (D) the number of arrests;
 3-27 (E) the institution's interest in protecting the
 3-28 safety and welfare of its employees, the general public, state
 3-29 property, and the integrity of the institution;
 3-30 (F) an explanation of the arrest by the applicant
 3-31 or employee; and
 3-32 (G) whether the reason for arrest violates an
 3-33 institutional rule, policy, or procedure, regardless of whether the
 3-34 arrest resulted in a conviction; and

3-35 (2) determine that:
 3-36 (A) the alleged misconduct is job-related;
 3-37 (B) the rejection of an application or
 3-38 disciplinary action is necessary to properly administer the
 3-39 institution; and
 3-40 (C) the applicant or employee is likely to have
 3-41 engaged in the misconduct that caused the arrest.

3-42 Sec. 51.058. APPEALS; DETERMINATION. (a) An applicant for
 3-43 employment may appeal a decision of an institution of higher
 3-44 education under this subchapter to refuse to employ the applicant
 3-45 only on the basis that the institution discriminated against the
 3-46 applicant for an unlawful reason, including the applicant's race,
 3-47 color, national origin, religion, sex, disability, or age.

3-48 (b) An applicant alleging unlawful discrimination by the
 3-49 institution of higher education must, not later than the 10th
 3-50 business day after the date an application is rejected, present
 3-51 written data or documentation of the specific actions or basis of
 3-52 the allegation to the appropriate institution employee responsible
 3-53 for equal employment opportunity or the employee's designee.

3-54 (c) On receiving the data or documentation, the employee
 3-55 responsible for equal employment opportunity or the employee's
 3-56 designee shall investigate the complaint and issue a written report
 3-57 of findings to the chief executive officer of the institution of
 3-58 higher education or the officer's designee.

3-59 (d) If the chief executive officer or the officer's designee
 3-60 approves the report under Subsection (b), the officer or designee
 3-61 shall provide a copy of the report to the rejected applicant not
 3-62 later than the 14th day after the date the report is approved.

3-63 (e) The governing board of an institution of higher
 3-64 education may adopt a separate appeals process under this section
 3-65 or may use an existing process regarding employee discipline and
 3-66 termination of employment.

3-67 Sec. 51.059. USE AND DESTRUCTION OF CRIMINAL HISTORY RECORD
 3-68 INFORMATION. An institution of higher education shall:

3-69 (1) use criminal history record information obtained

4-1 under this subchapter exclusively to verify employability; and
4-2 (2) destroy all criminal history record information
4-3 obtained under this subchapter as soon as practicable, consistent
4-4 with the following:

4-5 (A) for an applicant for employment, after the
4-6 position for which the applicant applied has been filled and the
4-7 applicant that was hired reports for the first day of work; or

4-8 (B) for an employee, after the criminal history
4-9 record information has been analyzed and any resulting
4-10 administrative action has been taken.

4-11 Sec. 51.060. POLICIES. Each governing board of an
4-12 institution of higher education shall adopt policies as necessary
4-13 for the institution to comply with this subchapter.

4-14 SECTION 2. Subsection (i), Section 411.081, Government
4-15 Code, is amended to read as follows:

4-16 (i) A criminal justice agency may disclose criminal history
4-17 record information that is the subject of an order of nondisclosure
4-18 to the following noncriminal justice agencies or entities only:

4-19 (1) the State Board for Educator Certification;

4-20 (2) a school district, charter school, private school,
4-21 regional education service center, commercial transportation
4-22 company, or education shared service arrangement;

4-23 (3) the Texas Medical Board;

4-24 (4) the Texas School for the Blind and Visually
4-25 Impaired;

4-26 (5) the Board of Law Examiners;

4-27 (6) the State Bar of Texas;

4-28 (7) a district court regarding a petition for name
4-29 change under Subchapter B, Chapter 45, Family Code;

4-30 (8) the Texas School for the Deaf;

4-31 (9) the Department of Family and Protective Services;

4-32 (10) the Texas Youth Commission;

4-33 (11) the Department of Assistive and Rehabilitative
4-34 Services;

4-35 (12) the Department of State Health Services, a local
4-36 mental health service, a local mental retardation authority, or a
4-37 community center providing services to persons with mental illness
4-38 or retardation;

4-39 (13) the Texas Private Security Board;

4-40 (14) a municipal or volunteer fire department;

4-41 (15) the Texas Board of Nursing;

4-42 (16) a safe house providing shelter to children in
4-43 harmful situations;

4-44 (17) a public or nonprofit hospital or hospital
4-45 district;

4-46 (18) the Texas Juvenile Probation Commission;

4-47 (19) the securities commissioner, the banking
4-48 commissioner, the savings and mortgage lending commissioner, or the
4-49 credit union commissioner;

4-50 (20) the Texas State Board of Public Accountancy;

4-51 (21) the Texas Department of Licensing and Regulation;

4-52 (22) the Health and Human Services Commission;

4-53 (23) the Department of Aging and Disability Services;

4-54 [~~and~~]

4-55 (24) the Texas Education Agency; and

4-56 (25) an institution of higher education, as defined by
4-57 Section 411.094(a)(1)(A).

4-58 SECTION 3. Section 411.094, Government Code, is amended by
4-59 adding Subsection (f) to read as follows:

4-60 (f) Notwithstanding Subsection (c), an institution of
4-61 higher education, as defined by Subsection (a)(1)(A), is entitled
4-62 to obtain from the department criminal history record information
4-63 maintained by the department that relates to a person who is
4-64 employed by or is an applicant for employment at the institution, to
4-65 the extent the information is necessary for the institution to
4-66 administer the institution's duties under Subchapter B, Chapter 51,
4-67 Education Code.

4-68 SECTION 4. Section 51.215, Education Code, is repealed.

4-69 SECTION 5. As soon as practicable after the effective date

5-1 of this Act, the governing board of a public institution of higher
5-2 education shall adopt policies required by Section 51.060,
5-3 Education Code, as added by this Act.

5-4 SECTION 6. This Act takes effect September 1, 2009.

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