

By: Canales

H.B. No. 317

A BILL TO BE ENTITLED

AN ACT

relating to the consideration by certain employers of the consumer credit reports of certain employees and applicants for employment; providing administrative penalties.

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

SECTION 1. Chapter 52, Labor Code, is amended by adding Subchapter H to read as follows:

SUBCHAPTER H. CONSIDERATION OF CREDIT REPORT BY EMPLOYER

Sec. 52.081. DEFINITIONS. In this subchapter:

(1) "Applicant" means a person who has made an oral or written application with an employer, or has sent a resume or other correspondence to an employer, indicating an interest in employment.

(2) "Commission" means the Texas Workforce Commission.

(3) "Consumer reporting agency" means any person that, for monetary fees or dues or on a cooperative nonprofit basis, regularly engages in the practice of assembling or evaluating credit information or other information on individuals for the purpose of furnishing credit reports to third parties.

(4) "Credit report" means any written, oral, or other communication of information by a consumer reporting agency that bears on an individual's creditworthiness, credit standing, or credit capacity.

1           (5) "Employee" and "employer" have the meanings  
2 assigned by Section 21.002.

3           (6) "Employer engaged in or regulating financial  
4 services" means:

5           (A) a bank, savings and loan association or  
6 savings bank, credit union, or other depository institution or its  
7 subsidiaries or affiliates;

8           (B) a mortgage banker or residential mortgage  
9 loan company;

10           (C) a securities firm or registered financial  
11 advisory firm;

12           (D) a regulated loan company;

13           (E) an insurance company or insurance agency; or

14           (F) a state agency responsible for regulating an  
15 entity described by Paragraph (A), (B), (C), or (D).

16           Sec. 52.082. CREDIT REPORT SUBSTANTIALLY RELATED TO  
17 EMPLOYMENT POSITION. A credit report is considered to be  
18 substantially related to an employee's or applicant's employment  
19 position or prospective employment position if the position:

20           (1) is a managerial position which involves setting  
21 the direction or control of a business or a division, unit, or  
22 agency of a business;

23           (2) involves access to customers', employees', or the  
24 employer's personal or financial information, other than  
25 information customarily provided in retail transactions;

26           (3) involves a fiduciary responsibility to the  
27 employer, including the authority to issue payments, collect debts,

1 transfer money, or enter into contracts;

2 (4) provides an expense account or corporate debit or  
3 credit card;

4 (5) involves access to the employer's nonfinancial  
5 assets valued at \$2,005 or more, including museum and library  
6 collections or prescription medications or other pharmaceuticals;  
7 or

8 (6) provides access to:

9 (A) confidential or proprietary business  
10 information; or

11 (B) information, including a formula, pattern,  
12 compilation, program, device, method, technique, process, or trade  
13 secret that:

14 (i) derives independent economic value,  
15 actual or potential, from not being generally known to, and not  
16 being readily ascertainable by proper means by, other persons who  
17 could obtain economic value from the disclosure or use of the  
18 information; and

19 (ii) is the subject of efforts that are  
20 reasonable under the circumstances to maintain its secrecy.

21 Sec. 52.083. EFFECT ON OTHER LAW. This subchapter does not  
22 limit or affect the rights, remedies, or procedures available to an  
23 individual who alleges an unlawful employment practice prohibited  
24 under federal law, another state law, or an order or ordinance of a  
25 political subdivision of this state.

26 Sec. 52.084. PROHIBITED ACTS BY EMPLOYER. An employer may  
27 not require an employee or applicant to consent to a request for a

1 credit report that contains information about the employee's or  
2 applicant's credit score, credit account balances, payment  
3 history, savings or checking account balances, or savings or  
4 checking account numbers as a condition of employment unless:

5 (1) the employer is a financial institution or other  
6 employer engaged in or regulating financial services;

7 (2) consideration of the credit report is required by  
8 law;

9 (3) the employer reasonably believes that the employee  
10 or applicant has engaged in specific activity that constitutes a  
11 violation of the law related to the employee's employment or  
12 applicant's prospective employment; or

13 (4) the report is substantially related to the  
14 employment position or prospective employment position of an  
15 employee or applicant and the employer:

16 (A) has a bona fide employment purpose for  
17 requesting or using information in the credit report; and

18 (B) discloses in writing to the employee or  
19 applicant:

20 (i) that the employer intends to consider  
21 the employee's or applicant's credit report; and

22 (ii) the employment reason for the  
23 employer's consideration of the credit report.

24 Sec. 52.085. ADMINISTRATIVE PENALTY. (a) An employer  
25 commits an administrative violation if the employer violates this  
26 subchapter.

27 (b) The penalty for a violation under this section may not

1 exceed \$1,000. In assessing a penalty under this section, the  
2 commission shall consider:

3 (1) prior violations of this subchapter by the  
4 employer;

5 (2) the severity of the violation; and

6 (3) any other factor the commission determines to be  
7 relevant.

8 SECTION 2. This Act applies only to an adverse employment  
9 action that is taken by an employer against an employee or applicant  
10 for employment or other employer conduct that occurs on or after  
11 January 1, 2018. Action taken by an employer or other conduct that  
12 occurs before January 1, 2018, is governed by the law in effect  
13 immediately before the effective date of this Act, and the former  
14 law is continued in effect for that purpose.

15 SECTION 3. This Act takes effect September 1, 2017.