

By: Johnson of Dallas

H.B. No. 1981

A BILL TO BE ENTITLED

1 AN ACT
2 relating to the consideration of criminal history record
3 information of applicants for public employment or an occupational
4 license.

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

6 SECTION 1. Chapter 656, Government Code, is amended by
7 adding Subchapter E to read as follows:

8 SUBCHAPTER E. CONSIDERATION OF CRIMINAL HISTORY RECORD INFORMATION

9 Sec. 656.151. DEFINITIONS. In this subchapter:

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

14 (2) "Criminal history record information" has the
15 meaning assigned by Section 411.082.

16 (3) "State agency" means an agency in any branch of
17 state government.

18 Sec. 656.152. CRIMINAL HISTORY ON EMPLOYMENT APPLICATION.

19 A state agency may not include a question regarding an applicant's
20 criminal history record information on an initial employment
21 application form.

22 Sec. 656.153. CONFIDENTIALITY OF CRIMINAL HISTORY RECORD

23 INFORMATION. Notwithstanding Section 411.0765, an applicant's
24 criminal history record information is confidential and may not be

1 disclosed by a state agency.

2 Sec. 656.154. CONSIDERATION OF CRIMINAL HISTORY RECORD
3 INFORMATION. (a) A state agency may inquire into or consider an
4 applicant's criminal history record information after the agency
5 has determined that the applicant is otherwise qualified and has
6 conditionally offered the applicant employment.

7 (b) A state agency may not disqualify an applicant from
8 employment because of a prior criminal conviction unless:

9 (1) the criminal conviction directly relates to the
10 employment position sought by the applicant; or

11 (2) other law prohibits the applicant from employment
12 because of the type of criminal conviction.

13 (c) A state agency may not consider in the criminal history
14 record information or disqualify an applicant based on:

15 (1) an arrest that is not followed by an indictment;

16 (2) a conviction that has been sealed, dismissed, or
17 expunged; or

18 (3) a Class C misdemeanor or other misdemeanor
19 punishable by fine only.

20 Sec. 656.155. FACTORS IN DETERMINING WHETHER CONVICTION
21 RELATES TO EMPLOYMENT POSITION. In determining whether a criminal
22 conviction directly relates to an employment position under Section
23 656.154(b)(1), the state agency shall consider:

24 (1) whether the criminal conviction is directly
25 related to the duties and responsibilities of the employment
26 position;

27 (2) the extent to which employment might offer an

1 opportunity to engage in further criminal activity of the same type
2 as that for which the person was convicted;

3 (3) whether circumstances leading to the conduct for
4 which the person was convicted will recur in the employment
5 position; and

6 (4) the amount of time that has elapsed since the
7 applicant's last criminal conviction.

8 Sec. 656.156. NOTICE OF INTENT TO DENY EMPLOYMENT. Before
9 denying an applicant employment based on the applicant's criminal
10 history record information, a state agency must notify the
11 applicant in writing of the state agency's intent to deny the
12 applicant an employment position because of the applicant's
13 criminal history. The state agency must:

14 (1) identify the criminal conviction that is the basis
15 for the potential denial or disqualification;

16 (2) provide to the applicant a copy of the applicant's
17 criminal history record information; and

18 (3) provide examples of evidence of mitigation or
19 rehabilitation that the applicant may voluntarily provide under
20 Section 656.157.

21 Sec. 656.157. EVIDENCE OF APPLICANT'S REHABILITATION. A
22 state agency may not initially disqualify an applicant from an
23 employment position because of a criminal conviction directly
24 relating to the employment position if, not later than the 10th day
25 after the date the state agency notified the applicant under
26 Section 656.156 of the state agency's intent to deny employment,
27 the applicant provides to the state agency evidence of:

1 (1) mitigation or rehabilitation, including evidence
2 that:

3 (A) at least one year has elapsed since the date
4 of the applicant's release from any correctional institution
5 without subsequent criminal convictions; and

6 (B) the applicant is in compliance with the
7 applicant's terms of probation or parole; and

8 (2) the applicant's fitness to perform the duties of
9 the employment position, including letters of recommendation.

10 Sec. 656.158. DENIAL OF EMPLOYMENT. A state agency shall
11 consider any information provided under Section 656.157 and make a
12 final employment decision based on an individualized assessment of
13 the information submitted by the applicant and the factors under
14 Section 656.155. A state agency that denies an applicant
15 employment after considering that information shall notify the
16 applicant in writing of:

17 (1) the final denial or disqualification;

18 (2) the appeals process established by the Texas
19 Workforce Commission under Section 656.161;

20 (3) potential eligibility of the applicant for other
21 employment; and

22 (4) the earliest date on which the applicant may
23 reapply for employment.

24 Sec. 656.159. HIRING BY CONTRACTOR. A state agency
25 entering into an agreement with a contractor shall:

26 (1) require the contractor to certify in writing that
27 the contractor's consideration of criminal history record

1 information in hiring decisions satisfies the requirements of this
2 subchapter for state agencies;

3 (2) review a contractor's policies for the
4 consideration of criminal history record information in hiring for
5 consistency with the requirements of this subchapter for state
6 agencies; and

7 (3) when evaluating a contract, consider the
8 contractor's policies for the consideration of criminal history
9 record information in hiring among the criteria to award a
10 contract.

11 Sec. 656.160. RECORDS; REVIEW; COMPLAINTS. (a) A state
12 agency shall retain application forms, records of employment,
13 communications with applicants, and any other records related to
14 this subchapter until at least the third anniversary of the date of
15 filling an employment position subject to this subchapter.

16 (b) The Texas Workforce Commission shall have access to
17 records under Subsection (a) to monitor compliance with this
18 subchapter.

19 (c) Any person aggrieved by a state agency's violation of
20 this subchapter may file a complaint regarding the implementation
21 of, compliance with, and impact of this subchapter to the Texas
22 Workforce Commission. The Texas Workforce Commission shall keep a
23 record of reports made under this subsection.

24 (d) The Texas Workforce Commission shall:

25 (1) conduct periodic reviews of state agencies to
26 assess compliance with this subchapter;

27 (2) investigate and review complaints of violations of

1 this subchapter; and

2 (3) report quarterly on complaints, investigations,
3 and reviews.

4 Sec. 656.161. APPEAL. The Texas Workforce Commission shall
5 establish an appeals process for any complaints or grievances
6 concerning a violation of this subchapter.

7 Sec. 656.162. STATISTICS AND AUDITS. A state agency shall:

8 (1) maintain a record of the number of:

9 (A) employment positions, applicants, and
10 applicants conditionally offered employment for employment
11 positions requiring criminal history record information by the
12 state agency; and

13 (B) applicants with prior criminal convictions
14 who:

15 (i) were notified of the state agency's
16 intent to deny the applicant employment under Section 656.156;

17 (ii) provided evidence of rehabilitation
18 under Section 656.157;

19 (iii) were notified of the state agency's
20 denial of employment under Section 656.158; or

21 (iv) were offered employment;

22 (2) regularly conduct a confidential, anonymous
23 survey of employees in employment positions not requiring criminal
24 history record information to determine the number of employees
25 with prior convictions; and

26 (3) conduct an audit of the state agency's hiring
27 practices in an effort to ensure that applicants with prior

1 criminal convictions are not unreasonably denied employment.

2 Sec. 656.163. EXEMPTIONS. This subchapter does not apply
3 to an applicant for a position:

4 (1) that involves the provision of services to or care
5 of children;

6 (2) that requires direct interaction with children; or

7 (3) for which consideration of criminal history record
8 information is otherwise required by law.

9 SECTION 2. Subtitle C, Title 5, Local Government Code, is
10 amended by adding Chapter 181 to read as follows:

11 CHAPTER 181. CONSIDERATION OF CRIMINAL HISTORY RECORD INFORMATION

12 Sec. 181.001. DEFINITIONS. In this chapter:

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

17 (2) "Criminal history record information" has the
18 meaning assigned by Section 411.082, Government Code.

19 (3) "Local government" means a county, municipality,
20 or other political subdivision of this state.

21 Sec. 181.002. CRIMINAL HISTORY ON EMPLOYMENT APPLICATION.

22 A local government may not include a question regarding an
23 applicant's criminal history record information on an initial
24 employment application form.

25 Sec. 181.003. CONFIDENTIALITY OF CRIMINAL HISTORY RECORD
26 INFORMATION. Notwithstanding Section 411.0765, Government Code,
27 an applicant's criminal history record information is confidential

1 and may not be disclosed by a local government.

2 Sec. 181.004. CONSIDERATION OF CRIMINAL HISTORY RECORD
3 INFORMATION. (a) A local government may inquire into or consider
4 an applicant's criminal history record information after the local
5 government has determined that the applicant is otherwise qualified
6 and has conditionally offered the applicant employment.

7 (b) A local government may not disqualify an applicant from
8 employment because of a prior criminal conviction unless:

9 (1) the criminal conviction directly relates to the
10 employment position sought by the applicant; or

11 (2) other law prohibits the applicant from employment
12 because of the type of criminal conviction.

13 (c) A local government may not consider in the criminal
14 history record information or disqualify an applicant based on:

15 (1) an arrest that is not followed by an indictment;

16 (2) a conviction that has been sealed, dismissed, or
17 expunged; or

18 (3) a Class C misdemeanor or other misdemeanor
19 punishable by fine only.

20 Sec. 181.005. FACTORS IN DETERMINING WHETHER CONVICTION
21 RELATES TO EMPLOYMENT POSITION. In determining whether a criminal
22 conviction directly relates to an employment position under Section
23 181.004(b)(1), a local government shall consider:

24 (1) whether the criminal conviction is directly
25 related to the duties and responsibilities of the employment
26 position;

27 (2) the extent to which employment might offer an

1 opportunity to engage in further criminal activity of the same type
2 as that for which the person was convicted;

3 (3) whether circumstances leading to the conduct for
4 which the person was convicted will recur in the employment
5 position; and

6 (4) the amount of time that has elapsed since the
7 applicant's last criminal conviction.

8 Sec. 181.006. NOTICE OF INTENT TO DENY EMPLOYMENT. Before
9 denying an applicant employment based on the applicant's criminal
10 history record information, a local government must notify the
11 applicant in writing of the local government's intent to deny the
12 applicant employment because of the applicant's criminal history.
13 The local government must:

14 (1) identify the criminal conviction that is the basis
15 for the potential denial or disqualification;

16 (2) provide to the applicant a copy of the applicant's
17 criminal history record information; and

18 (3) provide examples of evidence of mitigation or
19 rehabilitation that the applicant may voluntarily provide under
20 Section 181.007.

21 Sec. 181.007. EVIDENCE OF APPLICANT'S REHABILITATION. A
22 local government may not initially disqualify an applicant from an
23 employment position because of a criminal conviction directly
24 relating to the employment position if, not later than the 10th day
25 after the date the local government notified the applicant under
26 Section 181.006 of the local government's intent to deny
27 employment, the applicant provides to the local government evidence

1 of:

2 (1) mitigation or rehabilitation, including evidence
3 that:

4 (A) at least one year has elapsed since the date
5 of the applicant's release from any correctional institution
6 without subsequent criminal convictions; and

7 (B) the applicant is in compliance with the
8 applicant's terms of probation or parole; and

9 (2) the applicant's fitness to perform the duties of
10 the employment position, including letters of recommendation.

11 Sec. 181.008. DENIAL OF EMPLOYMENT. A local government
12 shall consider any information provided under Section 181.007 and
13 make a final employment decision based on an individualized
14 assessment of the information submitted by the applicant and the
15 factors under Section 181.005. A local government that denies an
16 applicant employment after considering that information shall
17 notify the applicant in writing of:

18 (1) the final denial or disqualification;

19 (2) the appeals process established by the Texas
20 Workforce Commission under Section 181.011;

21 (3) potential eligibility of the applicant for other
22 employment; and

23 (4) the earliest date on which the applicant may
24 reapply for employment.

25 Sec. 181.009. HIRING BY CONTRACTOR. A local government
26 entering into an agreement with a contractor shall:

27 (1) require the contractor to certify in writing that

1 the contractor's consideration of criminal history record
2 information in hiring decisions satisfies the requirements of this
3 chapter for local governments;

4 (2) review a contractor's policies for the
5 consideration of criminal history record information in hiring for
6 consistency with the requirements of this chapter for local
7 governments; and

8 (3) when evaluating a contract, consider the
9 contractor's policies for the consideration of criminal history
10 record information in hiring among the criteria to award a
11 contract.

12 Sec. 181.010. RECORDS; REVIEW; COMPLAINTS. (a) A local
13 government shall retain application forms, records of employment,
14 communications with applicants, and any other records related to
15 this chapter until at least the third anniversary of the date of
16 filling an employment position subject to this chapter.

17 (b) The Texas Workforce Commission shall have access to
18 records under Subsection (a) to monitor compliance with this
19 chapter.

20 (c) Any person aggrieved by a local government's violation
21 of this chapter may file a complaint regarding the implementation
22 of, compliance with, and impact of this chapter to the Texas
23 Workforce Commission. The Texas Workforce Commission shall keep a
24 record of reports made under this subsection.

25 (d) The Texas Workforce Commission shall:

26 (1) conduct periodic reviews of local governments to
27 assess compliance with this chapter;

1 (2) investigate and review complaints of violations of
2 this chapter; and

3 (3) report quarterly on complaints, investigations,
4 and reviews.

5 Sec. 181.011. APPEAL. The Texas Workforce Commission shall
6 establish an appeals process for any complaints or grievances
7 concerning a violation of this chapter.

8 Sec. 181.012. STATISTICS AND AUDITS. A local government
9 shall:

10 (1) maintain a record of the number of:

11 (A) employment positions, applicants, and
12 applicants conditionally offered employment for employment
13 positions requiring criminal history record information by the
14 local government; and

15 (B) applicants with prior criminal convictions
16 who:

17 (i) were notified of the local government's
18 intent to deny the applicant employment under Section 181.006;

19 (ii) provided evidence of rehabilitation
20 under Section 181.007;

21 (iii) were notified of the local
22 government's final denial of employment under Section 181.008; or

23 (iv) were offered employment;

24 (2) regularly conduct a confidential, anonymous
25 survey of employees in employment positions not requiring criminal
26 history record information to determine the number of employees
27 with prior convictions; and

1 (3) conduct an audit of the local government's hiring
2 practices in an effort to ensure that applicants with prior
3 criminal convictions are not unreasonably denied employment.

4 Sec. 181.013. EXEMPTIONS. This chapter does not apply to an
5 applicant for a position:

6 (1) that involves the provision of services to or care
7 of children;

8 (2) that requires direct interaction with children; or

9 (3) for which consideration of criminal history record
10 information is otherwise required by law.

11 SECTION 3. Subchapter A, Chapter 53, Occupations Code, is
12 amended by adding Sections 53.003, 53.004, and 53.005 to read as
13 follows:

14 Sec. 53.003. CONFIDENTIALITY OF CRIMINAL HISTORY RECORD
15 INFORMATION. A state agency that issues a license that obtains in
16 connection with the licensing process any criminal history record
17 information regarding a license applicant or license holder may not
18 disclose or otherwise use the information, except as allowed by
19 law.

20 Sec. 53.004. CONSIDERATION OF CRIMINAL HISTORY RECORD
21 INFORMATION. A state agency that issues a license may not inquire
22 into or consider an applicant's criminal history record information
23 until after the state agency has determined that the applicant is
24 otherwise qualified for the license.

25 Sec. 53.005. CRIMINAL HISTORY ON LICENSE APPLICATION.
26 Notwithstanding any other law, an application for a license may not
27 include a question regarding an applicant's criminal history record

1 information.

2 SECTION 4. Section [53.021](#), Occupations Code, is amended by
3 amending Subsections (a) and (a-1) and adding Subsection (a-2) to
4 read as follows:

5 (a) Except as provided by Subsection (b), notwithstanding
6 any other law, a [A] licensing authority may not suspend or revoke a
7 license, disqualify a person from receiving a license, or deny to a
8 person the opportunity to take a licensing examination on the
9 grounds that the person has been convicted of an offense, unless the
10 offense:

11 (1) [~~an offense that~~] directly relates to the duties
12 and responsibilities of the licensed occupation; or

13 (2) by operation of law automatically disqualifies the
14 person from obtaining employment in the occupation for which the
15 license is required [~~an offense that does not directly relate to the~~
16 ~~duties and responsibilities of the licensed occupation and that was~~
17 ~~committed less than five years before the date the person applies~~
18 ~~for the license,~~

19 [~~(3) an offense listed in Article [42A.054](#), Code of~~
20 ~~Criminal Procedure, or~~

21 [~~(4) a sexually violent offense, as defined by Article~~
22 ~~[62.001](#), Code of Criminal Procedure].~~

23 (a-1) A licensing authority may not consider a person to
24 have been convicted of an offense for purposes of this section if
25 the conviction:

26 (1) is for an offense punishable by fine only

27 [~~Subsection (a) does not apply to a person who has been convicted~~

1 ~~only of an offense punishable as a Class C misdemeanor]~~ unless:

2 (A) [~~(1)~~] the person is an applicant for or the
3 holder of a license that authorizes the person to possess a firearm;
4 and

5 (B) [~~(2)~~] the offense for which the person was
6 convicted is a misdemeanor crime of domestic violence as that term
7 is defined by 18 U.S.C. Section 921; or

8 (2) has been sealed or expunged.

9 (a-2) A licensing authority may not suspend or revoke a
10 license, disqualify a person from receiving a license, or deny to a
11 person the opportunity to take a licensing examination on the
12 grounds that the person has been arrested for an offense.

13 SECTION 5. Section [53.051](#), Occupations Code, is amended to
14 read as follows:

15 Sec. 53.051. NOTICE OF SUSPENSION OR REVOCATION. A
16 licensing authority that suspends or revokes a license [~~or denies a~~
17 ~~person a license or the opportunity to be examined for a license]~~
18 because of the person's prior conviction of a crime and the
19 relationship of the crime to the license shall notify the person in
20 writing of:

21 (1) the reason for the suspension or [~~7~~] revocation[~~7~~
22 ~~denial, or disqualification]~~];

23 (2) the review procedure provided by Section [53.052](#);
24 and

25 (3) the earliest date the person may appeal the action
26 of the licensing authority.

27 SECTION 6. Subchapter C, Chapter [53](#), Occupations Code, is

1 amended by adding Sections 53.053, 53.054, and 53.055 to read as
2 follows:

3 Sec. 53.053. NOTICE OF INTENT TO DENY LICENSE. Before
4 denying an application for a license based on the applicant's
5 criminal history record information, a state agency that issues a
6 license must notify the applicant in writing of the agency's intent
7 to deny the applicant a license because of the applicant's criminal
8 history. The state agency must:

9 (1) identify the criminal conviction that is the basis
10 for the potential denial or disqualification;

11 (2) provide to the applicant a copy of the applicant's
12 criminal history record information; and

13 (3) provide examples of evidence of mitigation or
14 rehabilitation that the applicant may voluntarily provide under
15 Section 53.054.

16 Sec. 53.054. EVIDENCE OF APPLICANT'S REHABILITATION. A
17 state agency that issues a license may not initially disqualify an
18 applicant for a license because of a criminal conviction directly
19 relating to the occupation for which the license is required if, not
20 later than the 10th day after the date the agency notified the
21 applicant under Section 53.053 of the agency's intent to deny an
22 application for a license, the applicant provides to the agency
23 evidence of:

24 (1) mitigation or rehabilitation, including evidence:

25 (A) that at least one year has elapsed since the
26 date of the applicant's release from any correctional institution
27 without subsequent criminal convictions; and

1 (B) that the applicant is in compliance with the
2 applicant's terms of probation or parole; and

3 (2) the applicant's fitness to perform the duties of
4 the occupation, including letters of recommendation.

5 Sec. 53.055. DENIAL OF LICENSE. A state agency that issues
6 a license shall consider any information provided under Section
7 53.054 and make a final licensing decision based on an
8 individualized assessment of the information submitted by the
9 applicant and the factors under Sections 53.022 and 53.023. A state
10 agency that denies a license application after considering that
11 information shall notify the applicant in writing of:

12 (1) the final denial;

13 (2) the review procedure provided by Section 53.052;

14 (3) the earliest date on which the person may appeal
15 the action of the agency; and

16 (4) the earliest date on which the applicant may
17 reapply for the license, if applicable.

18 SECTION 7. Sections 51.356 and 53.021(c), (d), and (e),
19 Occupations Code, are repealed.

20 SECTION 8. (a) Subchapter E, Chapter 656, Government Code,
21 and Chapter 181, Local Government Code, as added by this Act, apply
22 only to an application for employment submitted, or a contract for
23 which the solicitation of qualifications, proposals, or other
24 similar expressions of interest is published, on or after the
25 effective date of this Act.

26 (b) The changes in law made by this Act to Chapter 53,
27 Occupations Code, apply only to an application for a license or

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1 other authorization that is filed, or a proceeding to revoke or
2 suspend a license or authorization that is commenced, on or after
3 the effective date of this Act.

4 SECTION 9. This Act takes effect September 1, 2017.