87R3542 JSC-F

By:  Rose, Reynolds, Bucy H.B. No. 2542

A BILL TO BE ENTITLED

AN ACT

relating to considering criminal history in employment decisions; providing an administrative penalty.

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

SECTION 1.  Title 3, Labor Code, is amended by adding Chapter 106 to read as follows:

CHAPTER 106. CRIMINAL HISTORY CONSIDERATION IN EMPLOYMENT DECISIONS

Sec. 106.001.  DEFINITIONS. In this chapter:

(1)  "Adverse action" means a refusal to hire, a refusal to promote, or the revocation of an offer of employment or promotion.

(2)  "Application" means a written or oral expression of interest in an employment position by an individual made in compliance with the employer's established criteria for receiving expressions of interest.

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

(4)  "Conditional employment offer" means an oral or written offer by an employer to employ an individual in an employment position, or a classification or referral by an employment agency or labor union, that may be conditioned on:

(A)  the employer's evaluation of the individual's criminal history; or

(B)  any preemployment medical examination authorized under the Americans with Disabilities Act (42 U.S.C. Section 12101 et seq.).

(5)  "Criminal history" means information collected about an individual by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their disposition. The term does not include a record pertaining to a misdemeanor punishable by fine only.

(6)  "Employer" means a person who employs at least 15 individuals in this state for each working day in at least 20 or more calendar weeks in the current or preceding calendar year. The term does not include a governmental body as defined by Section 552.003, Government Code.

(7)  "Employment" means to work for an employer for pay and includes full-time work, part-time work, temporary or seasonal work, contract work, casual or contingent work, work through the services of a temporary or other employment agency, and participation in a vocational, apprenticeship, or educational training program.

(8)  "Employment agency" and "labor organization" have the meanings assigned by Section 21.002.

Sec. 106.002.  APPLICABILITY. This chapter does not apply to an employment position for which an individual may be disqualified based on the individual's criminal history under a federal, state, or local law or in compliance with a legally mandated insurance or bond requirement.

Sec. 106.003.  INDIVIDUAL ASSESSMENT. An employer may evaluate an individual's suitability for an employment position by performing an assessment of the individual's criminal history. The assessment performed under this section must include an evaluation of the:

(1)  nature and gravity of any offense in the individual's criminal history;

(2)  length of time that has elapsed since the date:

(A)  the offense was committed; and

(B)  the individual fully discharged the individual's sentence; and

(3)  nature and duties of the employment position for which the individual has applied.

Sec. 106.004.  FAIR CHANCE HIRING PRACTICES. (a) An employer may not publish or cause to be published information about an employment position that states or implies that an individual's criminal history automatically disqualifies the individual from consideration for the position.

(b)  An employer may not solicit or otherwise inquire about the criminal history of an individual in an application for an employment position.

(c)  An employer may not solicit criminal history record information about an individual or consider an individual's criminal history unless the employer has first made a conditional employment offer to the individual. An employer may explain to an applicant, in writing, the assessment system under Section 106.003 that the employer uses to consider criminal history.

(d)  An employer may not refuse to make a conditional employment offer to an individual solely because the individual did not provide criminal history record information before an offer was made.

(e)  An employer may not take an adverse action against an individual because of the individual's criminal history unless the employer has determined that the individual is unsuitable for the employment position based on an assessment conducted by the employer under Section 106.003.

(f)  An employer who takes an adverse action against an individual based on the individual's criminal history shall inform the individual in writing that the adverse action was based on the individual's criminal history.

Sec. 106.005.  EMPLOYMENT AGENCIES AND LABOR ORGANIZATIONS. An employment agency or labor organization may solicit criminal history record information about an individual and make an assessment of an individual's criminal history only after the employment agency or labor organization has identified an employment position for which the employment agency or labor organization intends to classify or refer the individual.

Sec. 106.006.  COMMISSION DUTIES. (a) The commission shall:

(1)  administer this chapter; and

(2)  adopt rules as necessary to implement this chapter.

(b)  The commission may require reports, conduct investigations, and take other action the commission considers necessary to implement this chapter.

Sec. 106.007.  ADMINISTRATIVE PENALTY. (a) The commission may assess an administrative penalty against an employer in an amount not to exceed $500 for each employment position posting or adverse action that violates this chapter.

(b)  On an employer's first violation, the commission may issue a warning notice to the employer in lieu of assessing the administrative penalty and provide training materials to the employer about compliance with this chapter.

SECTION 2.  (a) In this section, "adverse action" and "employer" have the meanings assigned by Section 106.001, Labor Code, as added by this Act.

(b)  The changes in law made by this Act apply only to an adverse action taken by an employer on or after the effective date of this Act. An adverse action taken before that date is governed by the law in effect on the date the action was taken, and the former law is continued in effect for that purpose.

SECTION 3.  This Act takes effect September 1, 2021.