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By:  Miles S.B. No. 1976

A BILL TO BE ENTITLED

AN ACT

relating to the consideration of criminal history record information of applicants for public employment or an occupational license.

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

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

SUBCHAPTER E. CONSIDERATION OF CRIMINAL HISTORY RECORD INFORMATION

Sec. 656.151.  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)  "Criminal history record information" has the meaning assigned by Section 411.082.

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

Sec. 656.152.  CRIMINAL HISTORY ON EMPLOYMENT APPLICATION. A state agency may not include a question regarding an applicant's criminal history record information on an initial employment application form.

Sec. 656.153.  CONFIDENTIALITY OF CRIMINAL HISTORY RECORD INFORMATION. Notwithstanding Section 411.0765, an applicant's criminal history record information collected by a state agency as part of the application review process, if any, is confidential and may not be disclosed by the state agency.

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

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

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

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

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

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

(2)  a conviction that has been sealed or expunged; or

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

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

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

(2)  the extent to which employment might offer an opportunity to engage in further criminal activity of the same type as that for which the person was convicted;

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

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

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

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

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

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

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

(1)  mitigation or rehabilitation, including evidence that:

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

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

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

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

(1)  the final denial or disqualification;

(2)  the appeals process established by the Texas Workforce Commission under Section 656.160;

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

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

Sec. 656.159.  RECORDS; REVIEW; COMPLAINTS. (a) A state agency shall retain application forms, records of employment, communications with applicants, and any other records related to this subchapter until at least the third anniversary of the date of filling an employment position subject to this subchapter.

(b)  The Texas Workforce Commission shall be provided access to records under Subsection (a) to monitor compliance with this subchapter.

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

(d)  The Texas Workforce Commission shall:

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

(2)  investigate and review complaints of violations of this subchapter; and

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

Sec. 656.160.  APPEAL. The Texas Workforce Commission shall establish an appeals process for any complaints or grievances concerning a violation of this subchapter.

Sec. 656.161.  STATISTICS AND AUDITS. A state agency shall:

(1)  maintain a record of the number of:

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

(B)  applicants with prior criminal convictions who:

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

(ii)  provided evidence of mitigation or rehabilitation under Section 656.157;

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

(iv)  were offered employment;

(2)  regularly conduct an anonymous survey of employees in employment positions not requiring criminal history record information to determine the number of employees with prior convictions; and

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

Sec. 656.162.  EXEMPTIONS. This subchapter does not apply to an applicant for a position:

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

(2)  that requires direct interaction with children; or

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

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

CHAPTER 181. CONSIDERATION OF CRIMINAL HISTORY RECORD INFORMATION

Sec. 181.001.  DEFINITIONS. In this chapter:

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

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

Sec. 181.002.  CRIMINAL HISTORY ON EMPLOYMENT APPLICATION. A local government may not include a question regarding an applicant's criminal history record information on an initial employment application form.

Sec. 181.003.  CONFIDENTIALITY OF CRIMINAL HISTORY RECORD INFORMATION. Notwithstanding Section 411.0765, Government Code, an applicant's criminal history record information collected by a local government as part of the application review process, if any, is confidential and may not be disclosed by the local government.

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

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

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

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

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

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

(2)  a conviction that has been sealed or expunged; or

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

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

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

(2)  the extent to which employment might offer an opportunity to engage in further criminal activity of the same type as that for which the person was convicted;

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

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

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

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

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

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

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

(1)  mitigation or rehabilitation, including evidence that:

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

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

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

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

(1)  the final denial or disqualification;

(2)  the appeals process established by the Texas Workforce Commission under Section 181.010;

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

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

Sec. 181.009.  RECORDS; REVIEW; COMPLAINTS. (a) A local government shall retain application forms, records of employment, communications with applicants, and any other records related to this chapter until at least the third anniversary of the date of filling an employment position subject to this chapter.

(b)  The Texas Workforce Commission shall be provided access to records under Subsection (a) to monitor compliance with this chapter.

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

(d)  The Texas Workforce Commission shall:

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

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

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

Sec. 181.010.  APPEAL. The Texas Workforce Commission shall establish an appeals process for any complaints or grievances concerning a violation of this chapter.

Sec. 181.011.  STATISTICS AND AUDITS. A local government shall:

(1)  maintain a record of the number of:

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

(B)  applicants with prior criminal convictions who:

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

(ii)  provided evidence of mitigation or rehabilitation under Section 181.007;

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

(iv)  were offered employment;

(2)  regularly conduct an anonymous survey of employees in employment positions not requiring criminal history record information to determine the number of employees with prior convictions; and

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

Sec. 181.012.  EXEMPTIONS. This chapter does not apply to an applicant for a position:

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

(2)  that requires direct interaction with children; or

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

SECTION 3.  Subchapter A, Chapter 53, Occupations Code, is amended by adding Sections 53.004, 53.005, and 53.006 to read as follows:

Sec. 53.004.  DISCLOSURE OF CRIMINAL HISTORY RECORD INFORMATION PROHIBITED. A state agency that issues a license that obtains in connection with the licensing process any criminal history record information regarding a license applicant or license holder may not disclose or otherwise use the information, except as allowed by law.

Sec. 53.005.  CONSIDERATION OF CRIMINAL HISTORY RECORD INFORMATION. A state agency that issues a license may not inquire into or consider an applicant's criminal history record information until after the state agency has determined that the applicant is otherwise qualified for the license.

Sec. 53.006.  CRIMINAL HISTORY ON LICENSE APPLICATION. Notwithstanding any other law, an application for a license may not include a question regarding an applicant's criminal history record information.

SECTION 4.  Sections 53.021(a) and (a-1), Occupations Code, are amended to read as follows:

(a)  Except as provided by Subsection (b) and subject [~~Subject~~] to Section 53.0231, a licensing authority may not suspend or revoke a license, disqualify a person from receiving a license, or deny to a person the opportunity to take a licensing examination on the grounds that the person has been convicted of an offense, unless the offense:

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

(2)  by law disqualifies the person from obtaining employment in the occupation for which the license is required [~~an offense listed in Article 42A.054, Code of Criminal Procedure; or~~

[~~(3) a sexually violent offense, as defined by Article 62.001, Code of Criminal Procedure~~].

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

(1)  is for an offense punishable by fine only [~~Subsection (a) does not apply to a person who has been convicted only of an offense punishable as a Class C misdemeanor~~] unless:

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

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

(2)  has been sealed or expunged.

SECTION 5.  Sections 51.356 and 53.021(c), (d), and (e), Occupations Code, are repealed.

SECTION 6.  (a) Subchapter E, Chapter 656, Government Code, and Chapter 181, Local Government Code, as added by this Act, apply only to an application for employment submitted on or after the effective date of this Act.

(b)  The changes in law made by this Act to Chapter 53, Occupations Code, apply only to an application for a license or other authorization that is filed, or a proceeding to revoke or suspend a license or authorization that is commenced, on or after the effective date of this Act.

SECTION 7.  This Act takes effect September 1, 2023.