

By: Miles

S.B. No. 1976

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 collected by a state agency as

1 part of the application review process, if any, is confidential and  
2 may not be disclosed by the state agency.

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

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

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

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

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

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

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

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

21 Sec. 656.155. FACTORS IN DETERMINING WHETHER CONVICTION  
22 RELATES TO EMPLOYMENT POSITION. In determining whether a criminal  
23 conviction directly relates to an employment position under Section  
24 656.154(b)(1), the state agency shall consider:

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

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

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

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

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

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

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

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

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

1 the applicant provides to the state agency evidence 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. 656.158. DENIAL OF EMPLOYMENT. A state agency shall  
12 consider any information provided under Section 656.157 and make a  
13 final employment decision based on an individualized assessment of  
14 the information submitted by the applicant and the factors under  
15 Section 656.155. A state agency that denies an applicant  
16 employment after considering that information shall notify the  
17 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 656.160;

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. 656.159. RECORDS; REVIEW; COMPLAINTS. (a) A state  
26 agency shall retain application forms, records of employment,  
27 communications with applicants, and any other records related to

1 this subchapter until at least the third anniversary of the date of  
2 filling an employment position subject to this subchapter.

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

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

11 (d) The Texas Workforce Commission shall:

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

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

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

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

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

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

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

27 (B) applicants with prior criminal convictions

1 who:

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

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

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

8 (iv) were offered employment;

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

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

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

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

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

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

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

25 CHAPTER 181. CONSIDERATION OF CRIMINAL HISTORY RECORD INFORMATION

26 Sec. 181.001. DEFINITIONS. In this chapter:

27 (1) "Applicant" means a person who has made an oral or

1 written application with an employer, or has sent a resume or other  
2 correspondence to an employer, indicating an interest in  
3 employment.

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

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

8 Sec. 181.002. CRIMINAL HISTORY ON EMPLOYMENT APPLICATION.

9 A local government may not include a question regarding an  
10 applicant's criminal history record information on an initial  
11 employment application form.

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

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

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

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

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

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

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

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

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

8       Sec. 181.005. FACTORS IN DETERMINING WHETHER CONVICTION  
9 RELATES TO EMPLOYMENT POSITION. In determining whether a criminal  
10 conviction directly relates to an employment position under Section  
11 181.004(b)(1), a local government shall consider:

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

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

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

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

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

1 The local government must:

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

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

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

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

17 (1) mitigation or rehabilitation, including evidence  
18 that:

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

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

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

26 Sec. 181.008. DENIAL OF EMPLOYMENT. A local government  
27 shall consider any information provided under Section 181.007 and

1 make a final employment decision based on an individualized  
2 assessment of the information submitted by the applicant and the  
3 factors under Section 181.005. A local government that denies an  
4 applicant employment after considering that information shall  
5 notify the applicant in writing of:

6 (1) the final denial or disqualification;

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

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

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

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

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

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

26 (d) The Texas Workforce Commission shall:

27 (1) conduct periodic reviews of local governments to

1 assess compliance with this chapter;

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

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

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

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

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

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

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

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

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

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

24 (iv) were offered employment;

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

1 convictions; and

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

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

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

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

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

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

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

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

26 Sec. 53.006. CRIMINAL HISTORY ON LICENSE APPLICATION.  
27 Notwithstanding any other law, an application for a license may not

1 include a question regarding an applicant's criminal history record  
2 information.

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

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

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

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

16 ~~[(3) a sexually violent offense, as defined by Article~~  
17 ~~62.001, Code of Criminal Procedure].~~

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

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

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

27 (B) ~~[(2)]~~ the offense for which the person was

1 convicted is a misdemeanor crime of domestic violence as that term  
2 is defined by 18 U.S.C. Section 921; or

3 (2) has been sealed or expunged.

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

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

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

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