

## **BILL ANALYSIS**

C.S.H.B. 317  
By: Canales  
Business & Industry  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Interested parties are concerned that certain employers use consumer credit checks as an applicant and employee screening tool and that the applicant or employee who is subject to the credit check is not given an opportunity to explain the results of the check. C.S.H.B. 317 seeks to prevent this practice by requiring an employer to provide such opportunity for explanation by an applicant or employee and to consider an explanation if offered.

### **CRIMINAL JUSTICE IMPACT**

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

C.S.H.B. 317 amends the Labor Code to authorize an employer to take an adverse employment action, as defined by the bill, against an employee or applicant that is based wholly or partly on the employee's or applicant's credit report only if the employer provided to the employee or applicant a copy of the credit report relied on by the employer together with written instructions regarding how the employee or applicant, not later than the second business day after the date the employee or applicant receives the credit report and instructions, may provide the employer with information explaining or otherwise addressing the information in the credit report and if either the employee or applicant has not provided to the employer such explanatory information within the prescribed time or the employee or applicant provided to the employer such explanatory information within the prescribed time and the employer considered that information before taking the action.

C.S.H.B. 317 applies to an employer that is engaged in an industry affecting commerce and has 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year; an agent of such an employer; an individual elected to public office in the state or a political subdivision of the state; or a county, municipality, state agency, or state instrumentality, regardless of the number of individuals employed. The bill's provisions apply only to an adverse employment action that is taken by an employer against an employee or applicant for employment or other employer conduct that occurs on or after January 1, 2018.

### **EFFECTIVE DATE**

September 1, 2017.

## COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 317 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

### INTRODUCED

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.

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

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

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

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

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

(D) a regulated loan company;

(E) an insurance company or insurance agency; or

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

### HOUSE COMMITTEE SUBSTITUTE

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) "Adverse employment action" means the denial of employment or a decision regarding the conditions of employment that adversely affects an employee or applicant.

(2) "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.

(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, credit capacity, or debts.

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

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

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

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

(3) involves a fiduciary responsibility to the employer, including the authority to issue payments, collect debts, transfer money, or enter into contracts;

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

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

(6) provides access to:

(A) confidential or proprietary business information; or

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

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

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

No equivalent provision.

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

No equivalent provision.

Sec. 52.084. PROHIBITED ACTS BY EMPLOYER. An employer may not require an employee or applicant to consent to a request for a credit report that contains

No equivalent provision.

information about the employee's or applicant's credit score, credit account balances, payment history, savings or checking account balances, or savings or checking account numbers as a condition of employment unless:

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

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

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

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

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

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

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

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

No equivalent provision.

Sec. 52.082. ADVERSE EMPLOYMENT ACTION BY EMPLOYER. An employer may take an adverse employment action against an employee or applicant that is based wholly or partly on the employee's or applicant's credit report only if:

(1) the employer provided to the employee or applicant a copy of the credit report relied on by the employer together with written instructions regarding how the employee or applicant, not later than the second business day after the date the employee or applicant receives the credit report and instructions, may provide the employer with information explaining or otherwise addressing the information in the credit report; and

(2) either:

(A) the employee or applicant has not provided to the employer the information described by Subdivision (1) within the time prescribed by that subdivision; or

(B) the employee or applicant provided to the employer the information described by Subdivision (1) within the time prescribed by that subdivision and the employer

considered that information before taking the action.

No equivalent provision.

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

(b) The penalty for a violation under this section may not exceed \$1,000. In assessing a penalty under this section, the commission shall consider:

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

(2) the severity of the violation; and

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

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

SECTION 2. Same as introduced version.

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

SECTION 3. Same as introduced version.