

BILL ANALYSIS

H.B. 2542
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Business & Industry
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Many Texans are barred from job opportunities due to past criminal history, which contributes to the recidivism and incarceration rates in the United States. A stigma unfortunately exists for those who were formally incarcerated, regardless of how long ago the crime took place, how minor the infraction was, or how good of a fit the applicant might be for the potential role. This stigma can prevent potentially great job candidates from being hired and can have a negative impact on children and other family members of individuals with criminal histories who are unable to work or are limited to jobs that do not allow educational or workforce development. Furthermore, it has been noted that many criminal background checks fail to distinguish between an arrest, charge, or conviction. H.B. 2542 seeks to provide all job applicants an opportunity for fair employment by outlining employer criteria for criminal history considerations in employment decisions.

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 rulemaking authority is expressly granted to the Texas Workforce Commission in SECTION 1 of this bill.

ANALYSIS

H.B. 2542 amends the Labor Code to authorize an employer to evaluate an individual's suitability for an employment position by performing an assessment of the individual's criminal history that evaluates the following:

- the nature and gravity of any offense in the criminal history;
- the length of time that has elapsed since the date the offense was committed and since the date the individual fully discharged the individual's sentence; and
- the nature and duties of the employment position for which the individual has applied.

H.B. 2542 prohibits an employer from doing the following:

- publishing or causing 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;
- soliciting or otherwise inquiring about an individual's criminal history in an application for an employment position;
- soliciting criminal history record information about an individual or considering an individual's criminal history unless the employer has first made a conditional employment offer to the individual;

- refusing 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; and
- taking 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 the assessment authorized by the bill.

The bill defines, among other terms, an "adverse action" as a refusal to hire, a refusal to promote, or the revocation of an offer of employment or promotion.

H.B. 2542 authorizes an employer to explain to an applicant, in writing, the assessment system that the employer uses to consider criminal history and requires an employer who takes an adverse action against an individual based on the individual's criminal history to inform the individual in writing that the adverse action was based on the individual's criminal history. The bill authorizes an employment agency or labor organization to solicit criminal history record information about an individual and make an assessment of an individual's criminal history only after identifying an employment position for which the agency or organization intends to classify or refer the individual.

H.B. 2542 restricts the applicability of the bill's provisions to an employer who employs at least 15 individuals in Texas for each working day in at least 20 or more calendar weeks in the current or preceding calendar year. The bill exempts from the bill's provisions a governmental body and 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.

H.B. 2542 requires the Texas Workforce Commission (TWC) to administer the bill's provisions and adopt rules as necessary to implement the provisions. The bill authorizes the TWC to require reports, conduct investigations, and take other action the TWC considers necessary for that implementation. The bill authorizes the TWC to assess an administrative penalty against an employer capped at \$500 for each employment position posting or adverse action that violates the bill's provisions. The bill also gives the TWC the option of issuing a warning and providing training materials to an employer on the employer's first violation in lieu of assessing the administrative penalty.

EFFECTIVE DATE

September 1, 2021.