

SUBJECT: Prohibiting considering criminal history in certain employment decisions

COMMITTEE: Business and Industry — favorable, without amendment

VOTE: 5 ayes — C. Turner, Crockett, Lambert, Ordaz Perez, S. Thompson

0 nays

4 absent — Hefner, Cain, Patterson, Shine

WITNESSES: For — Lauren Johnson, ACLU of Texas; Koretta Brown and Robert Williams, Alliance For A New Justice System; RoShawn C. Evans and Norman Harris, Pure Justice; Maggie Luna, Statewide Leadership Council; Devin Driver, Texas Criminal Justice Coalition; Cynthia Simons, Texas Women's Justice Coalition; Carmen Ivonne; (*Registered, but did not testify*: Daniel Collins, El Paso County; Leonard Aguilar, Texas AFL-CIO; Georgia Keysor; Vanessa MacDougal; Thomas Parkinson; Jennifer Toon)

Against — (*Registered, but did not testify*: Pam Bratton, Texas Association of Staffing)

On — (*Registered, but did not testify*: Bryan Snoddy, Texas Workforce Commission)

BACKGROUND: Concerns have been raised that many Texans are barred from employment due to past criminal history, which can lead to recidivism, and suggest a prohibition on employers considering an applicant's criminal history to provide all applicants an opportunity for fair employment.

DIGEST: HB 2542 would prohibit an employer from making certain considerations of the criminal history of an applicant for employment and authorize the Texas Workforce Commission (TWC) to assess a penalty for a violation of the bill.

Applicability. Under the bill, an "employer" would mean a person who

employed at least 15 individuals in the state for each working day in at least 20 or more calendar weeks in the current or preceding calendar year. The term would not include a governmental body.

The bill would not apply to an employment position for which an individual could be disqualified based on their criminal history under a federal, state, or local law or in compliance with a legally mandated insurance or bond requirement.

Solicitation, consideration of criminal history prohibited. The bill would prohibit an employer from publishing information about an employment position that stated or implied that an individual's criminal history automatically disqualified the individual from consideration for the position. An employer also could not solicit or otherwise inquire about the criminal history of an individual in an application for an employment position.

An employer could not solicit or consider criminal history record information about an individual unless the employer had first made a conditional employment offer to the individual. An employer could explain to an applicant, in writing, the assessment system that the employer used to consider criminal history, as authorized by this bill.

The bill would prohibit an employer from 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.

An employer could not take an adverse action against an individual because of the individual's criminal history unless the employer had determined that the individual was unsuitable for the employment position based on an assessment authorized by this bill. An "adverse action" would include a refusal to hire or promote or revocation of an offer of employment or promotion.

An employer who took an adverse action against an individual based on the individual's criminal history would have to inform the individual in

writing that the adverse action was based on the individual's criminal history.

Individual assessment. An employer could evaluate an individual's suitability for an employment position by performing an assessment of the individual's criminal history. The assessment would have to include an evaluation of the:

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

Employment agencies and labor organizations. An employment agency or labor organization could solicit criminal history record information about an individual and make an assessment of the individual's criminal history only after the agency or organization had identified an employment position for which it intended to classify or refer the individual.

Administrative penalty. TWC could assess an administrative penalty of up to \$500 on an employer for each employment position posting or adverse action that violated the bill. On an employer's first violation, TWC could issue a warning notice to the employer in lieu of assessing the administrative penalty and provide certain training materials to the employer.

Implementation. TWC would have to adopt rules and could require reports, conduct investigations, and take other action to implement the bill.

The bill would take effect September 1, 2021, and apply only to an adverse action taken by an employer on or after that date.