

BILL ANALYSIS

Senate Research Center
81R20148 SJM-D

C.S.S.B. 2046
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Criminal Justice
4/19/2009
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Recent incidents of violence at colleges and universities across the country have brought increased attention to the security and safety protocols currently in place at institutions of higher education. In 2006, the state's 35 general academic institutions reported that 1,100 crimes were committed on or around their campuses. These crimes ranged from burglaries to aggravated assaults and sex offenses. While institutions have taken steps to prepare for emergency situations and provide students and staff with a safe and secure environment, there are still additional steps to be taken. This legislation is an attempt to mitigate risks at institutions of higher education and provide students, higher education employees, and their families an added sense of security.

C.S.S.B. 2046 requires institutions of higher education to obtain criminal history record information for all prospective employees as well as current employees upon transfer or promotion within the institution.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subchapter B, Chapter 51, Education Code, as follows:

SUBCHAPTER B. New heading: CRIMINAL HISTORY BACKGROUND CHECKS FOR POTENTIAL AND CURRENT EMPLOYEES

Sec. 51.051. DEFINITIONS. Defines "criminal history record information," "governing board," and "institution of higher education."

Sec. 51.052. ACCESS TO CRIMINAL HISTORY RECORD INFORMATION BY INSTITUTION. (a) Requires an institution of higher education (institution) to subscribe to the criminal history clearinghouse as provided by Section 411.0845 (Criminal History Clearinghouse), Government Code.

(b) Authorizes an institution to obtain from a law enforcement or criminal justice agency any criminal history record information, including information contained in a closed criminal investigation file, that relates to a specific applicant for employment with or an employee of the institution.

Sec. 51.053. PREEMPLOYMENT CRIMINAL HISTORY BACKGROUND CHECKS; RESTRICTIONS ON EMPLOYMENT. (a) Requires an institution to condition an offer of employment on obtaining acceptable criminal history information under Section 51.052.

(b) Requires an institution to reject an application for employment if the applicant fails to consent to a criminal history background check or provide fingerprints necessary to obtain criminal history record information or the applicant's criminal history record information indicates that the applicant has been convicted of certain felonies or an offense for which registration as a sex

offender is requires under Chapter 62 (Sex Offender Registration Program), Code of Criminal Procedure.

(c) Requires an institution, if an applicant's criminal history record information indicates that the applicant has been convicted of an offense, other than an offense listed under Subsection (b)(2) (relating to an applicant's criminal history record information indicating conviction of a certain felony or an offense for which registration as a sex offender is required), or arrested for any offense, to conduct an analysis under Section 51.057 to determine whether to employ the applicant.

(d) Authorizes an institution, after an analysis under Section 51.057, to employ an applicant whose criminal history record information indicates that the applicant has been convicted of a felony, other than on offense listed under Subsection (b)(2), only if employment of the applicant is recommended by the person in charge of the department or division to which the applicant has applied and approved by the chief executive officer of the institution or the officer's designee.

Sec. 51.054. **POST-EMPLOYMENT CRIMINAL HISTORY BACKGROUND CHECKS; TERMINATION OF EMPLOYMENT FOR FAILURE TO PROVIDE INFORMATION.** (a) Requires an institution to conduct a criminal history background check of an employee on promotion or transfer of the employee within the institution. Authorizes an institution to conduct additional criminal history background checks as necessary to maintain the integrity of the institution's faculty and staff .

(b) Requires the institution to require that every employee of the institution provide the identification information and fingerprints necessary to conduct a criminal history background check. Authorizes the institution to immediately terminate the employment of an employee who fails to provide the information or fingerprints.

Sec. 51.055. **FALSIFICATION OF CRIMINAL HISTORY; DISCIPLINARY AND OTHER ACTION.** (a) Requires an institution to reject an application for employment if the applicant knowingly fails to provide or falsifies criminal history record information on an application.

(b) Authorizes an institution to take disciplinary action, including termination of employment, against an employee if the employee knowingly failed to provide or falsified criminal history record information on the employee's application for employment, a promotion, or a transfer.

(c) Authorizes an institution to make a decision to reject an application for employment under Subsection (a) or take disciplinary action against an employee under Subsection (b) without conducting an analysis under Section 51.057.

Sec. 51.056. **INFORMATION REQUIRED TO BE REPORTED BY APPLICANTS AND EMPLOYEES; DISCIPLINARY ACTION.** (a) Requires an institution to require an applicant for employment to report an arrest made after the applicant has submitted the application to the institution and before the institution has notified the applicant of a decision about employment of the applicant and an employee to report to a supervisor, within 24 hours of the arrest, charge, or conviction, or at the earliest practicable opportunity after the 24-hour period, the employee's criminal arrest, charge, or conviction, other than for a misdemeanor traffic offense punishable by a fine only.

(b) Requires a supervisor who receives a report from an employee under Subsection (a)(2) (relating to requiring an institution to require an employee to report to a supervisor under within a certain amount of time) to report the information to the person in charge of the department or division to which the employee is assigned and to the institution's human resources department.

(c) Authorizes an institution to take disciplinary action, including termination of employment, against an employee who fails to report as required by Subsection (a)(2).

(d) Requires an institution's human resources department or, in the case of a faculty member, the provost or provost's designee to conduct an analysis under Section 51.057 and assist the department or division to which the employee is assigned in determining, for an arrest, charge, or conviction reported under Subsection (a)(2), the appropriate disciplinary action to take against the employee, which may include termination of employment.

(e) Authorizes an institution, on learning of an arrest, charge, or conviction reported under Subsection (a)(2), to immediately suspend with pay the employee pending the outcome of an administrative review under Subsection (d).

Sec. 51.057. ANALYSIS OF CRIMINAL HISTORY RECORD INFORMATION AND SUBSEQUENT ACTIONS. (a) Requires an institution, except as provided by Section 51.053(b)(2), before rejecting an application for employment or taking disciplinary action against an employee on the basis of a criminal conviction, to consider certain factors and determine that the conviction is job-related and the rejection of the application or disciplinary action against the employee is necessary to properly administer the institution.

(b) Requires an institution, before rejecting an application for employment or taking disciplinary action against the employee on the basis of a criminal arrest, to consider certain factors and determine that the alleged misconduct is job-related, the rejection of an application or disciplinary action is necessary to properly administer the institution, and the applicant or employee is likely to have engaged in the misconduct that caused the arrest.

Sec. 51.058. APPEALS; DETERMINATION. (a) Authorizes an applicant for employment to appeal a decision of an institution of higher education under this subchapter to refuse to employ the applicant only on the basis that the institution discriminated against the applicant for an unlawful reason, including the applicant's race, color, national origin, religion, sex, disability, or age.

(b) Requires an applicant alleging unlawful discrimination by the institution of higher education to, not later than the 10th business day after the date an application is rejected, present written data or documentation of the specific actions or basis of the allegation to the appropriate institution employee responsible for equal employment opportunity or the employee's designee.

(c) Requires the employee responsible for equal employment opportunity or the employee's designee, on receiving the data or documentation, to investigate the complaint and issue a written report of findings to the chief executive officer of the institution or the officer's designee.

(d) Requires the chief executive officer or the officer's designee, if the officer or designee approves the report under Subsection (b), to provide a copy of the report to the rejected applicant not later than the 14th day after the date the report is approved.

(e) Authorizes the governing board of an institution to adopt a separate appeals process under this section or use an existing process regarding employee discipline and termination of employment.

Sec. 51.059. USE AND DESTRUCTION OF CRIMINAL HISTORY RECORD INFORMATION. Requires an institution to use criminal history record information obtained under this subchapter exclusively to verify employability and destroy all criminal history record information obtained under this subchapter as soon as practicable, consistent with certain timelines.

Sec. 51.060. POLICIES. Requires each governing board of an institution to adopt policies as necessary for the institution to comply with this subchapter.

SECTION 2. Amends Section 411.081(i), Government Code, to authorize a criminal justice agency to disclose criminal history record information that is the subject of an order of nondisclosure to certain noncriminal justice agencies or entities only, including an institution of higher education, as defined by Section 411.094(a)(1)(A) (relating to the definition of "institution of higher education"). Makes nonsubstantive changes.

SECTION 3. Amends Section 411.094, Government Code, by adding Subsection (f), to entitle an institution of higher education, as defined by Subsection (a)(1)(A), notwithstanding Subsection (c) (relating to the requirement that criminal history information obtained by an institution of higher education from DPS be used only for evaluating applicants for employment in security-sensitive positions), to obtain from the Texas Department of Public Safety (DPS) criminal history record information maintained by DPS that relates to a person who is employed by or is an applicant for employment at the institution, to the extent the information is necessary for the institution to administer the institution's duties under Subchapter B, Chapter 51, Education Code.

SECTION 4. Repealer: Section 51.215 (Access to Police Records of Employment Applicants), Education Code.

SECTION 5. Requires the governing board of a public institution of higher education, as soon as practicable after the effective date of this Act, to adopt policies required by Section 51.060, Education Code, as added by this Act.

SECTION 6. Effective date: September 1, 2009.