

By: Canales

H.B. No. 317

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the consideration by certain employers of the consumer
3 credit reports of certain employees and applicants for employment;
4 providing administrative penalties.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

6 SECTION 1. Chapter 52, Labor Code, is amended by adding
7 Subchapter H to read as follows:

8 SUBCHAPTER H. CONSIDERATION OF CREDIT REPORT BY EMPLOYER

9 Sec. 52.081. 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) "Commission" means the Texas Workforce
15 Commission.

16 (3) "Consumer reporting agency" means any person that,
17 for monetary fees or dues or on a cooperative nonprofit basis,
18 regularly engages in the practice of assembling or evaluating
19 credit information or other information on individuals for the
20 purpose of furnishing credit reports to third parties.

21 (4) "Credit report" means any written, oral, or other
22 communication of information by a consumer reporting agency that
23 bears on an individual's creditworthiness, credit standing, or
24 credit capacity.

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

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

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

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

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

12 (D) a regulated loan company;

13 (E) an insurance company or insurance agency; or

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

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

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

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

26 (3) involves a fiduciary responsibility to the
27 employer, including the authority to issue payments, collect debts,

1 transfer money, or enter into contracts;

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

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

8 (6) provides access to:

9 (A) confidential or proprietary business
10 information; or

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

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

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

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

26 Sec. 52.084. PROHIBITED ACTS BY EMPLOYER. An employer may
27 not require an employee or applicant to consent to a request for a

1 credit report that contains information about the employee's or
2 applicant's credit score, credit account balances, payment
3 history, savings or checking account balances, or savings or
4 checking account numbers as a condition of employment unless:

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

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

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

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

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

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

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

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

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

27 (b) The penalty for a violation under this section may not

1 exceed \$1,000. In assessing a penalty under this section, the
2 commission shall consider:

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

5 (2) the severity of the violation; and

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

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

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