A BILL TO BE ENTITLED

AN ACT

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

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

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).

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.

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.

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 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.

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 3. This Act takes effect September 1, 2017.