

CHAPTER 694

S.B. No. 536

AN ACT

relating to disclosure of information by certain applicants for employment in residential dwelling projects; providing criminal penalties.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Chapter 135, Human Resources Code, is amended to read as follows:

CHAPTER 135. CRIMINAL CONVICTION CHECKS OF EMPLOYEES OF
RESIDENTIAL DWELLING PROJECTS [~~SUBSIDIZED HOUSING~~]

Sec. 135.001. DEFINITIONS. In this chapter:

- (1) "Department" means the Department of Public Safety.
- (2) "Dwelling" means one or more rooms rented for residential purposes to one or more tenants.
- (3) "Employer" means a person who employs employees to work at a residential dwelling project.
- (4) [(2)] "Employee" means an individual who performs services for compensation at a residential dwelling project and who is employed by the entity that owns the project or represents the owner in managing or leasing dwellings in the project [~~subsidized housing residence~~]. The term does not include an independent contractor.
- (5) [(3)] "Occupant" means an individual who resides in a dwelling in a residential dwelling project, other than:
 - (A) a tenant of the dwelling; or
 - (B) the owner or manager of the dwelling [~~subsidized housing residence~~].
- (6) "Residential dwelling project" means a house, condominium, apartment building, duplex, or similar facility that is used as a dwelling or a facility that provides lodging to guests for compensation including a hotel, motel, inn, bed and breakfast facility, or similar facility. The term does not include a nursing home or other related institution regulated under Chapter 242, Health and Safety Code.

[(4) "~~Subsidized housing residence~~" means a house, an apartment building, a duplex, or other similar facility that is used as a residence and for which the rent or other payment is subsidized by the federal government.]

Sec. 135.002. APPLICATION OF ACT; EXCEPTION. (a) This chapter applies to each applicant for a position of employment in a residential dwelling project [~~subsidized housing residence~~] to whom an offer of employment is made and who, in the course and scope of the employment, may be reasonably required to have access to a dwelling in the residential dwelling project [~~the residence of an occupant who is elderly or disabled~~].

(b) This chapter does not apply to a person employed by an occupant or tenant of a dwelling in a residential dwelling project.

Sec. 135.003. VERIFICATION OF [~~ACCESS TO~~] CRIMINAL HISTORY RECORD INFORMATION. (a) An employer may request an applicant to disclose to the employer the applicant's [~~is entitled to obtain~~] criminal history at any time before or after an offer of employment is made to the applicant. After an offer of employment is made, the employer may verify through the department any criminal history record information that is maintained by the department relating to that applicant and that the department is authorized to release under this chapter. The employer may verify the information only with the authorization of the applicant and in compliance with this section [~~record information maintained by the Department of Public Safety to investigate an applicant for employment who is subject to this chapter~~].

(b) The department [~~Department of Public Safety~~] may require the employer to submit the applicant's complete name, date of birth, social security number, sex, race, current street address, and current Texas driver's license number, if any [~~or the complete name of the applicant for employment~~].

(c) The department [~~Department of Public Safety~~] may adopt rules relating to an employer's access to criminal history record information, including requirements for submission of:

- (1) the employer's complete name, current street address, and federal employer identification number;

(2) an affidavit by an authorized representative of the employer that the individual whose criminal history is requested has been offered a position of employment by the employer in a residential dwelling project and that, in the course and scope of the employment, the individual may be reasonably required to have access to a dwelling in the residential dwelling project; and

(3) the complete name, date of birth, social security number, and current street address of the individual signing the affidavit.

(d) An affidavit submitted under Subsection (c) must include a statement, executed by the individual offered the position of employment, that authorizes the employer to obtain the criminal history record of the individual.

(e) The department rules shall contain procedures to help protect the confidentiality of criminal history record information sent through the United States mail. The department may adopt forms for requesting the criminal history record information and may assess a fee to cover all ~~the administrative~~ costs related to ~~of~~ processing a request for information under this section.

(f) ~~(d)~~ The department ~~[Department of Public Safety]~~ may not provide an employer with the criminal history record information of an applicant under this chapter unless the information relates to:

(1) a felony or misdemeanor classified as an offense against the person or the family;

(2) a felony or misdemeanor classified as public indecency; or

(3) a felony or misdemeanor classified as an offense against property; ~~or~~

~~[(4) a felony violation of any statute intended to control the possession or distribution of a substance regulated under Chapter 481, Health and Safety Code, or Section 485.033, Health and Safety Code].~~

(g) This chapter does not require an employer to obtain criminal history record information under this chapter.

Sec. 135.004. PRIVILEGE. Criminal history record information received by an employer under this chapter is privileged and is for the exclusive use of the employer. *The employer may disclose the information to an authorized officer, employee, or agent of the employer only for the purpose of making a determination regarding the suitability of an individual for employment. Otherwise [Except on court order or with the written consent of the individual being investigated], an employer, or any individual to whom the employer may have disclosed information, may not release or otherwise disclose the information received under this chapter to any [other] person or governmental entity except on court order or with the written consent of the individual being investigated.*

Sec. 135.005. PENALTY. ~~[(a)] An individual who is an officer, employee, or agent of an employer and who knowingly or intentionally violates Section 135.004 of this chapter or submits false information to the department [employer who discloses information in violation of Section 135.004 of this code] commits an offense. An offense under this section is a Class A misdemeanor~~

~~[(b) An offense under this section is a felony of the second degree].~~

Sec. 135.006. EFFECT OF SUBMISSION OF FALSE INFORMATION. *An employer may terminate the employment of an individual who, at the time of the individual's application for employment or after the individual has been employed by the employer, submits false information relating to the individual's criminal history.*

Sec. 135.007. OTHER INFORMATION. *This chapter does not prevent an employer from asking an applicant for employment or an employee to provide other information if the request for that information is not otherwise prohibited by law.*

SECTION 2. This Act takes effect September 1, 1993, and applies only to an application for employment made on or after that date. An application submitted before that date is governed by the law in effect immediately before that date, and that law is continued in effect for that purpose.

SECTION 3. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the

constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed the Senate on May 6, 1993, by a viva-voce vote; passed the House on May 21, 1993, by a non-record vote.

Approved June 15, 1993.

Effective Sept. 1, 1993.