

## BACKGROUND CHECK LAWS FCRA vs. TEXAS STATE LAW

### QUICK REFERENCE FOR EMPLOYERS

| TOPIC | BAN THE BOX | CRIMINAL LOOKBACK | SALARY HISTORY | CREDIT REPORT  | PRE-ADVERSE WAITING PERIOD |
|-------|-------------|-------------------|----------------|----------------|----------------------------|
| FCRA  | None        | No Limit          | None           | No Restriction | Reasonable Time            |
| TX    | No          | 7 Years*          | None           | None           | 5 Days                     |

\*Legal enforceability of Texas's 7-year conviction reporting cap is contested under federal preemption — see [Criminal Record Lookback](#) below.

| TOPIC                                   | FCRA                                                                                                                                                                 | TEXAS STATE LAW                                                                                                                                                                                                                                                                                                                                                                                                              | SOURCE                                                                          |
|-----------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------|
| <b>Ban the Box / Fair Chance Hiring</b> | <ul style="list-style-type: none"> <li>No federal ban-the-box law.</li> <li>Employers may ask about criminal history at any time, subject to other laws.</li> </ul>  | <ul style="list-style-type: none"> <li>Texas has no statewide ban-the-box law.</li> <li>House Bill 2466 was referred to a House subcommittee on March 17, 2025, and did not advance further before the legislative session ended.</li> </ul>                                                                                                                                                                                 | <b>Texas HB 2466 (89th Legislature) — Referred to Subcommittee, Not Enacted</b> |
| <b>Criminal Record Lookback</b>         | <ul style="list-style-type: none"> <li>No federal limit on reporting convictions.</li> <li>Arrest records not resulting in conviction limited to 7 years.</li> </ul> | <ul style="list-style-type: none"> <li>Tex. Bus. &amp; Com. Code § 20.05 states reports generally cannot include arrests, indictments, or convictions older than 7 years, with an exception for positions paying \$75,000+ annually.</li> <li>Legal commentary has questioned whether this state-law cap on conviction reporting is preempted by federal law under 15 U.S.C. § 1681t. Treat as an unsettled area.</li> </ul> | <b>Tex. Bus. &amp; Com. Code § 20.05; 15 U.S.C. § 1681t</b>                     |
| <b>Reporting Restrictions</b>           | <ul style="list-style-type: none"> <li>Most non-conviction adverse information cannot be reported if more than 7 years old.</li> </ul>                               | <ul style="list-style-type: none"> <li>Texas law does not include additional reporting exceptions beyond the general lookback rule above, such as California's exception for open or unresolved cases.</li> </ul>                                                                                                                                                                                                            | <b>No additional Texas statute; see Tex. Bus. &amp; Com. Code § 20.05</b>       |
| <b>Expunged / Sealed Records</b>        | <ul style="list-style-type: none"> <li>No specific federal expungement provision beyond standard reporting limits.</li> </ul>                                        | <ul style="list-style-type: none"> <li>Texas allows certain records to be expunged (destroyed) under the Code of Criminal Procedure, or sealed from public/employer access through an order of nondisclosure.</li> <li>Employers generally may not consider expunged records.</li> </ul>                                                                                                                                     | <b>Tex. Code Crim. Proc. Ch. 55A; Tex. Gov't Code Ch. 411, Subch. E-1</b>       |
| <b>Salary History Ban</b>               | <ul style="list-style-type: none"> <li>No federal restriction on salary history.</li> </ul>                                                                          | <ul style="list-style-type: none"> <li>Texas has no law restricting employers from asking about or relying on a candidate's salary history.</li> </ul>                                                                                                                                                                                                                                                                       | <b>No Texas statute; see Equal Pay Act, 29 U.S.C. § 206(d)</b>                  |

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|-------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------|
| <b>Credit Report Restrictions</b>                     | <ul style="list-style-type: none"> <li>Requires a permissible purpose.</li> <li>Requires written authorization.</li> </ul>                                                            | <ul style="list-style-type: none"> <li>Texas imposes no state-level restriction on which positions may consider a candidate's credit history.</li> <li>Only the federal FCRA's standard requirements apply.</li> </ul>                  | No Texas-specific restriction; see FCRA, 15 U.S.C. § 1681b |
| <b>Bankruptcies</b>                                   | <ul style="list-style-type: none"> <li>Cannot report if more than 10 years old (15 U.S.C. § 1681c(a)(1)).</li> </ul>                                                                  | <ul style="list-style-type: none"> <li>Bankruptcy records generally cannot be reported if more than 10 years old, measured from the order for relief or adjudication.</li> </ul>                                                        | Tex. Bus. & Com. Code § 20.05(a)(1)                        |
| <b>Civil Judgments &amp; Lawsuits</b>                 | <ul style="list-style-type: none"> <li>Cannot report if more than 7 years old (15 U.S.C. § 1681c(a)(2)).</li> </ul>                                                                   | <ul style="list-style-type: none"> <li>Civil suits and judgments generally cannot be reported if more than 7 years old, measured from entry, or until the statute of limitations expires, whichever is longer.</li> </ul>               | Tex. Bus. & Com. Code § 20.05(a)(2)                        |
| <b>Tax Liens &amp; Collections</b>                    | <ul style="list-style-type: none"> <li>Cannot report if more than 7 years old (15 U.S.C. § 1681c(a)(3)-(4)).</li> </ul>                                                               | <ul style="list-style-type: none"> <li>Paid tax liens generally cannot be reported if more than 7 years old, measured from the date of payment.</li> </ul>                                                                              | Tex. Bus. & Com. Code § 20.05(a)(3)                        |
| <b>Marijuana / Drug Testing Protections</b>           | <ul style="list-style-type: none"> <li>No federal protection for legal marijuana use.</li> </ul>                                                                                      | <ul style="list-style-type: none"> <li>Texas provides no employment protections for marijuana use, on- or off-duty.</li> <li>Private employers may drug test and act on results, subject to a written policy.</li> </ul>                | Tex. Health & Safety Code § 481.121                        |
| <b>Pre-Adverse Action Notice &amp; Waiting Period</b> | <ul style="list-style-type: none"> <li>Must provide a copy of the report and a summary of rights.</li> <li>"Reasonable time" to respond, often treated as 5 business days.</li> </ul> | <ul style="list-style-type: none"> <li>Texas has no state law setting a specific waiting period.</li> <li>Only the FCRA's "reasonable time" standard applies, commonly treated as 5 business days.</li> </ul>                           | No Texas statute; see FCRA, 15 U.S.C. § 1681b(b)(3)(A)     |
| <b>Adverse Action Notice Requirements</b>             | <ul style="list-style-type: none"> <li>Must provide notice with the CRA's name, address, and phone number, and a copy of "A Summary of Your Rights."</li> </ul>                       | <ul style="list-style-type: none"> <li>Texas imposes no additional adverse action notice requirements beyond the FCRA.</li> </ul>                                                                                                       | No Texas statute; see FCRA, 15 U.S.C. § 1681m              |
| <b>Authorization Requirements</b>                     | <ul style="list-style-type: none"> <li>Written authorization required.</li> <li>Must be clear and readable.</li> </ul>                                                                | <ul style="list-style-type: none"> <li>Texas imposes no additional disclosure or authorization format requirements beyond the FCRA.</li> </ul>                                                                                          | No Texas statute; see FCRA, 15 U.S.C. § 1681b(b)(2)(A)     |
| <b>Individualized Assessment</b>                      | <ul style="list-style-type: none"> <li>No federal requirement (EEOC guidance recommends one).</li> </ul>                                                                              | <ul style="list-style-type: none"> <li>Texas does not require employers to conduct an individualized assessment before taking adverse action based on criminal history.</li> <li>Only EEOC guidance under Title VII applies.</li> </ul> | EEOC Enforcement Guidance on Arrest and Conviction Records |

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| <b>Childcare &amp; Foster/Adoptive Home Screening</b> | <ul style="list-style-type: none"> <li>No specific federal requirement at this level of detail.</li> </ul> | <ul style="list-style-type: none"> <li>Employers operating licensed childcare facilities or homes must obtain criminal background checks on staff.</li> <li>Extends to prospective foster/adoptive parents and household members 14+.</li> </ul> | <b>Tex. Human Resources Code § 42.056</b>                 |
| <b>School District Contractor Screening</b>           | <ul style="list-style-type: none"> <li>No specific federal requirement at this level of detail.</li> </ul> | <ul style="list-style-type: none"> <li>Contractors and individuals with access to a school district must be screened for felony convictions.</li> <li>Certain findings must be reported to the district.</li> </ul>                              | <b>Tex. Education Code § 44.034</b>                       |
| <b>In-Home Service Company Screening</b>              | <ul style="list-style-type: none"> <li>No specific federal requirement at this level of detail.</li> </ul> | <ul style="list-style-type: none"> <li>Companies that send individuals into a customer's home to perform services must conduct a criminal background check before doing so.</li> </ul>                                                           | <b>Tex. Civ. Prac. &amp; Rem. Code §§ 145.002–145.004</b> |

### LOCAL ORDINANCES THAT MAY APPLY

Texas's Regulatory Consistency Act (House Bill 2127, 2023) preempts cities and counties from enforcing local labor ordinances that go beyond state law, including fair chance hiring and ban-the-box ordinances. Austin's and DeSoto's local ban-the-box ordinances are no longer enforceable as a result. A Texas appeals court upheld HB 2127 in 2025 after a lower court had ruled it unconstitutional. No locally-enforceable background check ordinances currently apply to private employers in Texas.

**SOURCE:** [Tex. Gov't Code Ch. 2400 \(HB 2127\) — Upheld on Appeal, 2025](#)

### WHAT THIS MEANS FOR EMPLOYERS

Texas imposes fewer state-specific restrictions than many states, but employers still have obligations under the FCRA and Texas's own screening laws. To stay compliant:

- ✓ Follow ban-the-box timing and fair chance rules
- ✓ Limit criminal record reporting to what's allowed by law
- ✓ Avoid asking for salary history
- ✓ Use credit reports only when legally permitted
- ✓ Provide proper notices and follow state timelines
- ✓ Conduct individualized assessments before adverse action