

- SUBJECT:** Allowing employees to inspect personnel records
- COMMITTEE:** Economic Development — committee substitute recommended
- VOTE:** 6 ayes — Oliveira, Yarbrough, Greenberg, Luna, Siebert, Van de Putte  
2 nays — Keffer, Seaman  
1 absent — Raymond
- WITNESSES:** For — Walter Hinojosa, Texas AFL-CIO; Matthew Porter, Transport Workers Union; Hannah Riddering, Texas NOW  
Against — Chris Knepp, Texas Employment Law Council; David Pinkus, Small Business United of Texas; Michael A. Fox, Texas Association of Business and Chambers of Commerce
- DIGEST:** CSHB 1574 would allow employees to inspect personnel documents used or intended to be used to determine their qualifications for employment, promotion, transfer or disciplinary action. Employers would be required to permit access to personnel records within seven days upon request from the employee and at least twice each calendar year in a location reasonably near the employee's place of employment and during normal working hours. The seven-day deadline could be extended an additional seven days if the employer could not reasonably meet it. Employees involved in a grievance against an employer could designate a representative to inspect their personnel record.  
  
Personnel records would be defined to include applications, wage and salary information, notice of commendation, warning, disciplinary actions, fringe benefit information, leave records, employment history with the employer, job titles, dates of changes, retirement records, performance evaluations, letters of reference and attendance records. The term would not include records relating to the investigation of a possible criminal offense, documents being prepared for the use in a civil, criminal or grievance procedure, or materials used by the employer to plan for future operations.

An employer and employee could agree to remove or correct any information in the personnel record with which the worker disagreed. If an agreement could not be reached, the employee could submit a written statement disputing the information. The employer would have to attach the statement to the disputed material in the file and include the statement if the material was released to a third party.

Employees could request and obtain copies of any information contained in their record. The employer could charge a fee to duplicate the information, not to exceed copying costs.

CSHB 1574 would take effect September 1, 1997. Violations of its provisions would be a misdemeanor punishable by a fine of up to \$100.

**SUPPORTERS  
SAY:**

CSHB 1574 would give employees access to their own personnel records and allow them to respond to and correct inaccuracies that could shape their career with their present or a future employer. Access to these records is important to ensure their accuracy. Since employees and employers are mutual partners in creating these records, they should have equal rights to view and respond to information they contain. The bill would allow employees to designate a representative to inspect personnel records simply because employees sometimes have strained relationships with their employers.

The bill contains a carefully crafted definition of personnel records that includes only those documents relating directly to employees and their job histories and performance. Investigatory and legal documents as well as business plans could not be viewed by an employee, thus protecting other employees who could be involved in workplace disputes and complaints and securing privileged business information. The provisions are straightforward, lacking a multitude of restrictions and exclusions. There should be no confusion about which documents are covered under the access provisions.

State employees already are able to inspect their personnel records, and it would only be fair to extend the same rights to private sector employees. Although some employers do give access to records, CSHB 1574 would

ensure all employees have the same rights, making Texas law consistent with laws in 24 other states that allow access to personnel records.

OPPONENTS  
SAY:

Allowing access to employee personal records may be a good business practice in many cases, but the state should not tell employers how to run their businesses. Personnel records are the property of the employer. Employees do not have access to any other types of employer business records and should not have access to view or respond to employee personnel documents.

CSHB 1574 would be a burden on small business. Allowing third parties, such as attorneys, to inspect personnel records would be an imposition on businesses and unnecessarily interfere with the employee-employer relationship.

The definition of personnel documents is too vague. While excluding information relating to criminal investigations, it would include information pertaining to investigations of workplace misconduct, such as sexual harassment, that may not have escalated to a criminal offense. Employees should not be able to access information related to these types of investigations because it involves sensitive information about other employees. Co-workers would be less likely to offer information regarding a co-worker investigated for misconduct for fear of retaliation if the employee was able to review the information.

OTHER  
OPPONENTS  
SAY:

A \$100 fine would do little to deter employers bent on evading the access law. The penalty should be increased to dissuade employers from violating the rights of employees.

NOTES:

The original version of the bill would have made violations of the access law a Class C misdemeanor; allowed records to be inspected at alternate locations and during nonworking hours; required employers to mail copies of the record to employees who could not review them in person; prohibited employers from using information in a personnel record for judicial or administrative proceedings; allowed employees to seek legal action to expunge false information; provided for confidentiality of certain types of information; prohibited employers from maintaining records of employees' associations

political activities, publications or on employment activities; and authorized the Texas Workforce Commission to administer and enforce access laws.

A related bill, HB 40 by McCall et al., which would protect employees disclosing information about an employee's job performance, passed the House on April 18 and has been referred to the Senate Jurisprudence Committee.