



TEXAS

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BUSINESS REPORT



The Business Behind Criminal Justice Reform

TAB backed plan would cut costs and keep our streets safe.

Texas has always been a tough on crime state. We now have the chance to be a smart on crime state while staying tough.

It costs \$50 a day to lock up someone in a Texas prison. For violent offenders, that is money well spent; for those convicted of non-violent crimes, that isn't always the case. Probation costs about \$3 a day. Even intensive probation with constant monitoring only costs around \$10 a day. Businesses pay 65 percent of taxes in Texas, so it makes sense that we support public policy that keeps Texans safe while providing us the best possible rehabilitation outcomes for the tax dollars that we invest in the system.

“Putting non-violent offenders in prison is a sure way to turn them into professional criminals,” said TAB President and CEO Bill Hammond. “Most non-violent offenders, need probation and treatment, not incarceration.”

“We think this approach holds offenders accountable and helps keep them on the right track to turn their lives around,” said TAB Board Member Penny Rayfield, who is spearheading TAB’s involvement on the issue.



For some offenders, probation may be a better alternative than prison.

“The big concern for TAB is getting these people back into the workforce once they are rehabilitated,” said Hammond. “There are restrictions right now on those convicted of certain felonies that prevent them from obtaining commercial driver’s licenses and other state occupational licenses. That means that no matter how long ago you served your time, you may not be able to get the necessary licenses to hold a good paying job. That restriction can lead someone right back down the path to prison,

continued on page 3

WORKFORCE Q&A

My employees don't sign non-competes or non-disclosure agreements. An ex-employee just opened a shop across the street and is raiding my sales people and customers. I feel like she kept some documents. Do I have any remedies?

(see page 2)

YOU ARE INVITED

*Step aboard the Excellence Express on **March 19** and celebrate the **Best Companies to Work for in Texas**. Engineered to be more high energy and much more celebratory, bring your staff and make a night of it in Austin. Whether you are a Best Company winner, a proud Texan or a business roaring down the track to greatness, come celebrate.*

(see page 5 for details)

TAB MISSION

To make the Texas business climate the best in the world.

WORKFORCE Q&A



Harry Jones,
Littler Mendelson, P.C.

My employees don't sign non-competes or non-disclosure agreements. An ex-employee just opened a shop across the street and is raiding my sales people and customers. I feel like she kept some documents. Do I have any remedies?

Even without a signed non-compete or non-disclosure agreement, you can keep trade secrets from being used; and slow or stop unfair competition. Texas law allows an employer to protect a trade secret and prohibit a former employee from disclosing or using it. It does not take a contract to create this right; this implicit duty exists because of the confidential relationship. The duty continues after the employee is terminated or resigns. Thus, you could sue your ex-employee if you can prove a trade secret existed; i.e. she got it through improper means and she is using the trade secret. To “use” means commercial use or the pursuit of profit.

What is a “trade secret?” Generally, any confidential formula, pattern, device or compilation of information used in your business that gives you an opportunity for advantage over competitors who do not know it. Also, you must be able to show your intent to keep it secret. Depending on the circumstances, courts have recognized customer lists, pricing information, customer preferences, buyer contacts, blueprints or market strategies as trade secrets. Almost anything may be claimed to be a trade secret; it is the circumstances surrounding the use or disclosure that determine whether a court will grant protection.

Some courts distinguish between written customer lists (she cannot use these) and customer names retained in the former employee's memory (this, she can use). Other Texas courts have focused on the relative difficulty in obtaining the customer list. If the list is readily accessible (for instance, if your customers are school districts or hospitals), the list itself may not constitute confidential information. Some courts focus more on how the former employee obtained the information; and protect the employer if the disloyal employee did not actually obtain the information in the public arena.

The Texas Legislature protects trade secrets by statute, via the Texas Theft Liability Act and the Harmful Access by Computer Act, depending on the facts. Texas also recognizes a broader concept of employer rights: the right to be free of “unfair competition.” This is difficult to neatly summarize; it can include an employee forming a competing business before resigning her employment; an employee soliciting customers whom she serviced on behalf of her former employer; and a competitor successfully soliciting employees. No firm rules govern. Often, there are contradictory judicial opinions.

Going forward, it would be prudent to have your current employees sign off on a confidentiality policy, with tailored language that meets the needs of your business to protect truly critical, confidential information. You should stamp key documents “confidential” and keep them in a secure place or computer file with limited access. Finally, a reasonably narrow, non-compete covenant drafted by legal counsel and tailored to key employees in the business may deter the threat of unfair competition and may provide the basis for legal action, if necessary. Additionally, covenants preventing solicitation of employees can be useful to protect your interests.

Employment Relations questions?

***Don't forget to call TAB's Employment Relations Hotline for your next HR Question
1.800.856.6721, ext. 164 or E-mail smcgee@txbiz.org***

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Tax Cut Drive

TAB launches a petition drive for tax relief.

Governor Rick Perry would like to see this Legislature pass tax relief. TAB supports that goal and believes that businesses should be the target of that relief, since businesses pay 65 percent of the overall taxes.

“TAB has launched a petition drive to support a \$1.8 billion tax cut that would help all businesses in Texas,” said TAB President and CEO Bill Hammond. “We also are pleased that State Rep. Brandon Creighton is carrying bills to make this tax cut a reality.”

The success of this petition drive depends on members contacting as many friends and associates as possible to have them sign the online petition. You can access it on the TAB webpage, www.txbiz.org.

“It’s a very easy process and only takes about five minutes to complete,” said Hammond.

The business tax relief plan has two parts. The first would make the current \$1 million exemption permanent. That would mean businesses that make less than \$1 million in taxable revenue would continue to not have to pay the franchise tax.

The second part of the plan would create a \$1 million deduction. That would mean businesses wouldn’t have to pay tax on the first \$1 million of taxable revenue. If, for example, a business makes \$1.2 million, that business would only pay taxes on \$200,000.

“The \$1 million deduction is going to make a real difference in the tax bill of every Texas business,” said Hammond. “The impact will be greatest in the small business community, where many of the state’s jobs are created. We feel this

tax cut will spur new job creation in Texas.”

“I am very happy to have the Texas Association of Business and its members firmly behind the effort to cut taxes for Texas businesses,” said State Representative Brandon Creighton. “A tax cut for businesses will help make the business climate in Texas even stronger, provide another reason for businesses from out of state to move to Texas and, most importantly, create jobs. I would strongly encourage folks to sign on to TAB’s petition.”



State Rep. Brandon Creighton backs business tax relief.

There have been some groups who have called for the franchise tax to be completely eliminated. While that sounds like a good idea, there is a serious drawback. “You have to find money to replace that tax somewhere,” said Hammond. “Creating another permanent hole in the budget isn’t a good idea. Right now we may have enough money to cover it, but the next time the economy takes a turn for the worse we won’t.”

Criminal Justice Reform

continued from page one

which is exactly what we don’t want to happen.”

Businesses also are reluctant to employ people who have served time and gone through rehabilitation and job training because of liability concerns. Another part of the proposal would provide immunity from liability for businesses that hire ex-offenders. “We feel that would lessen the fear that a business might have of being sued if an ex-offender they have hired commits another crime while on the job,” said Hammond.

Also at issue is the aging prison population. Part of the plan would make it easier to parole terminally ill and bedridden offenders, saving the state millions of dollars and allowing the families to care for these inmates in their final days.

“Anytime you are talking about fundamental changes to the criminal justice system, there will be opposition,” said Hammond. “In this case, some local district attorneys are fearful that these proposals are not tough on crime. I contend that for non-violent offenders, it is important that we be smart. The terms of probation are not easy to live up to and one slip up can lead someone straight back to prison. There is also the idea of using the current state jail system to put some non-violent offenders away for a short time and then keep them on probation when they come out. Doing that is not being weak on crime; it is being fiscally smart about punishment and rehabilitation.”

MEMBER PROFILE

Hochheim Prairie Insurance – Texans Serving Texas Since 1892

Founded in 1892, Hochheim Prairie Insurance is one of the state's largest farm mutual insurance companies. Created by a group of immigrant farmers unable to secure insurance on their homes and property, the organization catered to families in rural communities. Presently, the company continues to serve these areas as well as suburban and growing counties of Texas. Hochheim's products include home, liability, auto, and business insurance.

Hochheim's vision statement of "Texans Serving Texas Since 1892" sums up the philosophy of the organization. Though Texas has changed considerably over the past 120 years, Hochheim has remained focused on the concept of what it means to be a mutual insurance company.

"A person is more than a policyholder when they are insured by Hochheim Prairie. They're a member, and as a member they have ownership in the organization," says Dave Talbert, president of Hochheim. "When we discuss corporate goals, the true litmus test is asking ourselves how membership will benefit from the decisions we make."

Hochheim's unique heritage is reinforced by its 123 branches, through which Hochheim donates more than \$500,000 annually to organizations across Texas. While each branch has the autonomy to donate as they choose, common recipients include local fire departments, student and community organizations.

As a member of the Texas Association Business (TAB), Hochheim has long believed in the importance of TAB and its role for Texas business and citizens.

"We are a Texas-only company," explains Talbert. "It is important to us that the relationships we cultivate understand the uniqueness of our state. Being a member of TAB is a perfect fit for us. They understand both the

opportunities and challenges facing businesses in Texas. We feel fortunate to have an organization that works to ensure that Texas remains a great place to do business."

Hochheim and its employees take leadership roles in its hometown of Yoakum and the surrounding communities, serving in various capacities on the local chamber, city council, school boards and hospital boards.

"My first personal experience with TAB was while working on a project for the Yoakum Chamber of Commerce. The amount of information, resources, and expertise they were able to provide went far beyond what we were able to do on our own. I appreciate the same zeal with which TAB works to help Texas businesses through its legislative and advocacy efforts."

In addition to civic leadership, Hochheim makes significant charitable contributions to the area. Examples include supporting the Bluebonnet Youth Ranch, a privately supported organization that provides a safe living environment for abused children. Hochheim's more than 20-year involvement with the Yoakum area Blue Santa project helps provide toys to underprivileged children. The organization assists local libraries by donating computer equipment and supplying funds and technical expertise from its IT Department.

Hochheim and its employees support the local chapters of The American Cancer Society, Special Olympics, Boy Scouts of America, Little League, and Crime Stoppers.

Hochheim underwrites more than 250,000 policies with \$173 million in written premium and distributes its products through a network of 220 independent insurance agencies across the state.

"We feel fortunate to have an organization that works to ensure that Texas remains a great place to do business."

*- Dave Talbert,
President, Hochheim
Prairie Insurance*



Hochheim Prairie Insurance Staff

The Best of the Best

The Texas Association of Business and program partners *Texas Monthly*, Texas SHRM, and Best Companies Group are inviting businesses from around the state to hop aboard the Excellence Express as together we celebrate the *Best Companies to Work For In Texas*. The dinner event, happening in Austin on March 19, will be a high energy, celebratory night filled with recognition of exceptional business practices, employee relations and strategies demonstrated by companies around the state.

The Best Companies program is designed to distinguish companies that demonstrate and are superior in workplace excellence. Through the use of an in-depth, two-part survey process, Best Companies objectively researches the dynamics and characteristics of the participating companies and receives feedback from the employees. Once the data is compiled, detailed analysis takes place leading to the ranking of all participants and the creation of “The Best” list. The reports are incredible benchmarking tools for employers of all sizes to improve practices, recruit and retain staff, and grow in their work.



Along with the data, each participating company receives a detailed employee feedback report that provides valuable insights including employee comments, demographic report, employee benchmark report and employer benchmark report. To learn more about the process you can visit the Best Companies website at www.bestcompaniesgroup.net. While you are there you can learn about signing up for the 2014 program.

Participating in the Best Companies process can help your business. It helps you learn more about your businesses strengths and

weaknesses while going through the assessment process. Businesses named on “The Best” list can see a marketing boost and an increased sense of company pride.

The culmination of the process is the Awards Celebration Dinner where all rankings will be announced, and the *Best Companies to Work for In Texas* will be revealed. The event will take place March 19 at the Hyatt Regency Hotel in Austin. We invite all businesses, winner or not, to join in the celebration. **To register visit www.txbiz.org/events.**

ANNUAL CONFERENCE A HIT

TAB’s Annual Conference saw a large increase in attendance this year over last year. “I believe that the increase in attendance shows that our members are eager to be engaged on the issues this legislative session,” said TAB President and CEO Bill Hammond.

Our members at the conference heard from the state leadership, including Gov. Rick Perry, who delivered the message from his State of the State address the day before. Also speaking to the membership was Lt. Gov. David Dewhurst and House Speaker Joe Straus, who sat down with Hammond

for a question and answer session that kicked off the second day of the conference.

The conference ended with a frank discussion between Hammond and Congressman Joaquin Castro from San Antonio on immigration reform. TAB supports a comprehensive immigration reform plan.

Members also heard about the top issues facing the Legislature this year, and from the top legislative leaders on those issues, which include education, transportation and water funding, healthcare and workplace issues, like drug testing for people receiving unemployment benefits.

QUOTES

“Texas businesses are unable to hire enough workers which hurts their productivity and diminishes their profits.”

– Bill Hammond in the *Dallas Morning News* from his testimony at the school finance trial.

“We have 150 members on our board, and the positions we take are the priorities of our board.”

– Bill Hammond in a profile run by the *Lubbock Avalanche-Journal*.

“We’re sending too many people to the slammer. The taxpayers and the business community are both being harmed.”

– Bill Hammond speaking on criminal justice reform in the *Austin American-Statesman*.



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Talk **About** Business



Bill Hammond, TAB President

Our Schools Are Broken, Not Broke

Educators, school board members and superintendents were popping champagne corks this month when Judge John Dietz ruled that their wallets should be fattened by an average of \$2,000 per student. That would cost us \$11 billion a year.

The judge ruled that the school finance system creates an unconstitutional property tax that is inadequate to fund the high standards placed on it by the state.

TAB was an intervener in the lawsuit and asked Judge Dietz to rule that the system was inefficient and not producing an educated workforce, which I believe should be the core mission of our school system. Judge Dietz agreed, saying that schools are inefficient with their dollars and they are not graduating enough career and college ready students. Unfortunately, Judge Dietz did not include the issues in his final court ruling, saying those were legislative issues.

I guess it is possible that Judge Dietz believes that simply spending \$2,000 more per student will get us the results that we want. It will not. We have been spending more money on education for a decade, even including last session's cuts, and we still are left with a broken system that

isn't giving us the kind of results we all should be demanding.

Without efficiency changes like classroom size flexibility and at-will employment of teachers, more money won't change very much. Dr. Eric Hanushek testified that if we were able to remove the least productive eight percent of teachers and replace them with teachers just producing at an average level, our education system would be as good as Finland, which is the best in the world.

What difference would spending \$2,000 more per student really make? We already are spending \$10,000 per student and only getting 23 percent of graduates career or college ready based on ACT scores. That's simply not acceptable, and it won't be changed by \$2,000. I don't remember a lot of testimony during the trial that would support the argument that \$2,000 would bring the level of career or college ready graduates up to 65 percent—the amount we need to be economically competitive in the short term.

People may argue that it's a small price to pay and that the "state" has the money to spend. The "state" only has money because it gets it from you. That is your money. When you

are buying something, you want to make sure to get your money's worth. Is 23 percent of graduates career or college ready getting your money's worth? No, it isn't.

Much of the case presented to Judge Dietz was based on the argument that school districts are being asked to do more because of higher standards placed on them by what I believe is the strongest accountability system in the country. At the same time that they are arguing in court for more money, they are arguing before the legislature to dismantle that accountability system. So, the basic fight for the school districts is this: We want more taxpayer money without being held accountable to those taxpayers for preparing their children for life after school. Parents, that gimmick should make you very upset.

While there are some issues of school finance that need to be addressed, simply adding \$11 billion a year to the education budget won't produce the results that we need. Maybe the real lawsuit should have been taxpayers suing to get a refund for money paid to schools because they have not done their primary job: graduating career and college ready students.