

Regular Session, 2010

SENATE BILL NO. 204

BY SENATOR MCPHERSON

HEALTH CARE. Removes provisions which allow an employer to waive the existence of certain criminal offenses when hiring any licensed ambulance personnel or nonlicensed persons. (8/15/10)

1 AN ACT

2 To amend and reenact R.S. 40:1300.53, relative to criminal history checks of licensed
3 ambulance personnel or nonlicensed persons; to remove provisions which allow an
4 employer to waive certain provisions; and to provide for related matters.

5 Be it enacted by the Legislature of Louisiana:

6 Section 1. R.S. 40:1300.53 is hereby amended and reenacted to read as follows:

7 §1300.53. Refusal to hire or contract; termination of employment; exemption;
8 appeal procedure; waiver

9 A.(+) Except as otherwise provided in R.S. 40:1300.52(C), if **no employer**
10 **shall hire any licensed ambulance personnel or nonlicensed person when** the
11 results of a criminal history check reveal that ~~any~~ **the** licensed ambulance personnel
12 or nonlicensed person has been convicted of any of the following offenses, ~~the~~
13 employer shall not hire or contract with such person:

14 (a) **(1)** Any crime of violence as enumerated by R.S. 14:2(B), R.S. 14:34.7,
15 R.S. 14:35, **R.S. 14:35.2**, R.S. 14:36, R.S. 14:37.1, R.S. 14:37.4, R.S. 14:38, R.S.
16 14:41, R.S. 14:43.3, R.S. 14:43.5, **R.S. 14:44.2**, R.S. 14:52 through R.S. 14:54.4,
17 R.S. 14:64.3, R.S. 14:64.4, R.S. 14:78, R.S. 14:80 through R.S. 14:83.3, R.S. 14:86,

1 R.S. 14:89, R.S. 14:93, R.S. 14:93.3 through 14:93.5, R.S. 14:102.1, R.S. 14:282,
2 R.S. 14:286, or distribution or possession with the intent to distribute controlled
3 dangerous substances as listed in Schedules I through V of the Uniform Controlled
4 Dangerous Substances Act.

5 ~~(b)~~ **(2)** An attempt or conspiracy to commit any of the offenses listed in
6 Subparagraph **Paragraph** (1)(a) of this Subsection.

7 ~~(2) If the results of a criminal history check reveal that any licensed~~
8 ~~ambulance personnel or nonlicensed person has been convicted of any of the~~
9 ~~following offenses, the employer may refuse to hire or contract with such person:~~

10 ~~(a) R.S. 14:55, R.S. 14:60 through R.S. 14:62.3, R.S. 14:74, R.S. 14:79.1,~~
11 ~~R.S. 14:83.4 through R.S. 14:85.1, R.S. 14:92, R.S. 14:93.2.1, or R.S. 14:106.~~

12 ~~(b) An attempt or conspiracy to commit any of the offenses listed in~~
13 ~~Subparagraph (1)(a) of this Subsection.~~

14 B.(1) If the results of a criminal history check reveal that a nonlicensed
15 person or any licensed ambulance personnel hired on a temporary basis or any other
16 person who is an employee has been convicted of any of the offenses listed in
17 Subsection A of this Section, the employer shall immediately terminate the person's
18 employment.

19 (2) The provisions of this Subsection shall not apply to an employee or
20 contract provider who has been employed for twenty-four months of the preceding
21 thirty-six months, or a person who has received a pardon of the conviction.

22 ~~C.(1) The employer may waive the provisions of this Part, unless the licensed~~
23 ~~ambulance personnel or nonlicensed person has been convicted of any crime as~~
24 ~~enumerated by R.S. 14:31, 34, 34.7, 35.2, 37, 37.1, 37.4, 42.1, 43.1, 44.2, 64, 80,~~
25 ~~81.2, 93, 93.3, 93.4, or 93.5. If the licensed ambulance personnel or nonlicensed~~
26 ~~person has been convicted of any crime as enumerated by R.S. 14:31, 34, 34.7, 35.2,~~
27 ~~37, 37.1, 37.4, 42.1, 43.1, 44.2, 64, 80, 81.2, 93, 93.3, 93.4, or 93.5, then the~~
28 ~~employer shall not hire or contract with such person and shall not grant a waiver to~~
29 ~~such person.~~

- 1 ~~(2) A waiver may be granted for mitigating circumstances, which shall~~
2 ~~include but not be limited to:~~
- 3 ~~(a) Age at which the crime was committed.~~
4 ~~(b) Circumstances surrounding the crime.~~
5 ~~(c) Length of time since the conviction.~~
6 ~~(d) Criminal history since the conviction.~~
7 ~~(e) Work history.~~
8 ~~(f) Current employment references.~~
9 ~~(g) Character references.~~
10 ~~(h) Nurse aide registry records.~~
11 ~~(i) Other evidence demonstrating the ability of the person to perform the~~
12 ~~employment responsibilities competently and that the person does not pose a threat~~
13 ~~to the health or safety of patients or clients.~~
- 14 ~~(3) The granting of a waiver shall not be construed as creating an obligation~~
15 ~~upon an employer to offer permanent employment to such person.~~

The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Greg Waddell.

DIGEST

Present law provides that an employer shall not hire or contract with any licensed ambulance personnel or nonlicensed person if the results of a criminal history check reveal that such person has been convicted of any of the following offenses the attempt or conspiracy thereof:

- (1) Any crime of violence as defined in present law.
- (2) Aggravated second degree battery
- (3) Assault
- (4) Aggravated assault with a firearm
- (5) Simple assault
- (6) Rape
- (7) Oral sexual battery
- (8) Intentional exposure to AIDS virus
- (9) Simple arson

- (10) Simple arson of a religious building
- (11) Arson with intent to defraud
- (12) Communicating of false information of planned arson
- (13) Manufacture and possession of delayed action incendiary devices
- (14) Manufacture and possession of a bomb
- (15) Forfeitures
- (16) Second degree robbery
- (17) Incest
- (18) Felony carnal knowledge of a juvenile
- (19) Misdemeanor carnal knowledge of a juvenile
- (20) Indecent behavior with juveniles
- (21) Pornography involving juveniles
- (22) Molestation of a juvenile
- (23) Computer-aided solicitation of a minor
- (24) Prohibited sexual conduct between educator and student
- (25) Unlawful possession of videotape of protected persons
- (26) Prostitution
- (27) Soliciting for prostitutes
- (28) Inciting prostitution
- (29) Promoting prostitution
- (30) Prostitution by massage
- (31) Enticing persons into prostitution
- (32) Crime against nature
- (33) Cruelty to juveniles
- (34) Cruelty to the infirmed
- (35) Exploitation of the infirmed
- (36) Sexual battery of the infirm
- (37) Cruelty to animals; simple and aggravated
- (38) Operation of places of prostitution prohibited

- (39) Sale of minor children
- (40) Distribution or possession with the intent to distribute controlled dangerous substances as listed in Schedules I through V of the Uniform Controlled Dangerous Substances Act.

Proposed law retains present law and adds the offenses of simple battery of the infirm and aggravated kidnapping of a child.

Present law provides that an employer may refuse to hire or contract with such person if the results of a criminal history check reveal that any licensed ambulance personnel or nonlicensed person has been convicted of, attempted, or conspired to commit, any of the following offenses:

- (1) Aggravated criminal damage to property
- (2) Aggravated burglary
- (3) Unauthorized entry of a critical infrastructure
- (4) Simple burglary
- (5) Simple burglary of a pharmacy
- (6) Simple burglary of an inhabited dwelling
- (7) Unauthorized entry of an inhabited dwelling
- (8) Criminal neglect of family
- (9) Criminal abandonment
- (10) Massage; sexual conduct prohibited
- (11) Pandering
- (12) Letting premises for prostitution
- (13) Contributing to the delinquency of juveniles
- (14) Child desertion
- (15) Obscenity

Proposed law repeals present law.

Present law provides that if the results of a criminal history check reveal that a nonlicensed person or any licensed ambulance personnel hired on a temporary basis or any other person who is an employee has been convicted of any of the offenses which would bar employment, the employer shall immediately terminate the person's employment.

Proposed law retains present law.

Present law provides that the employer may waive the provisions of present law, unless the licensed ambulance personnel or nonlicensed person has been convicted of any of the enumerated crimes in present law in which case the employer shall not hire or contract with

such person and shall not grant a waiver to such person. Present law further provides the list of mitigating circumstances for which the employer may grant a waiver of the provisions of present law.

Proposed law repeals present law.

Effective August 15, 2010.

(Amends R.S. 40:1300.53)