

2020 Regular Session

SENATE BILL NO. 510

BY SENATOR BOUIE

EMPLOYMENT. Provides relative to the "Fair Chance Hiring Act". (8/1/20)

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AN ACT

To amend and reenact R.S. 23:291(D)(1) and (E)(2) and R.S. 51:2231(A), 2232, 2236(A), and 2238(1), and to enact R.S. 51:2247.2, relative to the Fair Chance Hiring Act, to provide definitions; to provide relative to the disclosure of criminal background information; to provide prohibitions against discrimination; to provide relative to the hiring of employees or prospective employees with criminal records; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 23:291(D)(1) and (E)(2) and R.S. 51:2231(A), 2232, 2236(A), and 2238(1) are hereby amended and reenacted, and R.S. 51:2247.2 is hereby enacted to read as follows:

§291. Disclosure of employment related information; liability for hiring certain employees; presumptions; causes of action; definitions

* * *

D.(1) Any employer who has conducted a background check of an employee or prospective employee after having obtained written consent from the employee or prospective employee or at the request of the owner or operator of any facility

1 where the employer performs or may perform all or part of its work shall be immune
 2 from civil liability for any and all claims arising out of the disclosure of the
 3 background information obtained. This limitation of liability shall extend to all
 4 claims of the employee based upon a failure to hire, wrongful termination, and
 5 invasion of privacy, as well as all claims of any owner, operator, or any third person
 6 for claims of negligent hiring or negligent retention **except for claims made under**
 7 **the Fair Chance Hiring Act.**

8 * * *

9 E. * * *

10 (2) The provisions of Paragraph (1) of this Subsection shall not apply to ~~any~~
 11 ~~of the following:~~

12 ~~(a) Acts acts of the employee arising out of the course and scope of his~~
 13 ~~employment that give rise to damages or injury when the act is substantially related~~
 14 ~~to the nature of the crime for which the employee was convicted and the employer,~~
 15 ~~general contractor, premises owner, or other third party knew or should have known~~
 16 ~~of the conviction.~~

17 ~~(b) Acts of an employee who has been previously convicted of any crime of~~
 18 ~~violence as enumerated in R.S. 14:2(B) or any sex offense as enumerated in R.S.~~
 19 ~~15:541 and the employer, general contractor, premises owner, or other third party~~
 20 ~~knew or should have known of the conviction.~~

21 * * *

22 §2231. Statement of purpose; limitation on prohibitions against discrimination
 23 because of age

24 A. It is the purpose and intent of the legislature by this enactment to provide
 25 for execution within Louisiana of the policies embodied in the Federal Civil Rights
 26 Act of 1964, 1968, and 1972 and the Age Discrimination in Employment Act of
 27 1967, as amended; and to assure that Louisiana has appropriate legislation
 28 prohibiting discrimination in public accommodations sufficient to justify the deferral
 29 of cases by the federal Equal Employment Opportunity Commission, the secretary

1 of the Louisiana Workforce Commission, and the Department of Justice under those
 2 statutes; to safeguard all individuals within the state from discrimination because of
 3 race, creed, color, religion, sex, age, disability, or national origin in connection with
 4 employment and in connection with public accommodations; to protect their interest
 5 in personal dignity and freedom from humiliation; to make available to the state their
 6 full productive capacities in employment; **to provide a fair opportunity for people**
 7 **with criminal records to obtain employment;** to secure the state against domestic
 8 strife and unrest which would menace its democratic institutions; to preserve the
 9 public safety, health, and general welfare; and to further the interest, rights, and
 10 privileges within the state.

11 * * *

12 §2232. Definitions

13 As used in this Chapter:

- 14 (1) "Commission" means the Louisiana Commission on Human Rights.
- 15 (2) "Commissioner" means a member of the commission.
- 16 (3) **"Criminal history record" means information collected by criminal**
 17 **justice agencies on individuals consisting of identifiable descriptions and**
 18 **notations of arrests, detentions, indictments, bills of information, or any formal**
 19 **criminal charges, and any disposition arising therefrom, including records of**
 20 **juvenile criminal conduct.**

21 **(4)(a)** "Disability" means a physical or mental impairment that substantially
 22 limits one or more of the major life activities of the individual, a record of such
 23 impairment, or being regarded as having such an impairment. For purposes of all
 24 laws which incorporate by reference, apply to, or rely for meaning upon the term
 25 disability as defined herein, the terms used in this definition have the following
 26 meanings:

- 27 (i) "Physical impairment" means any physiological disorder or condition,
 28 cosmetic disfigurement, or anatomical loss affecting one or more of the following
 29 body systems: neurological, musculoskeletal, special sense organs, respiratory,

1 including speech organs, cardiovascular, reproductive, digestive, genito-urinary,
2 hemic and lymphatic, skin, and endocrine.

3 (ii) "Mental impairment" means any mental or psychological disorder, such
4 as intellectual disability, organic brain syndrome, emotional or mental illness, and
5 specific learning disabilities.

6 (iii) "Major life activities" includes functions such as caring for oneself,
7 performing manual tasks, walking, seeing, hearing, speaking, breathing, learning,
8 and working.

9 (b) The following shall not be considered disabilities: homosexuality,
10 bisexuality, transvestism, transexualism, pedophilia, exhibitionism, voyeurism,
11 gender identity disorders not resulting from physical impairments, or other sexual
12 behavior disorders, compulsive gambling, kleptomania, pyromania, psychoactive
13 substance use disorders resulting from current illegal use of drugs, or use of alcohol
14 which adversely affects job performance or conduct.

15 ~~(4)~~**(5)** "Discriminatory practice in connection with employment" means an
16 employment practice prohibited by Chapter 3-A of Title 23 of the Louisiana Revised
17 Statutes of 1950, or by R.S. 23:664.

18 ~~(5)~~**(6)** "Discriminatory practice in connection with public accommodations"
19 means any direct or indirect act or practice of exclusion, distinction, restriction,
20 segregation, limitation, refusal, denial, or any other act or practice of differentiation
21 or preference in the treatment of a person or persons because of race, creed, color,
22 religion, sex, age, disability, or national origin.

23 ~~(6)~~**(7)** "Hearing examiner" means one or more persons or commissioners
24 designated by the commission to conduct a hearing. The commission shall have the
25 sole power to determine qualifications of the examiner.

26 ~~(7)~~**(8)** "National origin" means the national origin of an ancestor.

27 ~~(8)~~**(9)** "Person" means one or more individuals, governments, governmental
28 agencies, public authorities, labor organizations, corporations, legal representatives,
29 partnerships, associations, trustees, trustees in bankruptcy, receivers, mutual

1 companies, joint stock companies, trusts, unincorporated organizations, or other
2 organized groups of persons.

3 ~~(9)~~**(10)** "Place of public accommodation, resort, or amusement" means any
4 place, store, or other establishment, either licensed or unlicensed, which supplies
5 goods or services to the general public or which solicits or accepts the patronage or
6 trade of the general public, or which is supported directly or indirectly by
7 government funds. However, a bona fide private club is not a place of public
8 accommodation, resort, or amusement if its policies are determined solely by its
9 members and its facilities or services are available only to its members and their
10 bona fide guests.

11 ~~(10)~~**(11)** "Unlawful practice" means a discriminatory practice in connection
12 with employment, a discriminatory practice in connection with public
13 accommodations, or any other practice prohibited by this Chapter or by Chapter 3-A
14 of Title 23 of the Louisiana Revised Statutes of 1950.

15 * * *

16 §2236. Parishes and municipalities may prohibit discrimination

17 A. Parishes and municipalities may adopt and enforce ordinances, orders, and
18 resolutions ~~prohibiting~~ **that provide for fair chance hiring and prohibit** all forms
19 of discrimination, including discrimination on the basis of race, creed, color,
20 religion, national origin, sex, disability, or age, and to prescribe penalties for
21 violations thereof, such penalties being in addition to the remedial orders and
22 enforcement herein authorized.

23 * * *

24 §2238. Powers of local commissions

25 A local commission may:

26 (1) Receive, initiate, investigate, hear, and determine charges of violations
27 of ordinances, orders, or resolutions forbidding discrimination **or providing for fair**
28 **chance hiring** adopted by the parish or municipality.

29 * * *

1 **§2247.2 Fair Chance Hiring Act**

2 **A. No employer may inquire about an applicant's criminal background**
3 **unless the applicant has been given a conditional offer of employment. For**
4 **purposes of this Section, "employer" shall have the same meaning as defined in**
5 **R.S. 23:302.**

6 **B. All required criminal background checks for employment shall occur**
7 **after a conditional offer of employment is presented to the prospective**
8 **employee.**

9 **C. In making a final hiring decision, employers may not consider an**
10 **applicant's arrest records and sealed, dismissed, or expunged convictions.**

11 **D. In considering other types of criminal history records, the employer**
12 **shall make an individualized assessment of whether the applicant's criminal**
13 **record has a direct and adverse relationship with the specific duties of the job**
14 **that justifies denying the applicant the position. In making this assessment, the**
15 **employer shall consider all of the following:**

16 **(1) The nature and gravity of the offense or conduct.**

17 **(2) The time that has passed since the offense or conduct and completion**
18 **of the sentence.**

19 **(3) The nature of the job held or sought.**

20 **E. If after the conditional offer of employment, the employer makes a**
21 **preliminary decision that the applicant's criminal record disqualifies the**
22 **applicant from employment, the employer shall notify the applicant of this**
23 **preliminary decision in writing explaining their reasoning, the disqualifying**
24 **conviction(s), the applicant's right to respond within at least five business days,**
25 **and a copy of the conviction history report or documents upon which the**
26 **decision was based.**

27 **F. The applicant shall have at least five business days to respond to the**
28 **notice provided to them under Subsection E of this Section before the employer**
29 **may make a final hiring decision. If the employer hires the applicant, the**

1 minimum five day right to respond period does not apply.

2 G. The employer shall consider information submitted by the applicant
3 pursuant to Subsection F of this Section before making a final hiring decision.

4 Nothing in this Section shall preclude an employer from making a final hiring
5 decision earlier than five business days, should the applicant earlier respond to
6 the notice described in Subsection E of this Section.

7 H. If an employer makes a final decision to deny an application solely or
8 in part because of the applicant's criminal record, the employer shall notify the
9 applicant in writing of the final denial, with or without reasons, and the right
10 to file a complaint with the state or local human rights commission.

11 I. In addition to the remedies contained in this Chapter, an employer
12 that violates this Section shall be subject to a penalty of not more than five
13 thousand dollars for each violation.

14 J. Nothing in this Section shall be construed to override the applicability
15 of the Fair Credit Reporting Act, 15 U.S.C. § 1681.

16 K. This Section shall be known and may be cited as the "Fair Chance
17 Hiring Act."

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

DIGEST

SB 510 Original 2020 Regular Session Bouie

Present law provides that an employer, or the owner of the facility where the employer does his business, who conducts a criminal background check with the employee or prospective employee's written consent is immune from civil liability regarding claims arising out of the disclosure of the background information obtained.

Proposed law retains present law but exempts those claims made pursuant to the Fair Chance Hiring Act from immunity.

Present law provides that an employer, general contractor, premises owner, or other third party shall not be subject to a cause of action for negligent hiring or the improper supervision of an employee or independent contractor who causes damages or injury solely because the employee or independent contractor's criminal conviction.

Proposed law retains present law but makes an employer, general contractor, premises owner, or other third party subject to a cause of action due to an employee or independent contractor who has been previously convicted of a crime of violence as enumerated in R.S. 14:2(B) or any sex offense as enumerated in R.S. 15:541 when the employer or general

contractor knew or should have known of the conviction.

Present law provides that it is the purpose of the legislature to safeguard all individuals within the state from discrimination because of race, creed, color, religion, sex, age, disability, or national origin.

Proposed law retains present law and expands the purpose and intent of the legislature to include a requirement to provide a fair opportunity for people with criminal records to obtain employment.

Present law (R.S. 15:576(2)) defines "criminal history record" as information collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of arrests, detentions, indictments, bills of information, or any formal criminal charges, and any disposition arising therefrom, including sentencing, correctional supervision, and release. Present law further provides that the records of juvenile criminal conduct are not to be included.

Proposed law retains present law but includes records of juvenile criminal conduct.

Present law allows parishes and municipalities to adopt and enforce ordinances, orders, and resolutions prohibiting all forms of discrimination based on race, creed, color, religion, national origin, sex, disability, or age. Present law also allows parishes and municipalities to prescribe penalties for violators.

Proposed law retains present law but adds that parishes and municipalities prohibit discrimination on the basis of an applicant's criminal history.

Present law grants a local commission the power to receive, initiate, investigate, hear, and determine charges of violations of ordinances, orders, or resolution forbidding discrimination adopted by the parish or municipality.

Proposed law retains present law but adds that the local commission may also receive, initiate, hear, and determine whether or not fair chance hiring adopted by the parish or municipality has been violated.

Proposed law authorizes an employer to inquire about a prospective employee's criminal record only after the prospective employee has been given a conditional offer of employment.

Proposed law prohibits employers from considering an applicant's criminal arrest and sealed, dismissed or expunged convictions.

Proposed law authorizes employers to make an individualized assessment of whether the applicant's criminal record has a direct and adverse relationship with the specific duties of the job. Proposed law requires the employer to consider all of the following:

- (1) The nature and gravity of the offense or conduct.
- (2) The time that has passed since the offense or conduct and completion of the sentence.
- (3) The nature of the job held or sought.

Proposed law requires an employer who makes a preliminary decision to disqualify an applicant due to the applicant's criminal record notify the applicant of the decision in writing explaining the reason, the disqualifying conviction, and a copy of the conviction history report upon which the decision was based. Proposed law also provides that an applicant shall be given five days to respond.

Proposed law provides that the response period does not apply if the employer hires the applicant. Proposed law requires the employer to consider information submitted by the applicant prior to making a final hiring decision. If the employer denies the application solely or partly because of the criminal record, the employer must notify the applicant in writing of the final denial and the right to file a complaint with the state or local human rights commission. Proposed law provides that in addition to remedies provided in present law, an employer who violates proposed law shall be subject to a penalty of not more than \$5,000 per violation.

Proposed law shall not be construed to supercede the federal Fair Credit Reporting Act.

Proposed law is to be known and may be cited as the "Fair Chance Hiring Act."

Effective August 1, 2020.

(Amends R.S. 23:291(D)(1) and (E)(2) and R.S. 51:2231(A), 2232, 2236(A), and 2238(1); adds R.S. 51:2247.2)