

2021 Regular Session

HOUSE BILL NO. 480

BY REPRESENTATIVE WILLARD

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

EMPLOYMENT: Provides relative to employment discrimination and creates the Fair Chance Hiring Act

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20

AN ACT

To amend and reenact R.S. 23:291(D)(1) and R.S. 51:2231(A), 2236(A), and 2238(1) and to enact R.S. 51:2232(11) and 2247.2, relative to employment discrimination; to create the Fair Chance Hiring Act; to prohibit discrimination based on criminal history records; to provide for hiring decisions in conjunction with criminal history records; to require notice under certain circumstances; to provide for definitions; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 23:291(D)(1) is hereby amended and reenacted 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 where the employer performs or may perform all or part of its work shall be immune from civil liability for any and all claims arising out of the disclosure of the background information obtained. This limitation of liability shall extend to all claims, except for claims provided for in R.S. 51:2247.2, of the employee based upon a failure to hire, wrongful termination, and invasion of privacy, as well as all claims

1 of any owner, operator, or any third person for claims of negligent hiring or negligent
2 retention.

3 * * *

4 Section 2. R.S. 51:2231(A), 2236(A), and 2238(1) are hereby amended and
5 reenacted and R.S. 51:2232(11) and 2247.2 are hereby enacted to read as follows:

6 §2231. Statement of purpose; limitation on prohibitions against discrimination
7 because of age

8 A. It is the purpose and intent of the legislature by this enactment to provide
9 a fair opportunity for people with criminal history records to obtain employment and
10 to provide for execution within Louisiana of the policies embodied in the Federal
11 Civil Rights Act of 1964, 1968, and 1972 and the Age Discrimination in
12 Employment Act of 1967, as amended; and to assure that Louisiana has appropriate
13 legislation prohibiting discrimination in public accommodations sufficient to justify
14 the deferral of cases by the federal Equal Employment Opportunity Commission, the
15 secretary of the Louisiana Workforce Commission, and the Department of Justice
16 under those statutes; to safeguard all individuals within the state from discrimination
17 because of race, creed, color, religion, sex, age, disability, or national origin in
18 connection with employment and in connection with public accommodations; to
19 protect their interest in personal dignity and freedom from humiliation; to make
20 available to the state their full productive capacities in employment; to secure the
21 state against domestic strife and unrest which would menace its democratic
22 institutions; to preserve the public safety, health, and general welfare; and to further
23 the interest, rights, and privileges within the state.

24 * * *

25 §2232. Definitions

26 * * *

27 (11) "Criminal history record" has the same meaning ascribed in R.S.
28 14:133.7, with the exception that records of juvenile criminal conduct shall be

1 included.

2 * * *

3 §2236. Parishes and municipalities may prohibit discrimination

4 A. Parishes and municipalities may adopt and enforce ordinances, orders,
5 and resolutions providing for fair chance hiring pursuant to R.S. 51:2247.2 and
6 prohibiting all forms of discrimination, including discrimination on the basis of race,
7 creed, color, religion, national origin, sex, disability, or age, and to prescribe
8 penalties for violations thereof, such penalties being in addition to the remedial
9 orders and enforcement herein authorized.

10 * * *

11 §2238. Powers of local commissions

12 A local commission may:

13 (1) Receive, initiate, investigate, hear, and determine charges of violations
14 of ordinances, orders, or resolutions forbidding discrimination, including
15 discrimination on the basis of race, creed, color, religion, national origin, sex,
16 disability, or age, and providing for fair chance hiring pursuant to R.S. 51:2247.2
17 adopted by the parish or municipality.

18 * * *

19 §2247.2 Criminal history; discriminatory practices prohibited

20 A. No employer, when filling a position, shall inquire, including without
21 limitation on an initial application form, about an applicant's criminal history record
22 until after the applicant has been given a conditional offer of employment.

23 B.(1) For the purpose of this Section, an employer is defined as a person,
24 association, or legal or commercial entity receiving services from an employee and,
25 in return, giving compensation of any kind to an employee.

26 (2) This Section does not apply to a state employer as defined in to R.S.
27 42:1701.

1 C. An employer shall not consider an arrest record or charge that did not
2 result in a conviction or consider a sealed, dismissed, set aside, expunged, or
3 pardoned conviction when making a final hiring decision.

4 D. An employer, when considering other types of criminal history records,
5 shall make an individual assessment of whether an applicant's criminal history record
6 has a direct and adverse relationship with the specific duties of the job that may
7 justify denying the applicant the position. When making this assessment, an
8 employer shall consider all of the following:

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

10 (2) The time that has passed between the offense or conduct and completion
11 of the sentence.

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

13 E.(1) If, after the conditional offer of employment, an employer makes a
14 preliminary decision that an applicant's criminal history record disqualifies him from
15 employment, the employer shall notify the applicant, in writing, of this decision
16 along with an explanation of his reasoning for the decision, the disqualifying
17 conviction, the applicant's right to respond within at least five business days, and a
18 copy of the conviction history report or document upon which the decision was
19 based.

20 (2) The applicant shall have at least five business days to respond to the
21 employer's notice before the employer makes a final hiring decision.

22 (3) The employer shall consider any and all information submitted by the
23 applicant before making a final hiring decision.

24 F. If an employer makes a final hiring decision to deny an application in part
25 or solely because of an applicant's criminal history record, the employer shall notify
26 the applicant in writing of the denial and the applicant's right to file a complaint with
27 the state or local human rights commission.

1 G. In addition to the remedies contained in this Chapter, an employer that
 2 violates this Section is subject to a penalty of not more than five thousand dollars for
 3 each violation.

4 H. Nothing in this Section shall be construed to override the applicability of
 5 the Fair Credit Report Act, 15 U.S.C. §1681.

6 Section 3. This Act shall be known as the "Fair Chance Hiring Act".

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 480 Original

2021 Regular Session

Willard

Abstract: Prohibits employment discrimination based on criminal history records and creates the Fair Chance Hiring Act.

Present law provides that an 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 where the employer performs or may perform all or part of its work shall be immune from civil liability for any and all claims arising out of the disclosure of the background information obtained.

Present law further provides that this limitation of liability shall extend to all claims of the employee based upon a failure to hire, wrongful termination, and invasion of privacy, as well as all claims of any owner, operator, or any third person for claims of negligent hiring or negligent retention.

Proposed law retains present law, with the exception that this limitation of liability shall not extend to claims provided for in proposed law.

Present law provides that it is the purpose and intent of the legislature to provide for execution within La. of policies embodied by federal legislation.

Proposed law retains present law and adds that it is the purpose and intent of the legislature to provide a fair opportunity for people with criminal history records to obtain employment.

Present law provides that parishes and municipalities may adopt and enforce ordinances, orders, and resolutions prohibiting all forms of discrimination, including discrimination on the basis of race, creed, color, religion, national origin, sex, disability, or age.

Proposed law retains present law and adds that parishes and municipalities may adopt and enforce ordinances, orders, and resolutions providing for fair chance hiring pursuant to proposed law.

Present law provides that a local human rights commission may receive, initiate, investigate, hear, and determine charges of violations of ordinances, orders, or resolutions forbidding discrimination adopted by the parish or municipality.

Proposed law retains present law and adds that such discrimination can include discrimination on the basis of race, creed, color, religion, national origin, sex, disability, or age. Proposed law further provides that a local commission may receive, initiate, investigate, hear, and determine charges of violations of ordinances, orders, or resolutions providing for fair chance hiring pursuant to proposed law.

Proposed law provides that no employer, when filling a position, shall inquire on an initial application form, about an applicant's criminal history, until after the applicant has been given a conditional offer of employment.

Proposed law provides that an employer shall not consider an arrest record or charge that did not result in a conviction or consider a sealed, dismissed, set aside, expunged, or pardoned conviction when making a final hiring decision.

Proposed law provides that an employer, when considering other types of criminal history records, shall make an individual assessment of whether an applicant's criminal history record has a direct and adverse relationship with the specific duties of the job that may justify denying the applicant the position. Proposed law further provides that when making this assessment, an employer shall consider all of the following:

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

Proposed law provides that if, after the conditional offer of employment, the employer makes a preliminary decision based on the applicant's criminal history record that would disqualify the applicant from employment, the employer shall provide the applicant with written notification of this decision along with an explanation of his reasoning for this decision, the disqualifying conviction, the applicant's right to respond within at least five business days, and a copy of the conviction history report or document upon which the decision was based.

Proposed law provides that an applicant shall have at least five business days to respond to an employer's written notice before the employer makes a final hiring decision.

Proposed law provides that an employer shall consider any and all information submitted by an applicant before making a final hiring decision.

Proposed law provides that if an employer makes a final hiring decision to deny an application in part or solely because of an applicant's criminal history record, the employer shall notify the applicant in writing of the denial and the applicant's right to file a complaint with the state or local human rights commission.

Proposed law provides that in addition to the remedies contained in present law, an employer that violates proposed law is subject to a penalty of \$5,000 for each violation.

Proposed law provides that nothing in proposed law shall be construed to override the applicability of the Fair Credit Report Act, 15 U.S.C. §1681.

Proposed law provides that proposed law shall be known as the "Fair Chance Hiring Act".

(Amends R.S. 23:291(D)(1), and R.S. 51:2231(A), 2236(A), and 2238(1); Adds R.S. 51:2232(11) and 2247.2)