

2021 Regular Session

HOUSE BILL NO. 447

BY REPRESENTATIVE BUTLER

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

HEALTH CARE/FACILITIES: Provides relative to employment in intermediate care facilities on nonlicensed persons convicted of certain offenses

1 AN ACT

2 To enact R.S. 40:1203.3(E), relative to employment of certain nonlicensed persons who  
3 provide health-related services; to provide relative to the prohibition on employment  
4 of such persons who have been convicted of certain offenses; to allow for the  
5 prohibition to be waived in certain instances; and to provide for related matters.

6 Be it enacted by the Legislature of Louisiana:

7 Section 1. R.S. 40:1203.3(E) is hereby enacted to read as follows:

8 §1203.3. Refusal to hire or contract; termination of employment; exemption; appeal  
9 procedure; waiver

10 \* \* \*

11 E.(1) The provisions of this Subsection shall apply exclusively to  
12 nonlicensed persons seeking employment in an intermediate care facility for people  
13 with developmental disabilities that is licensed in accordance with the provisions of  
14 R.S. 40:2180 et seq. The provisions of this Subsection shall not be construed to  
15 apply to any other nonlicensed person or any licensed ambulance personnel.

16 (2) The employer may waive the provisions of this Section unless the  
17 nonlicensed person has been convicted of any crime enumerated in R.S. 14:28.1, 30,  
18 30.1, 31, 34, 34.7, 35.2, 37, 37.1, 37.4, 42, 42.1, 43, 43.1, 44.2, 46.2, 64, 80, 81.2, 93,  
19 93.3, 93.4, or 93.5.

1           (3) If the nonlicensed person has been convicted of any crime identified in  
2           Paragraph (1) of this Subsection, then the employer shall not hire or contract with  
3           such person and shall not grant a waiver to such person.

4           (4) A waiver may be granted for mitigating circumstances, which shall  
5           include but not be limited to:

6           (a) The age of the person when he committed the crime.

7           (b) The circumstances surrounding the crime.

8           (c) The length of time since the conviction.

9           (d) The criminal history of the person since his conviction.

10          (e) The person's work history.

11          (f) The person's current employment references.

12          (g) The person's character references.

13          (h) Direct service worker registry and nurse aide registry records.

14          (i) Other factors demonstrating the ability of the person to perform the  
15          employment responsibilities competently and that the person does not pose a threat  
16          to the health or safety of patients or clients.

17          (5) The granting of a waiver as authorized in this Subsection shall not be  
18          construed as creating an obligation upon an employer to offer permanent  
19          employment to a person.

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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)]

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HB 447 Engrossed

2021 Regular Session

Butler

**Abstract:** Allows intermediate care facilities for people with developmental disabilities to waive provisions prohibiting employment of nonlicensed providers of health-related services who have been convicted of certain offenses.

Present law provides that, for purposes of present law, "nonlicensed person" means any person who is not a licensed health provider and provides for compensation nursing care or other health-related services directly related to patient care to residents in or patients of a nursing facility, intermediate care facility for people with developmental disabilities, adult residential care facility or provider, pediatric day health care facility, adult day health care center, psychiatric residential treatment facility, end stage renal disease facility, behavioral health services provider, home health agency, hospice agency, provider of ambulance

services, hospital, adult brain injury facility, crisis receiving center, pain management clinic, outpatient abortion facility, rural health clinic, ambulatory surgical center, therapeutic group home, forensic supervised transitional residential and aftercare facility, case management provider, or home- and community-based service provider. Provides that "nonlicensed person" also means any person who provides such services to individuals in their own homes as an employee or contract provider of a home health agency, hospice, or home- and community-based service provider. Provides further that "nonlicensed person" also means any other direct service worker as defined in present law and any student or trainee applying for enrollment in a clinical preceptor training program authorized by present law or enrollment in a nurse aide training program approved by the state.

Present law prohibits intermediate care facilities for people with developmental disabilities (ICF/DD) licensed in accordance with present law from hiring any nonlicensed person when the results of a criminal history check reveal that the person has been convicted of any criminal offense enumerated in present law.

Proposed law amends present law to allow ICF/DD to waive the prohibition on employment of nonlicensed persons based on criminal history provided in present law unless the person seeking such employment has been convicted of any of the following crimes:

- (1) Solicitation for murder (R.S. 14:28.1).
- (2) First degree murder (R.S. 14:30).
- (3) Second degree murder (R.S. 14:30.1).
- (4) Manslaughter (R.S. 14:31).
- (5) Aggravated battery (R.S. 14:34).
- (6) Aggravated second degree battery (R.S. 14:34.7).
- (7) Simple battery of persons with infirmities (R.S. 14:35.2).
- (8) Aggravated assault (R.S. 14:37).
- (9) Assault by drive-by shooting (R.S. 14:37.1).
- (10) Aggravated assault with a firearm (R.S. 14:37.4).
- (11) Aggravated rape (R.S. 14:42).
- (12) Second degree rape (R.S. 14:42.1).
- (13) Simple rape (R.S. 14:43).
- (14) Sexual battery (R.S. 14:43.1).
- (15) Aggravated kidnapping of a child (R.S. 14:44.2).
- (16) Human trafficking (R.S. 14:46.2).
- (17) Armed robbery (R.S. 14:64).
- (18) Felony carnal knowledge of a juvenile (R.S. 14:80).
- (19) Molestation of a juvenile or a person with a physical or mental disability (R.S. 14:81.2).

- (20) Cruelty to juveniles (R.S. 14:93).
- (21) Cruelty to persons with infirmities (R.S. 14:93.3).
- (22) Exploitation of persons with infirmities (R.S. 14:93.4).
- (23) Sexual battery of persons with infirmities (R.S. 14:93.5).

Proposed law provides that if the nonlicensed person has been convicted of any crime listed above, then the ICF/DD shall not hire or contract with such person and shall not grant a waiver to such person.

Proposed law provides that a waiver may be granted for mitigating circumstances, which shall include but not be limited to:

- (1) The age of the person when he committed the crime.
- (2) The circumstances surrounding the crime.
- (3) The length of time since the conviction.
- (4) The criminal history of the person since his conviction.
- (5) The person's work history.
- (6) The person's current employment references.
- (7) The person's character references.
- (8) Direct service worker registry and nurse aide registry records.
- (9) Other factors demonstrating the ability of the person to perform the employment responsibilities competently and that the person does not pose a threat to the health or safety of patients or clients.

Proposed law stipulates that the granting of a waiver as authorized in proposed law shall not be construed as creating an obligation upon an employer to offer permanent employment to a person.

(Adds R.S. 40:1203.3(E))

#### Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Health and Welfare to the original bill:

- 1. Limit proposed law such that it would apply exclusively to nonlicensed persons seeking employment in an intermediate care facility for people with developmental disabilities. Stipulate that proposed law shall not be construed to apply to any other nonlicensed person or any licensed ambulance personnel.
- 2. Add the following to the set of crimes for which conviction disqualifies a nonlicensed person from employment in in an intermediate care facility for people with developmental disabilities:
  - a. Solicitation for murder (R.S. 14:28.1).
  - b. First degree murder (R.S. 14:30).

- c. Second degree murder (R.S. 14:30.1).
- d. Aggravated rape (R.S. 14:42).
- e. Simple rape (R.S. 14:43).
- f. Human trafficking (R.S. 14:46.2).