

2021 Regular Session

SENATE RESOLUTION NO. 100

BY SENATOR FOIL

LEGIS POWERS/FUNCTIONS. Requests the Law Institute to study and make recommendations relative to certain collateral consequences faced by persons with criminal records.

1 A RESOLUTION

2 To urge and request the Louisiana State Law Institute to study and make recommendations  
3 relative to collateral consequences that can hinder persons with criminal records  
4 from obtaining employment or occupational licenses.

5 WHEREAS, there are many barriers associated with a criminal record, including  
6 difficulty in finding gainful employment and obtaining occupational licenses; and

7 WHEREAS, while Louisiana law generally prohibits the denial of licensure based  
8 upon a criminal conviction that is not "directly related" to the licensed activity, twenty-seven  
9 licensing bodies are exempt from these general limitations on conviction-based  
10 disqualification, including most health care related boards, and there are no general  
11 limitations on the imposition of these structural barriers to employment or business  
12 licensure; and

13 WHEREAS, Louisiana law places no general limits on the age of convictions that  
14 may be considered by employers or licensing bodies; and

15 WHEREAS, more than five hundred of the employment-related collateral  
16 consequences imposed by Louisiana law may be triggered by any felony whatsoever, and  
17 more than two hundred may be triggered by any crime at all; and

18 WHEREAS, Louisiana law does not generally require individualized consideration

1 of applicants and their convictions in private employment or licensing determinations; and

2 WHEREAS, few employment and licensing applications provide specific  
3 information as to whether or how criminal history is considered, even those that inform  
4 applicants that background checks may be required; and

5 WHEREAS, there is scant online information about how criminal history is  
6 considered by employers and licensing bodies; and

7 WHEREAS, Louisiana law does not require employers to provide prospective  
8 applicants with a list of the specific offenses that may be disqualifying; and

9 WHEREAS, Louisiana law does not generally require licensing bodies to identify  
10 the specific convictions that may result in a discretionary denial; and

11 WHEREAS, Louisiana law does not generally require or authorize a process for  
12 determining pre-application eligibility for employment or licensing; and

13 WHEREAS, although the law governing consideration of convictions for public  
14 employment in unclassified positions suggests that an individualized approach should be  
15 taken, it falls short of actually requiring it; and

16 WHEREAS, while Louisiana law generally requires occupational and professional  
17 licensing bodies to provide applicants who are denied licensure due to a conviction with  
18 written notice describing the reasons for denial, this requirement does not apply to the  
19 twenty-seven licensing bodies not already subject to the general prohibitions on  
20 conviction-based disqualification; and

21 WHEREAS, Louisiana law does not generally provide accessible pathways to appeal  
22 or review that are specific to conviction-based licensing or public employment denials; and

23 WHEREAS, although review may be available under the state's general  
24 administrative laws, this review process can be complex, costly, and prolonged; and

25 WHEREAS, while long-term relief for persons with a criminal history is most  
26 commonly available in the form of expungement, Louisiana does not offer generally  
27 applicable near-term relief from structural barriers to employment or licensure, either in the  
28 form of certificates of relief or other mechanisms that mitigate the impact of these structural  
29 barriers; and

30 WHEREAS, while expungement may be granted without a hearing so long as no

1 objections are brought by law enforcement or the prosecution, it is not automatic and is  
2 available only upon petition to the court; and

3 WHEREAS, expungement can be prohibitively costly for some persons, and can be  
4 burdensome for those seeking expungement without an attorney because of the  
5 documentation and filing requirements, complex eligibility determinations, and the fact that  
6 a hearing may be required in some cases; and

7 WHEREAS, although expungement shields the record from public access and  
8 prohibits a person from being required to disclose an expunged conviction, Louisiana law  
9 does not explicitly prohibit employers or licensing bodies from considering convictions that  
10 have been expunged, and expungement law specifically gives many licensing bodies the  
11 authority to access expunged records; and

12 WHEREAS, the legislature could benefit from a comprehensive review of  
13 Louisiana's laws relative to collateral consequences that can hinder a person with a criminal  
14 record from obtaining employment or an occupational license.

15 THEREFORE, BE IT RESOLVED that the Senate of the Legislature of Louisiana  
16 does hereby urge and request the Louisiana State Law Institute to review and study  
17 Louisiana's laws relative to collateral consequences of a criminal record on a person's ability  
18 to obtain employment or an occupational license, in order to determine any need to amend  
19 or clarify existing law, or enact new laws, that might negate or mitigate these collateral  
20 consequences, and to make recommendations for proposed legislation to further this goal.

21 BE IT FURTHER RESOLVED that this study should include, but not be limited to,  
22 recommendations for legislation that would:

23 (1) Allow employers and licensing bodies greater flexibility in deciding whether to  
24 employ or grant licenses to persons with convictions, and allow applicants and employees  
25 to be free from collateral consequences after a reasonable period of time.

26 (2) Align offenses that trigger collateral consequences with valid public safety  
27 concerns.

28 (3) Promote fair, consistent application of discretionary consequences.

29 (4) Promote transparency relative to how an applicant's or employee's criminal record  
30 is likely to impact employment and licensing opportunities.

1           (5) Expand the availability and effect of near-term and long-term relief mechanisms.

2           BE IT FURTHER RESOLVED that the Louisiana State Law Institute shall submit  
3 a report detailing the results of its study and its recommendations for proposed legislation  
4 to the legislature no later than February 1, 2022.

5           BE IT FURTHER RESOLVED that a copy of this Resolution be transmitted to the  
6 director of the Louisiana State Law Institute.

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The original instrument and the following digest, which constitutes no part  
of the legislative instrument, were prepared by Alden A. Clement Jr.

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SR 100 Original	DIGEST 2021 Regular Session	Foil
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Requests the Louisiana State Law Institute to study and make recommendations relative to collateral consequences that can hinder persons with criminal records from obtaining employment or an occupational license and requires a report to the legislature no later than 2/1/22.