

2016 Regular Session

HOUSE BILL NO. 349

BY REPRESENTATIVE EMERSON

STATE EMPLOYEES: Provides with respect to inquiries about criminal background checks in certain public employment situations

1 AN ACT

2 To enact Chapter 29 of Title 42 of the Louisiana Revised Statutes of 1950, to be comprised  
3 of R.S. 42:1701 and 1702, relative to state employment; to provide relative to the  
4 consideration of criminal history in such employment; to prohibit certain conduct;  
5 to provide for applicability; and to provide for related matters.

6 Be it enacted by the Legislature of Louisiana:

7 Section 1. Chapter 29 of Title 42 of the Louisiana Revised Statutes of 1950,  
8 comprised of R.S. 42:1701 and 1702, is hereby enacted to read as follows:

9 CHAPTER 29. REDUCING BARRIERS TO EMPLOYMENT

10 §1701. Definitions

11 For the purposes of this Chapter, the following terms shall have the following  
12 meanings:

13 (1) "Applicant" means any person considered for or who requests to be  
14 considered for employment with a state agency or who is requested by a public  
15 employer to consider employment with a state agency or a different position with a  
16 state agency.

17 (2) "State agency" means an agency, department, division, board, committee,  
18 or other organizational unit of the state.

1        §1702. Use of conviction history in state agency hiring decisions

2            A. Unless the employment of a person with a specific criminal conviction  
3        for a particular position is prohibited by state or federal law, no state agency shall  
4        advertise a position of employment with a statement that a person with a criminal  
5        record may not apply for the position.

6            B. Except for inquiring into a conviction for a crime of violence or sex  
7        offense, a state agency shall not ask an applicant to disclose information concerning  
8        his criminal conviction history, either on an employment application or verbally,  
9        prior to the applicant being given an opportunity to interview for the position or, if  
10       no such interview is to be conducted, until after the applicant has been given a  
11       conditional offer of employment.

12           C.(1) Except as provided in Paragraph (2) of this Subsection, this Chapter  
13        shall apply to each position in the unclassified service.

14           (2) This Chapter shall not apply to the following:

15           (a) Any position for which a criminal background check is required by law.

16           (b) Any position in law enforcement or corrections.

17           (c) Any position for which the employee is required to exercise a substantial  
18        degree of trust or responsibility over public funds.

19           D. This Section shall not be construed to prevent or prohibit a state agency  
20        from conducting a criminal conviction history background check on any applicant  
21        for public employment.

22           E. If, after inquiring into the criminal history of an applicant, a state agency  
23        determines the applicant has been convicted of a crime, the state agency shall  
24        consider the following factors in evaluating whether the conviction disqualifies the  
25        applicant for the position:

26           (1) The nature of the conviction.

27           (2) Whether there is a direct relationship between the conviction and the  
28        position's duties and responsibilities and the bearing, if any, the conviction may have  
29        on the applicant's fitness or ability to perform one or more such duties and

1 responsibilities, and whether the duties of employment would place any person or  
2 the state agency in a vulnerable position.

3 (3) Any information regarding the applicant's rehabilitation and post-  
4 conviction conduct.

5 (4) The time that has elapsed since the conviction.

6 Section 2. The Legislature of Louisiana hereby encourages and requests the State  
7 Civil Service Commission to establish the same or substantially similar provisions as  
8 provided in Section 1 of this Act for each position in the classified service within its civil  
9 service system.

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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 349 Original

2016 Regular Session

Emerson

**Abstract:** With specified exceptions, prohibits a state agency from inquiring about an applicant for employment's criminal history until after an interview or a conditional offer of employment is made. Provides for the consideration of criminal history in making employment decisions.

Proposed law provides that unless the employment of a person with a specific criminal conviction for a particular position is prohibited by law, no state agency shall advertise a position of employment with a statement that a person with a criminal record may not apply for the position. Further, except for inquiring into a conviction for a crime of violence or sex offense, prohibits a state agency from asking an applicant to disclose information concerning his criminal conviction history, on an employment application or verbally, prior to the applicant being given an opportunity to interview for the position or, if no such interview is to be conducted, until after the applicant has been given a conditional offer of employment. Proposed law defines for its purposes "applicant" and "state agency".

Proposed law specifies that it applies to each position in the unclassified service and specifically excludes from its application any position for which a criminal background check is required by law; any position in law enforcement or corrections; and any position for which the employee is required to exercise a substantial degree of trust or responsibility over public funds. Further specifies that proposed law shall not be construed to prevent or prohibit a state agency from conducting a criminal conviction history background check on any applicant for public employment.

Proposed law requires a state agency that determines an applicant has been convicted of a crime to consider the following factors in evaluating whether the conviction disqualifies the applicant for the position:

- (1) The nature of the conviction.
- (2) If there is a relationship between the conviction and the position's duties and responsibilities and the bearing the conviction may have on the fitness or ability to

perform such duties and responsibilities, and whether the duties of employment would place any person or the state agency in a vulnerable position.

- (3) Any information regarding the applicant's rehabilitation and good conduct.
- (4) The time that has elapsed since the conviction.

Further provides that the legislature encourages and requests the State Civil Service Commission to establish the same or substantially similar provisions as provided in proposed law for each position in the classified service within its civil service system.

(Adds R.S. 42:1701 and 1702)