



LOUISIANA STATE LAW INSTITUTE

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January 26, 2022

Senator Patrick Page Cortez
President of the Senate
P.O. Box 94183
Baton Rouge, Louisiana 70804

RE: SENATE RESOLUTION NO. 100 OF THE 2021 REGULAR SESSION

Dear Mr. President:

The Louisiana State Law Institute respectfully submits its interim report to the legislature relative to employment-related collateral consequences.

Sincerely,

A handwritten signature in blue ink, appearing to read "Guy Holdridge".

Guy Holdridge
Director

cc: Senator Regina Barrow
Senator Franklin J. Foil
Senator Rick Ward, III

email cc: David R. Poynter Legislative Research Library
drplibrary@legis.la.gov

Secretary of State, Mr. R. Kyle Ardoin
admin@sos.louisiana.gov

**LOUISIANA STATE LAW INSTITUTE
EMPLOYMENT LAW COMMITTEE**

**INTERIM REPORT TO THE LEGISLATURE IN RESPONSE TO
SR NO. 100 OF THE 2021 REGULAR SESSION**

Relative to employment-related collateral consequences

Prepared for the
Louisiana Legislature on

January 26, 2022

Baton Rouge, Louisiana

SENATE RESOLUTION NO. 100

BY SENATORS FOIL, BARROW AND WARD

A RESOLUTION

To urge and request 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 occupational licenses.

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

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

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

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

WHEREAS, Louisiana law does not generally require individualized consideration of applicants and their convictions in private employment or licensing determinations; and

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

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

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

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

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

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

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

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

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

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

WHEREAS, while expungement may be granted without a hearing so long as no objections are brought by law enforcement or the prosecution, it is not automatic and is available only upon petition to the court; and

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

WHEREAS, although expungement shields the record from public access and prohibits a person from being required to disclose an expunged conviction, Louisiana law

does not explicitly prohibit employers or licensing bodies from considering convictions that have been expunged, and expungement law specifically gives many licensing bodies the authority to access expunged records; and

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

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

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

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

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

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

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

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

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

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

PRESIDENT OF THE SENATE

January 26, 2022

To: Senator Patrick Page Cortez
President of the Senate
P.O. Box 94183
Baton Rouge, Louisiana 70804

**INTERIM REPORT TO THE LEGISLATURE
IN RESPONSE TO SR NO. 100 OF THE 2021 REGULAR SESSION**

Senate Resolution No. 100 of the 2021 Regular Session urges and 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 occupational licenses in order to determine any need to amend or clarify existing law, or to enact new laws, that might negate or mitigate these collateral consequences.

The resolution further requests that the study include recommendations for legislation that would provide greater flexibility to employers and licensing bodies, align offenses that trigger collateral consequences with public safety concerns, promote the fair and consistent application of discretionary consequences, promote transparency with respect to how criminal records are likely to impact employment and licensing opportunities, and expand the availability and effect of both short- and long-term relief mechanisms.

In response to this request, the Law Institute created a new Employment Law Committee and placed it under the direction of Professor William R. Corbett of the LSU Paul M. Hebert Law Center as Reporter. The membership of the Committee is currently being finalized, and in the meantime, background information is being compiled and preliminary research is being conducted with respect to the hundreds of employment-related collateral consequences mentioned in the resolution.

The Committee plans to meet over the coming year to discuss this background information and preliminary research and to begin formulating its recommendations in response to the resolution. A final report will be submitted to the Legislature once the Committee's recommendations have been approved by the Law Institute's Council.