

HR 222 Report, 2016 Regular Session

Criminal History and Security Checks

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Louisiana Department of Health (LDH)

Bureau of Legal Services

January 31, 2017





State of Louisiana
Louisiana Department of Health
Bureau of Legal Services

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LOUISIANA HOUSE OF REPRESENTATIVES
900 North Third Street
Baton Rouge, Louisiana 70804

RE: HR 222 of the 2016 Regular Session

Dear Honorable Members of the Louisiana House of Representatives:

Thank you for the opportunity to respond to House Resolution 222 of the 2016 Regular Session, regarding criminal history and security checks. The Louisiana Department of Health hopes that the information and recommendation contained in this correspondence will assist healthcare agencies in providing for the safety and welfare of the patients and clients they serve.

Pursuant to House Resolution 222 (HR 222) of the 2016 Regular Session of the Louisiana Legislature, the Louisiana Department of Health (formerly, Department of Health and Hospitals) was urged and requested to evaluate and report on the economic impact of prospective employee criminal background check costs on licensed healthcare agencies. HR 222 noted that La. R.S. 40:1203.2 "requires a healthcare agency licensed by the Department of Health and Hospitals to request a criminal history and security check be conducted prior to making an offer to employ or to contract with a nonlicensed person or licensed ambulance personnel to provide nursing care, health-related services, medic services, or supportive assistance to any individual" and noted that a fee of twenty-six dollars was associated with this criminal history check. HR 222 also cited R.S. 23:897, regarding costs that employers are required to pay.

After a review of the applicable statutes, it is the opinion of the Louisiana Department of Health (LDH) that La. R.S. 23:897 does not establish a prohibition against employers from requiring an applicant for employment to pay the cost of the criminal history and security check mandated in La. R.S. 40:1203.2. Rather, La. R.S. 23:897 states that employers are prohibited from requiring a prospective employee from paying the costs of fingerprinting, medical exams, and drug tests required by the employer as a condition of employment. In the case of the criminal history and security checks mandated by La. R.S. 40:1203.2, the legislature has required the criminal history and security checks;

these legislatively mandated criminal history and security checks are now required by law. No discretion is left to the employer, and as such, these criminal history and security checks are not “required” by the employer but required by law. Therefore, it is the opinion of LDH that the employer is not prohibited from passing such costs of the criminal history and security check to the prospective employee.

To ensure that there is uniform understanding across healthcare agencies regarding such criminal history and security checks mandated by La. R.S. 40:1203.2, it is the recommendation of the LDH that legislation be enacted to amend La. R.S. 40:1203.2 et seq. to include a provision that conclusively establishes the ability of the healthcare agency to impose the fees/costs on the person seeking employment – much like institutions of postsecondary education have done in La. R.S. 15:587.2. Suggested draft language for a bill is attached.

If you have any questions or would like to discuss further, please do not hesitate to contact Tonya Joiner, LDH Legislative Liaison at (225) 342-5274 or (225) 329-6886.

Sincerely,



Stephen Russo
LDH Executive Counsel

SR/klh

Enclosures

cc: Honorable Frank A. Hoffman
Kimberly Humbles, LDH General Counsel
Cecile Castello, LDH Health Standards
Mark A. Thomas, LDH OCDD Assistant Secretary
Tara LeBlanc, LDH OAAS Assistant Secretary
Tonya Joiner, LDH Legislative & Governmental Relations

HOUSE BILL NO. _____

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

AN ACT

Be it enacted by the Legislature of Louisiana:

§1203.2. Employment of nonlicensed persons and licensed ambulatory personnel; mandatory criminal history and security checks; temporary employment; notice to applicants

* * * *

(B)(2) An employer or authorized agency shall pay a fee of twenty-six dollars to the office for a search of the office's criminal history files on an applicant for employment. The employer or authorized agency may impose any or all of such fees or costs on the person seeking employment with the employer or authorized agency.

Section 2. This Act shall become effective upon signature by the Governor or, if not signed by the Governor, upon expiration of the time for bills to become law without signature by the Governor, as provided in Article III, Section 18 of the Constitution of Louisiana. If vetoed by the Governor and subsequently approved by the Legislature, this Act shall become effective on the day following such approval.