HLS 18RS-1033 ENGROSSED

2018 Regular Session

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HOUSE BILL NO. 402

BY REPRESENTATIVE EDMONDS

EMPLOYMENT: Provides for the reimbursement of the cost of certain preemployment examinations, testing, or background checks

1 AN ACT 2 To amend and reenact R.S. 23:634(B) and to enact R.S. 23:897(N), relative to 3 preemployment criminal background checks; to provide for reimbursement of costs 4 associated with employment in certain circumstances; and to provide for related 5 matters. 6 Be it enacted by the Legislature of Louisiana: 7 Section 1. R.S. 23:634(B) is hereby amended and reenacted and R.S. 23:897(N) is 8 hereby enacted to read as follows: 9 §634. Contract forfeiting wages on discharge unlawful 10

B. Nothing in Subsection A of this Section or in R.S. 23:631(A) shall prohibit an employer from requiring an applicant for employment who becomes an employee or an employee, provided the employee is compensated at a rate equivalent to not less than one dollar above the existing federal minimum wage and is not a part-time or seasonal employee as defined in R.S. 23:1021, to sign a contract providing that the costs of such individual's preemployment medical examination, criminal background check, or drug test may be withheld from his wages if he resigns within ninety working days from his first day of work, and, upon resignation, withholding such costs, unless such resignation is attributable to a substantial change

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CODING: Words in struck through type are deletions from existing law; words <u>underscored</u> are additions.

1	made to the employment by the employer as applied in the Louisiana Employment
2	Security Law.
3	* * *
4	§897. Medical and other examinations; fingerprinting; background checks;
5	requiring employee to pay for, prohibited; costs paid; enforcement of
6	provisions; civil and criminal penalties
7	* * *
8	N.(1) Notwithstanding any other provision of law to the contrary, an
9	employer shall have a right of reimbursement for the costs of a preemployment
10	criminal background check if all of the following conditions are met:
11	(a) The background check is required by law.
12	(b) The employee terminates the employment relationship sooner than ninety
13	working days after his first day of work or never reports to work.
14	(c) The employee is compensated at a rate equivalent to not less than one
15	dollar above the federal minimum hourly wage rate set by Section 6 of the federal
16	Fair Labor Standards Act of 1938, or a successor federal law.
17	(d) The employee is not a part-time or seasonal employee as defined in R.S.
18	<u>23:1021.</u>
19	(2) The provisions of this Subsection shall not apply and no reimbursement
20	shall be owed if an employee terminates the employment relationship due to a
21	substantial change to the employment situation pursuant to the Louisiana
22	Employment Security Law.

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)]

HB 402 Engrossed

2018 Regular Session

Edmonds

Abstract: Provides for reimbursement of the costs associated with a preemployment criminal background check in certain circumstances.

<u>Present law</u> provides that it is unlawful for any public or private employer to require any employee to pay for any of the following costs:

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- (1) Fingerprinting.
- (2) Medical examination or a drug test.
- (3) The furnishing of any records available to the employer or required by the employer as a condition of employment.

<u>Present law</u> provides that whoever violates <u>present law</u> will be fined not more than \$100 or imprisoned for not more than 90 days, or both.

<u>Present law</u> provides that, in addition to criminal penalties, <u>present law</u> provides that the employer who violates <u>present law</u> shall be subject to a civil penalty of up to \$500 and liable for reasonable litigation expenses not exceeding \$7,500.

Proposed law retains present law.

<u>Present law</u> provides an exception in that an employer has a right of reimbursement from an employee or an applicant for the costs of the employee's preemployment medical examination or drug test provided that the employee meets all of the following criteria:

- (1) The employee is compensated at a rate equivalent to not less than \$1 above the existing federal minimum wage.
- (2) The employee is not a part-time or seasonal employee.
- (3) The employee terminates the employment relationship sooner than 90 working days after his first day of work or never reports to work, unless such termination is attributable to a substantial change made to the employment by the employer for purpose of unemployment compensation.

<u>Proposed law</u> retains <u>present law</u> but adds the costs attributable to criminal background checks to the list of costs for which an employee may be charged if the criminal background check is required by law as a condition of employment.

<u>Present law</u> provides that an employer may ask an employee to sign a contract which allows the employer to withhold the costs associated with a medical examination or drug test if the employee resigns within 90 working days, unless the resignation is attributable to a substantial change in the employment and if the employee's pay rate is at least one dollar above the federal minimum wage rate. <u>Proposed law</u> retains <u>present law</u> and adds costs associated with a criminal background check to costs that may be withheld pursuant to present law.

(Amends R.S. 23:634(B); Adds R.S. 23:897(N))

Summary of Amendments Adopted by House

The Committee Amendments Proposed by <u>House Committee on Labor and Industrial</u> <u>Relations</u> to the <u>original</u> bill:

1. Provide that an employer may ask an employee to sign a contract that would allow the employer to withhold the costs associated with conducting a criminal background check if the employee resigns within 90 days, unless the resignation is pursuant to a substantial change in the employment, if the employee earns at least one dollar above the federal minimum wage rate.