

1 SB134  
2 164358-2  
3 By Senators Ross, Figures, Singleton, Dunn, Coleman, Beasley,  
4 Smitherman, and Sanders  
5 RFD: Fiscal Responsibility and Economic Development  
6 First Read: 03-MAR-15

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8 SYNOPSIS: Under existing law, there is no Alabama  
9 statute prohibiting an employer from discriminating  
10 against a job applicant based on the applicant's  
11 criminal record or a licensing authority from  
12 discriminating against an applicant for a license  
13 based on the applicant's criminal conviction  
14 record.

15 This bill would prohibit employers from  
16 inquiring into or considering an applicant's  
17 conviction history for consideration of a job until  
18 after the applicant has received a conditional job  
19 offer, except when a conviction is directly related  
20 to the position of employment sought.

21 This bill would prohibit licensing  
22 authorities from inquiring into or considering an  
23 applicant's conviction history for consideration of  
24 a license until after the applicant is found to be  
25 otherwise qualified for a license, except when a  
26 conviction is directly related to the occupation  
27 for which the license is sought.

1                   This bill would require employers to  
2                   maintain certain employment and hiring records  
3                   relating to the conviction history of employees and  
4                   job applicants.

5                   This bill would also authorize the  
6                   Department of Labor to enforce the provisions of  
7                   this act.

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9                                           A BILL  
10                                          TO BE ENTITLED  
11                                          AN ACT

12  
13                   Relating to criminal convictions; to prohibit  
14                   employers from inquiring into or considering an applicant's  
15                   conviction history for consideration of a job until after the  
16                   applicant has received a conditional job offer, except when a  
17                   conviction is directly related to the position of employment  
18                   sought; to prohibit licensing authorities from inquiring into  
19                   or considering an applicant's conviction history for  
20                   consideration of a license until after the applicant is found  
21                   to be otherwise qualified for a license, except when a  
22                   conviction is directly related to the occupation for which the  
23                   license is sought; to require employers to maintain certain  
24                   employment and hiring records relating to the conviction  
25                   history of employees and job applicants; and to authorize the  
26                   Department of Labor to enforce the provisions of this act.  
27                   BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

1           Section 1. The Legislature finds and declares that  
2           reducing barriers to employment for people with arrest and  
3           conviction records and decreasing unemployment in communities  
4           with concentrated numbers of people with criminal conviction  
5           records are matters of statewide concern. The Legislature  
6           further finds and declares that increasing employment  
7           opportunities for people with records will reduce recidivism  
8           and improve economic stability in our communities.

9           Section 2. As used in this act, the following words  
10          shall have the following meanings:

11           (1) APPLICANT. Any individual considered for, or who  
12          requests to be considered for, employment or any employee  
13          considered for, or who requests to be considered for, another  
14          employment position by the employer.

15           (2) EMPLOYER. The state, or the agencies or  
16          political subdivisions thereof, any person in the state that  
17          employs four or more individuals, any person that is acting in  
18          the interest of an employer directly or indirectly, or any  
19          person that undertakes for compensation the procurement of  
20          employees or opportunities for employment.

21           (3) HIRING AUTHORITY. The person, board, commission,  
22          or department of the state, or the agencies or political  
23          subdivisions thereof, responsible by law for hiring  
24          individuals for public employment.

25           (4) LICENSE. A license, permit, certificate,  
26          registration, or other means required to engage in an  
27          occupation which is granted or issued by the state, or the

1 agencies or political subdivisions thereof, before an  
2 individual may pursue, practice, or engage in any occupation.

3 (5) LICENSING AUTHORITY. The person, board,  
4 commission, or department of the state, or the agencies or  
5 political subdivisions thereof, responsible by law for the  
6 licensing of individuals for occupations.

7 (6) OCCUPATION. An occupation, trade, vocation,  
8 profession, business, or employment of any kind for which a  
9 license is required to be issued by the state, or the agencies  
10 or political subdivisions thereof.

11 Section 3. (a) The following criminal records may  
12 not be used, distributed, or disseminated by the state, or the  
13 agencies or political subdivisions thereof, in connection with  
14 any application for employment or in connection with an  
15 application for a license:

16 (1) Arrest not followed by a valid conviction.

17 (2) Convictions that have been sealed, dismissed, or  
18 expunged.

19 (3) Infractions or misdemeanor convictions for which  
20 no jail sentence may be imposed.

21 (b) Any information pertaining to an applicant's  
22 background check obtained in conjunction with the hiring  
23 process shall remain confidential, and may not be used,  
24 distributed, or disseminated by the state, or the agencies or  
25 political subdivisions thereof, except as otherwise required  
26 by law.

1           Section 4. (a) An employer or hiring authority may  
2 not inquire into or consider an applicant's conviction history  
3 until after the applicant has received a conditional offer.

4           (b) A licensing authority may not inquire into or  
5 consider the conviction history of an applicant for licensing  
6 until after an applicant is found to be otherwise qualified  
7 for the license.

8           (c) Job applications and licensing applications may  
9 not inquire into an applicant's conviction history.

10          Section 5. (a) An individual may not be disqualified  
11 from employment or disqualified from pursuing, practicing, or  
12 engaging in any occupation for which a license is required  
13 solely or in part because of a prior conviction, unless a  
14 conviction is directly related to the position of employment  
15 sought or to the occupation for which the license is sought.  
16 If a law explicitly requires that certain convictions are an  
17 automatic bar to employment or licensing, then those  
18 convictions shall be considered.

19          (b) In determining whether a conviction directly  
20 relates to the position of employment sought or the occupation  
21 for which the license is sought, the employer, hiring  
22 authority, or licensing authority shall consider:

23           (1) Whether the conviction is directly related to  
24 the duties and responsibilities of that employment position or  
25 occupation.

26           (2) Whether the position or occupation offers the  
27 opportunity for the same or a similar offense to occur.

1           (3) Whether circumstances leading to the conduct for  
2 which the individual was convicted will recur in the position  
3 or occupation.

4           (4) The length of time since the offense occurred.

5           Section 6. (a) If the employer, hiring authority, or  
6 licensing authority intends to deny an applicant a position of  
7 employment or intends to disqualify an applicant from  
8 pursuing, practicing, or engaging in any occupation for which  
9 a license is required solely or in part because of the  
10 applicant's prior conviction, the employer, hiring authority,  
11 or licensing authority, prior to a final decision, shall  
12 provide the applicant written notification of the following:

13           (1) The specific conviction or convictions that are  
14 the basis for the potential denial or disqualification.

15           (2) A copy of the conviction history report, if any.

16           (3) Examples of mitigation or rehabilitation  
17 evidence that the applicant may voluntarily provide.

18           (b) An applicant who has been convicted of an  
19 offense that directly relates to the employment sought or to  
20 the occupation for which a license is sought may not be  
21 disqualified from the employment or occupation if the  
22 applicant can show evidence of mitigation or rehabilitation  
23 and present proof of fitness to perform the duties of the  
24 employment sought or the occupation for which the license is  
25 sought.

26           (c) The applicant shall have 10 business days after  
27 the issuance of the notice to respond with any information

1 challenging the accuracy of the information and submitting  
2 mitigation or rehabilitation evidence. The employer or hiring  
3 authority shall hold the position open until it makes the  
4 final employment decision based on an individualized  
5 assessment of the information submitted by the applicant and  
6 factors recommended by the U.S. Equal Employment Opportunity  
7 Commission.

8 (d) Evidence of mitigation or rehabilitation may be  
9 established by either of the following:

10 (1) Evidence showing that at least one year has  
11 elapsed since release from any correctional institution  
12 without subsequent conviction of a crime and evidence showing  
13 compliance with terms and conditions of probation or parole.

14 (2) Other evidence of mitigation or rehabilitation  
15 and proof of fitness to perform including, but not limited to,  
16 letters of reference.

17 (e) If an employer, hiring authority, or licensing  
18 authority denies an applicant a position of employment or  
19 disqualifies an applicant from pursuing, practicing, or  
20 engaging in any occupation for which a license is required,  
21 solely or in part because of the applicant's prior conviction,  
22 the employer, hiring authority, or licensing authority shall  
23 provide written notification to the applicant including the  
24 following:

25 (1) The final denial or disqualification.

26 (2) The appeal process.



1           (3) Whether the applicant may be eligible for other  
2 employment or occupation.

3           (4) The earliest date the applicant may reapply for  
4 a position of employment or a license.

5           Section 7. (a) It shall be the policy of the state  
6 to do business only with contractors that have adopted and  
7 employ written policies, practices, and standards that are  
8 consistent with the requirements of Sections 1 to 6,  
9 inclusive, of this act.

10           (b) State agencies shall review all contractors'  
11 background check policies for consistency with the policies of  
12 the state as expressed in Sections 1 to 6, inclusive, of this  
13 act, and shall consider background check policies and  
14 practices among the performance criteria in evaluating a  
15 contract.

16           Section 8. (a) The Department of Labor shall be  
17 responsible for enforcing the provisions of this act. Any  
18 person who is aggrieved by an employer's violation of this act  
19 may contact the Department of Labor to report any problems,  
20 concerns, or suggestions regarding the implementation,  
21 compliance, and impact of the provisions of this act, and the  
22 department shall keep a record. In addition, the Department of  
23 Labor shall conduct periodic reviews to assess compliance with  
24 this act. The Department of Labor shall investigate and review  
25 complaints and maintain records detailing complaints and their  
26 disposition.

1 (b) An employer shall retain for a minimum of three  
2 years application forms, records of employment, and other  
3 pertinent data and records required under Sections 1 to 6,  
4 inclusive, of this act, including, but not limited to,  
5 communication with the applicant, and shall allow the  
6 Department of Labor access to such records to monitor  
7 compliance. In addition, the employer shall maintain a record  
8 of all of the following:

9 (1) The number of positions requiring background  
10 checks.

11 (2) The number of applicants for positions described  
12 in subdivision (1) who were provided a conditional offer.

13 (3) The number of applicants with a conviction  
14 record who were notified by the employer that the applicant's  
15 conviction record may disqualify the applicant, as provided in  
16 subsection (a) of Section 6 of this act.

17 (4) The number of applicants described in  
18 subdivision (3) who provided evidence of mitigation or  
19 rehabilitation.

20 (5) The number of applicants described in  
21 subdivision (4) who were hired.

22 (c) Public employers shall also regularly conduct a  
23 confidential, anonymous survey of employees in public  
24 employment in which background checks are not conducted to  
25 determine the number of individuals with conviction records  
26 who are hired.

1 (d) An appeal, complaint, or grievance concerning a  
2 violation of the provisions of this act by a public employer  
3 shall be processed and adjudicated in accordance with  
4 established state procedures.

5 (e) The Department of Labor shall conduct an audit  
6 to review the state's hiring practices in an effort to ensure  
7 that people with records are not unreasonably denied  
8 employment with the state.

9 (f) The Department of Labor may issue a fine of up  
10 to one thousand dollars (\$1,000) for a first violation of  
11 Sections 1 to 6, inclusive, of this act and provide counseling  
12 to the private employer to ensure future compliance.  
13 Subsequent violations are subject to fines of up to two  
14 thousand dollars (\$2,000) per violation. In addition, an  
15 individual may bring a civil action in any court of competent  
16 jurisdiction against the employer or other person violating a  
17 provision of Sections 1 to 6, inclusive, of this act, and upon  
18 prevailing, shall be entitled to such legal or equitable  
19 relief as may be appropriate to remedy the violation,  
20 including, but not limited to, damages, injunctive relief, and  
21 reasonable attorneys' fees and costs. If an employer does not  
22 maintain or retain adequate records documenting compliance or  
23 does not allow the Department of Labor reasonable access to  
24 such records, it shall be presumed that the employer did not  
25 comply with this act, absent clear and convincing evidence  
26 indicating otherwise.

1                   Section 9. The provisions of this act shall prevail  
2 over any other laws or rules which purport to govern the  
3 granting, denial, renewal, suspension, or revocation of a  
4 license or the initiation, suspension, or termination of  
5 employment on the grounds of conviction of an offense. Nothing  
6 in this act may be construed to otherwise affect relevant  
7 proceedings involving the granting, denial, renewal,  
8 suspension, or revocation of a license or the initiation,  
9 suspension, or termination of employment.

10                   Section 10. This act shall become effective on the  
11 first day of the third month following its passage and  
12 approval by the Governor, or its otherwise becoming law.