

1 SB200
2 181796-2
3 By Senators Ross, Dunn, Beasley, Smitherman, Coleman-Madison,
4 Figures, Singleton and Sanders
5 RFD: Judiciary
6 First Read: 16-FEB-17

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8 SYNOPSIS: Under existing law, there is no Alabama
9 statute prohibiting the State of Alabama, its
10 agencies, or its political subdivisions, as
11 employers, from discriminating against a job
12 applicant based on the applicant's criminal
13 conviction record.

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

22 This bill would require the State of
23 Alabama, its agencies, and its political
24 subdivisions, as employers, to maintain certain
25 employment and hiring records relating to the
26 conviction history of employees and job applicants.

1 This bill would also authorize the
2 Department of Labor to enforce the provisions of
3 this act.

4
5 A BILL
6 TO BE ENTITLED
7 AN ACT

8
9 Relating to criminal convictions; to prohibit the
10 State of Alabama, its agencies, and its political
11 subdivisions, as employers, from inquiring into or considering
12 an applicant's conviction history for consideration of a job
13 until after the applicant has received a conditional job
14 offer, with exceptions; to require the State of Alabama, its
15 agencies, and its political subdivisions, as employers, to
16 maintain certain employment and hiring records relating to the
17 conviction history of employees and job applicants; and to
18 authorize the Department of Labor to enforce the provisions of
19 this act.

20 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

21 Section 1. The Legislature finds and declares that
22 reducing barriers to employment for people with arrest and
23 conviction records and decreasing unemployment in communities
24 with concentrated numbers of people with criminal conviction
25 records are matters of statewide concern. The Legislature
26 further finds and declares that increasing employment

1 opportunities for people with records will reduce recidivism
2 and improve economic stability in our communities.

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

5 (1) APPLICANT. Any individual considered for, or who
6 requests to be considered for, employment or any employee
7 considered for, or who requests to be considered for, another
8 employment position by the employer.

9 (2) EMPLOYER. The State of Alabama, its agencies, or
10 political subdivisions.

11 (3) HIRING AUTHORITY. The person, board, commission,
12 or department of the state, or the agencies or political
13 subdivisions thereof, responsible by law for hiring
14 individuals for public employment.

15 Section 3. (a) The following criminal records may
16 not be used, distributed, or disseminated by the state, or the
17 agencies or political subdivisions thereof, in connection with
18 any application for employment:

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

20 (2) Convictions that have been sealed, dismissed, or
21 expunged.

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

24 (b) Any information pertaining to an applicant's
25 background check obtained in conjunction with the hiring
26 process shall remain confidential, and may not be used,
27 distributed, or disseminated by the state, or the agencies or

1 political subdivisions thereof, except as otherwise required
2 by law.

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

6 (b) Job applications may not inquire into an
7 applicant's conviction history.

8 Section 5. (a) An individual may not be disqualified
9 from employment solely or in part because of a prior
10 conviction, unless a conviction is directly related to the
11 position of employment sought. If a law explicitly requires
12 that certain convictions are an automatic bar to employment,
13 then those convictions shall be considered.

14 (b) In determining whether a conviction directly
15 relates to the position of employment sought, the employer or
16 hiring authority shall consider all of the following:

17 (1) Whether the conviction is directly related to
18 the duties and responsibilities of that employment position or
19 occupation.

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

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

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

26 Section 6. (a) Nothing in this act shall be
27 interpreted as to create any requirement, power, or duty in

1 conflict with any federal or state law, rule, or regulation,
2 or with a requirement of any government agency or employer
3 from implementing any federal or state law, rule, or
4 regulation that may govern applicant inquiries, employment
5 decisions, or applicant communications.

6 (b) Nothing in this act shall prohibit an employer
7 from notifying applicants in writing of the specific offenses
8 that will disqualify an applicant from employment in a
9 particular position due to federal or state law or the
10 employer's policy.

11 Section 7. (a) The requirements set forth in this
12 act do not apply to positions where a standard fidelity bond
13 or an equivalent bond is required and an applicant's
14 conviction of one or more specified offenses would disqualify
15 the applicant from obtaining such a bond, in which case an
16 employer may include a question or otherwise inquire whether
17 the applicant has ever been convicted of any of those
18 offenses.

19 (b) This act shall not apply to the hiring of
20 Alabama Securities Commission personnel who have access to
21 confidential information or who perform law enforcement
22 functions.

23 Section 8. If the employer or hiring authority
24 intends to deny an applicant a position of employment solely
25 or in part because of the applicant's prior conviction, the
26 employer or hiring authority, prior to a final decision, shall
27 provide the applicant written notification of the following:

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

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

4 Section 9. (a) The Department of Labor shall be
5 responsible for enforcing the provisions of this act. A person
6 who is aggrieved by an employer's or hiring authority's
7 violation of this act may contact the Department of Labor to
8 report any problems, concerns, or suggestions regarding the
9 implementation, compliance, and impact of the provisions of
10 this act, and the department shall keep a record. In addition,
11 the Department of Labor shall conduct periodic reviews to
12 assess compliance with this act. The Department of Labor shall
13 investigate and review complaints and maintain records
14 detailing complaints and their disposition.

15 (b) An employer or hiring authority shall retain for
16 a minimum of three years application forms, records of
17 employment, and other pertinent data and records required
18 under Sections 1 to 6, inclusive, including, but not limited
19 to, communication with the applicant, and shall allow the
20 Department of Labor access to such records to monitor
21 compliance. In addition, the employer shall maintain a record
22 of all of the following:

23 (1) The number of positions requiring background
24 checks.

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

1 (3) The number of applicants with a conviction
2 record who were notified by the employer that the applicant's
3 conviction record may disqualify the applicant, as provided in
4 Section 8.

5 (c) Employers and hiring authorities shall also
6 regularly conduct a confidential, anonymous survey of
7 employees in public employment in which background checks are
8 not conducted to determine the number of individuals with
9 conviction records who are hired.

10 (d) An appeal, complaint, or grievance concerning a
11 violation of the provisions of this act by an employer or
12 hiring authority shall be processed and adjudicated in
13 accordance with established state procedures.

14 (e) The Department of Labor shall conduct an annual
15 audit to review the state's hiring practices in an effort to
16 ensure that people with records are not unreasonably denied
17 employment with the state. The Department of Labor shall
18 prepare a written report of this annual audit and submit the
19 written report to the Governor within 90 days of the end of
20 the fiscal year for which the audit was conducted. With
21 respect to any violations of this act noted in the annual
22 audit report that occur after January 1, 2018, the Governor
23 shall take immediate and appropriate action to ensure that
24 such violations do not recur.

25 Section 10. The provisions of this act shall prevail
26 over any other laws or rules which purport to govern the
27 initiation, suspension, or termination of employment on the

1 grounds of conviction of an offense. Nothing in this act may
2 be construed to otherwise affect relevant proceedings
3 involving the initiation, suspension, or termination of
4 employment.

5 Section 11. This act shall become effective January
6 1, 2018.