

1 HB257
2 190023-1
3 By Representatives Givan, Scott, Jackson, Boyd, McClammy,
4 Hollis, Knight, McCampbell, England, Grimsley, Warren, Hall,
5 Moore (M), Alexander, Bracy and Buskey
6 RFD: State Government
7 First Read: 18-JAN-18

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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 with an employer:

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 for employment with an employer
7 may not inquire into an applicant's conviction history.

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

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

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

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

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

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

1 Section 6. (a) Nothing in this act shall be
2 interpreted as to create any requirement, power, or duty in
3 conflict with any federal or state law, rule, or regulation,
4 or with a requirement of any government agency or employer
5 from implementing any federal or state law, rule, or
6 regulation that may govern applicant inquiries, employment
7 decisions, or applicant communications.

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

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

21 (b) This act shall not apply to the hiring of
22 Alabama Securities Commission personnel who have access to
23 confidential information or who perform law enforcement
24 functions or to the hiring of Alabama Banking Department
25 personnel who have access to confidential supervisory
26 information.

1 (c) This act shall not apply to an employer that is
2 a law enforcement agency.

3 Section 8. If the employer or hiring authority
4 intends to deny an applicant a position of employment solely
5 or in part because of the applicant's prior conviction, the
6 employer or hiring authority, prior to a final decision, shall
7 provide the applicant written notification of the following:

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

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

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

22 (b) An employer or hiring authority shall retain for
23 a minimum of three years application forms, records of
24 employment, and other pertinent data and records required
25 under Sections 1 to 6, inclusive, including, but not limited
26 to, communication with the applicant, and shall allow the
27 Department of Labor access to such records to monitor

1 compliance. In addition, the employer shall maintain a record
2 of all of the following:

3 (1) The number of positions requiring background
4 checks.

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

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

11 (c) Employers and hiring authorities shall also
12 regularly conduct a confidential, anonymous survey of
13 employees in public employment in which background checks are
14 not conducted to determine the number of individuals with
15 conviction records who are hired.

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

20 (e) The Department of Labor shall conduct an annual
21 audit to review the state's hiring practices in an effort to
22 ensure that people with records are not unreasonably denied
23 employment with the state. The Department of Labor shall
24 prepare a written report of this annual audit and submit the
25 written report to the Governor within 90 days of the end of
26 the fiscal year for which the audit was conducted. With
27 respect to any violations of this act noted in the annual

1 audit report that occur after January 1, 2018, the Governor
2 shall take immediate and appropriate action to ensure that
3 such violations do not recur.

4 Section 10. The provisions of this act shall prevail
5 over any other laws or rules which purport to govern the
6 initiation, suspension, or termination of employment on the
7 grounds of conviction of an offense. Nothing in this act may
8 be construed to otherwise affect relevant proceedings
9 involving the initiation, suspension, or termination of
10 employment.

11 Section 11. This act shall become effective January
12 1, 2019.