

1 SB198  
2 190023-1  
3 By Senators Singleton, Coleman-Madison, Dunn, Beasley and  
4 Smitherman  
5 RFD: Judiciary  
6 First Read: 23-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.

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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.