

1 SB163
2 195974-3
3 By Senators Ward and Smitherman
4 RFD: Judiciary
5 First Read: 21-MAR-19

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8 SYNOPSIS: Under existing law, an individual who has
9 been convicted of a crime is prohibited from
10 obtaining certain occupational certifications or
11 licenses.

12 This law would create a process for an
13 individual who has been convicted of a crime to
14 petition the circuit court to obtain an Order of
15 Limited Relief and for the court to grant such an
16 order.

17 This bill would prohibit an occupational
18 licensing board or commission from automatically
19 denying a certificate or license to an individual
20 holding a valid Order of Limited Relief.

21 This bill would provide exceptions for
22 certain occupations and admissions.

23
24 A BILL
25 TO BE ENTITLED
26 AN ACT
27

1 Relating to occupational licensing; to create a
2 process for an individual who has been convicted of a crime to
3 petition the circuit court to obtain an Order of Limited
4 Relief and for the court to grant such an order; to prohibit
5 an occupational licensing board or commission from
6 automatically denying a certificate or license if an
7 individual holds a valid Order of Limited Relief; and to
8 provide certain exceptions.

9 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

10 Section 1. As used in this act, the following terms
11 have the following meanings:

12 (1) COLLATERAL CONSEQUENCE. A consequence, penalty,
13 or other result automatically imposed by operation of state
14 law or rule that limits or prohibits an individual convicted
15 of a crime from obtaining occupational licensing,
16 certification, or other evidence of qualification necessary to
17 engage in a particular occupation. The term does not include
18 imprisonment, probation, parole, supervised release,
19 forfeiture, restitution, fines, assessments, other costs of
20 court, or responsibilities imposed under the Alabama Sex
21 Offender Registration and Community Notification Act.

22 (2) CUSTODIAL SENTENCE. A criminal sentence or
23 portion of a sentence during which an individual convicted of
24 a crime serves time in the jurisdictional custody of the
25 state, including, but not limited to, a prison term, jail
26 term, or community corrections sentence.

1 (3) ORDER OF LIMITED RELIEF or ORDER. An order
2 concerning an individual convicted of a crime by a court of
3 conviction that relieves the individual from some or all of
4 the collateral consequences associated with that conviction
5 within this state.

6 Section 2. This act does not do any of the
7 following:

8 (1) Provide a basis for invalidating a plea,
9 conviction, or sentence.

10 (2) Provide a cause of action for monetary damages.

11 (3) Affect any of the following:

12 a. The responsibilities imposed by the Alabama Sex
13 Offender Registration and Community Notification Act.

14 b. Any licensure requirements imposed by an
15 interstate compact or other interstate mutual recognition
16 licensure requirements imposed by law to which Alabama is
17 subject, or any licensure requirements imposed by federal law.

18 c. An attorney's duty to represent a client.

19 d. A claim or right of the victim of a criminal
20 offense.

21 e. A right or remedy under law, other than this act,
22 available to an individual convicted of a crime.

23 Section 3. (a) An individual who has been convicted
24 in this state of a misdemeanor or felony may file a petition
25 to obtain an Order of Limited Relief in the following venues:

26 (1) For a conviction imposed by a circuit court, in
27 the circuit court in the county that imposed the conviction.

1 (2) For a conviction imposed by a district or
2 municipal court, in the circuit court in the county where the
3 crime occurred.

4 (b) An individual who has been convicted in multiple
5 judicial circuits in this state may file a petition to obtain
6 an Order of Limited Relief covering each of his or her
7 criminal convictions in the circuit court in any county that
8 imposed one of the convictions.

9 (c) The circuit court shall have original
10 jurisdiction of any petition to obtain an Order of Limited
11 Relief, as described in subsection (a) or (b).

12 Section 4. (a) An individual who has been convicted
13 in federal court may file a petition to obtain an Order of
14 Limited Relief in the circuit court in the judicial circuit
15 where the individual resides.

16 (b) The circuit court shall have original
17 jurisdiction of any petition to obtain an Order of Limited
18 Relief, as described in subsection (a).

19 Section 5. (a) An individual who has been convicted
20 in the court of another state or country and has received an
21 Order of Limited Relief or similar document or ruling from the
22 convicting jurisdiction may file a petition to obtain an Order
23 of Limited Relief in the circuit court in the judicial circuit
24 where the individual resides.

25 (b) The circuit court shall have original
26 jurisdiction of any petition to obtain an Order of Limited
27 Relief, as described in subsection (a).

1 Section 6. (a) An individual may not file a petition
2 to obtain an Order of Limited Relief in either of the
3 following circumstances:

4 (1) If the petitioner is serving a custodial
5 sentence with more than six months remaining.

6 (2) If the petitioner is currently charged with a
7 felony.

8 (3) If the petitioner is currently charged with a
9 misdemeanor that is alleged to have occurred within the past
10 12 months.

11 (b) An individual may not file a petition to obtain
12 an Order of Limited Relief if a separate petition covering the
13 same conviction or convictions has been filed in another
14 circuit.

15 (c) A court's rejection of a petition to obtain an
16 Order of Limited Relief on its merits shall be preclusive as
17 to the related convictions for a period of two years, unless
18 otherwise ordered at the court's discretion.

19 Section 7. (a) A petition to obtain an Order of
20 Limited Relief shall include a sworn statement made under
21 penalty of perjury by the petitioner stating all of the
22 following:

23 (1) That the petitioner is not subject to the
24 limitations in Section 6 and is eligible to seek an Order of
25 Limited Relief.

1 (2) Whether the petitioner has previously applied
2 for an Order of Limited Relief in any jurisdiction and whether
3 an order has been granted previously.

4 (3) A list specifying the convictions and collateral
5 consequences to which the order should apply.

6 (b) Once a petition has been filed, the court shall
7 review available presentence and other reports on the
8 defendant and may order a postsentence report to be completed
9 by the Board of Pardons and Paroles or by the Commissioner of
10 the Department of Corrections. The postsentence report shall
11 contain information required by the court, which may include,
12 but not be limited to, any of the following:

13 (1) A statement of the offense or offenses and
14 surrounding circumstances.

15 (2) A statement of the petitioner's criminal and
16 juvenile record.

17 (3) A record of previous applications for Orders of
18 Limited Relief.

19 (4) A statement of the petitioner's medical and
20 psychological history, if available.

21 (5) A statement of the petitioner's history while
22 under the custody of the Department of Corrections, if any.

23 (6) Any previous probation or sentencing reports
24 prepared by the Board of Pardons and Paroles.

25 (c) Upon completion, the Board of Pardons and
26 Paroles shall provide copies of the postsentence report to the

1 court and to either the petitioner's attorney or the
2 petitioner, if not represented by an attorney.

3 (d) When a petitioner seeks relief from a conviction
4 from a jurisdiction other than this state, the circuit court
5 may require the petitioner to have additional documentation
6 sent from that jurisdiction, including, but not limited to,
7 any of the following:

8 (1) Any Orders of Limited Relief, Certificates of
9 Relief from Disabilities, Certificates of Rehabilitation, or
10 similar documents issued by that jurisdiction.

11 (2) Any transcripts or other court records.

12 (3) Any sentencing reports, probation records, or
13 similar documents.

14 (4) Any other available documentation necessary in
15 considering the merits of the petition.

16 (e) Filing a petition for an Order of Limited Relief
17 shall constitute a waiver of privilege for any parole or
18 probation records related to the offenses for which the
19 petition is filed.

20 (f) Following a ruling by the court on the petition,
21 any parole or probation records or other material that is
22 otherwise subject to privilege shall be sealed.

23 Section 8. (a) In addition to any court costs or
24 docket fees for filing a petition in circuit court, the
25 petitioner shall pay an administrative filing fee of one
26 hundred dollars (\$100) at the time of filing a petition to

1 obtain an Order of Limited Relief. The administrative filing
2 fee may not be waived by the court.

3 (b) Notwithstanding subsection (a), a petitioner may
4 apply for indigent status by completing an Affidavit of
5 Substantial Hardship and submitting the affidavit when filing
6 the petition. If the court finds the petitioner is indigent,
7 the court may establish a payment plan for the petitioner to
8 satisfy the filing fee over a period of time.

9 (c) All filing fees shall be allocated to the State
10 Judicial Administration Fund administered by the
11 Administrative Office of Courts.

12 Section 9. (a) The circuit court shall rule on the
13 merits of the petition in accordance with subsection (d)
14 within 90 calendar days of the date the petition was filed.
15 The court, for good cause, may extend the time within which it
16 must rule on the petition by order entered prior to the
17 expiration of the initial 90-day period.

18 (b) If the court determines that a hearing is not
19 necessary, the court may rule without a hearing.

20 (c) If a hearing is held, the hearing shall be
21 conducted in a manner prescribed by the trial judge and may
22 include oral argument and review of relevant documentation in
23 support of, or in objection to, the granting of the petition.
24 Leave of the court shall be obtained for the taking of witness
25 testimony relating to any disputed fact.

1 (d) In ruling on the petition, the court may
2 consider the following factors, in addition to the information
3 contained in the postsentence report:

4 (1) The nature and seriousness of the offense.

5 (2) The circumstances under which the offense
6 occurred.

7 (3) Whether the offense or offenses for which the
8 order is sought were the result of an isolated instance or a
9 pattern of conduct.

10 (4) The relationship between the offense and
11 collateral consequence or consequences from which the
12 petitioner seeks relief.

13 (5) Available probation or parole records, reports,
14 or recommendations.

15 (6) Evidence of previous Orders of Limited Relief
16 granted to the petitioner or prior expungement of the
17 petitioner's record.

18 (7) Any other matter the court deems relevant.

19 (e) The court shall grant the petition if it is
20 reasonably satisfied from the evidence that granting the
21 petition will materially assist the petitioner in obtaining or
22 maintaining employment and in living a law-abiding life, and
23 will not pose an unreasonable risk to the safety or welfare of
24 the public or any individual.

25 (f) There is no right to an Order of Limited Relief,
26 and any request for such an order may be denied at the sole
27 discretion of the court.

1 (g) The ruling of the court shall be subject to
2 direct appeal to the Alabama Court of Criminal Appeals and
3 shall not be reversed absent a showing of an abuse of
4 discretion.

5 (h) When the court grants a petition for an Order of
6 Limited Relief, the petitioner shall be entitled to three
7 copies of the order from the clerk's office.

8 (i) When an Order of Limited Relief is granted, an
9 occupational licensing board, as defined in Section 12, may
10 still consider the conduct underlying the conviction upon
11 which the order was granted in determining whether to deny,
12 revoke, or suspend a license, as defined in Section 12.

13 Section 10. (a) If a court makes a preliminary
14 determination that a petition for an Order of Limited Relief
15 was filed under false pretenses or supported by false
16 evidence, the court shall notify the petitioner, and the
17 petitioner shall have 30 days to file a response to the
18 court's determination. After 30 days or the filing of the
19 response, whether or not the petitioner was able to be
20 located, the court, in its discretion, may order a hearing or
21 enter an order revoking the order.

22 (b) Subsequent conviction of a Class A, B, or C
23 felony shall automatically revoke an Order of Limited Relief.

24 (c) When an order is issued while the petitioner is
25 on probation for the related offense, the court may revoke the
26 order at its discretion upon a finding that the petitioner has
27 violated the terms or conditions of probation.

1 Section 11. (a) The Administrative Office of Courts
2 may establish a standard Order of Limited Relief form to be
3 used by all courts in the state.

4 (b) Upon request, the Administrative Office of
5 Courts shall provide an annual report to the Legislature
6 specifying by jurisdiction the number of applicants requesting
7 an Order of Limited Relief, the number of orders granted, and
8 a list of the underlying offenses for which an order was
9 granted. The report may not include any case-specific
10 identifying information.

11 Section 12. (a) As used in this section, the
12 following terms have the following meanings:

13 (1) LICENSE. Any license, certificate, or other
14 evidence of qualification that an individual is required to
15 obtain before he or she may engage in or represent himself or
16 herself to be a member of a particular profession or
17 occupation.

18 (2) OCCUPATIONAL LICENSING BOARD. Any state board,
19 agency, commission, or other entity in this state that is
20 established for the primary purpose of regulating the entry of
21 individuals into, or the conduct of individuals within, or
22 both, a particular profession or occupation, and that is
23 authorized to issue licenses. The term does not include any
24 state agency staffed by full-time state employees, that, as a
25 part of its regular functions, may issue licenses.

1 (b) When applying for a license, an applicant may
2 attach to the application a valid Order of Limited Relief
3 granted under Section 9.

4 (c) An occupational licensing board may not
5 automatically deny an application for a license or revoke an
6 existing license because of a criminal conviction when a valid
7 Order of Limited Relief has been issued for the otherwise
8 disqualifying conviction or convictions in question; provided,
9 however, an occupational licensing board may consider the
10 conduct underlying a conviction upon which an Order of Limited
11 Relief was granted and may deny, revoke, or suspend a license
12 based on that underlying conduct.

13 (d) This section does not apply to law enforcement
14 employment, Alabama Peace Officers' Standards and Training
15 Commission certification, or drivers' licenses.

16 Section 13. This act shall become effective on the
17 first day of the third month following its passage and
18 approval by the Governor, or its otherwise becoming law.