

1 SB265
2 210509-1
3 By Senators Smitherman, Coleman-Madison, Beasley and Figures
4 RFD: Judiciary
5 First Read: 24-FEB-21

8 SYNOPSIS: Under existing state law, it is unlawful for
9 any person to discriminate against an individual
10 because of his or her race with respect to housing.

11 Under existing state law, it is also
12 unlawful for an employer to pay an employee at wage
13 rates less than those paid to employees of another
14 race for substantially similar work.

15 This bill would make it unlawful for a
16 person to deny an individual full and equal
17 enjoyment of public accommodations based upon the
18 individual's hairstyle.

19 This bill would prohibit an employer from
20 discriminating against an applicant or employee
21 based upon the applicant or employee's race,
22 ethnicity, or hairstyle and would create a cause of
23 action against an employer who does so.

24 This bill would also prohibit discrimination
25 against a recipient of state or federal assistance
26 based upon the recipient's hairstyle.

1 A BILL
2 TO BE ENTITLED
3 AN ACT
4

5 Relating to discrimination; to prohibit
6 discrimination in employment, public accommodations, or
7 federal or state financial assistance based on an individual's
8 hairstyle; and to create a cause of action against an employer
9 for discrimination based on hairstyle.

10 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

11 Section 1. The Legislature finds and declares all of
12 the following:

13 (1) The history of our nation is riddled with laws
14 that discriminated against individuals on the basis of race
15 and ethnicity. The federal government has long recognized that
16 discrimination on the basis of race in places of public
17 accommodation is unlawful. The State of Alabama hereby
18 declares that discrimination on the basis of race or ethnicity
19 in places of public accommodation is unlawful.

20 (2) The Legislature is committed to safeguarding all
21 individuals in this state from discrimination based upon race
22 or ethnicity in connection with employment. Pursuant to
23 federal law and the guidelines on race discrimination
24 established by the Equal Employment Opportunity Commission,
25 the Legislature fully supports the protection and safeguarding
26 of the rights and opportunities of all people to seek, obtain,

1 and hold employment without subjection to racial or ethnic
2 discrimination in the workplace.

3 (3) The history of our nation is also riddled with
4 laws and societal norms that equated blackness and the
5 associated physical traits, such as dark skin and kinky or
6 curly hair, to a badge of inferiority, sometimes subject to
7 separate and unequal treatment.

8 (4) This idea also permeated societal understanding
9 of professionalism. Professionalism was, and still is, closely
10 linked to European features and mannerisms, which entails that
11 those who do not naturally fall into Eurocentric norms must
12 alter their appearances, sometimes drastically and
13 permanently, in order to be deemed professional.

14 (5) Despite the great strides in American society
15 and laws made to reverse the racist ideology that Black traits
16 are inferior, hair remains a rampant source of racial
17 discrimination with serious economic and health consequences,
18 especially for Black individuals.

19 (6) Workplace dress code and grooming policies that
20 prohibit natural hair, including afros, braids, twists, and
21 locks, have a disparate impact on Black individuals as these
22 policies are more likely to deter Black applicants and burden
23 or punish Black employees than any other group.

24 (7) Federal courts accept that Title VII of the
25 Civil Rights Act of 1964, prohibits discrimination based on
26 race, and therefore protects against discrimination against
27 afros. However, the courts do not understand that afros are

1 not the only natural presentation of Black hair. Black hair
2 can also be naturally presented in braids, twists, and locks.

3 (8) In a society in which hair has historically been
4 one of the many determining factors of an individual's race
5 and whether he or she was a second class citizen, hair today
6 remains a proxy for race. Therefore, hair discrimination
7 targeting hairstyles associated with race is racial
8 discrimination.

9 (9) Acting in accordance with the constitutional
10 values of fairness, equity, and opportunity for all, the
11 Legislature recognizes that continuing to enforce a
12 Eurocentric image of professionalism through purportedly
13 race-neutral grooming policies that disparately impact Black
14 individuals and exclude them from some workplaces is in direct
15 opposition to equity and opportunity for all.

16 Section 2. As used in Sections 3 through 5, the
17 following terms have the following meanings:

18 (1) EMPLOYER. Any person regularly employing five or
19 more individuals, or any person acting as an agent of an
20 employer, directly or indirectly, the state or any political
21 subdivision of the state. The term does not include a
22 religious association or a non profit corporation.

23 (2) HAIRSTYLE. The term includes, but is not limited
24 to, hairstyles such as braids, locks, twists, cornrows, afros,
25 bantu knots, and fades.

26 (3) HAIR TEXTURE. The visual or surface
27 characteristics and appearance of an individual's hair.

1 (4) LABOR ORGANIZATION. Any organization that exists
2 for the purpose, in whole or in part, of collective bargaining
3 or of dealing with employers concerning grievances, terms or
4 conditions of employment, or other mutual aid or protection.

5 (5) NATIONAL ORIGIN. Being from a particular country
6 or part of the world or appearing to be of a certain ethnic
7 background.

8 (6) RACE OR ETHNICITY. The term includes ancestry,
9 color, ethnic group identification, ethnic background, and
10 traits historically associated with race, including, but not
11 limited to, hair texture and protective hairstyles.

12 Section 3. It is an unlawful employment practice for
13 an employer, employment agency, or labor organization,
14 including on-the-job training programs, to fail or refuse to
15 hire, to discharge any individual, or to otherwise
16 discriminate against an individual, based on the individual's
17 hair texture or hairstyle, if that hair texture or hairstyle
18 is commonly associated with a particular race, ethnicity, or
19 national origin.

20 Section 4. (a) An employer may not discriminate in
21 employment against, or take any adverse employment action
22 against, any individual because the individual has done any of
23 the following:

24 (1) Taken an action to enforce a protection afforded
25 any individual under Section 3.

26 (2) Testified or otherwise made a statement in or in
27 connection with any proceeding under Section 3.

1 (3) Assisted or otherwise participated in an
2 investigation under Section 3.

3 (4) Exercised a right provided for under this
4 section.

5 (b) An employer shall be deemed to have engaged in
6 an action prohibited under subsection (a) if the individual's
7 race or ethnicity is a motivating factor in the employer's
8 action, unless the employer can prove that there was a
9 legitimate, non-discriminatory reason for the adverse
10 employment action.

11 (c) Unless the employer can prove that there was a
12 legitimate, non-discriminatory reason for the adverse
13 employment action, the employer shall be deemed to have
14 engaged in discriminatory action under subsection (a).

15 Section 5. (a) Any individual whose rights under
16 Section 4 have been violated by an employer may bring a cause
17 of action against the employer.

18 (b) In any action filed under this section, the
19 court may award relief and require the employer to do any one
20 or more of the following:

21 (1) Refrain from engaging discriminatory action in
22 compliance with Section 3.

23 (2) Compensate the individual for any loss of wages
24 or benefits suffered by reason of the employer's failure to
25 comply with Section 3.

26 (3) Pay the individual liquidated damages in an
27 amount equal to the amount of lost wages or benefits suffered

1 by reason of the employer's failure to comply with Section 3,
2 if the court determines that the employer's failure to comply
3 was willful.

4 (c) No fees or court costs may be charged or taxed
5 against any individual claiming a right under Section 3.

6 (d) If an individual who obtained private counsel to
7 bring an action or proceeding under Section 3 prevails in the
8 action or proceeding, the court may award the individual
9 reasonable attorney fees, expert witness fees, and other
10 litigation expenses.

11 Section 6. An individual may not be excluded from
12 participation in, be denied the benefits of, or be subjected
13 to discrimination under any program or activity receiving
14 state or federal financial assistance, based on the
15 individual's hair texture or hairstyle, as defined in Section
16 2, if that hair texture or that hairstyle is commonly
17 associated with a particular race or national origin.

18 Section 7. An individual may not be subjected to a
19 discriminatory housing practice based on the individual's hair
20 texture or hairstyle, as defined in Section 2, if that hair
21 texture or that hairstyle is commonly associated with a
22 particular race or national origin.

23 Section 8. This act shall become effective on the
24 first day of the third month following its passage and
25 approval by the Governor, or its otherwise becoming law.