

SB172 INTRODUCED



1 SB172
2 GRX3CCC-1
3 By Senator Smitherman
4 RFD: Judiciary
5 First Read: 28-Feb-24



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SYNOPSIS:

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

Also under existing state law, it is unlawful for an employer to pay an employee at wage rates less than those paid to employees of another race for substantially similar work.

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

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

A BILL
TO BE ENTITLED
AN ACT

Relating to discrimination; to prohibit discrimination in employment and receipt of federal or state financial assistance based on an individual's hairstyle; and to create a



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29 cause of action against an employer for discrimination based
30 on hairstyle.

31 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

32 Section 1. The Legislature finds and declares all of
33 the following:

34 (1) The Legislature is committed to safeguarding all
35 individuals in this state from discrimination based upon race
36 or ethnicity in connection with employment. Pursuant to
37 federal law and the guidelines on race discrimination
38 established by the Equal Employment Opportunity Commission,
39 the Legislature fully supports the protection and safeguarding
40 of the rights and opportunities of all people to seek, obtain,
41 and hold employment without subjection to racial or ethnic
42 discrimination in the workplace.

43 (2) The history of our nation is also riddled with laws
44 and societal norms that equated blackness and the associated
45 physical traits, such as dark skin and kinky or curly hair, to
46 a badge of inferiority, sometimes subject to separate and
47 unequal treatment.

48 (3) This idea also permeated societal understanding of
49 professionalism. Professionalism was, and still is, closely
50 linked to European features and mannerisms, which entails that
51 those who do not naturally fall into Eurocentric norms must
52 alter their appearances, sometimes drastically and
53 permanently, in order to be deemed professional.

54 (4) Despite the great strides in American society and
55 laws made to reverse the racist ideology that Black traits are
56 inferior, hair remains a rampant source of racial



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57 discrimination with serious economic and health consequences,
58 especially for Black individuals.

59 (5) Workplace dress code and grooming policies that
60 prohibit natural hair, including afros, braids, twists, and
61 locks, have a disparate impact on Black individuals as these
62 policies are more likely to deter Black applicants and burden
63 or punish Black employees more than any other group.

64 (6) Federal courts accept that Title VII of the Civil
65 Rights Act of 1964, prohibits discrimination based on race,
66 and therefore protects against discrimination against afros.
67 However, the courts do not understand that afros are not the
68 only natural presentation of Black hair. Black hair can also
69 be naturally presented in braids, twists, and locks.

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

76 (8) Acting in accordance with the constitutional values
77 of fairness, equity, and opportunity for all, the Legislature
78 recognizes that continuing to enforce a Eurocentric image of
79 professionalism through purportedly race-neutral grooming
80 policies that disparately impact Black individuals and exclude
81 them from some workplaces is in direct opposition to equity
82 and opportunity for all.

83 Section 2. As used in this act, the following terms
84 have the following meanings:



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85 (1) EMPLOYER. Any person regularly employing five or
86 more individuals, or any person acting as an agent of an
87 employer, directly or indirectly, the state or any political
88 subdivision of the state. The term does not include a
89 religious association or a nonprofit corporation.

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

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

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

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

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

106 Section 3. It is an unlawful employment practice for an
107 employer, employment agency, or labor organization, including
108 on-the-job training programs, to fail or refuse to hire, to
109 discharge any individual, or to otherwise discriminate against
110 an individual, based on the individual's hair texture or
111 hairstyle, if that hair texture or hairstyle is commonly
112 associated with a particular race or ethnicity or national



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113 origin.

114 Section 4. (a) An employer may not take any adverse
115 employment action against any individual because the
116 individual has done any of the following:

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

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

121 (3) Assisted or otherwise participated in an
122 investigation under Section 3.

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

124 (b) An employer shall be deemed to have engaged in an
125 action prohibited under subsection (a) if the individual's
126 race or ethnicity is a motivating factor in the employer's
127 action, unless the employer can prove that there was a
128 legitimate, non-discriminatory reason for the adverse
129 employment action.

130 Section 5. (a) Any individual whose rights under
131 Section 3 or 4 have been violated by an employer may bring a
132 cause of action against the employer.

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

136 (1) Refrain from engaging in discriminatory action in
137 compliance with Section 3 and 4.

138 (2) Compensate the individual for any loss of wages or
139 benefits suffered by reason of the employer's failure to
140 comply with Section 3 or 4.



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141 (3) Pay the individual liquidated damages in an amount
142 equal to the amount of lost wages or benefits suffered by
143 reason of the employer's failure to comply with Section 3 or
144 4, if the court determines that the employer's failure to
145 comply was willful.

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

148 (d) If an individual who obtained private counsel to
149 bring an action or proceeding under Section 5 prevails in the
150 action or proceeding, the court may award the individual
151 reasonable attorney fees, expert witness fees, and other
152 litigation expenses.

153 Section 6. An individual may not be excluded from
154 participation in, be denied the benefits of, or be subjected
155 to discrimination under any program or activity receiving
156 state or federal financial assistance, based on the
157 individual's hair texture or hairstyle, as defined in Section
158 2, if that hair texture or that hairstyle is commonly
159 associated with a particular race or national origin.

160 Section 7. This act shall become effective on October
161 1, 2024.