

SB138 ENGROSSED



1 SB138
2 6HW8313-2
3 By Senator Smitherman
4 RFD: Judiciary
5 First Read: 06-Feb-25



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A BILL
TO BE ENTITLED
AN ACT

Relating to eligibility for employment of convicted individuals; to amend Sections 12-26-7, 12-26-9, 41-9A-1, and 41-9A-2, Code of Alabama 1975; to add Section 41-9A-2.1 to the Code of Alabama 1975; to create a presumption of fitness for occupational licensure in certain circumstances; to provide immunity to employers in certain circumstances that hire individuals granted an order of limited relief; to provide further for the process under which an occupational licensing board may disqualify an individual convicted of a crime from obtaining a license to practice a profession or occupation; to require the Board of Pardons and Paroles to create a certificate of employability to be issued to certain individuals upon their release on parole from the Department of Corrections; and to provide immunity to employers in certain circumstances that hire individuals who have been issued certificates of employability.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Sections 12-26-7, 12-26-9, 41-9A-1, and 41-9A-2, Code of Alabama 1975, are amended to read as follows:

"§12-26-7



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29 (a) A petition to obtain an order of limited relief
30 shall include a sworn statement made under penalty of perjury
31 by the petitioner stating all of the following:

32 (1) That the petitioner is not subject to the
33 limitations in Section 12-26-6 and is eligible to seek an
34 order of limited relief.

35 (2) Whether the petitioner has previously applied for
36 an order of limited relief in any jurisdiction and whether an
37 order has been granted previously.

38 (3) A list specifying ~~the~~ any convictions and
39 collateral consequences to which the order should apply.

40 (b) Once a petition has been filed, ~~the circuit clerk~~
41 ~~shall serve the petition on the occupational licensing board,~~
42 ~~as defined in Section 41-9A-1, or other entity responsible for~~
43 ~~the collateral consequence that the petitioner is seeking~~
44 ~~relief from. Once service is made,~~ the court shall review
45 available presentence and other reports on the defendant and
46 may order a postsentence report to be completed by the Board
47 of Pardons and Paroles or by the Commissioner of the
48 Department of Corrections. The postsentence report shall
49 contain information required by the court, which may include,
50 but not be limited to, any of the following:

51 (1) A statement of the offense or offenses and
52 surrounding circumstances.

53 (2) A statement of the petitioner's criminal and
54 juvenile record.

55 (3) A record of previous applications for orders of
56 limited relief.



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

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

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

63 (c) Upon completion, the Board of Pardons and Paroles
64 shall provide copies of the postsentence report to the court
65 and to either the petitioner's attorney or the petitioner, if
66 not represented by an attorney.

67 (d) When a petitioner seeks relief from a conviction
68 from a jurisdiction other than this state, the circuit court
69 may require the petitioner to have additional documentation
70 sent from that jurisdiction, including, but not limited to,
71 any of the following:

72 (1) Any orders of limited relief, Certificates of
73 Relief from Disabilities, Certificates of Rehabilitation, or
74 similar documents issued by that jurisdiction.

75 (2) Any transcripts or other court records.

76 (3) Any sentencing reports, probation records, or
77 similar documents.

78 (4) Any other available documentation necessary in
79 considering the merits of the petition.

80 (e) Filing a petition for an order of limited relief
81 shall constitute a waiver of privilege for any parole or
82 probation records related to the offenses for which the
83 petition is filed.

84 (f) Following a ruling by the court on the petition,



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85 any filed parole or probation records or other material that
86 is otherwise subject to privilege shall be considered
87 confidential.

88 (g) An individual required to register as a sex
89 offender pursuant to Chapter 20A of Title 15 or convicted of a
90 violent offense as defined in Section 12-25-32 is ineligible
91 to obtain an order of limited relief."

92 "§12-26-9

93 (a) The circuit court shall rule on the merits of the
94 petition in accordance with subsection (d) within 90 calendar
95 days of the date the petition was filed. The court, for good
96 cause, may extend the time within which it must rule on the
97 petition by order entered prior to the expiration of the
98 initial 90-day period.

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

101 (c) If a hearing is held, the hearing shall be
102 conducted in a manner prescribed by the trial judge and may
103 include oral argument and review of relevant documentation in
104 support of, or in objection to, the granting of the petition.
105 Leave of the court shall be obtained for the taking of witness
106 testimony relating to any disputed fact.

107 (d) In ruling on the petition, the court may consider
108 the following factors, in addition to the information
109 contained in the postsentence report:

- 110 (1) The nature and seriousness of the offense.
- 111 (2) The circumstances under which the offense occurred.
- 112 (3) Whether the offense or offenses for which the order



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113 is sought were the result of an isolated instance or a pattern
114 of conduct.

115 (4) The relationship between the offense and collateral
116 consequence or consequences from which the petitioner seeks
117 relief.

118 (5) Available probation or parole records, reports, or
119 recommendations.

120 (6) Evidence of previous orders of limited relief
121 granted to the petitioner or prior expungement of the
122 petitioner's record.

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

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

130 (f) There is no right to an order of limited relief,
131 and any request for such an order may be denied at the sole
132 discretion of the court.

133 (g) The ruling of the court shall be subject to direct
134 appeal to the Alabama Court of Civil Appeals and shall not be
135 reversed absent a showing of an abuse of discretion.

136 (h) When the court grants a petition for an order of
137 limited relief, the petitioner shall be entitled to three
138 copies of the order from the clerk's office.

139 (i) When an order of limited relief is granted, an
140 occupational licensing board, as defined in Section 41-9A-1,

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141 may still consider the conduct underlying the conviction upon
142 which the order was granted ~~in determining whether to deny,~~
143 ~~revoke, or suspend a license,~~ but the order of limited relief
144 shall create a presumption of rehabilitation and fitness for
145 obtaining a license as defined in Section 41-9A-1.

146 (j) In a judicial or administrative proceeding alleging
147 negligent hiring, an order of limited relief granted to an
148 individual pursuant to this section may be introduced as
149 evidence of a person's due care in hiring that individual if
150 the person knew of the order of limited relief at the time of
151 the alleged negligent hiring.

152 (k) In any proceeding on a claim against an employer
153 for negligent hiring based upon the prior conviction of an
154 employee, an order of limited relief granted to the employee
155 pursuant to this section shall provide immunity for the
156 employer with respect to the claim of negligent hiring if the
157 employer knew of the order of limited relief at the time of
158 the alleged negligent hiring. This subsection does not provide
159 immunity to the employer for other claims related to the
160 conduct of the employee.

161 (1) An employer who hires an individual who has been
162 granted an order of limited relief is subject to suit in a
163 civil action based on or relating to the retention of the
164 individual as an employee only if:

165 (1) The individual, after being hired, demonstrates a
166 danger to others or is subsequently convicted of a felony; and

167 (2) The individual is retained by the employer after
168 the demonstration of danger to others or a subsequent



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169 conviction that is substantially similar to the conduct
170 resulting in the prior conviction upon which the order of
171 limited relief was granted."

172 "§41-9A-1

173 As used in this chapter, the following terms have the
174 following meanings:

175 (1) LICENSE. Any license, certificate, or other
176 evidence of qualification that an individual is required to
177 obtain before he or she may engage in or represent himself or
178 herself to be a member of a particular profession or
179 occupation. The term does not include certification by the
180 Alabama Peace Officers' Standards and Training Commission or
181 driver licenses.

182 (2) OCCUPATIONAL LICENSING BOARD. Any state board,
183 agency, commission, or other entity in this state that is
184 established for the primary purpose of regulating the entry of
185 individuals into, or the conduct of individuals within, or
186 both, a particular profession or occupation, and that is
187 authorized to issue licenses. The term does not include any
188 state agency staffed by full-time state employees that, as a
189 part of its regular functions, may issue licenses and does not
190 include a board governed by Chapter 9, Chapter 23, or Chapter
191 24 of Title 34."

192 "§41-9A-2

193 (a) Notwithstanding any other law to the contrary, an
194 occupational licensing board shall not deny an application for
195 a license due to any of the following:

196 (1) A criminal conviction that is not directly related



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197 to the duties and responsibilities of the profession or
198 occupation for which the license is required.

199 (2) A criminal conviction that has been pardoned,
200 sealed, expunged, or otherwise nullified or made confidential
201 by the jurisdiction from which it originated.

202 (3) An arrest that did not result in a criminal
203 conviction and for which criminal charges are not currently
204 pending.

205 (4) An applicant's lack of "good moral character" or
206 failure to adhere to any similarly vague or generic standard.

207 (b) In determining whether a criminal conviction is
208 directly related to the duties and responsibilities of the
209 profession or occupation for which a license is required, an
210 occupational licensing board shall consider all of the
211 following factors on a case-by-case basis:

212 (1) The nature and seriousness of the crime for which
213 the individual was convicted.

214 (2) The nature of the specific duties and
215 responsibilities for which the license is required.

216 (3) The age of the individual at the time of the
217 commission of the crime.

218 (4) The passage of time since the commission of the
219 crime.

220 (5) Any evidence of rehabilitation or treatment
221 undertaken by the individual that might mitigate the direct
222 relationship between the criminal conviction and the duties
223 and responsibilities of the profession or occupation sought.

224 (c) An occupational licensing board that makes



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225 determinations pursuant to this section and Section 41-9A-2.1
226 shall publish on the occupational licensing board's official
227 website the standards and factors that shall guide the board
228 in making such determinations.

229 (d) When applying for a license, an applicant may
230 attach to the application a valid order of limited relief
231 granted under Section 12-26-9. A valid order of limited relief
232 shall create a presumption that an individual's criminal
233 conviction is not directly related to the duties and
234 responsibilities for which a license is required.

235 ~~(b) An occupational licensing board may not~~
236 ~~automatically deny an application for a license or revoke an~~
237 ~~existing license because of a criminal conviction when a valid~~
238 ~~order of limited relief has been issued for the otherwise~~
239 ~~disqualifying conviction or convictions in question; provided,~~
240 ~~however, an occupational licensing board may consider the~~
241 ~~conduct underlying a conviction upon which an order of limited~~
242 ~~relief was granted and may deny, revoke, or suspend a license~~
243 ~~based on that underlying conduct.~~

244 ~~(c) This section does not apply to law enforcement~~
245 ~~employment, Alabama Peace Officers' Standards and Training~~
246 ~~Commission certification, or the issuance of drivers'~~
247 ~~licenses.~~

248 (e) This section and Section 41-9A-2.1 do not apply to
249 any licensure requirement imposed by an interstate licensure
250 compact or other interstate mutual recognition licensure
251 requirement imposed by law to which Alabama is subject, or to
252 any licensure requirement imposed by Title 27, Title 8, or



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253 Title 5 or by federal law."

254 Section 2. Sections 41-9A-2.1 is added to the Code of
255 Alabama 1975, to read as follows:

256 §41-9A-2.1

257 (a) An individual who has been convicted of a criminal
258 offense, at any time, may request in writing that an
259 occupational licensing board determine whether the
260 individual's criminal conviction disqualifies that individual
261 from obtaining a license from the board. Any individual making
262 a request shall include any required fee as provided in
263 subsection (e) and information relevant to the factors listed
264 in Section 41-9A-2(b). An occupational licensing board, by
265 rule, may prescribe a standard request form to be used by all
266 individual's requesting a determination.

267 (b) Not later than 30 days after receiving a request,
268 an occupational licensing board shall make a determination,
269 based on the factors provided in Section 41-9A-2, whether the
270 individual's criminal conviction disqualifies the individual
271 from obtaining a license and notify the individual, in
272 writing, of its determination. If the occupational licensing
273 board disqualifies the individual, the notification must
274 include an explanation that addresses the factors provided in
275 Section 41-9A-2.

276 (c) A determination made pursuant to this section that
277 an individual's criminal conviction does not disqualify the
278 individual from obtaining a license may be rescinded if, at
279 the time the individual submits a completed application for
280 licensure, the individual:



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- 281 (1) Has been convicted of a subsequent crime;
- 282 (2) Is the subject of a pending criminal charge or
283 charges; or
- 284 (3) Has failed to disclose a prior criminal conviction.
- 285 (d) If an individual submits a completed application
286 for licensure after an occupational licensing board has
287 determined pursuant to this section that the individual's
288 criminal conviction disqualifies him or her from obtaining a
289 license, the occupational licensing board shall make a de novo
290 determination as further provided in subsections (a) and (b).
- 291 (e) An occupational licensing board may charge a fee of
292 not more than twenty dollars (\$20) per request to reimburse
293 the board for costs incurred in making a determination.
- 294 (f) An occupational licensing board may adopt rules to
295 implement Section 41-9A-2 and this section.
- 296 Section 3. (a) The Board of Pardons and Paroles shall
297 create a certificate of employability that shall be issued by
298 the board to individuals under the custody of the Department
299 of Corrections who meet eligibility criteria established by
300 the board, by rule, which demonstrates an individual's
301 achievements toward successful reentry into the workforce. The
302 eligibility criteria shall include consideration of:
- 303 (1) An individual's disciplinary record while in the
304 custody of the Department of Corrections;
- 305 (2) Successful completion of designated programs or
306 development of a useful skill set while in the custody of the
307 Department of Corrections; and
- 308 (3) Any other factor the board deems relevant to an



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309 individual's qualification for the certificate.

310 (b) The Board of Pardons and Paroles shall notify
311 individuals in the custody of the Department of Corrections of
312 the possibility to earn a certificate of employability. Prior
313 to being released on parole, the board shall determine whether
314 an individual meets the eligibility criteria and if so, issue
315 a certificate of employability when the individual is released
316 from the custody of the department for use in obtaining
317 employment.

318 (c) An individual required to register as a sex
319 offender pursuant to Chapter 20A of Title 15 or convicted of a
320 violent offense, as defined in Section 12-25-32, is ineligible
321 to be issued a certificate of employability.

322 (d) The Board of Pardons and Paroles shall revoke a
323 certificate of employability if the individual to whom the
324 certificate of employability was issued is convicted of a
325 felony offense committed after the issuance of the certificate
326 of employability.

327 (e) (1) In a judicial or administrative proceeding
328 alleging negligent hiring, a certificate of employability
329 issued to an individual pursuant to this section may be
330 introduced as evidence of an employer's due care in hiring
331 that individual if the employer knew of the certificate at the
332 time of the alleged negligent hiring.

333 (2) In any proceeding on a claim against an employer
334 for negligent hiring based upon the prior conviction of an
335 employee, a certificate of employability issued to an
336 individual pursuant to this section shall provide immunity for



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337 the employer with respect to the claim of negligent hiring if
338 the employer knew of the certificate at the time of the
339 alleged negligent hiring. This subdivision does not provide
340 immunity to the employer for other claims related to the
341 conduct of the employee.

342 (3) The revocation of a certificate of employability
343 does not affect the right of an employer to rely on the
344 validity of the certificate of employability at the time of
345 hiring unless the employer knew before the individual was
346 employed that the certificate of employability was fraudulent
347 or was revoked.

348 (f) An employer who hires an individual who has been
349 issued a certificate of employability may be held liable in a
350 civil action based on or relating to the retention of the
351 individual as an employee only if:

352 (1) The individual, after being hired, demonstrates a
353 danger to others or is convicted of a felony;

354 (2) The plaintiff proves by a preponderance of the
355 evidence that the individual having hiring and firing
356 responsibility for the employer had actual knowledge that the
357 employee demonstrated a danger to others or was convicted of a
358 felony; and

359 (3) That the individual having hiring and firing
360 responsibility, upon having actual knowledge that the
361 individual demonstrated a danger to others, nonetheless
362 retained the individual as an employee.

363 (g) Nothing in this section shall be construed to
364 constitute a waiver of the sovereign immunity of the state,



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365 consistent with Section 36-1-12, Code of Alabama 1975, and no
366 action shall be maintained against the state or any agency or
367 department thereof for issuance of or failure to issue any
368 certificate of employability.

369 (h) This section shall not apply to any board governed
370 by Chapter 9, Chapter 23, or Chapter 24 of Title 34.

371 Section 4. This act shall become effective on October
372 1, 2025, and applies to any cause of action pursuant to this
373 act which occurs on or after October 1, 2025.



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376 Senate

377 Read for the first time and referred06-Feb-25
378 to the Senate committee on Judiciary
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380 Read for the second time and placed27-Feb-25
381 on the calendar:
382 2 amendments
383
384 Read for the third time and passed06-Mar-25
385 as amended
386 Yeas 29
387 Nays 0
388 Abstains 0
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Patrick Harris,
Secretary.

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