

SB138 ENROLLED



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



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Enrolled, 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

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

(1) That the petitioner is not subject to the limitations in Section 12-26-6 and is eligible to seek an



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order of limited relief.

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

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

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

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

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

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

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

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

(6) Any previous probation or sentencing reports



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prepared by the Board of Pardons and Paroles.

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

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

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

(2) Any transcripts or other court records.

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

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

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

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

(g) An individual required to register as a sex offender pursuant to Chapter 20A of Title 15 or convicted of a



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violent offense as defined in Section 12-25-32 is ineligible
to obtain an order of limited relief."

"§12-26-9

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

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

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

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

(1) The nature and seriousness of the offense.

(2) The circumstances under which the offense occurred.

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

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



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

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

(7) Any other matter the court deems relevant.

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

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

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

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

(i) When an order of limited relief is granted, an occupational licensing board, as defined in Section 41-9A-1, may still consider the conduct underlying the conviction upon which the order was granted ~~in determining whether to deny, revoke, or suspend a license,~~ but the order of limited relief shall create a presumption of rehabilitation and fitness for obtaining a license as defined in Section 41-9A-1.



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

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

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

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

(2) The individual is retained by the employer after the demonstration of danger to others or a subsequent conviction that is substantially similar to the conduct resulting in the prior conviction upon which the order of limited relief was granted."

"§41-9A-1

As used in this chapter, the following terms have the



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following meanings:

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

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

"§41-9A-2

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

(1) A criminal conviction that is not directly related to the duties and responsibilities of the profession or occupation for which the license is required.

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



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

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

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

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

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

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

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

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

(c) An occupational licensing board that makes determinations pursuant to this section and Section 41-9A-2.1 shall publish on the occupational licensing board's official website the standards and factors that shall guide the board in making such determinations.

(d) When applying for a license, an applicant may



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attach to the application a valid order of limited relief granted under Section 12-26-9. A valid order of limited relief shall create a presumption that an individual's criminal conviction is not directly related to the duties and responsibilities for which a license is required.

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

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

(e) This section and Section 41-9A-2.1 do not apply to any licensure requirement imposed by an interstate licensure compact or other interstate mutual recognition licensure requirement imposed by law to which Alabama is subject, or to any licensure requirement imposed by Title 27, Title 8, or Title 5 or by federal law."

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

§41-9A-2.1

(a) An individual who has been convicted of a criminal



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

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

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

- (1) Has been convicted of a subsequent crime;
 - (2) Is the subject of a pending criminal charge or charges; or
 - (3) Has failed to disclose a prior criminal conviction.
- (d) If an individual submits a completed application



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for licensure after an occupational licensing board has determined pursuant to this section that the individual's criminal conviction disqualifies him or her from obtaining a license, the occupational licensing board shall make a de novo determination as further provided in subsections (a) and (b).

(e) An occupational licensing board may charge a fee of not more than twenty dollars (\$20) per request to reimburse the board for costs incurred in making a determination.

(f) An occupational licensing board may adopt rules to implement Section 41-9A-2 and this section.

Section 3. (a) The Board of Pardons and Paroles shall create a certificate of employability that shall be issued by the board to individuals under the custody of the Department of Corrections who meet eligibility criteria established by the board, by rule, which demonstrates an individual's achievements toward successful reentry into the workforce. The eligibility criteria shall include consideration of:

(1) An individual's disciplinary record while in the custody of the Department of Corrections;

(2) Successful completion of designated programs or development of a useful skill set while in the custody of the Department of Corrections; and

(3) Any other factor the board deems relevant to an individual's qualification for the certificate.

(b) The Board of Pardons and Paroles shall notify individuals in the custody of the Department of Corrections of the possibility to earn a certificate of employability. Prior to being released on parole, the board shall determine whether



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an individual meets the eligibility criteria and if so, issue a certificate of employability when the individual is released from the custody of the department for use in obtaining employment.

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

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

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

(2) In any proceeding on a claim against an employer for negligent hiring based upon the prior conviction of an employee, a certificate of employability issued to an individual pursuant to this section shall provide immunity for the employer with respect to the claim of negligent hiring if the employer knew of the certificate at the time of the alleged negligent hiring. This subdivision does not provide immunity to the employer for other claims related to the conduct of the employee.



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

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

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

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

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

(g) Nothing in this section shall be construed to constitute a waiver of the sovereign immunity of the state, consistent with Section 36-1-12, Code of Alabama 1975, and no action shall be maintained against the state or any agency or department thereof for issuance of or failure to issue any certificate of employability.

(h) This section shall not apply to any board governed



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365 by Chapter 9, Chapter 23, or Chapter 24 of Title 34.

366 Section 4. This act shall become effective on October
367 1, 2025, and applies to any cause of action pursuant to this
368 act which occurs on or after October 1, 2025.



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President and Presiding Officer of the Senate

Speaker of the House of Representatives

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Senate 06-Mar-25

I hereby certify that the within Act originated in and passed
the Senate, as amended.

Patrick Harris,
Secretary.

House of Representatives

Passed: 29-Apr-25

By: Senator Smitherman