

**SB138 INTRODUCED**



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



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SYNOPSIS:

Under existing law, certain occupational licensing boards may automatically disqualify an applicant convicted of a crime from licensure to practice a particular profession or occupation unless the individual has received an order of limited relief granted by a circuit court, in which case the occupational licensing board may not automatically disqualify the individual but may consider the conduct underlying the conviction when determining whether to disqualify the individual from licensure.

This bill would create a presumption of rehabilitation and fitness for licensure if an individual has been granted an order of limited relief.

This bill would establish circumstances under which an individual's felony conviction may not disqualify the individual from obtaining an occupational license and would provide immunity to employers in certain circumstances that hire individuals who have been granted an order of limited relief.

This bill would establish a formal process for an individual to request an occupational licensing board to determine whether the individual's conviction disqualifies that individual from obtaining an



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29 occupational license.

30 This bill would require the Board of Pardons and  
31 Paroles to create a certificate of employability to be  
32 issued to those individuals, when released on parole  
33 from the custody of the Department of Corrections, who  
34 meet certain eligibility criteria established by the  
35 board, to assist those individuals in obtaining  
36 employment.

37 This bill would prohibit certain individuals  
38 from being eligible for a certificate of employability.

39 This bill would also provide immunity in certain  
40 circumstances to employers that hire individuals who  
41 have been issued a certificate of employability.

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A BILL

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TO BE ENTITLED

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AN ACT

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50 Relating to eligibility for employment of convicted  
51 individuals; to amend Sections 12-26-7, 12-26-9, 41-9A-1, and  
52 41-9A-2, Code of Alabama 1975; to add Section 41-9A-2.1 to the  
53 Code of Alabama 1975; to create a presumption of fitness for  
54 occupational licensure in certain circumstances; to provide  
55 immunity to employers in certain circumstances that hire  
56 individuals granted an order of limited relief; to provide



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57 further for the process under which an occupational licensing  
58 board may disqualify an individual convicted of a crime from  
59 obtaining a license to practice a profession or occupation; to  
60 require the Board of Pardons and Paroles to create a  
61 certificate of employability to be issued to certain  
62 individuals upon their release on parole from the Department  
63 of Corrections; and to provide immunity to employers in  
64 certain circumstances that hire individuals who have been  
65 issued certificates of employability.

66 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

67 Section 1. Sections 12-26-7, 12-26-9, 41-9A-1, and  
68 41-9A-2, Code of Alabama 1975, are amended to read as follows:

69 "§12-26-7

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

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

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

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

81 (b) Once a petition has been filed, the circuit clerk  
82 ~~shall serve the petition on the occupational licensing board,~~  
83 ~~as defined in Section 41-9A-1, or other entity responsible for~~  
84 ~~the collateral consequence that the petitioner is seeking~~



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85 ~~relief from. Once service is made, the court~~ shall review  
86 available presentence and other reports on the defendant and  
87 may order a postsentence report to be completed by the Board  
88 of Pardons and Paroles or by the Commissioner of the  
89 Department of Corrections. The postsentence report shall  
90 contain information required by the court, which may include,  
91 but not be limited to, any of the following:

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

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

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

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

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

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

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

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



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

116 (2) Any transcripts or other court records.

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

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

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

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

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

133 "§12-26-9

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

140 (b) If the court determines that a hearing is not



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141 necessary, the court may rule without a hearing.

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

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

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

152 (2) The circumstances under which the offense occurred.

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

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

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

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

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

165 (e) The court shall grant the petition if it is  
166 reasonably satisfied from the evidence that granting the  
167 petition will materially assist the petitioner in obtaining or  
168 maintaining employment and in living a law-abiding life, and



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169 will not pose an unreasonable risk to the safety or welfare of  
170 the public or any individual.

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

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

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

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

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

193 (k) In any proceeding on a claim against an employer  
194 for negligent hiring based upon the prior conviction of an  
195 employee, an order of limited relief granted to the employee  
196 pursuant to this section shall provide immunity for the





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197 employer with respect to the claim of negligent hiring if the  
198 employer knew of the order of limited relief at the time of  
199 the alleged negligent hiring. This subsection does not provide  
200 immunity to the employer for other claims related to the  
201 conduct of the employee.

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

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

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

213 "§41-9A-1

214 As used in this chapter, the following terms have the  
215 following meanings:

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

223 (2) OCCUPATIONAL LICENSING BOARD. Any state board,  
224 agency, commission, or other entity in this state that is



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225 established for the primary purpose of regulating the entry of  
226 individuals into, or the conduct of individuals within, or  
227 both, a particular profession or occupation, and that is  
228 authorized to issue licenses. The term does not include any  
229 state agency staffed by full-time state employees that, as a  
230 part of its regular functions, may issue licenses."

231 "§41-9A-2

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

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

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

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

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

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

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



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

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

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

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

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

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

274           ~~(b) An occupational licensing board may not~~  
275 ~~automatically deny an application for a license or revoke an~~  
276 ~~existing license because of a criminal conviction when a valid~~  
277 ~~order of limited relief has been issued for the otherwise~~  
278 ~~disqualifying conviction or convictions in question; provided,~~  
279 ~~however, an occupational licensing board may consider the~~  
280 ~~conduct underlying a conviction upon which an order of limited~~



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281 ~~relief was granted and may deny, revoke, or suspend a license~~  
282 ~~based on that underlying conduct.~~

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

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

289 §41-9A-2.1

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

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



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

314 (1) Has been convicted of a subsequent crime;

315 (2) Is the subject of a pending criminal charge or  
316 charges; or

317 (3) Has failed to disclose a prior criminal conviction.

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

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

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

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

336 (1) An individual's disciplinary record while in the



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337 custody of the Department of Corrections;

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

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

343 (b) The Board of Pardons and Paroles shall notify  
344 individuals in the custody of the Department of Corrections of  
345 the possibility to earn a certificate of employability. Prior  
346 to being released on parole, the board shall determine whether  
347 an individual meets the eligibility criteria and if so, issue  
348 a certificate of employability when the individual is released  
349 from the custody of the department for use in obtaining  
350 employment.

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

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

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



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365 time of the alleged negligent hiring.

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

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

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

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

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

392 (3) That the individual having hiring and firing



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393 responsibility, upon having actual knowledge that the  
394 individual demonstrated a danger to others, nonetheless  
395 retained the individual as an employee.

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

402 Section 4. This act shall become effective on October  
403 1, 2025, and applies to any cause of action pursuant to this  
404 act which occurs on or after October 1, 2025.