

1 SB327
2 164358-3
3 By Senators Ross, Beasley, Figures, Smitherman, Dunn,
4 Singleton, Pittman and Sanders
5 RFD: Fiscal Responsibility and Economic Development
6 First Read: 08-MAR-16

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8 SYNOPSIS: Under existing law, there is no Alabama
9 statute prohibiting an employer from discriminating
10 against a job applicant based on the applicant's
11 criminal conviction record or a licensing authority
12 from discriminating against an applicant for a
13 license based on the applicant's criminal
14 conviction record.

15 This bill would prohibit employers from
16 inquiring into or considering an applicant's
17 conviction history for consideration of a job until
18 after the applicant has received a conditional job
19 offer, except when a conviction is directly related
20 to the position of employment sought.

21 This bill would prohibit licensing
22 authorities from inquiring into or considering an
23 applicant's conviction history for consideration of
24 a license until after the applicant is found to be
25 otherwise qualified for a license, except when a
26 conviction is directly related to the occupation
27 for which the license is sought.

1 This bill would require employers to
2 maintain certain employment and hiring records
3 relating to the conviction history of employees and
4 job applicants.

5 This bill would also authorize the
6 Department of Labor to enforce the provisions of
7 this act.

8
9 A BILL
10 TO BE ENTITLED
11 AN ACT

12
13 Relating to criminal convictions; to prohibit
14 employers from inquiring into or considering an applicant's
15 conviction history for consideration of a job until after the
16 applicant has received a conditional job offer, except when a
17 conviction is directly related to the position of employment
18 sought; to prohibit licensing authorities from inquiring into
19 or considering an applicant's conviction history for
20 consideration of a license until after the applicant is found
21 to be otherwise qualified for a license, except when a
22 conviction is directly related to the occupation for which the
23 license is sought; to require employers to maintain certain
24 employment and hiring records relating to the conviction
25 history of employees and job applicants; and to authorize the
26 Department of Labor to enforce the provisions of this act.
27 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

1 Section 1. The Legislature finds and declares that
2 reducing barriers to employment for people with arrest and
3 conviction records and decreasing unemployment in communities
4 with concentrated numbers of people with criminal conviction
5 records are matters of statewide concern. The Legislature
6 further finds and declares that increasing employment
7 opportunities for people with records will reduce recidivism
8 and improve economic stability in our communities.

9 Section 2. As used in this act, the following words
10 shall have the following meanings:

11 (1) APPLICANT. Any individual considered for, or who
12 requests to be considered for, employment or any employee
13 considered for, or who requests to be considered for, another
14 employment position by the employer.

15 (2) EMPLOYER. The state, or the agencies or
16 political subdivisions thereof, any person in the state that
17 employs four or more individuals, any person that is acting in
18 the interest of an employer directly or indirectly, or any
19 person that undertakes for compensation the procurement of
20 employees or opportunities for employment.

21 (3) HIRING AUTHORITY. The person, board, commission,
22 or department of the state, or the agencies or political
23 subdivisions thereof, responsible by law for hiring
24 individuals for public employment.

25 (4) LICENSE. A license, permit, certificate,
26 registration, or other means required to engage in an
27 occupation which is granted or issued by the state, or the

1 agencies or political subdivisions thereof, before an
2 individual may pursue, practice, or engage in any occupation.

3 (5) LICENSING AUTHORITY. The person, board,
4 commission, or department of the state, or the agencies or
5 political subdivisions thereof, responsible by law for the
6 licensing of individuals for occupations.

7 (6) OCCUPATION. An occupation, trade, vocation,
8 profession, business, or employment of any kind for which a
9 license is required to be issued by the state, or the agencies
10 or political subdivisions thereof.

11 Section 3. (a) The following criminal records may
12 not be used, distributed, or disseminated by the state, or the
13 agencies or political subdivisions thereof, in connection with
14 any application for employment or in connection with an
15 application for a license:

16 (1) Arrest not followed by a valid conviction.

17 (2) Convictions that have been sealed, dismissed, or
18 expunged.

19 (3) Infractions or misdemeanor convictions for which
20 no jail sentence may be imposed.

21 (b) Any information pertaining to an applicant's
22 background check obtained in conjunction with the hiring
23 process shall remain confidential, and may not be used,
24 distributed, or disseminated by the state, or the agencies or
25 political subdivisions thereof, except as otherwise required
26 by law.

1 Section 4. (a) An employer or hiring authority may
2 not inquire into or consider an applicant's conviction history
3 until after the applicant has received a conditional offer.

4 (b) A licensing authority may not inquire into or
5 consider the conviction history of an applicant for licensing
6 until after an applicant is found to be otherwise qualified
7 for the license.

8 (c) Job applications and licensing applications may
9 not inquire into an applicant's conviction history.

10 Section 5. (a) An individual may not be disqualified
11 from employment or disqualified from pursuing, practicing, or
12 engaging in any occupation for which a license is required
13 solely or in part because of a prior conviction, unless a
14 conviction is directly related to the position of employment
15 sought or to the occupation for which the license is sought.
16 If a law explicitly requires that certain convictions are an
17 automatic bar to employment or licensing, then those
18 convictions shall be considered.

19 (b) In determining whether a conviction directly
20 relates to the position of employment sought or the occupation
21 for which the license is sought, the employer, hiring
22 authority, or licensing authority shall consider:

23 (1) Whether the conviction is directly related to
24 the duties and responsibilities of that employment position or
25 occupation.

26 (2) Whether the position or occupation offers the
27 opportunity for the same or a similar offense to occur.

1 (3) Whether circumstances leading to the conduct for
2 which the individual was convicted will recur in the position
3 or occupation.

4 (4) The length of time since the offense occurred.

5 Section 6. (a) Nothing in this act shall be
6 interpreted as to create any requirement, power, or duty in
7 conflict with any federal or state law, rule, or regulation,
8 or with a requirement of any government agency or employer
9 from implementing any federal or state law, rule, or
10 regulation that may govern applicant inquiries, employment
11 decisions, or applicant communications.

12 (b) Nothing in this act shall prohibit an employer
13 from notifying applicants in writing of the specific offenses
14 that will disqualify an applicant from employment in a
15 particular position due to federal or state law or the
16 employer's policy.

17 Section 7. The requirements set forth in this act do
18 not apply for positions where a standard fidelity bond or an
19 equivalent bond is required and an applicant's conviction of
20 one or more specified offenses would disqualify the applicant
21 from obtaining such a bond, in which case an employer may
22 include a question or otherwise inquire whether the applicant
23 has ever been convicted of any of those offenses.

24 Section 8. If the employer, hiring authority, or
25 licensing authority intends to deny an applicant a position of
26 employment or intends to disqualify an applicant from
27 pursuing, practicing, or engaging in any occupation for which

1 a license is required solely or in part because of the
2 applicant's prior conviction, the employer, hiring authority,
3 or licensing authority, prior to a final decision, shall
4 provide the applicant written notification of the following:

5 (1) The specific conviction or convictions that are
6 the basis for the potential denial or disqualification.

7 (2) A copy of the conviction history report, if any.

8 Section 9. (a) It shall be the policy of the state
9 to do business only with contractors that have adopted and
10 employ written policies, practices, and standards that are
11 consistent with the requirements of Sections 1 to 8,
12 inclusive, of this act.

13 (b) State agencies shall review all contractors'
14 background check policies for consistency with the policies of
15 the state as expressed in Sections 1 to 8, inclusive, of this
16 act, and shall consider background check policies and
17 practices among the performance criteria in evaluating a
18 contract.

19 Section 10. (a) The Department of Labor shall be
20 responsible for enforcing the provisions of this act. Any
21 person who is aggrieved by an employer's violation of this act
22 may contact the Department of Labor to report any problems,
23 concerns, or suggestions regarding the implementation,
24 compliance, and impact of the provisions of this act, and the
25 department shall keep a record. In addition, the Department of
26 Labor shall conduct periodic reviews to assess compliance with
27 this act. The Department of Labor shall investigate and review

1 complaints and maintain records detailing complaints and their
2 disposition.

3 (b) An employer shall retain for a minimum of three
4 years application forms, records of employment, and other
5 pertinent data and records required under Sections 1 to 6,
6 inclusive, of this act, including, but not limited to,
7 communication with the applicant, and shall allow the
8 Department of Labor access to such records to monitor
9 compliance. In addition, the employer shall maintain a record
10 of all of the following:

11 (1) The number of positions requiring background
12 checks.

13 (2) The number of applicants for positions described
14 in subdivision (1) who were provided a conditional offer.

15 (3) The number of applicants with a conviction
16 record who were notified by the employer that the applicant's
17 conviction record may disqualify the applicant, as provided in
18 Section 8 of this act.

19 (c) Public employers shall also regularly conduct a
20 confidential, anonymous survey of employees in public
21 employment in which background checks are not conducted to
22 determine the number of individuals with conviction records
23 who are hired.

24 (d) An appeal, complaint, or grievance concerning a
25 violation of the provisions of this act by a public employer
26 shall be processed and adjudicated in accordance with
27 established state procedures.

1 (e) The Department of Labor shall conduct an audit
2 to review the state's hiring practices in an effort to ensure
3 that people with records are not unreasonably denied
4 employment with the state.

5 (f) For violations that occur before January 1,
6 2018, the Department of Labor shall issue a written warning to
7 the employer that includes a notice regarding the possible
8 penalties for such a violation.

9 (g) For violations that occur on or after January 1,
10 2018, the Department of Labor may issue a fine of up to one
11 thousand dollars (\$1,000) for a first violation of Sections 1
12 to 6, inclusive, of this act and provide counseling to the
13 private employer to ensure future compliance. Subsequent
14 violations are subject to fines of up to two thousand dollars
15 (\$2,000) per violation. In addition, an individual may bring a
16 civil action in any court of competent jurisdiction against
17 the employer or other person violating a provision of Sections
18 1 to 6, inclusive, of this act, and upon prevailing, shall be
19 entitled to such legal or equitable relief as may be
20 appropriate to remedy the violation, including, but not
21 limited to, damages, injunctive relief, and reasonable
22 attorneys' fees and costs. If an employer does not maintain or
23 retain adequate records documenting compliance or does not
24 allow the Department of Labor reasonable access to such
25 records, it shall be presumed that the employer did not comply
26 with this act, absent clear and convincing evidence indicating
27 otherwise.

1 Section 11. The provisions of this act shall prevail
2 over any other laws or rules which purport to govern the
3 granting, denial, renewal, suspension, or revocation of a
4 license or the initiation, suspension, or termination of
5 employment on the grounds of conviction of an offense. Nothing
6 in this act may be construed to otherwise affect relevant
7 proceedings involving the granting, denial, renewal,
8 suspension, or revocation of a license or the initiation,
9 suspension, or termination of employment.

10 Section 12. This act shall become effective January
11 1, 2017.