

1 HB377
2 217638-1
3 By Representatives Givan, Morris, Moore (M), Rogers, Hall,
4 Scott, Jones (S), Hassell, Jackson, Warren, Drummond, Forte,
5 Hollis, Gray, Rafferty and Alexander
6 RFD: State Government
7 First Read: 17-FEB-22

8 SYNOPSIS: Under existing state law, there is no
9 statute prohibiting the state or political
10 subdivisions of the state, as employers, from
11 discriminating against a job applicant based on a
12 job applicant's criminal conviction record.

13 This bill would prohibit the state and
14 political subdivisions of the state, as employers,
15 from inquiring into or considering an applicant's
16 arrest or conviction history for consideration of a
17 job until after the applicant has received a
18 conditional job offer, except under certain
19 conditions.

20 This bill would require the state and
21 political subdivisions of the state, as employers,
22 to maintain certain employment and hiring records
23 relating to the conviction history of employees and
24 job applicants.

25 This bill would also provide the State
26 Personnel Department with enforcement powers over
27 certain provisions of the bill.

1
2 A BILL
3 TO BE ENTITLED
4 AN ACT

5
6 Relating to employment discrimination; to prohibit
7 the state and political subdivisions of the state, as
8 employers, from inquiring into or considering an applicant's
9 criminal conviction history for consideration of a job until
10 after the applicant has received a conditional job offer, with
11 exceptions; to require the state and political subdivisions,
12 as employers, to maintain certain employment and hiring
13 records relating to the conviction history of employees and
14 job applicants; and to require the State Personnel Department
15 to review the hiring practices of state agencies, boards,
16 commissions, and departments.

17 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

18 Section 1. The Legislature finds and declares that
19 reducing barriers to employment for people with arrest and
20 conviction records and decreasing unemployment in communities
21 with concentrated numbers of people with criminal conviction
22 records are matters of statewide concern. The Legislature
23 further finds and declares that increasing employment
24 opportunities for people with criminal conviction records will
25 reduce recidivism and improve economic stability in our
26 communities.

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

3 (1) APPLICANT. An individual considered for, or who
4 requests to be considered for, employment, or an employee
5 considered for, or who requests to be considered for, another
6 employment position by the employer.

7 (2) EMPLOYER. State agencies, boards, commissions,
8 or departments, or other entities of the state that are
9 subject to the rules, policies, and procedures of the State
10 Personnel Board.

11 (3) HIRING AUTHORITY. The person, board, commission,
12 or department of the state, or the agencies or political
13 subdivisions thereof, responsible by law for hiring
14 individuals for public employment.

15 (4) POLITICAL SUBDIVISION OF THE STATE. A county or
16 municipality or an agency or department thereof.

17 (5) SENSITIVE GOVERNMENTAL POSITION. Any of the
18 following:

19 a. Any employment position with an employer in which
20 the employee or applicant, if hired, has or would have access
21 to or be exposed to any of the following:

22 1. Federal Tax Information, as defined from time to
23 time in Internal Revenue Service Publication 1075, and which
24 is subject to the confidentiality protections of the Internal
25 Revenue Code and safeguarding requirements of Section 6103 of
26 the Internal Revenue Code.

1 2. Return information that is subject to the
2 confidentiality provisions of Section 40-2A-10, Code of
3 Alabama 1975.

4 3. Personal information subject to the
5 confidentiality provisions of the federal Driver's Privacy
6 Protection Act (Public Law 103-322).

7 b. Any employment position with an employer in which
8 the applicant or employee will be subject to the provisions of
9 Section 38-13-1, et seq., Code of Alabama 1975, which requires
10 nationwide criminal history background checks in order to
11 determine the suitability of individuals to have unsupervised
12 access to a child, an elderly person, or a person with a
13 disability as one of the essential functions of the job under
14 Section 38-13-3, Code of Alabama 1975.

15 c. Any employment position with the employer in
16 which the applicant or employee would have access to funds,
17 public benefits, or personal information subject to the
18 confidentiality provisions of Section 26-14-8, Section 38-2-6,
19 Section 38-7-13, Section 38-9-6, or Section 38-13-8, Code of
20 Alabama 1975.

21 Section 3. (a) The following criminal records may
22 not be used, distributed, or disseminated by an employee,
23 employer, or hiring authority in connection with any
24 application for employment with an employer:

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

26 (2) Convictions that have been sealed, dismissed, or
27 expunged.

1 (3) Infraction or misdemeanor convictions for which
2 no jail sentence may be imposed.

3 (b) Any information pertaining to an applicant's
4 background check obtained by an employer or hiring authority
5 in conjunction with the hiring process shall remain
6 confidential and may not be used, distributed, or disseminated
7 by the employer or hiring authority, except as otherwise
8 required by law.

9 Section 4. (a) An employer or hiring authority may
10 not inquire into or consider an applicant's conviction history
11 until after the applicant has received a conditional job
12 offer.

13 (b) Except as provided in Section 5 or 7, an
14 application for employment with an employer or hiring
15 authority may not inquire into an applicant's conviction
16 history.

17 Section 5. (a) An applicant may not be disqualified
18 from employment with an employer or hiring authority solely or
19 in part because of a prior conviction, unless a conviction is
20 directly related to the position of employment sought. If a
21 state or federal law, rule, or regulation explicitly requires
22 that certain convictions are an automatic bar to employment,
23 then those convictions shall be considered.

24 (b) In determining whether a conviction directly
25 relates to the position of employment sought, the employer or
26 hiring authority shall consider all of the following:

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

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

6 (3) Whether circumstances leading to the conduct for
7 which the applicant was convicted will recur in the position
8 or occupation.

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

10 Section 6. (a) Nothing in this act shall be
11 interpreted as creating any requirement, power, or duty in
12 conflict with any federal or state law, rule, or regulation,
13 or with a requirement of any government agency or employer,
14 that may govern applicant inquiries, employment decisions, or
15 applicant communications.

16 (b) Nothing in this act shall prohibit an employer
17 or hiring authority from notifying applicants in writing of
18 the specific offenses that will disqualify an applicant from
19 employment in a particular position due to federal or state
20 law or the employer's policy.

21 Section 7. (a) The requirements set forth in this
22 act do not apply to positions where a standard fidelity bond
23 or an equivalent bond is required and an applicant's
24 conviction of one or more specified offenses would disqualify
25 the applicant from obtaining the bond, in which case an
26 employer may include a question or otherwise inquire whether

1 the applicant has ever been convicted of any of those
2 offenses.

3 (b) This act does not apply to the hiring of any of
4 the following:

5 (1) Alabama Securities Commission personnel who have
6 access to confidential information or who perform law
7 enforcement functions.

8 (2) Alabama Banking Department personnel who have
9 access to confidential supervisory information.

10 (3) Personnel of employers who administer public
11 health plans with access to protected health information as
12 defined by the Health Insurance Portability and Accountability
13 Act (HIPAA) under 42 U.S.C. § 1320d.

14 (4) Law enforcement officers.

15 (5) Positions filled through the direct appointment
16 provisions authorized by State Personnel Board rules.

17 (6) Sensitive governmental positions, as defined in
18 Section 2, for which a criminal history would be an immediate
19 disqualification.

20 Section 8. If an employer or hiring authority
21 intends to deny an applicant a position of employment solely
22 or in part because of the applicant's prior conviction, the
23 employer or hiring authority, prior to a final decision, shall
24 provide the applicant written notification of the following:

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

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

1 Section 9. (a) The State Personnel Department shall
2 be responsible for enforcing the provisions relating to the
3 hiring practices of state agencies, boards, commissions, and
4 departments. A state employee who is aggrieved by an
5 employer's or hiring authority's violation of this act may
6 contact the State Personnel Department to report any problems,
7 concerns, or suggestions regarding the implementation,
8 compliance, and impact of the provisions of this act, and the
9 department shall keep a record. In addition, the State
10 Personnel Department shall conduct periodic reviews to assess
11 compliance with this act. The State Personnel Department shall
12 investigate and review complaints and maintain records
13 detailing complaints and their dispositions.

14 (b) An employer or hiring authority shall retain,
15 for a minimum of three years, application forms, records of
16 employment, and other pertinent data and records required
17 under Sections 3 to 5, inclusive, including, but not limited
18 to, communication with the applicant, and shall allow the
19 State Personnel Department access to the records to monitor
20 compliance. In addition, the employer shall maintain a record
21 of all of the following:

22 (1) The number of positions requiring background
23 checks.

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

26 (3) The number of applicants with a conviction
27 record who were notified by the employer or hiring authority

1 that the applicant's conviction record disqualified the
2 applicant, as provided in Section 8.

3 (c) Employers and hiring authorities shall regularly
4 conduct a confidential, anonymous survey of employees in
5 public employment in which background checks are not conducted
6 to determine the number of individuals with conviction records
7 who are hired.

8 (d) An appeal, complaint, or grievance concerning a
9 violation of the provisions of this act by an employer or
10 hiring authority shall be processed and adjudicated in
11 accordance with procedures of the State Personnel Department.

12 (e) The State Personnel Department shall conduct an
13 annual audit to review the state's hiring practices in an
14 effort to ensure that individuals with criminal records are
15 not unreasonably denied employment with the state. The State
16 Personnel Department shall prepare a written report of this
17 annual audit and submit the written report to the Governor
18 within 90 days of the end of the fiscal year for which the
19 audit was conducted. With respect to any violations of this
20 act noted in the annual audit report that occur after January
21 1, 2023, the Governor shall take immediate and appropriate
22 action to ensure that the violations do not recur.

23 Section 10. (a) If an applicant is denied a position
24 of employment by a political subdivision of the state that has
25 a hiring practice in violation of this act, the applicant may
26 file a complaint with the circuit court of the political
27 subdivision.

1 (b) Upon a finding that the political subdivision
2 violated the provisions of this act, the court may enjoin the
3 hiring practices of the political subdivision that are in
4 violation of the act and may award the applicant damages,
5 court costs, and reasonably incurred attorney fees.

6 Section 11. The provisions of this act shall prevail
7 over any other laws or rules which purport to govern the
8 initiation, suspension, or termination of employment on the
9 grounds of conviction of an offense. Nothing in this act may
10 be construed to otherwise affect relevant proceedings
11 involving the initiation, suspension, or termination of
12 employment.

13 Section 12. This act shall become effective January
14 1, 2023, following its passage and approval by the Governor,
15 or its otherwise becoming law.