

1 SB163  
2 195974-4  
3 By Senators Ward and Smitherman  
4 RFD: Judiciary  
5 First Read: 21-MAR-19

1 SB163

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4 ENROLLED, An Act,

5 Relating to occupational licensing; to create a  
6 process for an individual who has been convicted of a crime to  
7 petition the circuit court to obtain an Order of Limited  
8 Relief and for the court to grant such an order; to prohibit  
9 an occupational licensing board or commission from  
10 automatically denying a certificate or license if an  
11 individual holds a valid Order of Limited Relief; and to  
12 provide certain exceptions.

13 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

14 Section 1. As used in this act, the following terms  
15 have the following meanings:

16 (1) COLLATERAL CONSEQUENCE. A consequence, penalty,  
17 or other result automatically imposed by operation of state  
18 law or rule that limits or prohibits an individual convicted  
19 of a crime from obtaining occupational licensing,  
20 certification, or other evidence of qualification necessary to  
21 engage in a particular occupation. The term does not include  
22 imprisonment, probation, parole, supervised release,  
23 forfeiture, restitution, fines, assessments, other costs of  
24 court, or responsibilities imposed under the Alabama Sex  
25 Offender Registration and Community Notification Act.

1           (2) CUSTODIAL SENTENCE. A criminal sentence or  
2 portion of a sentence during which an individual convicted of  
3 a crime serves time in the jurisdictional custody of the  
4 state, including, but not limited to, a prison term, jail  
5 term, or community corrections sentence.

6           (3) ORDER OF LIMITED RELIEF or ORDER. An order  
7 concerning an individual convicted of a crime by a court of  
8 conviction that relieves the individual from some or all of  
9 the collateral consequences associated with that conviction  
10 within this state.

11           Section 2. This act does not do any of the  
12 following:

13           (1) Provide a basis for invalidating a plea,  
14 conviction, or sentence.

15           (2) Provide a cause of action for monetary damages.

16           (3) Affect any of the following:

17           a. The responsibilities imposed by the Alabama Sex  
18 Offender Registration and Community Notification Act.

19           b. Any licensure requirements imposed by an  
20 interstate compact or other interstate mutual recognition  
21 licensure requirements imposed by law to which Alabama is  
22 subject, or any licensure requirements imposed by federal law.

23           c. An attorney's duty to represent a client.

24           d. A claim or right of the victim of a criminal  
25 offense.

1           e. A right or remedy under law, other than this act,  
2 available to an individual convicted of a crime.

3           Section 3. (a) An individual who has been convicted  
4 in this state of a misdemeanor or felony may file a petition  
5 to obtain an Order of Limited Relief in the following venues:

6           (1) For a conviction imposed by a circuit court, in  
7 the circuit civil court in the county that imposed the  
8 conviction.

9           (2) For a conviction imposed by a district or  
10 municipal court, in the circuit civil court in the county  
11 where the crime occurred.

12           (b) An individual who has been convicted in multiple  
13 judicial circuits in this state may file a petition to obtain  
14 an Order of Limited Relief covering each of his or her  
15 criminal convictions in the circuit civil court in any county  
16 that imposed one of the convictions.

17           (c) The circuit court shall have original  
18 jurisdiction of any petition to obtain an Order of Limited  
19 Relief, as described in subsection (a) or (b).

20           Section 4. (a) An individual who has been convicted  
21 in federal court may file a petition to obtain an Order of  
22 Limited Relief in the circuit civil court in the judicial  
23 circuit where the individual resides.

1           (b) The circuit court shall have original  
2 jurisdiction of any petition to obtain an Order of Limited  
3 Relief, as described in subsection (a).

4           Section 5. (a) An individual who has been convicted  
5 in the court of another state or country and has received an  
6 Order of Limited Relief or similar document or ruling from the  
7 convicting jurisdiction may file a petition to obtain an Order  
8 of Limited Relief in the circuit civil court in the judicial  
9 circuit where the individual resides.

10           (b) The circuit court shall have original  
11 jurisdiction of any petition to obtain an Order of Limited  
12 Relief, as described in subsection (a).

13           Section 6. (a) An individual may not file a petition  
14 to obtain an Order of Limited Relief in either of the  
15 following circumstances:

16           (1) If the petitioner is serving a custodial  
17 sentence with more than six months remaining.

18           (2) If the petitioner is currently charged with a  
19 felony.

20           (3) If the petitioner is currently charged with a  
21 Class A misdemeanor that is alleged to have occurred within  
22 the past 12 months.

23           (b) An individual may not file a petition to obtain  
24 an Order of Limited Relief if a separate petition covering the

1 same conviction or convictions has been filed in another  
2 circuit.

3 (c) A court's rejection of a petition to obtain an  
4 Order of Limited Relief on its merits shall be preclusive as  
5 to the related convictions for a period of two years, unless  
6 otherwise ordered at the court's discretion.

7 Section 7. (a) A petition to obtain an Order of  
8 Limited Relief shall include a sworn statement made under  
9 penalty of perjury by the petitioner stating all of the  
10 following:

11 (1) That the petitioner is not subject to the  
12 limitations in Section 6 and is eligible to seek an Order of  
13 Limited Relief.

14 (2) Whether the petitioner has previously applied  
15 for an Order of Limited Relief in any jurisdiction and whether  
16 an order has been granted previously.

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

19 (b) Once a petition has been filed, the circuit  
20 clerk shall serve the petition on the occupational licensing  
21 board, as defined in Section 12, or other entity responsible  
22 for the collateral consequence that the petitioner is seeking  
23 relief from. Once service is made, the court shall review  
24 available presentence and other reports on the defendant and  
25 may order a postsentence report to be completed by the Board

1 of Pardons and Paroles or by the Commissioner of the  
2 Department of Corrections. The postsentence report shall  
3 contain information required by the court, which may include,  
4 but not be limited to, any of the following:

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

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

9 (3) A record of previous applications for Orders of  
10 Limited Relief.

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

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

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

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

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

1           (1) Any Orders of Limited Relief, Certificates of  
2 Relief from Disabilities, Certificates of Rehabilitation, or  
3 similar documents issued by that jurisdiction.

4           (2) Any transcripts or other court records.

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

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

9           (e) Filing a petition for an Order of Limited Relief  
10 shall constitute a waiver of privilege for any parole or  
11 probation records related to the offenses for which the  
12 petition is filed.

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

17           Section 8. (a) In addition to any court costs or  
18 docket fees for filing a petition in circuit court, the  
19 petitioner shall pay an administrative filing fee of one  
20 hundred dollars (\$100) at the time of filing a petition to  
21 obtain an Order of Limited Relief. The administrative filing  
22 fee may not be waived by the court.

23           (b) Notwithstanding subsection (a), a petitioner may  
24 apply for indigent status by completing an Affidavit of  
25 Substantial Hardship and submitting the affidavit when filing



1 the petition. If the court finds the petitioner is indigent,  
2 the court may establish a payment plan for the petitioner to  
3 satisfy the administrative filing fee over a period of time.

4 (c) All administrative filing fees shall be  
5 allocated to the State Judicial Administration Fund  
6 administered by the Administrative Office of Courts.

7 Section 9. (a) The circuit court shall rule on the  
8 merits of the petition in accordance with subsection (d)  
9 within 90 calendar days of the date the petition was filed.  
10 The court, for good cause, may extend the time within which it  
11 must rule on the petition by order entered prior to the  
12 expiration of the initial 90-day period.

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

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

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

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

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

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

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

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

11           (6) Evidence of previous Orders of Limited Relief  
12 granted to the petitioner or prior expungement of the  
13 petitioner's record.

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

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

21           (f) There is no right to an Order of Limited Relief,  
22 and any request for such an order may be denied at the sole  
23 discretion of the court.

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

4           (h) When the court grants a petition for an Order of  
5 Limited Relief, the petitioner shall be entitled to three  
6 copies of the order from the clerk's office.

7           (i) When an Order of Limited Relief is granted, an  
8 occupational licensing board, as defined in Section 12, may  
9 still consider the conduct underlying the conviction upon  
10 which the order was granted in determining whether to deny,  
11 revoke, or suspend a license, as defined in Section 12.

12           Section 10. (a) If a court makes a preliminary  
13 determination that a petition for an Order of Limited Relief  
14 was filed under false pretenses or supported by false  
15 evidence, the court shall notify the petitioner, and the  
16 petitioner shall have 30 days to file a response to the  
17 court's determination. After 30 days or the filing of the  
18 response, whether or not the petitioner was able to be  
19 located, the court, in its discretion, may order a hearing or  
20 enter an order revoking the order.

21           (b) Subsequent conviction of a Class A, B, or C  
22 felony shall void an Order of Limited Relief.

23           (c) When an order is issued while the petitioner is  
24 on probation for the related offense, the court may revoke the

1 order at its discretion upon a finding that the petitioner has  
2 violated the terms or conditions of probation.

3 Section 11. (a) The Administrative Office of Courts  
4 may establish a standard Order of Limited Relief form to be  
5 used by all courts in the state.

6 (b) Upon request, the Administrative Office of  
7 Courts shall provide an annual report to the Legislature  
8 specifying by jurisdiction the number of applicants requesting  
9 an Order of Limited Relief, the number of orders granted, and  
10 a list of the underlying offenses for which an order was  
11 granted. The report may not include any case-specific  
12 identifying information.

13 Section 12. (a) As used in this section, the  
14 following terms have the following meanings:

15 (1) LICENSE. Any license, certificate, or other  
16 evidence of qualification that an individual is required to  
17 obtain before he or she may engage in or represent himself or  
18 herself to be a member of a particular profession or  
19 occupation.

20 (2) OCCUPATIONAL LICENSING BOARD. Any state board,  
21 agency, commission, or other entity in this state that is  
22 established for the primary purpose of regulating the entry of  
23 individuals into, or the conduct of individuals within, or  
24 both, a particular profession or occupation, and that is  
25 authorized to issue licenses. The term does not include any

1 state agency staffed by full-time state employees, that, as a  
2 part of its regular functions, may issue licenses.

3 (b) When applying for a license, an applicant may  
4 attach to the application a valid Order of Limited Relief  
5 granted under Section 9.

6 (c) An occupational licensing board may not  
7 automatically deny an application for a license or revoke an  
8 existing license because of a criminal conviction when a valid  
9 Order of Limited Relief has been issued for the otherwise  
10 disqualifying conviction or convictions in question; provided,  
11 however, an occupational licensing board may consider the  
12 conduct underlying a conviction upon which an Order of Limited  
13 Relief was granted and may deny, revoke, or suspend a license  
14 based on that underlying conduct.

15 (d) This section does not apply to law enforcement  
16 employment, Alabama Peace Officers' Standards and Training  
17 Commission certification, or drivers' licenses.

18 Section 13. This act shall become effective on the  
19 first day of the third month following its passage and  
20 approval by the Governor, or its otherwise becoming law.

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President and Presiding Officer of the Senate

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Speaker of the House of Representatives

SB163

Senate 04-APR-19

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

Patrick Harris,  
Secretary.

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House of Representatives  
Amended and passed 23-MAY-19

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Senate concurred in House amendment 28-MAY-19

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By: Senator Ward