

1 SB237
2 203808-1
3 By Senator Ward
4 RFD: Judiciary
5 First Read: 25-FEB-20

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8 SYNOPSIS: Under existing law, an inmate does not
9 receive a deduction in his or her sentence for the
10 successful completion of academic, vocational,
11 risk-reducing, or apprenticeship programs.

12 This bill would provide an inmate with a
13 deduction in his or her sentence upon a successful
14 completion of a qualifying academic, vocational,
15 risk-reducing, or apprenticeship program.

16 This bill would also require the Department
17 of Corrections, in consultation with a task force,
18 to adopt rules for the administration of education
19 incentive time.

20 This bill would also establish a task force
21 under the supervision of the Department of
22 Corrections to make recommendations for rules for
23 the administering education incentive time.

24 This bill would provide a tax credit to an
25 employer that employs an individual recently
26 released from incarceration.

1 This bill would prohibit the state and
2 political subdivisions of the state, as employers,
3 from inquiring into or considering an applicant's
4 arrest or conviction history for consideration of a
5 job until after the applicant has received a
6 conditional job offer, except under certain
7 conditions.

8 This bill would require the state and
9 political subdivisions of the state, as employers,
10 to maintain certain employment and hiring records
11 relating to the conviction history of employees and
12 job applicants.

13 This bill would also authorize the State
14 Personnel Department to enforce certain provisions
15 of this act.

16
17 A BILL
18 TO BE ENTITLED
19 AN ACT

20
21 Relating to corrections; to add a new Article 4 to
22 Title 14 of the Code of Alabama 1975; to provide for a
23 deduction of a prisoner's sentence upon completion of
24 qualifying programs; to require the Department of Corrections,
25 in consultation with a task force, to adopt rules for the
26 administration of education incentive time; to provide for the
27 task force membership and duties; to provide an income tax

1 credit for an employer that employs an individual recently
2 released from incarceration; to prohibit the state and
3 political subdivisions of the state, as employers, from
4 inquiring into or considering an applicant's criminal
5 conviction history for consideration of a job until after the
6 applicant has received a conditional job offer, with
7 exceptions; to require the state and political subdivisions,
8 as employers, to maintain certain employment and hiring
9 records relating to the conviction history of employees and
10 job applicants; and to authorize the State Personnel
11 Department to enforce certain provisions of this act.

12 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

13 Section 1. Article 4, beginning with Section
14 14-9-100, is added to Chapter 9 of Title 14 of the Code of
15 Alabama 1975, to read as follows:

16 Article 4.

17 §14-9-100.

18 The Legislature finds and declares that according to
19 2013 RAND Corporation research, offenders who participate in
20 quality education programs are 43 percent less likely to
21 return to prison within three years. The Legislature further
22 finds and declares that providing this group of individuals
23 with skills essential for post-release success is paramount,
24 in that it will reduce recidivism and improve post-release
25 transition for offenders.

26 §14-9-101.

1 This article shall be known as the "Alabama
2 Education Incentive Time Act."

3 §14-9-102.

4 As used in this article, the following terms shall
5 have the following meanings:

6 (1) TERM OF INCARCERATION. A continuous period of
7 time during which a prisoner is in the legal or physical
8 custody of the Department of Corrections pursuant to one or
9 more court-imposed sentences starting on the sentence begins
10 date recorded on the prisoner's conviction transcript and
11 concluding on the prisoner's Department calculated end of
12 sentence date.

13 (2) QUALIFYING PROGRAM. An academic, vocational,
14 risk-reducing, or apprenticeship program approved by the
15 Department of Corrections.

16 §14-9-103.

17 The Department of Corrections shall adopt rules
18 regarding the administration of education incentive time;
19 provided, however, the board may not propose rules without
20 approval from the task force created pursuant to Section
21 14-9-104. For the purposes of this section, approval requires
22 an affirmative vote from at least three-fifths of the task
23 force members. The rules shall include, but are not limited
24 to, specifying the maximum amount of time a sentence may be
25 reduced based on the successful completion of a qualifying
26 program, determining the incremental credit awarded depending
27 on the program complexity and length, establishing a

1 revocation provision for disciplinary infractions, and any
2 additional restrictions at the discretion of the task force.
3 The final rules shall be certified to the Legislative Services
4 Agency no later than March 1, 2021.

5 §14-9-104.

6 (a) A task force is created to serve under the
7 supervision of the Department of Corrections to approve
8 proposed rules of the department regarding the administration
9 of education incentive time, in accordance with Section
10 14-9-103. The task force shall include all of the following
11 representatives:

12 (1) The Commissioner of the Department of
13 Corrections, or his or her designee

14 (2) The Attorney General, or his or her designee.

15 (3) The Director of the Alabama Board of Pardons and
16 Paroles, or his or her designee.

17 (4) The Chancellor of the Alabama Community College
18 System, or his or her designee.

19 (5) The President of Ingram State Technical College,
20 or his or her designee.

21 (6) The President of Calhoun Community College, or
22 his or her designee.

23 (7) The President of Coastal Alabama Community
24 College, or his or her designee.

25 (8) The President of Gadsden State Community
26 College, or his or her designee.

1 (9) The President of Wallace Community College -
2 Dothan, or his or her designee

3 (10) Two members from the Alabama District Attorneys
4 Association, of which one shall be from a largely populated
5 metropolitan judicial circuit and the other shall be from a
6 small, rurally populated judicial circuit.

7 (b) The Commissioner of the Department of
8 Corrections, or his or her designee, shall serve as chair of
9 the task force.

10 (c) The first meeting of the task force shall be
11 held no later than August 1, 2020, at which time the task
12 force may appoint or elect a vice chair.

13 §14-9-105.

14 (a) Each prisoner who is serving a term of
15 incarceration may be entitled to earn a deduction from the
16 term of his or her sentence for successfully completing a
17 qualifying program, known as education incentive time.

18 (b) No prisoner may receive more than a total of 12
19 months of education incentive time during any term of
20 incarceration.

21 (c) No prisoner may receive education incentive time
22 for the completion of any qualifying program that was
23 completed prior to the beginning of the term of incarceration.

24 (d) Deductions from a prisoner's term of
25 incarceration based on education incentive time shall be in
26 addition to any other available sentence deductions,

1 including, but not limited to, correctional incentive time
2 awarded pursuant to Section 14-9-41.

3 (e) No prisoner may receive the benefit of education
4 incentive time if he or she has been sentenced to death, a
5 term of life imprisonment, or upon the conviction of a sex
6 offense involving a child as provided in Section 15-20A-4.

7 §14-9-106.

8 (a) Any education incentive time awarded by the
9 department to a prisoner shall be reported by the department
10 to the Board of Pardons and Paroles. The Board of Pardons and
11 Paroles shall apply education incentive time to advance the
12 initial consideration date and any tentative parole review
13 date already established for the prisoner. The board shall
14 consider the education incentive time when making a final
15 parole release decision of the prisoner.

16 (b) The department shall report to the Board of
17 Pardons and Paroles when a prisoner, who is capable of
18 participating in a qualifying program, declines or refuses to
19 participate in a qualifying program. The board shall consider
20 the lack of participation in a qualifying program when making
21 a final parole release decision of the prisoner.

22 (c) A prisoner may not be eligible for parole if he
23 or she is able to participate in a qualifying program and
24 chooses not to participate in any program.

25 §14-9-107.

26 This article does not create an interest or right
27 for any prisoner to participate in, or receive education

1 incentive time, for any qualifying program, nor does it
2 authorize the commissioner to create an interest or right. No
3 prisoner or class of prisoners may bring any cause of action
4 against any party in any court involving the subject matter of
5 education incentive time under this article. No court has
6 subject matter jurisdiction over challenges to directives,
7 rules, or policies adopted under this article; awards or
8 failures to award education incentive time; decisions related
9 to approving programs for credit; program admission decisions;
10 financial aid eligibility determinations; evaluations or
11 grades; certifications of program completion; or any other
12 acts or omissions arising from or related to the authority
13 granted by this article.

14 §14-9-108.

15 The Board of Pardons and Paroles shall adopt rules
16 to implement and administer this article.

17 Section 2. Article 6, beginning with Section
18 36-26-150, is added to Chapter 26 of Title 36 of the Code of
19 Alabama 1975, to read as follows:

20 Article 6.

21 §36-26-150.

22 The Legislature finds and declares that reducing
23 barriers to employment for people with arrest and conviction
24 records and decreasing unemployment in communities with
25 concentrated numbers of people with criminal conviction
26 records are matters of statewide concern. The Legislature
27 further finds and declares that increasing employment

1 opportunities for people with criminal conviction records will
2 reduce recidivism and improve economic stability in our
3 communities.

4 §36-26-151.

5 As used in this article, the following words shall
6 have the following meanings:

7 (1) APPLICANT. An individual considered for, or who
8 requests to be considered for, employment, or an employee
9 considered for, or who requests to be considered for, another
10 employment position by the employer.

11 (2) EMPLOYER. State agencies, boards, commissions,
12 or departments, or political subdivisions of the state.

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

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

19 a. Any employment position with the employer in
20 which the employee will have access or be exposed to Federal
21 Tax Information as defined from time to time in Internal
22 Revenue Service Publication 1075 and which is subject to the
23 confidentiality protections of the Internal Revenue Code and
24 safeguarding requirements of Section 6103 of the Internal
25 Revenue Code; return information subject to the
26 confidentiality provisions of Section 40-2A-10; or personal

1 information subject to the confidentiality provisions of the
2 federal Driver's Privacy Protection Act (Public Law 103-322).

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

11 c. Any employment position with the employer in
12 which the applicant or employee will have access to funds,
13 public benefits, or personal information subject to the
14 confidentiality provisions of Section 26-14-8, 38-2-6,
15 38-7-13, 38-9-6, or 38-13-8.

16 §36-26-152.

17 (a) The following criminal records may not be used,
18 distributed, or disseminated by an employee or hiring
19 authority, in connection with any application for employment
20 with an employer:

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

22 (2) Convictions that have been sealed, dismissed, or
23 expunged.

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

26 (b) Any information pertaining to an applicant's
27 background check obtained by an employer or hiring authority

1 in conjunction with the hiring process shall remain
2 confidential, and may not be used, distributed, or
3 disseminated by the state or political subdivisions of the
4 state, except as otherwise required by law.

5 §36-26-153.

6 (a) An employer or hiring authority may not inquire
7 into or consider an applicant's conviction history until after
8 the applicant has received a conditional job offer.

9 (b) Except as provided in Section 36-26-154 or
10 36-26-156, an application for employment with an employer may
11 not include questions regarding an applicant's conviction
12 history.

13 §36-26-154.

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

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

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

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

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

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

7 §36-26-155.

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

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

19 §36-26-156.

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

1 (b) This article does not apply to the hiring of
2 Alabama Securities Commission personnel who have access to
3 confidential information or who perform law enforcement
4 functions or to the hiring of Alabama Banking Department
5 personnel who have access to confidential supervisory
6 information.

7 (c) This article does not apply to an employer that
8 is a law enforcement agency.

9 (d) This article does not apply to positions filled
10 through the direct appointment provisions authorized by State
11 Personnel Board rules.

12 (e) This article does not apply to applicants for
13 sensitive government positions, as defined in Section
14 36-26-151, for which a criminal history would be an immediate
15 disqualification.

16 §36-26-157.

17 If an employer or hiring authority intends to deny
18 an applicant a position of employment solely or in part
19 because of the applicant's prior conviction, the employer or
20 hiring authority, prior to a final decision, shall provide the
21 applicant written notification of both of the following:

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

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

25 §36-26-158.

26 (a) The State Personnel Department shall be
27 responsible for enforcing the provisions relating to the

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

12 (b) An employer or hiring authority shall retain,
13 for a minimum of three years, application forms, records of
14 employment, and other pertinent data and records required
15 under Sections 36-26-152 to 36-26-154, inclusive, including,
16 but not limited to, communication with the applicant, and
17 shall allow the State Personnel Department access to the
18 records to monitor compliance. In addition, the employer shall
19 maintain a record of all of the following:

20 (1) The number of positions requiring background
21 checks.

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

24 (3) The number of applicants with a conviction
25 record who were notified by the employer that the applicant's
26 conviction record disqualified the applicant, as provided in
27 Section 36-26-157.

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

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

10 (e) The State Personnel Department shall conduct an
11 annual audit to review the state's hiring practices in an
12 effort to ensure that individuals with criminal records are
13 not unreasonably denied employment with the state. The State
14 Personnel Department shall prepare a written report of this
15 annual audit and submit the written report to the Governor
16 within 90 days of the end of the fiscal year for which the
17 audit was conducted. With respect to any violations of this
18 act noted in the annual audit report that occur after January
19 1, 2021, the Governor shall take immediate and appropriate
20 action to ensure that the violations do not recur.

21 §36-26-159.

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

26 (b) Upon a finding that the political subdivision
27 violated this article, the court may enjoin the hiring

1 practices of the political subdivision that are in violation
2 of the article and may award the applicant damages, court
3 costs, and reasonably incurred attorney fees.

4 §36-26-160.

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

12 Section 3. (a) As used in this section, the
13 following terms shall have the following meanings:

14 (1) INDIVIDUAL RELEASED FROM INCARCERATION. An
15 individual who has been convicted of a felony offense and
16 sentenced to a period of incarceration in a Department of
17 Corrections facility and who is now released from
18 incarceration, either to a term of probation, on parole, or
19 due to reaching the end of his or her sentence and who, while
20 serving his or her incarceration period, participated in a
21 correctional education program through the Alabama Community
22 College System and received a certificate or associate degree
23 through the correctional education program.

24 (2) ELIGIBLE EMPLOYER. A taxpayer who first employs
25 an individual released from incarceration on or after the
26 effective date of this act.

1 (b) (1) An Alabama income tax credit is established
2 for eligible employers that employ for at least seven months
3 of the taxable year an individual released from incarceration.
4 The credit shall equal one thousand dollars (\$1,000) for each
5 individual employed. The credit shall not be available for an
6 individual for more than four taxable years.

7 (2) The credit shall be allowed against the tax
8 imposed by Chapter 18 of Title 40, Code of Alabama 1975. This
9 tax credit shall not be allowed to decrease a taxpayer's tax
10 liability to less than zero. The credit is not refundable or
11 transferable. The credit shall be available, on a pro rata
12 basis, to the owners of qualified employers that are entities
13 taxed under subchapters S or K of the Internal Revenue Code.
14 An employer applying for a tax credit must apply each year to
15 receive the credit for the preceding calendar year.

16 (c) (1) The Chancellor of the Alabama Community
17 College System may adopt rules necessary to establish
18 standards for participation and eligibility and to implement
19 and administer this section. The Alabama Community College
20 System shall consult with the Department of Revenue and the
21 Department of Corrections to coordinate their efforts.

22 (2) The Department of Revenue shall create a form to
23 claim this credit that provides information to the department
24 that is sufficient for the proper administration of this
25 credit.

1 (d) The income tax credit created pursuant to this
2 act shall be effective January 1, 2021 for the 2021 taxable
3 year and each subsequent taxable year thereafter.

4 Section 4. Section 1 of this act, relating to
5 education incentive time, shall become effective on the first
6 day of the third month following its passage and approval by
7 the Governor, or its otherwise becoming law; Section 2 of this
8 act, relating to criminal convictions, shall become effective
9 January 1, 2021; Section 3 of this act, relating to income
10 taxes credits shall become effective immediately.