**South Carolina General Assembly**

123rd Session, 2019-2020

**H. 3463**

**STATUS INFORMATION**

General Bill

Sponsors: Reps. Robinson and Garvin

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Introduced in the House on January 8, 2019

Currently residing in the House Committee on **Judiciary**

Summary: Criminal convictions

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

1/8/2019 House Introduced and read first time ([House Journal‑page 251](file:///h:\hj\20190108.docx))

1/8/2019 House Referred to Committee on **Judiciary** ([House Journal‑page 251](file:///h:\hj\20190108.docx))

2/21/2019 House Member(s) request name added as sponsor: Garvin

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**VERSIONS OF THIS BILL**

[1/8/2019](file:///p:\pprever\2019-20\3463_20190108.docx)

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 41‑1‑35 SO AS TO PROVIDE THAT NO JOB APPLICATION MAY INCLUDE QUESTIONS RELATED TO CONVICTIONS OF A CRIME, UNLESS THE CRIME FOR WHICH HE WAS CONVICTED DIRECTLY RELATES TO THE POSITION OF EMPLOYMENT SOUGHT OR THE OCCUPATION FOR WHICH THE LICENSE IS SOUGHT, TO PROVIDE A RELATED POLICY STATEMENT, AND TO PROVIDE NECESSARY DEFINITIONS, AMONG OTHER THINGS, IN ORDER TO GIVE A BETTER CHANCE FOR APPLICANTS TO BE CONSIDERED FOR EMPLOYMENT PRIOR TO THE STAGE IN THE APPLICATION PROCESS WHEN BACKGROUND CHECKS ARE CONDUCTED.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Chapter 1, Title 41 of the 1976 Code is amended by adding:

“Section 41‑1‑35. (A) It is the policy of the State of South Carolina to encourage and contribute to the rehabilitation of criminal offenders and to assist them in the resumption of the responsibilities of citizenship. The opportunity to secure employment or to pursue, practice, or engage in a meaningful and profitable trade, occupation, vocation, profession, or business is essential to rehabilitation and the resumption of the responsibilities of citizenship.

(B) For the purposes of this section:

(1) ‘Conviction of crime or crimes’ means convictions of felonies, gross misdemeanors, and misdemeanors for which a jail sentence may be imposed. No other criminal conviction may be considered.

(2) ‘Hiring or licensing authority’ means the person, board, commission, or department of this State and its political subdivisions, responsible by law for the hiring of people for public employment or the licensing of people for occupations.

(3) ‘License’ means all licenses, permits, certificates, registrations, or other means required to engage in an occupation which are granted or issued by this State or its political subdivisions before a person can pursue, practice, or engage in any occupation.

(4) ‘Occupation’ means all occupations, trades, vocations, professions, businesses, or employment of any kind for which a license is required to be issued by this State or its political subdivisions.

(5) ‘Public employment’ means all employment with this State and its political subdivisions.

(C)(1) Notwithstanding any other provision of law to the contrary, a public or private employer may not inquire into or consider or require disclosure of the criminal record or criminal history of an applicant for employment until the applicant has been selected for an interview by the employer or, if there is not an interview, before a conditional offer of employment is made to the applicant.

(2) This subsection does not apply to the Department of Corrections or to employers who have a statutory duty to conduct a criminal history background check or otherwise take into consideration a potential employee’s criminal history during the hiring process.

(3) This subsection does not prohibit an employer from notifying applicants that law or the employer’s policy will disqualify an individual with a particular criminal history background from employment in particular positions.

(D)(1) Notwithstanding another provision of law to the contrary, no person may be disqualified from public employment, nor may a person be disqualified from pursuing, practicing, or engaging in any occupation for which a license is required solely or in part because of a prior conviction of a crime, unless the crime for which he was convicted directly relates to the position of employment sought or the occupation for which the license is sought.

(2) In determining if a conviction directly relates to the position of public employment sought or the occupation for which the license is sought, the hiring or licensing authority shall consider:

(a) the nature and seriousness of the crime for which the individual was convicted;

(b) the relationship of the crime or crimes to the purposes of regulating the position of public employment sought or the occupation for which the license is sought; and

(c) the relationship of the crime to the ability, capacity, and fitness required to perform the duties and discharge the responsibilities of the position of employment or occupation.

(3)(a) A person who has been convicted of a crime that directly relates to the public employment sought or to the occupation for which a license is sought must not be disqualified from the employment or occupation if the person can show competent evidence of sufficient rehabilitation and present fitness to perform the duties of the public employment sought or the occupation for which the license is sought. Competent evidence of sufficient rehabilitation may be established by the production of the person’s most recent certified copy of a United States Department of Defense form 214 (DD‑214) showing the person’s honorable discharge, or separation under honorable conditions, from the United States armed forces for military service rendered following conviction for any crime that would otherwise disqualify the person from the public employment sought or the occupation for which the license is sought, or:

(i) a copy of the local, state, or federal release order;

(ii) evidence showing that at least one year has elapsed since release from any local, state, or federal correctional institution without subsequent conviction of a crime; and evidence showing compliance with all terms and conditions of probation or parole; or

(iii) a copy of the relevant Department of Corrections discharge order or other documents showing completion of probation or parole supervision.

(b) In addition to the documentary evidence presented, the licensing or hiring authority shall consider any evidence presented by the applicant regarding:

(i) the nature and seriousness of the crime for which he was convicted;

(ii) all circumstances relative to the crime, including mitigating circumstances or social conditions surrounding the commission of the crime;

(iii) the age of the person at the time the crime was committed;

(iv) the length of time elapsed since the crime was committed; and

(v) all other competent evidence of rehabilitation and present fitness presented, including, but not limited to, letters of reference by people who have been in contact with the applicant since the applicant’s release from any local, state, or federal correctional institution.

(c) The certified copy of a person’s United States Department of Defense form DD‑214 showing the person’s honorable discharge or separation under honorable conditions from the United States armed forces ceases to qualify as competent evidence of sufficient rehabilitation for purposes of this section upon the person’s conviction for any gross misdemeanor or felony committed by the person subsequent to the effective date of that honorable discharge or separation from military service.

(E) The following criminal records must not be used, distributed, or disseminated by the State or its political subdivisions in connection with any application for public employment nor in connection with an application for a license:

(1) records of arrest not followed by a valid conviction;

(2) convictions which have been, pursuant to law, annulled or expunged; and

(3) misdemeanor convictions for which no jail sentence can be imposed.

(F) If a hiring or licensing authority denies an individual a position of public employment or disqualifies the individual from pursuing, practicing, or engaging in any occupation for which a license is required, solely or in part because of the individual’s prior conviction of a crime, the hiring or licensing authority shall notify the individual in writing of the following:

(1) the grounds and reasons for the denial or disqualification;

(2) the applicable complaint and grievance procedure as set forth in subsection (G);

(3) the earliest date the person may reapply for a position of public employment or a license; and

(4) that all competent evidence of rehabilitation presented will be considered upon reapplication.

(G)(1) Any complaints or grievances concerning violations of this section by public employers must be processed and adjudicated pursuant to the Administrative Procedures Act.

(2)(a) The Human Affairs Commission shall investigate violations of this section by a private employer. If the commission finds that a violation has occurred, it may impose penalties as provided in subitems (b) and (c).

(b) For violations that occur before January 1, 2021, the penalties are as follows:

(i) for the first violation, the commissioner shall issue a written warning to the employer that includes a notice regarding the penalties for subsequent violations;

(ii) if a first violation is not remedied within thirty days after the issuance of a warning under subitem (i), the commission may impose up to a five hundred dollar fine; and

(iii) subsequent violations before January 1, 2021, are subject to a fine of up to five hundred dollars for each violation, not to exceed five hundred dollars in a calendar month.

(c) For violations that occur after December 31, 2022, the penalties are as follows:

(i) for employers that employ ten or fewer people at a site in this State, the penalty is up to one hundred dollars for each violation, not to exceed one hundred dollars in a calendar month;

(ii) for employers that employ eleven to twenty people at a site in this State, the penalty is up to five hundred dollars for each violation, not to exceed five hundred dollars in a calendar month; and

(iii) for employers that employ more than twenty people at one or more sites in this State, the penalty is up to five hundred dollars for each violation, not to exceed two thousand dollars in a calendar month.

(d) The remedies under this subsection are exclusive. A private employer is not otherwise liable for complying with or failing to comply with the provisions of this section.

(H) The provisions of this section must prevail over any other laws and rules which purport to govern the granting, denial, renewal, suspension, or revocation of a license or the initiation, suspension, or termination of public employment on the grounds of conviction of a crime. In deciding to grant, deny, revoke, suspend, or renew a license, or to deny, suspend, or terminate public employment for a lack of good moral character or the like, the hiring or licensing authority may consider evidence of conviction of a crime but only in the same manner and to the same effect as provided for in this section. Nothing in this section may be construed to otherwise effect relevant proceedings involving the granting, denial, renewal, suspension, or revocation of a license or the initiation, suspension, or termination of public employment.

(I) This section shall not apply to the practice of law or judicial branch employment; but nothing in this section may be construed to preclude the Supreme Court, in its discretion, from adopting the policies set forth in this section.”

SECTION 2. This act takes effect upon approval by the Governor.

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