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Sponsors: Senator M.B. Matthews

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**VERSIONS OF THIS BILL**

[12/9/2015](file:///p:\pprever\2015-16\957_20151209.docx)

**A** **BILL**

TO AMEND CHAPTER 1, TITLE 41 OF THE 1976 CODE, RELATING TO GENERAL PROVISIONS CONCERNING LABOR AND EMPLOYMENT, BY ADDING SECTION 41‑1‑25 TO PROVIDE THAT AN EMPLOYER MAY NOT INQUIRE, CONSIDER, OR REQUIRE DISCLOSURE OF THE CRIMINAL RECORD OR CRIMINAL HISTORY OF AN APPLICANT FOR EMPLOYMENT UNTIL THE APPLICANT IS SELECTED FOR AN INTERVIEW BY THE EMPLOYER OR BEFORE A CONDITIONAL OFFER OF EMPLOYMENT IS MADE TO THE APPLICANT, TO PROVIDE EXCEPTIONS, AND TO PROVIDE RELATED DEFINITIONS AND PROCEDURES, AMONG OTHER THINGS; AND TO AMEND CHAPTER 6, TITLE 12 TO PROVIDE FOR A TAX CREDIT TO EMPLOYERS WHO HIRE A QUALIFIED EX-FELON; AND TO DEFINE NECESSARY TERMS.

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 41‑1‑25. (A) It is the policy of the State of South Carolina to encourage and contribute to the rehabilitation of individuals with criminal records 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, ‘conviction of crime or crimes’ means a judgment in a verdict or finding of guilty, plea of guilty, pleas of nolo contendere, or forfeiture of bail to a criminal charge in which a jail sentence may be imposed.

(C)(1) An employer may not inquire, consider, or require disclosure of the criminal record or criminal history of an applicant for employment until the applicant is selected for an interview by the employer or, if interviews are not conducted, before a conditional offer of employment is made to the applicant.

(2) This subsection does not:

(a) apply to the Department of Corrections and employers who have a statutory duty to conduct a criminal history background check or otherwise consider the criminal history of a potential employee during the hiring process; and

(b) prohibit an employer from notifying applicants that a specific law or a policy of the employer will disqualify an individual with a particular criminal history background from employment in a particular position.

(D)(1) The prior conviction of a crime by a person alone may not disqualify him from employment unless the conviction was for a crime that directly relates to the position of employment sought. In determining if a conviction directly relates to the employment sought, the employer shall consider:

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

(b) 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; and

(c) the amount of time that has lapsed since the crime was committed.

(2)(a) A person who is convicted of a crime that directly relates to the employment he seeks may not be disqualified from the employment if he can provide competent evidence of his sufficient rehabilitation and present fitness to perform the duties of the employment. He may establish this evidence by producing:

(i) the most recent certified copy of a United States Department of Defense form 214 (DD‑214) indicating his honorable discharge or separation under honorable conditions from the United States armed forces for military service rendered following conviction for a crime that would otherwise disqualify him from the public employment he seeks;

(ii) a certified copy of an order releasing him from a local, state, or federal correctional institution, evidence that at least one year has elapsed since his release, evidence that he subsequently has not been convicted of a crime, and evidence of his compliance with all terms and conditions of probation or parole; or

(iii) a certified copy of the Department of Corrections discharge order or documentation showing completion of probation or parole supervision, if any.

(b) In addition to documentary evidence provided pursuant to subitem (a), the hiring authority also shall consider evidence presented by the applicant regarding:

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

(ii) all circumstances reasonably related 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 amount of time that has 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 credible people who have been in contact with the applicant since his release from incarceration.

(c) Documentation of honorable discharge or separation under honorable conditions from the United States armed forces permitted in subitem (a)(i) does not serve as competent evidence of sufficient rehabilitation for purposes of this section if the person is convicted of a misdemeanor or felony committed by the person after the effective date of that honorable discharge or separation from military service, except for convictions of minor traffic violations.

(E) The following criminal records may not be used, distributed, or disseminated by this State in connection with an application for employment:

(1) a record of an arrest for which no conviction resulted;

(2) an annulled or expunged conviction;

(3) a misdemeanor conviction for which no jail sentence may be imposed; and

(4) not pressed or dismissed charges.

(F) If an employer denies employment to an individual because of a prior criminal conviction of the person, the employer shall notify the individual in writing of:

(1) the grounds and reasons for the denial;

(2) the earliest date the person may reapply; and

(3) an assurance that all competent evidence of rehabilitation presented will be considered upon reapplication.

(G) This section may 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 3. Chapter 25, Title 12 of the 1976 Code is amended by adding:

“Section 12-6-3760. (A) For the purposes of this section, ‘qualified ex-felon’ means any individual who:

(1) was convicted of a felony as listed in Section 16-1-90; and

(2) as of the hiring date, if not more than two years after being released from prison, has not been convicted of another criminal offense.

(B)(1) An employer who employs a qualified ex-felon is eligible for an income tax credit in the following manner:

(a) if a qualified ex-felon works a minimum of one hundred twenty hours, an employer may claim a tax credit equal to twenty-five percent of the qualified ex-felon’s wages during the first twelve months of employment; or

(b) if a qualified ex-felon works a minimum of four hundred hours, an employer may claim a tax credit equal to forty percent of the qualified ex-felon’s first twelve months of employment.

(C) Nothing in this section may be construed as limiting the amount of qualified ex-felons an employer may claim a tax credit for in a given taxable year.”

SECTION 4. This act takes effect upon approval by the Governor.

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