

1 HB435
2 165318-3
3 By Representative Black
4 RFD: Education Policy
5 First Read: 07-APR-15

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8 SYNOPSIS: Under existing law, a person may be hired by
9 a board of education where a relative within the
10 fourth degree of affinity or consanguinity of that
11 person is an existing employee, so long as the
12 relative will not be the person's immediate
13 supervisor and where the relative has no
14 involvement in the hiring of that person.

15 This bill would prohibit a superintendant, a
16 principal or other supervisor, or a member of a
17 board of education from taking any direct or
18 indirect role in the hiring of a relative.

19 This bill would prohibit a person from being
20 hired by a board of education where a relative
21 would be the person's immediate supervisor.

22 This bill would allow a person to be hired
23 by a board of education where a relative would be
24 in the chain of command of that person so long as
25 the relative would not be the person's immediate
26 supervisor.

1 This bill would prohibit a person from
2 evaluating the performance of any subordinate who
3 is a relative.

4 This bill would provide a cause of action
5 for an applicant who is injured because of a
6 violation of the provisions of this act.

7 This bill would define relative.

8 This bill would also provide penalties for
9 violating this act.

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11 A BILL
12 TO BE ENTITLED
13 AN ACT

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15 Relating to school personnel; to amend Section
16 41-1-5, Code of Alabama 1975; to prohibit relatives from being
17 involved in the hiring, supervision, or performance evaluation
18 of a school employee; to define relative; to provide a cause
19 of action for an applicant injured because of a violation of
20 this act; and to provide penalties.

21 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

22 Section 1. Section 41-1-5, Code of Alabama 1975, is
23 amended to read as follows:

24 "§41-1-5.

25 "(a) No officer or employee of the state or of any
26 state department, board, bureau, committee, commission,
27 institution, corporation, authority, or other agency of the

1 state shall appoint, or enter a personal service contract
2 with, any person related to him or her within the fourth
3 degree of affinity or consanguinity to any job, position, or
4 office of profit with the state or with any of its agencies.

5 "(b) Any person within the fourth degree of affinity
6 or consanguinity of the agency head or appointing authority,
7 the appointing authority's designee, deputy director,
8 assistant director, or associate director shall be ineligible
9 to serve in any capacity with the state under authority of
10 such an appointment, and any appointment so attempted shall be
11 void. The provisions of this section shall not prohibit the
12 continued employment of any person who is employed as a public
13 employee as of August 1, 2013, nor shall it be construed to
14 hinder, alter, or in any way affect normal promotional
15 advancements under the state Merit System for the employee.

16 "(c) Any person within the fourth degree of affinity
17 or consanguinity of a public employee shall not be the
18 immediate supervisor for or in the chain of command of, or
19 participate in the hiring, evaluation, reassignment,
20 promotion, or discipline of, the public employee within any
21 state department, board, bureau, committee, commission,
22 institution, corporation, authority, or other agency of the
23 state.

24 ~~"However, this subsection shall not apply to an~~
25 ~~employee of a city or county board of education that is~~
26 ~~currently employed or to a future employee hired into a~~
27 ~~non-supervisory position posted in accordance with Section~~

1 ~~16-22-15, where his or her relative will not be the employee's~~
2 ~~immediate supervisor, and where the employee's relative made~~
3 ~~no recommendation, cast no vote, and otherwise had no~~
4 ~~involvement concerning the employee's hiring.~~

5 "(d) Whoever violates this section is guilty of a
6 misdemeanor and shall be punished by a fine not to exceed
7 ~~\$500.00~~ five hundred dollars (\$500) or by imprisonment not to
8 exceed one year, or both. A willful violation of this section
9 shall subject the public employee and the person or persons
10 within the fourth degree of affinity or consanguinity of the
11 public employee to disciplinary action, up to and including
12 separation from state service.

13 "(e) This section shall not apply to any city or
14 county board of education."

15 Section 2. As used in Sections 3 to 5, inclusive, of
16 this act, the following terms have the following meanings:

17 (1) BOARD, BOARD OF EDUCATION, or EXECUTIVE OFFICER.
18 These terms shall have the same meaning as provided in Section
19 16-22-15, Code of Alabama 1975.

20 (2) RELATIVE. The spouse, a dependant, an adult
21 child or his or her spouse, a parent, a spouse's parent, or a
22 sibling or his or her spouse, of another person.

23 Section 3. (a) Except as otherwise provided in this
24 section, an executive officer may not recommend a relative for
25 employment to his or her board.

26 (b) If a board publishes a vacancy announcement
27 pursuant to Section 16-22-15, Code of Alabama 1975, and a

1 relative of the executive officer submits an application or
2 otherwise seeks the advertised position, the executive officer
3 shall take no further direct or indirect action regarding the
4 posted vacancy. The executive officer shall appoint an
5 executive officer of another school system or another
6 disinterested individual who is not employed by the board and
7 does not report to the executive officer to conduct any
8 interviews and to make a determination as to the applicant to
9 be recommended to the board and to issue a report in writing.
10 The executive officer shall then perform the ministerial task
11 of presenting that written report, without comment, to the
12 board for its consideration as to the executive officer's
13 recommendation.

14 (c) If a board publishes a vacancy announcement
15 pursuant to Section 16-22-15, Code of Alabama 1975, and a
16 relative of a board member submits an application or otherwise
17 seeks the advertised position, that member shall recuse
18 himself or herself from any discussion, debate, consideration,
19 or vote on the executive officer's recommendation regarding
20 that vacancy.

21 (d) If a board publishes a vacancy announcement
22 pursuant to Section 16-22-15, Code of Alabama 1975, and a
23 relative of a principal or other supervisor who is charged
24 with conducting interviews, vetting or recommending
25 candidates, or otherwise taking part in the hiring process
26 submits an application or otherwise seeks the advertised
27 position, the principal or supervisor may not take any part in

1 the hiring process, directly or indirectly, and any
2 interviews, vetting, or recommendations shall be assigned by
3 the executive officer to another administrator in the system
4 who does not report to the disqualified principal or
5 administrator.

6 (e) Following the effective date of this act, no
7 person shall be eligible to apply for or be hired into a
8 position for which his or her immediate supervisor would be a
9 relative.

10 (f) A person may apply for and be hired into a
11 position where a relative would be in the applicant's chain of
12 command if hired but would not be the applicant's immediate
13 supervisor, so long as the applicant's supervisor made no
14 recommendation, cast no vote, and otherwise had no direct or
15 indirect involvement concerning the employee's hiring.

16 (g) If a position is filled by a relative of an
17 executive officer, board member, principal, or other
18 supervisor, and a violation of this section occurs, any other
19 applicant for the position shall have standing to bring a
20 declaratory judgment action in the circuit court with
21 jurisdiction over the board within 21 days of the board's
22 action to fill the position. If the court finds that this
23 section was violated, the court shall declare the action of
24 the board in hiring the relative null and void, order the
25 executive officer and board to advertise the position again in
26 accordance with Section 16-22-15, Code of Alabama 1975, and

1 declare the relative initially hired ineligible for employment
2 in that position.

3 Section 4. (a) A person may not evaluate the
4 performance of, have input into the compensation of, or
5 otherwise set the terms and conditions of employment of a
6 subordinate relative.

7 (b) If an executive officer receives a
8 recommendation for a personnel action affecting his or her
9 relative from the principal or other supervisor of that
10 relative, the executive officer shall delegate a third party
11 to take action or make a recommendation to the board as
12 provided in subsection (b) of Section 3 of this act.

13 Section 5. A willful violation of any provision of
14 Section 3 or 4 of this act may constitute grounds for
15 reprimand or a failure to satisfy the standards of
16 boardsmanship as provided in the School Board Governance
17 Improvement Act, Section 16-1-41.1, Code of Alabama 1975.

18 Section 6. 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.