

1 SB361
2 165318-4
3 By Senator Shelnutt
4 RFD: Education and Youth Affairs
5 First Read: 09-APR-15

1 SB361

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4 ENROLLED, An Act,

5 Relating to school personnel; to amend Section
6 41-1-5, Code of Alabama 1975; to prohibit relatives from being
7 involved in the hiring, supervision, or performance evaluation
8 of a school employee; to define relative; to provide a cause
9 of action for an applicant injured because of a violation of
10 this act; and to provide penalties.

11 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

14 "§41-1-5.

15 "(a) No officer or employee of the state or of any
16 state department, board, bureau, committee, commission,
17 institution, corporation, authority, or other agency of the
18 state shall appoint, or enter a personal service contract
19 with, any person related to him or her within the fourth
20 degree of affinity or consanguinity to any job, position, or
21 office of profit with the state or with any of its agencies.

22 "(b) Any person within the fourth degree of affinity
23 or consanguinity of the agency head or appointing authority,
24 the appointing authority's designee, deputy director,
25 assistant director, or associate director shall be ineligible

1 to serve in any capacity with the state under authority of
2 such an appointment, and any appointment so attempted shall be
3 void. The provisions of this section shall not prohibit the
4 continued employment of any person who is employed as a public
5 employee as of August 1, 2013, nor shall it be construed to
6 hinder, alter, or in any way affect normal promotional
7 advancements under the state Merit System for the employee.

8 "(c) Any person within the fourth degree of affinity
9 or consanguinity of a public employee shall not be the
10 immediate supervisor for or in the chain of command of, or
11 participate in the hiring, evaluation, reassignment,
12 promotion, or discipline of, the public employee within any
13 state department, board, bureau, committee, commission,
14 institution, corporation, authority, or other agency of the
15 state.

16 ~~"However, this subsection shall not apply to an~~
17 ~~employee of a city or county board of education that is~~
18 ~~currently employed or to a future employee hired into a~~
19 ~~non-supervisory position posted in accordance with Section~~
20 ~~16-22-15, where his or her relative will not be the employee's~~
21 ~~immediate supervisor, and where the employee's relative made~~
22 ~~no recommendation, cast no vote, and otherwise had no~~
23 ~~involvement concerning the employee's hiring.~~

24 "(d) Whoever violates this section is guilty of a
25 misdemeanor and shall be punished by a fine not to exceed

1 ~~\$500.00~~ five hundred dollars (\$500) or by imprisonment not to
2 exceed one year, or both. A willful violation of this section
3 shall subject the public employee and the person or persons
4 within the fourth degree of affinity or consanguinity of the
5 public employee to disciplinary action, up to and including
6 separation from state service.

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

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

11 (1) BOARD, BOARD OF EDUCATION, or EXECUTIVE OFFICER.
12 These terms shall have the same meaning as provided in Section
13 16-22-15, Code of Alabama 1975.

14 (2) RELATIVE. The spouse, a dependant, an adult
15 child or his or her spouse, a parent, a spouse's parent, or a
16 sibling or his or her spouse, of another person.

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

20 (b) If a board publishes a vacancy announcement
21 pursuant to Section 16-22-15, Code of Alabama 1975, and a
22 relative of the executive officer submits an application or
23 otherwise seeks the advertised position, the executive officer
24 shall take no further direct or indirect action regarding the
25 posted vacancy. The executive officer shall submit the

1 application to the chair of the board of education who shall
2 select an impartial person to conduct any interview and make a
3 determination as to whether to recommend the applicant to the
4 full board for consideration and if so, issue a report in
5 writing. The board shall consider the recommendation and
6 written report without any comment or input from the executive
7 officer.

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

15 (d) If a board publishes a vacancy announcement
16 pursuant to Section 16-22-15, Code of Alabama 1975, and a
17 relative of a principal or other supervisor who is charged
18 with conducting interviews, vetting or recommending
19 candidates, or otherwise taking part in the hiring process
20 submits an application or otherwise seeks the advertised
21 position, the principal or supervisor may not take any part in
22 the hiring process, directly or indirectly, and any
23 interviews, vetting, or recommendations shall be assigned by
24 the executive officer to another administrator in the system

1 who does not report to the disqualified principal or
2 administrator.

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

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

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

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

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

11 Section 5. Whoever violates Section 3 or 4 of this
12 act is guilty of a misdemeanor and shall be punished by a fine
13 not to exceed five hundred dollars (\$500) or by imprisonment
14 not to exceed one year, or both. A willful violation of
15 Section 3 or 4 of this act shall subject the employee and the
16 person or persons within the fourth degree of affinity or
17 consanguinity of the employee to disciplinary action, up to
18 and including termination.

19 Section 6. This act shall become effective on the
20 first day of the third month following its passage and
21 approval by the Governor, or its otherwise becoming law.

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President and Presiding Officer of the Senate

Speaker of the House of Representatives

SB361

Senate 30-APR-15

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

Patrick Harris
Secretary

House of Representatives
Amended and passed 02-JUN-15

Senate concurred in House amendment 03-JUN-15

By: Senator Shelnutt