HB277

185689-3

By Representatives Warren, Brown, Holmes (M), Drake, England, Knight, Beech, Beckman, McMillan, Sells, Davis, Collins, Johnson (K), Farley, Butler, Givan, Coleman, Scott, Moore (M), Jackson, Boyd, McCampbell, Todd, Shiver, Polizos, Millican, Gaston, Sessions, Ellis, Moore (B), Black, Ford, Grimsley and Rowe

RFD: Children and Senior Advocacy

First Read: 21-FEB-17
A BILL
TO BE ENTITLED
AN ACT

Relating to child care facilities; to amend Sections 13A-6-29, 38-7-2, 38-7-3, 38-13-2, and 38-13-3, Code of Alabama 1975; to establish the Child Care Safety Act; to revise the definition of day care center to include preschools; to remove the exemption from licensure by the Department of Human Resources of certain child care facilities that are part of a church or nonprofit religious school; to clarify that the licensing of a faith-based child care facility may not be construed to infringe upon the rights of the facility to teach or practice a religion; and to revise the criminal history background information check required for certain individuals.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. This act shall be known and may be cited as the Child Care Safety Act.

Section 2. Sections 13A-6-29, 38-7-2, 38-7-3, 38-13-2, and 38-13-3, Code of Alabama 1975, are amended to read as follows:

"§13A-6-29.
(a) As used in this section, the following terms shall have the following meanings:

(1) MEDICALLY PRESCRIBED. In accordance with a physician's prescription or in accordance with age-appropriate directions for the over-the-counter medication.

(2) NEAR FATALITY. An act that, as certified by a physician, places the child in serious or critical condition.

(b) There is established the crime of administration of medication by the owner, operator, or employee of a licensed or statutorily exempt child care facility with the intent to drug the child or alter the child's behavior beyond what is medically prescribed or with the reckless disregard for the health, safety, and welfare of the child.

(c) A violation of subsection (b) is punishable as follows:

(1) A violation which does not cause or contributes to the death, near fatality, dismemberment, or permanent disability of a child is a Class C felony.

(2) A violation which causes a near fatality, dismemberment, or permanent disability of a child is a Class B felony.

(3) A violation which causes the death of a child is a Class A felony.

§38-7-2.

Terms used in this chapter, unless the context otherwise requires, have the meanings ascribed to them in this
section. When not inconsistent with the context, words used in
the present tense include the future, words in the singular
number include the plural number, and words in the plural
number include the singular number, and the word "shall" is
always mandatory and not merely directory:

"(1) CHILD. Any person under 19 years of age, a
person under the continuing jurisdiction of the juvenile court
pursuant to Section 12-15-117, or a person under 21 years of
age in foster care as defined by the Department of Human
Resources.

"(2) CHILD-CARE INSTITUTION or INSTITUTION FOR CHILD
CARE. A child-care facility where more than 10 children are
received and maintained for the purpose of providing them with
care or training or both, or transitional living program
services, but does not include:

"a. Any institution for child care which is under
the ownership or control, or both, of the State of Alabama, or
which is operated or certified or licensed by another agency
or department of the State of Alabama;

"b. Any juvenile detention home established and
operated by the State of Alabama;

"c. Any bona fide boarding school in which children
are primarily taught branches of education corresponding to
those taught in public schools, grades 1 through 12, or taught
in public elementary schools, high schools, or both elementary
and high schools.
"(3) CHILD-PLACING AGENCY. A public or private child-care facility which receives, places, or arranges for the placement of any child or children in adoptive or foster family homes or other facilities for child care apart from the custody of the child's or children's parents. The term "child-placing agency" includes, but is not limited to, all agencies established and maintained by a municipality or other political subdivision of the State of Alabama to protect, guard, train, or care for children outside their own homes, but does not include any circuit court or juvenile court or any duly appointed juvenile probation officer or youth counselor of the court who receives and places children under an order of the court.

"(4) DAY CARE CENTER. Any child-care facility receiving more than 12 children for daytime care during all or part of a day. The term "day care center" includes, but is not limited to, facilities commonly called "child-care centers," "day nurseries," "nursery schools," "pre-kindergartens," "preschools," "kindergartens," and "play groups," with or without stated educational purposes. The term further includes, but is not limited to, pre-kindergarten, preschool, kindergarten, or nursery schools or other daytime programs operated as a part of a private school and receiving children younger than lawful school age for daytime care for more than four hours a day, with or without stated educational purposes. The term does not include any of the following:
"a. Kindergartens or nursery schools or other daytime programs operated by public elementary systems or secondary level school units or institutions of higher learning.

"b. Kindergartens or nursery schools or other daytime programs, with or without stated educational purposes, operating no more than four hours a day and receiving children younger than lawful school age.

"c. Kindergartens or nursery schools or other daytime programs operated as a part of a private school and receiving children younger than lawful school age for four hours a day or less, with or without stated educational purposes.

"d. Facilities operated for more than four hours a day in connection with a shopping center or service or other similar facility, where transient children are cared for temporarily while parents or custodians of the children are occupied on the premises or are in the immediate vicinity and readily available. The facilities shall meet local and state fire and health requirements.

"e. Any type of day care center that is conducted on federal government premises.

"f. Special activities programs for children of lawful school age including, but not limited to, athletics, crafts instruction and similar activities conducted on an organized and periodic basis by civic, charitable, and
governmental organizations provided local and state fire and
health requirements are met.

"(5) DAY CARE HOME. A child-care facility which is a
family home and which receives not more than six children for
care during the day.

"(6) DEPARTMENT. The Department of Human Resources
of the State of Alabama.

"(7) FACILITY FOR CHILD CARE or CHILD-CARE FACILITY.
A facility established by any person, group of persons,
agency, association, or organization, whether established for
gain or otherwise, who or which receives or arranges for care
or placement of one or more children, unrelated to the
operator of the facility, apart from the parents, with or
without the transfer of the right of custody, in any facility
as defined in this chapter, established and maintained for the
care of children.

"(8) FOSTER FAMILY HOME. A child-care facility in a
residence of a family where the family receives a child or
children, unrelated to that family, for the purpose of
providing family care or therapeutic family care and training,
or transitional living program services on a full-time basis.
The types of foster family homes are defined as follows:

"a. Boarding home. A foster family home wherein the
foster family receives a child or children and receives
payment for their care. The number of children so received
shall not exceed six, unless the children are of common
parentage.
"b. Free home. A foster home which does not receive payment for the care of a child or children and which may or may not receive the child or children for the purpose of adoption.

"(9) GROUP DAY CARE HOME. A child-care facility which is a family home and which receives at least seven but no more than 12 children for care during part of the day where there are at least two adults present and supervising the activities.

"(10) GROUP HOME. A child-care facility where at least seven but not more than 10 children are received and maintained for the purpose of providing them with care or training or both, or transitional living program services.

"(11) MATERNITY CENTER. A facility in which any person, agency, or corporation receives or cares for one or more minor pregnant girls, except that the term does not include hospitals.

"(12) NIGHT CARE FACILITY. A child-care facility which is a center or a family home receiving a child or children for care during the night. A "night care facility" is further defined as follows:

"a. Nighttime center. A facility which is established to receive more than 12 children for nighttime care.

"b. Nighttime home. A family home which receives no more than six children for nighttime care.
"c. Group nighttime home. A child-care facility which is a family home which receives at least seven but no more than 12 children for nighttime care and where there are at least two adults present and supervising the activities.

"(13) RELATED. Any of the following relationships by blood, marriage, or adoption: Parent, grandparent, brother, sister, stepparent, stepbrother, stepsister, half brother, half sister, uncle or aunt, and their spouses.

"(14) TRANSITIONAL LIVING FACILITY. A child-care facility or program that is designed to give opportunities to practice independent living skills to eligible persons at least 16 years of age and under 21 years of age in foster care in a variety of residential settings with varying degrees of care and supervision.

"§38-7-3."

"(a) No person, group of persons, or corporation may operate or conduct any facility for child care, as defined in this chapter, without being licensed or approved as provided in this chapter, provided, however, that nothing in this section or in this chapter prohibits an employee of the department from carrying out the duties of the department as provided in this title. Provided, further, the provisions of this chapter shall

"(b)(1) Except as provided in subdivision (2), the licensure requirements of this chapter do not apply to preschool programs which are a child care facility that is operating as an integral part of a local church ministry or a
religious nonprofit elementary school, and are recognized in the church or school's documents, whether operated separately or as a part of a religious nonprofit elementary school unit, secondary school unit or institution of higher learning under the governing board or authority of said local church or its convention, association, or regional body to which it may be subject, provided that notice is filed by the governing board or authority of the church or school with the department that said church or school meets the definition of a local church ministry or a religious nonprofit elementary school under terms of this section and are exempt from regulation by the department.

"(2) A child care facility that receives state or federal funds, is operating for profit, or has at least one child who receives a child care subsidy from the department is not exempt from licensure under this subsection.

"(c) A child care facility exempt from licensure under subsection (b) shall do all of the following to maintain its license exempt status:

"(1) A notice of intent to operate said programs is given to the appropriate fire and health departments so that said facilities shall the facility may be inspected in accordance with the state and local fire and health requirements.

provided the facility shall be inspected at least annually by the appropriate fire department and the appropriate health department. For such programs. In addition, all exempt
churches hereunder shall publish annually, on church letterhead, a notice to the department certifying that the following records are being maintained by the church:

"(2) Provide to the department on or before October 1, 2017, and annually thereafter, the following records and certify that the records are being maintained by the church or school:

"a. Documentation indicating the child care facility is in compliance with fire inspections and health inspection reports.

"b. Employee names and their criminal history information pursuant to Section 38-13-3.

"c. Proof of property, casualty, and liability insurance, as prescribed by the department.

"(3) Provide to the department, upon request, the following records and certify that the records are being maintained by the church or school:

"a. Immunization verifications for all children.

"b. Medical history forms for all staff and children, and that the following information shall be available to parents or guardian prior to enrolling their children in said church ministry; staff

"(4) Provide the department within 30 days of any updated fire inspection report, health inspection report, new employee hire, or receipt of updated insurance information as required under subdivision (2)."
"(5) Provide notice to parents or guardians of all
of the following information prior to enrollment of a child in
the child care facility:

"a. Staff qualifications."

"b. pupil-staff Pupil-staff ratio."

"c. discipline Discipline policies."

"d. The type of curriculum used in the learning
program."

"e. The religious teachings to be given each
child."

"f. The type of lunch program available."

provided further that prior to enrolling and annually
thereafter parents or guardian and a responsible individual
representing the governing board as authority of the church or
school be required to sign and file with the department the
affidavits provided by this section that the parents or
guardian have been notified by said responsible individual
that the church or school has filed notice and is exempt from
regulation by the department. The district attorney of the
county in which the preschool program is located shall, upon
proper presentment of charges, investigate at his discretion
any allegations against any such church under the laws of the
State of Alabama.

"(6) Post in plain view in a public area a statement
that the program is not regulated or licensed by the
Department of Human Resources."
"(7) Require a parent or guardian to sign an affidavit stating that the parent or guardian has been notified by the responsible individual of the church or school that the child care facility has filed notice to the department and is exempt from licensure and regulation by the department. The child care facility shall file the affidavits annually with the department. The affidavit shall be substantially in the following form:

"Form of Affidavit for Parent/Guardian

"STATE OF ALABAMA

"COUNTY OF _____

"Before me, a notary public in and for said state and county, appeared _____ and is known to me, after being duly sworn or affirmed, says as follows:

"That affiant is the parent or legal guardian of the minor child/children _____; that affiant has been notified by _____, a representative of _____ church/school, that said church or school has filed notice and is exempt under law from regulation by the Department of Human Resources.

"_____ Parent/Legal Guardian

"Sworn, or affirmed to and subscribed before me this _____ day of _____, 20__.

"(8) A responsible individual of the child care facility shall file an affidavit annually with the department certifying that it has satisfied all of the requirements of this section. The affidavit shall be substantially in the following form:
Form of Affidavit for Church/School

STATE OF ALABAMA

COUNTY OF _____

Before me, a notary public in and for said state and county, appeared _____ and is known to me, after being duly sworn or affirmed says as follows:

That affiant is the designated representative of _____ church/school and that the below listed parents/guardians have been notified prior to enrollment/reenrollment that _____ church/school has filed notice with and is exempt under law from regulation by the Department of Human Resources: _____

___________ Representative

The affiant certifies that the child care facility does not receive state or federal funds and, that, to the best of the affiant's knowledge, no child enrolled in the program receives a child care subsidy from the Department of Human Resources; the facility is in compliance with all applicable building, fire, and health codes; the facility has provided the information requested under Section 38-7-3, Code of Alabama 1975, to all parents or guardians of children enrolled in the facility; and the facility has posted notice in plain view in a public area stating that the child care facility is not licensed or regulated by the Department of Human Resources.

Sworn or affirmed to and subscribed before me this ____ day of ______, 20__.
(d)(1) On and after the effective date of the act adding this amendatory language, any church or nonprofit religious school intending to operate a new child care facility in the state shall notify the department at least 30 days prior to operating, and the department shall inspect the facility and ensure compliance with this section before the facility may begin operating.

(2) The department shall inspect any child care facility that is exempt from licensure under subsection (b) on an annual basis or at any time if it has reasonable cause to believe the facility is not in compliance with this section or the safety of a child is at risk. If the department finds there exists a situation that may put the safety of a child at risk, the department may refer to the fire or health department or to the local district attorney for the proper remedy or action.

(e) The district attorney of the county in which a child care facility that is exempt from licensure under subsection (b) is located, upon presentment of charges, shall investigate at his or her discretion, any allegations against the church or nonprofit religious school operating the facility under the laws of the state.

(f) The department, upon request, shall provide any documentation necessary to confirm any of the information relevant to a determination of whether a child care facility is exempt under subsection (b) to the district attorney.
"(g) Any child care facility that is exempt from licensure under subsection (b), upon request by the department, shall provide the department with any information listed in subsection (c) within 15 days.

"(h) Nothing in this section or in this chapter prohibits an employee of the department from carrying out the duties of the department as prescribed in this title.

"(i) Nothing in this section or in this chapter infringes upon the religious teaching or practices of a licensed faith-based child care facility.

"§38-13-2.

"When used in this chapter, the following words shall have the following meanings:

"(1) ADULT. An individual 19 years of age and older.

"(2) ADULT CARE FACILITY. A person or entity holding a Department of Human Resources license or approval or certification to provide care, including foster care, for adults.

"(3) APPLICANT. A person or entity who submits an application for license as a child care or adult care facility to the Department of Human Resources or a child placing agency, or an application for employment or for a volunteer position to a Department of Human Resources licensed child care or adult care facility. With regards to child care and adult care facilities in a home setting, the term includes an adult household member whose residence is in the home. The term also includes an individual who submits an application
for a volunteer position or for employment with the Department of Human Resources in a position in which the person has unsupervised access to children, adults, or individuals with disabilities as one of the essential functions of the job. The term also includes an applicant for approval as an adoptive parent of a child or as a foster parent of an adult or child.

"(4) AUTOMATED SYSTEM. The computerized, automated fingerprint identification system (AFIS) maintained by the Department of Public Safety Alabama State Law Enforcement Agency that allows for a computer search of the in-state database for criminal history background check information maintained by the Alabama Criminal Justice Information Center (ACJIC). The system contains criminal history background information for fingerprint-based and name-based searches.

"(5) CARE. The provision of care, treatment, education, training, instruction, supervision, or recreation to children, adults, or individuals with disabilities.

"(6) CARETAKER SETTING. A building, structure, or location, public or private property, or vehicle, utilized for or involved in the providing of care, education, training, instruction, or supervision of children, adults, or individuals with disabilities or transportation in connection with activity provided by a licensed, approved, or certified child or adult care facility.

"(7) CHIEF EXECUTIVE OFFICER. The Commissioner of the Department of Human Resources, the director of a county
department of human resources, or the head of an employer
covered by this chapter, but not specifically enumerated.

"(8) CHILD or CHILDREN. An individual under 19 years
of age.

"(9) CHILD CARE FACILITY. A person or entity holding
a Department of Human Resources license, permit, or approval
to provide child care, including foster care, under Chapter 7
of this title. The term excludes includes exempt child care
facilities.

"(10) CHILD PLACING AGENCY. A person or entity
licensed by the Department of Human Resources under Chapter 7
of this title, issuing approvals to foster family homes and
adoptive homes.

"(11) CONVICTION. A determination of guilt as the
result of a plea, including a plea of nolo contendere, or a
trial.

"(12) CRIMINAL HISTORY BACKGROUND INFORMATION CHECK.
The review of any and all records containing any information
collected and stored in the criminal record repository of the
Federal Bureau of Investigation, the Alabama Criminal Justice
Information Center, and the Alabama Department of Public
Safety State Law Enforcement Agency involving an arrest or
conviction by a criminal justice agency, including, but not
limited to, child abuse crime information as defined by 42
U.S.C. § 5119, the National Child Protection Act of 1993,
conviction record information, fingerprint cards, correctional
data and release information, and identifiable descriptions
and notations of convictions. Criminal history background information shall not include any analytical records or investigative reports that contain intelligence information or criminal investigation information.

"(13) CURRENT. An individual who is presently employed, licensed, or approved, or working as a volunteer on November 1, 2000.

"(14) DAILY LIVING TASKS. Activities of daily living, including walking, working, learning, grooming and hygiene, bathing, dressing, eating, cooking, cleaning, shopping, transportation, managing money, maintaining a residence, writing, and using telephones, computers, and other automated communication devices.

"(15) ELDERLY. An individual 65 years of age or older.

"(16) EMPLOYEE. An individual currently in the service of an employer for compensation, full-time or part-time, and employed by contract or at will, in which the employer has the authority to control the person in the material details of how work shall be performed and when compensation shall be provided.

"(17) EMPLOYER. An individual, person, group of persons, association, partnership, corporation, limited liability company or partnership, business, or other entity which hires employees, has volunteers, or contracts with others to provide personnel to work with or provide care to
children, adults, or individuals with disabilities in a caretaker setting.

"(18) ESSENTIAL FUNCTIONS. The fundamental, not merely marginal, job duties of the employment as determined by a written job description or the judgment of the employer.

"(19) EXEMPT CARE FACILITY. A person or entity exempt by law from licensure by the Department of Human Resources, or a child placing agency, including church day care, child centers, or elder centers adult care facilities.

"(20) INDIVIDUAL. A natural person.

"(21) INDIVIDUAL WITH DISABILITIES. A person with a mental or physical impairment who requires assistance to perform one or more daily living tasks.

"(22) LAW ENFORCEMENT. The sheriff's department of a county or the police department of a municipality.

"(23) LICENSE. A license, permit, certification, approval, registration, or other form of permission required by law by whatever designation for a child care facility, adult care facility, child placing agency, foster parent or foster home, adoptive parent or adoptive home, or any other person or entity in which an individual has unsupervised access to children, the elderly, or individuals with disabilities.

"(24) LICENSED SOCIAL WORKER. A social worker licensed by the Alabama State Board of Social Work Examiners to conduct family home studies and psychosocial assessments in
adoptive or custody cases by court order or for treatment not otherwise required to conduct a criminal history check.

"(25) LICENSEE. Holder of a license or approval and an adult household member whose residence is in the home in regards to child care and adult care facilities in a home setting.

"(26) PERSON or ENTITY. A natural person, sometimes referred to as an individual, an owner or operator of any adult care facility, child care facility, child placing agency, exempt child care facility, or licensee, whether an individual, corporation, limited liability company or partnership, partnership, association, or other legal entity or group, and a board member, an officer, member, or partner of an entity who has direct contact with children, the elderly, or individuals with disabilities in care.

"(27) REASONABLE SUSPICION. Belief by a prudent person that reasonable articulable grounds exist to suspect that the employee's past or present behavior should be reviewed to determine if such behavior or conduct bears upon the individual's fitness to teach or supervise or have responsibility for the safety and well-being of children, the elderly, or persons with disabilities as defined in this chapter.

"(28) REPORT. A written statement of criminal history background information.
"(29) RESIDENCE. Place of abode, domicile, or dwelling with intention to remain permanently and continuously or for an indefinite or uncertain length of time.

"(30) SEX CRIME. Includes the following:
  "a. Enticing a child to enter a vehicle, room, house, office, or any other place for immoral purposes, as proscribed by Section 13A-6-69.
  "b. Incest, when the offender is an adult and the victim is a minor, as proscribed by Section 13A-13-3.
  "c. Kidnapping of a minor, except by a parent, in the first or second degree, as proscribed by Section 13A-6-43 or Section 13A-6-44.
  "d. Promoting prostitution in the first or second degree, as proscribed by Section 13A-12-111 or Section 13A-12-112.
  "e. Rape in the first or second degree, as proscribed by Section 13A-6-61 or Section 13A-6-62.
  "f. Sexual misconduct, as proscribed by Section 13A-6-65.
  "g. Sexual torture, as proscribed by Section 13A-6-65.1.
  "h. Sexual abuse in the first or second degree, as proscribed by Section 13A-6-66 or Section 13A-6-67.
  "i. Sodomy in the first or second degree, as proscribed by Section 13A-6-63 or Section 13A-6-64.
  "j. Soliciting a child by computer for the purposes of committing a sexual act Electronic solicitation of a child
and transmitting obscene material to a child by computer as
proscribed by Sections 13A-6-110 13A-6-122 and 13A-6-111.

"k. Violation of the Alabama Child Pornography Act,
as proscribed by Section 13A-12-191, 13A-12-192, 13A-12-196,
or 13A-12-197.

"l. Any solicitation, attempt, or conspiracy to
commit any of the offenses listed in paragraphs a. to k.,
inclusive.

"m. A crime listed in the Alabama Sex Offender
Registration and Community Notification Act, Chapter 20A of
Title 15.

"n. Conviction for a violation or attempted
violation of an offense committed outside the State of Alabama
or under federal law is a sex crime or any other crime if the
offense would be a crime in Alabama.

"(31) SUITABILITY CRITERIA.

"a. Convictions for any of the following crimes
shall make an individual unsuitable for employment, volunteer
work, approval, or licensure:

"1. Murder, manslaughter, or criminally negligent
homicide.

"2. A sex crime.

"3. A crime that involves the physical or mental
injury or maltreatment of a child, the elderly, or an
individual with disabilities.

"4. A crime committed against a child.
"5. A crime involving the sale or distribution of a controlled substance.

"6. Robbery.

"7. A crime or offense committed in another state or under federal law which would constitute any of the above crimes in this state.

"b. Conviction for any crime listed in the Adoption and Safe Families Act, 42 U.S.C. § 671(a)(20) shall disqualify a person from being approved or continuing to be approved as a foster parent or adoptive parent and a convicted person shall be deemed unsuitable for employment, volunteer work, approval, or licensure as a foster parent or adoptive parent.

c. The Department of Human Resources may set other disqualifying convictions by rule under the Administrative Procedure Act, Section 41-22-1, et seq., for Department of Human Resources licensed child or adult care facilities.

"(32) SUITABILITY DETERMINATION. A decision that an individual is or is not suitable for employment, volunteer work, or licensure based upon the existence of a prohibited criminal conviction.

"(33) UNSUPERVISED ACCESS TO A CHILD OR CHILDREN, THE ELDERLY, OR AN INDIVIDUAL WITH DISABILITIES. Contacts, interviews, questions, examinations, interaction, or communications outside the presence, supervision, and control of someone other than a child or elderly or disabled individual in care during the provision of care, education,
training, instruction, supervision, or other employment or license related activities.

"(34) VOLUNTEER. An individual who provides services without an express or implied promise of compensation, but shall not include the parent, family member, legal custodian, or legal guardian of a child, the elderly, or disabled individual in care.

"(35) WRITTEN CONSENT. A signed statement by the applicant or employee containing all of the following:

"a. The name, address, date of birth, race, gender, and Social Security number appearing on a valid identification document as defined in subsection (d) of 18 U.S.C. § 1028. If the applicant does not have a Social Security number because of sincerely held personal beliefs, the Social Security number shall not be required and the Department of Human Resources and the [Department of Public Safety Alabama State Law Enforcement Agency] shall provide an alternative means of identification and procedure.

"b. Notice to the applicant or employee of the right to obtain a copy of the criminal history background information check report, challenge the accuracy and completeness of any information contained in the report, and to obtain a prompt determination as to the validity of a challenge.

"c. Name, address, and telephone number of the employer or licensing entity for which the criminal history background information check report is being sought.
"d. Release of the criminal history background information check report to the Department of Human Resources."

§38-13-3.

"(a) On November 1, 2000, every employer, child care facility, adult care facility, the Department of Human Resources, and child placing agency shall request the Department of Public Safety Alabama State Law Enforcement Agency to conduct a criminal history background information check for the following:

"(1) An employment applicant, employee or volunteer of an employer, child care facility, adult care facility, or child placing agency.

"(2) A current foster parent for a child or adult or adult household member of a foster family or applicant and an adult household member of a foster family seeking approval to operate as a foster parent or foster family home for a child placing agency or the Department of Human Resources. Unless otherwise provided in this chapter, no criminal history background information check shall be conducted on a current foster parent or household member of a foster family if a Federal Bureau of Investigation and Alabama Department of Public Safety State Law Enforcement Agency criminal history background information check has already been conducted under other law that meets the suitability criteria as provided in this chapter. Subsequent arrests or convictions of foster parents, or arrests or convictions entered into the automated system subsequent to the initial report, shall be sent by the
“(3) An applicant or employee, with the exception of those individuals on employed status on November 1, 2000, in a position in the Department of Human Resources which requires unsupervised access to children, the elderly, or individuals with disabilities as one of the essential functions of the job. All current employees of the Department of Human Resources shall be subjected to a criminal history background information check upon reasonable suspicion. Criminal history background information checks shall be required for prospective and current personnel under contract with the Department of Human Resources or working with another entity under contract with the Department of Human Resources, students, mentors, and volunteers in positions requiring unsupervised access to children, the elderly, or persons with disabilities as one of the essential functions of the job. The Department of Human Resources shall pay any fees related to checks required pursuant to this subdivision.

“(4) A current licensee or applicant for a license through the Department of Human Resources to operate a child care or adult care facility.

“(5) An adoptive parent applicant for a child adoptive placement through the Department of Human Resources or child placing agency and any Department of Human Resources or child placing agency approved adoptive parent prior to
entry of a final decree of adoption. Unless otherwise provided in this chapter, no criminal history background information check shall be conducted on a current adoptive parent or household member of an adoptive family if a Federal Bureau of Investigation and Alabama Department of Public Safety State Law Enforcement Agency criminal history background information check has already been conducted under other law that meets the suitability criteria as provided in this chapter.

Subsequent arrests or convictions of adoptive parents, or arrests or convictions entered into the automated system subsequent to the initial report, shall be sent by the Department of Public Safety Alabama State Law Enforcement Agency to the Department of Human Resources as elsewhere provided in this chapter.

"(b) An employer, child care facility, adult care facility, the Department of Human Resources, or a child placing agency may only request a criminal history background information check by its chief executive officer, or his or her designee authorized in writing and notarized, and law enforcement shall render assistance, including assistance in obtaining fingerprints required for submission of a request to the Department of Public Safety Alabama State Law Enforcement Agency.

"(c) Every employee, volunteer or applicant, for employment or a volunteer position, licensee, Department of Human Resources adoptive parent applicant or approved adoptive parent, or applicant for a license to the Department of Human
Resources to operate a child care or adult care facility shall submit two sets of fingerprints and sign a written consent to obtain the criminal history background information. Fingerprints shall not be required when a disability prevents a person from being fingerprinted. Disabilities preventing fingerprinting include the loss of both hands, severe scarring of all fingers, closed paralytic hands, and similar disabilities. In cases involving disability, a written consent to obtain available criminal history background information by name only shall be obtained. No one who fails or refuses to give written consent or submit fingerprints necessary to obtain criminal history background information may be employed, allowed to perform volunteer or other work, approved or issued a license, or allowed to retain a license or approval by the Department of Human Resources, an employer, child care facility, adult care facility, or child placing agency.

"(d) Child care facilities or adult Adult care facilities exempt from Department of Human Resources licensing shall not be required to comply with this chapter, but may voluntarily collect and forward two complete acceptable sets of fingerprints, the written consent, and nonrefundable fee from applicants or employees to the Department of Public Safety Alabama State Law Enforcement Agency to request a criminal history background information check which shall be processed pursuant to this chapter. Licensed social workers conducting home studies may also request a criminal history
background check which shall be processed pursuant to this chapter. Provided, however, if a license exempt child care facility operated as part of a church ministry or religious school does not choose to comply with this chapter on a voluntary basis, then the employee or prospective employee of the child care facility shall request a criminal history background check, and the request shall be processed in the same manner as for other employees or applicants under the provisions of this chapter. The Department of Human Resources shall, prior to the disbursement of any subsidized child care funds, require all employees and applicants of legally operating child care facilities to submit verification of the application for a criminal history background check and the results thereof when obtained. Upon reasonable suspicion that the individual has a criminal conviction or has not had a criminal history background check conducted, the Department of Human Resources shall have the right to require employees of license exempt child care or adult care facilities to submit each application for a criminal history background check and the results thereof when obtained."

Section 3. A child care facility that is an integral part of a church or nonprofit religious school, other than a child care facility exempt from licensure under subsection (b) of Section 38-7-3, Code of Alabama 1975, as amended by this act, shall be licensed in accordance with Chapter 7, Title 38, Code of Alabama 1975, no later than August 1, 2018.
Section 4. This act shall become effective immediately following its passage and approval by the Governor, or its otherwise becoming law.
House of Representatives

Read for the first time and referred to the House of Representatives committee on Children and Senior Advocacy.. 21-FEB-17

Read for the second time and placed on the calendar.. 02-MAR-17

Read for the third time and passed as amended.. 20-APR-17

Yeas 88, Nays 9, Abstains 2

Jeff Woodard
Clerk