

1 HB277
2 185689-2
3 By Representatives Warren, Brown, Holmes (M), Drake, England,
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6 Jackson, Boyd, McCampbell, Todd, Shiver, Polizos, Millican,
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8 Rowe
9 RFD: Children and Senior Advocacy
10 First Read: 21-FEB-17

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8 SYNOPSIS: Under existing law, the term day care center
9 is defined as a child care facility that receives
10 more than 12 children for daytime care. The term
11 includes child care centers, day nurseries, nursery
12 schools, pre-kindergartens, kindergartens, and play
13 groups, including those that are operated as part
14 of a private school if they provide care for more
15 than four hours a day.

16 Also under existing law, child care
17 facilities that are part of a church or nonprofit
18 religious school are exempt from licensing by the
19 Department of Human Resources.

20 This bill would establish the Child Care
21 Safety Act.

22 This bill would revise the definition of day
23 care center to include preschools.

24 This bill would remove certain exemptions
25 from licensure for child care facilities that are
26 part of a church or nonprofit religious school by

1 requiring such facilities to be licensed by the
2 Department of Human Resources.

3 This bill would clarify that the licensing
4 of a faith-based child care facility may not be
5 construed to infringe upon the rights of the
6 facility to teach or practice a religion.

7 This bill would also revise the criminal
8 history background information check required for
9 certain individuals.

10
11 A BILL
12 TO BE ENTITLED
13 AN ACT

14
15 Relating to child care facilities; to amend Sections
16 13A-6-29, 38-7-2, 38-7-3, 38-13-2, and 38-13-3, Code of
17 Alabama 1975; to establish the Child Care Safety Act; to
18 revise the definition of day care center to include
19 preschools; to remove the exemption from licensure by the
20 Department of Human Resources of certain child care facilities
21 that are part of a church or nonprofit religious school; to
22 clarify that the licensing of a faith-based child care
23 facility may not be construed to infringe upon the rights of
24 the facility to teach or practice a religion; and to revise
25 the criminal history background information check required for
26 certain individuals.

27 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

3 Section 2. Sections 13A-6-29, 38-7-2, 38-7-3,
4 38-13-2, and 38-13-3, Code of Alabama 1975, are amended to
5 read as follows:

6 "§13A-6-29.

7 "(a) As used in this section, the following terms
8 shall have the following meanings:

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

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

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

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

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

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

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

6 "§38-7-2.

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

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

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

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

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

3 "c. Any bona fide boarding school in which children
4 are primarily taught branches of education corresponding to
5 those taught in public schools, grades 1 through 12, or taught
6 in public elementary schools, high schools, or both elementary
7 and high schools.

8 "(3) CHILD-PLACING AGENCY. A public or private
9 child-care facility which receives, places, or arranges for
10 the placement of any child or children in adoptive or foster
11 family homes or other facilities for child care apart from the
12 custody of the child's or children's parents. The term
13 ~~"child-placing agency"~~ includes, but is not limited to, all
14 agencies established and maintained by a municipality or other
15 political subdivision of the State of Alabama to protect,
16 guard, train, or care for children outside their own homes,
17 but does not include any circuit court or juvenile court or
18 any duly appointed juvenile probation officer or youth
19 counselor of the court who receives and places children under
20 an order of the court.

21 "(4) DAY CARE CENTER. Any child-care facility
22 receiving more than 12 children for daytime care during all or
23 part of a day. The term ~~"day care center"~~ includes, but is not
24 limited to, facilities commonly called "child-care centers,"
25 "day nurseries," "nursery schools," "pre-kindergartens,"
26 "preschools," "kindergartens," and "play groups," with or
27 without stated educational purposes. The term further

1 includes, but is not limited to, pre-kindergarten, preschool,
2 kindergarten, or nursery schools or other daytime programs
3 operated as a part of a private school and receiving children
4 younger than lawful school age for daytime care for more than
5 four hours a day, with or without stated educational purposes.
6 The term does not include any of the following:

7 "a. Kindergartens or nursery schools or other
8 daytime programs operated by public elementary systems or
9 secondary level school units or institutions of higher
10 learning.

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

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

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

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

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

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

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

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

23 "(8) FOSTER FAMILY HOME. A child-care facility in a
24 residence of a family where the family receives a child or
25 children, unrelated to that family, for the purpose of
26 providing family care or therapeutic family care and training,

1 or transitional living program services on a full-time basis.
2 The types of foster family homes are defined as follows:

3 "a. Boarding home. A foster family home wherein the
4 foster family receives a child or children and receives
5 payment for their care. The number of children so received
6 shall not exceed six, unless the children are of common
7 parentage.

8 "b. Free home. A foster home which does not receive
9 payment for the care of a child or children and which may or
10 may not receive the child or children for the purpose of
11 adoption.

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

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

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

25 "(12) NIGHT CARE FACILITY. A child-care facility
26 which is a center or a family home receiving a child or

1 children for care during the night. A "night care facility" is
2 further defined as follows:

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

6 "b. Nighttime home. A family home which receives no
7 more than six children for nighttime care.

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

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

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

22 "§38-7-3.

23 "(a) No person, group of persons, l or corporation may
24 operate or conduct any facility for child care, as defined in
25 this chapter, without being licensed or approved as provided
26 in this chapter. ~~; provided, however, that nothing in this~~
27 ~~section or in this chapter prohibits an employee of the~~

1 ~~department from carrying out the duties of the department as~~
2 ~~provided in this title. Provided, further, the provisions of~~
3 ~~this chapter shall~~

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

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

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

1 ~~"(1) and a notice of intent to operate said programs~~
2 ~~is given~~ Provide notice of operation on an annual basis to the
3 appropriate fire and health departments so that ~~said~~
4 ~~facilities shall~~ the facility may be inspected in accordance
5 with the state and local fire and health requirements,
6 provided the facility shall be inspected at least annually by
7 the appropriate fire department and the appropriate health
8 department. ~~for such programs. In addition, all exempt~~
9 ~~churches hereunder shall publish annually, on church~~
10 ~~letterhead, a notice to the department certifying that the~~
11 ~~following records are being maintained by the church:~~

12 "(2) Provide to the department on or before October
13 1, 2017, and annually thereafter, the following records and
14 certify that the records are being maintained by the church or
15 school:

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

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

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

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

26 "a. immunization Immunization verifications for all
27 children. ~~medical~~

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

5 "(4) Provide the department within 30 days of any
6 updated fire inspection report, health inspection report, new
7 employee hire, or receipt of updated insurance information as
8 required under subdivision (2).

9 "(5) Provide notice to parents or guardians of all
10 of the following information prior to enrollment of a child in
11 the child care facility:

12 "a. Staff qualifications.↗

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

14 "c. discipline Discipline policies.↗

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

17 "e. the The religious teachings to be given each
18 child.↗

19 "f. and the The type of lunch program available. ↗
20 ~~provided further that prior to enrolling and annually~~
21 ~~thereafter parents or guardian and a responsible individual~~
22 ~~representing the governing board as authority of the church or~~
23 ~~school be required to sign and file with the department the~~
24 ~~affidavits provided by this section that the parents or~~
25 ~~guardian have been notified by said responsible individual~~
26 ~~that the church or school has filed notice and is exempt from~~
27 ~~regulation by the department. The district attorney of the~~

1 ~~county in which the preschool program is located shall, upon~~
2 ~~proper presentment of charges, investigate at his discretion~~
3 ~~any allegations against any such church under the laws of the~~
4 ~~State of Alabama.~~

5 "(6) Post in plain view in a public area a statement
6 that the program is not regulated or licensed by the
7 Department of Human Resources.

8 "(7) Require a parent or guardian to sign an
9 affidavit stating that the parent or guardian has been
10 notified by the responsible individual of the church or school
11 that the child care facility has filed notice to the
12 department and is exempt from licensure and regulation by the
13 department. The child care facility shall file the affidavits
14 annually with the department. The affidavit shall be
15 substantially in the following form:

16 "Form of Affidavit for Parent/Guardian

17 "STATE OF ALABAMA

18 "COUNTY OF _____

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

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

27 "_____ Parent/Legal Guardian

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

3 "(8) A responsible individual of the child care
4 facility shall file an affidavit annually with the department
5 certifying that it has satisfied all of the requirements of
6 this section. The affidavit shall be substantially in the
7 following form:

8 "Form of Affidavit for Church/School

9 "STATE OF ALABAMA

10 "COUNTY OF _____

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

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

20 " _____ Representative

21 "The affiant certifies that the child care facility
22 does not receive state or federal funds and, that, to the best
23 of the affiant's knowledge, no child enrolled in the program
24 receives a child care subsidy from the Department of Human
25 Resources; the facility is in compliance with all applicable
26 building, fire, and health codes; the facility has provided
27 the information requested under Section 38-7-3, Code of

1 Alabama 1975, to all parents or guardians of children enrolled
2 in the facility; and the facility has posted notice in plain
3 view in a public area stating that the child care facility is
4 not licensed or regulated by the Department of Human
5 Resources.

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

8 " _____ Notary Public

9 "(d) (1) On and after the effective date of the act
10 adding this amendatory language, any church or nonprofit
11 religious school intending to operate a new child care
12 facility in the state shall notify the department at least 30
13 days prior to operating, and the department shall inspect the
14 facility and ensure compliance with this section before the
15 facility may begin operating.

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

25 "(e) The district attorney of the county in which a
26 child care facility that is exempt from licensure under
27 subsection (b) is located, upon presentment of charges, shall

1 investigate at his or her discretion, any allegations against
2 the church or nonprofit religious school operating the
3 facility under the laws of the state.

4 "(f) The department, upon request, shall provide any
5 documentation necessary to confirm any of the information
6 relevant to a determination of whether a child care facility
7 is exempt under subsection (b) to the district attorney.

8 "(g) Any child care facility that is exempt from
9 licensure under subsection (b), upon request by the
10 department, shall provide the department with any information
11 listed in subsection (c) within 15 days.

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

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

18 "§38-13-2.

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

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

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

26 "(3) APPLICANT. A person or entity who submits an
27 application for license as a child care or adult care facility

1 to the Department of Human Resources or a child placing
2 agency, or an application for employment or for a volunteer
3 position to a Department of Human Resources licensed child
4 care or adult care facility. With regards to child care and
5 adult care facilities in a home setting, the term includes an
6 adult household member whose residence is in the home. The
7 term also includes an individual who submits an application
8 for a volunteer position or for employment with the Department
9 of Human Resources in a position in which the person has
10 unsupervised access to children, adults, or individuals with
11 disabilities as one of the essential functions of the job. The
12 term also includes an applicant for approval as an adoptive
13 parent of a child or as a foster parent of an adult or child.

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

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

25 "(6) CARETAKER SETTING. A building, structure, or
26 location, public or private property, or vehicle, utilized for
27 or involved in the providing of care, education, training,

1 instruction, or supervision of children, adults, or
2 individuals with disabilities or transportation in connection
3 with activity provided by a licensed, approved, or certified
4 child or adult care facility.

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

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

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

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

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

23 "(12) CRIMINAL HISTORY BACKGROUND INFORMATION CHECK.
24 The review of any and all records containing any information
25 collected and stored in the criminal record repository of the
26 Federal Bureau of Investigation, the Alabama Criminal Justice
27 Information Center, and the Alabama ~~Department of Public~~

1 ~~Safety~~ State Law Enforcement Agency involving an arrest or
2 conviction by a criminal justice agency, including, but not
3 limited to, child abuse crime information as defined by 42
4 U.S.C. § 5119, the National Child Protection Act of 1993,
5 conviction record information, fingerprint cards, correctional
6 data and release information, and identifiable descriptions
7 and notations of convictions. Criminal history background
8 information shall not include any analytical records or
9 investigative reports that contain intelligence information or
10 criminal investigation information.

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

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

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

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

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

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

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

15 "(20) INDIVIDUAL. A natural person.

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

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

21 "(23) LICENSE. A license, permit, certification,
22 approval, registration, or other form of permission required
23 by law by whatever designation for a child care facility,
24 adult care facility, child placing agency, foster parent or
25 foster home, adoptive parent or adoptive home, or any other
26 person or entity in which an individual has unsupervised

1 access to children, the elderly, or individuals with
2 disabilities.

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

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

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

21 "(27) REASONABLE SUSPICION. Belief by a prudent
22 person that reasonable articulable grounds exist to suspect
23 that the employee's past or present behavior should be
24 reviewed to determine if such behavior or conduct bears upon
25 the individual's fitness to teach or supervise or have
26 responsibility for the safety and well-being of children, the

1 elderly, or persons with disabilities as defined in this
2 chapter.

3 "(28) REPORT. A written statement of criminal
4 history background information.

5 "(29) RESIDENCE. Place of abode, domicile, or
6 dwelling with intention to remain permanently and continuously
7 or for an indefinite or uncertain length of time.

8 "(30) SEX CRIME. Includes the following:

9 "a. Enticing a child to enter a vehicle, room,
10 house, office, or any other place for immoral purposes, as
11 proscribed by Section 13A-6-69.

12 "b. Incest, when the offender is an adult and the
13 victim is a minor, as proscribed by Section 13A-13-3.

14 "c. Kidnapping of a minor, except by a parent, in
15 the first or second degree, as proscribed by Section 13A-6-43
16 or Section 13A-6-44.

17 "d. Promoting prostitution in the first or second
18 degree, as proscribed by Section 13A-12-111 or Section
19 13A-12-112.

20 "e. Rape in the first or second degree, as
21 proscribed by Section 13A-6-61 or Section 13A-6-62.

22 "f. Sexual misconduct, as proscribed by Section
23 13A-6-65.

24 "g. Sexual torture, as proscribed by Section
25 13A-6-65.1.

26 "h. Sexual abuse in the first or second degree, as
27 proscribed by Section 13A-6-66 or Section 13A-6-67.

1 "i. Sodomy in the first or second degree, as
2 proscribed by Section 13A-6-63 or Section 13A-6-64.

3 ~~"j. Soliciting a child by computer for the purposes~~
4 ~~of committing a sexual act~~ Electronic solicitation of a child
5 and transmitting obscene material to a child by computer as
6 proscribed by Sections ~~13A-6-110~~ 13A-6-122 and 13A-6-111.

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

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

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

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

20 "(31) SUITABILITY CRITERIA.

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

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

26 "2. A sex crime.

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

4 "4. A crime committed against a child.

5 "5. A crime involving the sale or distribution of a
6 controlled substance.

7 "6. Robbery.

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

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

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

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

25 "(33) UNSUPERVISED ACCESS TO A CHILD OR CHILDREN,
26 THE ELDERLY, OR AN INDIVIDUAL WITH DISABILITIES. Contacts,
27 interviews, questions, examinations, interaction, or

1 communications outside the presence, supervision, and control
2 of someone other than a child or elderly or disabled
3 individual in care during the provision of care, education,
4 training, instruction, supervision, or other employment or
5 license related activities.

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

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

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

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

1 "c. Name, address, and telephone number of the
2 employer or licensing entity for which the criminal history
3 background information check report is being sought.

4 "d. Release of the criminal history background
5 information check report to the Department of Human Resources.

6 "§38-13-3.

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

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

16 "(2) A current foster parent for a child or adult or
17 adult household member of a foster family or applicant and an
18 adult household member of a foster family seeking approval to
19 operate as a foster parent or foster family home for a child
20 placing agency or the Department of Human Resources. Unless
21 otherwise provided in this chapter, no criminal history
22 background information check shall be conducted on a current
23 foster parent or household member of a foster family if a
24 Federal Bureau of Investigation and Alabama ~~Department of~~
25 ~~Public Safety~~ State Law Enforcement Agency criminal history
26 background information check has already been conducted under
27 other law that meets the suitability criteria as provided in

1 this chapter. Subsequent arrests or convictions of foster
2 parents, or arrests or convictions entered into the automated
3 system subsequent to the initial report, shall be sent by the
4 ~~Department of Public Safety~~ Alabama State Law Enforcement
5 Agency to the Department of Human Resources as provided in
6 this chapter.

7 "(3) An applicant or employee, with the exception of
8 those individuals on employed status on November 1, 2000, in a
9 position in the Department of Human Resources which requires
10 unsupervised access to children, the elderly, or individuals
11 with disabilities as one of the essential functions of the
12 job. All current employees of the Department of Human
13 Resources shall be subjected to a criminal history background
14 information check upon reasonable suspicion. Criminal history
15 background information checks shall be required for
16 prospective and current personnel under contract with the
17 Department of Human Resources or working with another entity
18 under contract with the Department of Human Resources,
19 students, mentors, and volunteers in positions requiring
20 unsupervised access to children, the elderly, or persons with
21 disabilities as one of the essential functions of the job. The
22 Department of Human Resources shall pay any fees related to
23 checks required pursuant to this subdivision.

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

1 "(5) An adoptive parent applicant for a child
2 adoptive placement through the Department of Human Resources
3 or child placing agency and any Department of Human Resources
4 or child placing agency approved adoptive parent prior to
5 entry of a final decree of adoption. Unless otherwise provided
6 in this chapter, no criminal history background information
7 check shall be conducted on a current adoptive parent or
8 household member of an adoptive family if a Federal Bureau of
9 Investigation and ~~Alabama Department of Public Safety~~ State
10 Law Enforcement Agency criminal history background information
11 check has already been conducted under other law that meets
12 the suitability criteria as provided in this chapter.
13 Subsequent arrests or convictions of adoptive parents, or
14 arrests or convictions entered into the automated system
15 subsequent to the initial report, shall be sent by the
16 ~~Department of Public Safety~~ Alabama State Law Enforcement
17 Agency to the Department of Human Resources as elsewhere
18 provided in this chapter.

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

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

22 "(d) ~~Child care facilities or adult~~ Adult care
23 facilities exempt from Department of Human Resources licensing
24 shall not be required to comply with this chapter, but may
25 voluntarily collect and forward two complete acceptable sets
26 of fingerprints, the written consent, and nonrefundable fee
27 from applicants ~~or employees~~ to the ~~Department of Public~~

1 ~~Safety~~ Alabama State Law Enforcement Agency to request a
2 criminal history background information check which shall be
3 processed pursuant to this chapter. Licensed social workers
4 conducting home studies may also request a criminal history
5 background check which shall be processed pursuant to this
6 chapter. ~~Provided, however, if a license exempt child care~~
7 ~~facility operated as part of a church ministry or religious~~
8 ~~school does not choose to comply with this chapter on a~~
9 ~~voluntary basis, then the employee or prospective employee of~~
10 ~~the child care facility shall request a criminal history~~
11 ~~background check, and the request shall be processed in the~~
12 ~~same manner as for other employees or applicants under the~~
13 ~~provisions of this chapter.~~ The Department of Human Resources
14 shall, prior to the disbursement of any subsidized child care
15 funds, require all employees and applicants of legally
16 operating child care facilities to submit verification of the
17 application for a criminal history background check and the
18 results thereof when obtained. Upon reasonable suspicion that
19 the individual has a criminal conviction or has not had a
20 criminal history background check conducted, the Department of
21 Human Resources shall have the right to require employees of
22 ~~license exempt~~ child care or adult care facilities to submit
23 each application for a criminal history background check and
24 the results thereof when obtained."

25 Section 3. A child care facility that is an integral
26 part of a church or nonprofit religious school, other than a
27 child care facility exempt from licensure under subsection (b)

1 of Section 38-7-3, Code of Alabama 1975, as amended by this
2 act, shall be licensed in accordance with Chapter 7, Title 38,
3 Code of Alabama 1975, no later than August 1, 2018.

4 Section 4. This act shall become effective
5 immediately following its passage and approval by the
6 Governor, or its otherwise becoming law.