

1 HB277  
2 182154-2  
3 By Representatives Warren, Brown, Holmes (M), Drake, England,  
4 Knight, Beech, Beckman, McMillan, Sells, Davis, Collins,  
5 Johnson (K), Farley, Butler, Givan, Coleman, Scott, Moore (M),  
6 Jackson, Boyd, McCampbell, Todd, Shiver, Polizos, Millican,  
7 Gaston, Sessions, Ellis, Moore (B), Black, Ford, Grimsley and  
8 Rowe  
9 RFD: Children and Senior Advocacy  
10 First Read: 21-FEB-17

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 the exemption from  
25 licensure for child care facilities that are part  
26 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 preschool programs that are  
21   part of a church or nonprofit religious school; to clarify  
22   that the licensing of a faith-based child care facility may  
23   not be construed to infringe upon the rights of the facility  
24   to teach or practice a religion; and to revise the criminal  
25   history background information check required for certain  
26   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 "No person, group of persons, 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 or infringes upon the religious  
3 teaching or practices of a licensed faith-based facility for  
4 child care. ~~Provided, further, the provisions of this chapter~~  
5 ~~shall not apply to preschool programs which are an integral~~  
6 ~~part of a local church ministry or a religious nonprofit~~  
7 ~~elementary school, and are so recognized in the church or~~  
8 ~~school's documents, whether operated separately or as a part~~  
9 ~~of a religious nonprofit elementary school unit, secondary~~  
10 ~~school unit or institution of higher learning under the~~  
11 ~~governing board or authority of said local church or its~~  
12 ~~convention, association, or regional body to which it may be~~  
13 ~~subject; provided that notice is filed by the governing board~~  
14 ~~or authority of the church or school with the department that~~  
15 ~~said church or school meets the definition of a local church~~  
16 ~~ministry or a religious nonprofit elementary school under~~  
17 ~~terms of this section and are exempt from regulation by the~~  
18 ~~department and a notice of intent to operate said programs is~~  
19 ~~given to the appropriate fire and health departments so that~~  
20 ~~said facilities shall be inspected in accordance with the~~  
21 ~~state and local fire and health requirements for such~~  
22 ~~programs. In addition, all exempt churches hereunder shall~~  
23 ~~publish annually, on church letterhead, a notice to the~~  
24 ~~department certifying that the following records are being~~  
25 ~~maintained by the church: fire and health inspection reports;~~  
26 ~~immunization verifications for all children; medical history~~  
27 ~~forms for all staff and children and that the following~~

1 information shall be available to parents or guardian prior to  
2 enrolling their children in said church ministry; staff  
3 qualifications; pupil-staff ratio; discipline policies; type  
4 of curriculum used in the learning program; the religious  
5 teachings to be given each child; and the type of lunch  
6 program available; provided further that prior to enrolling  
7 and annually thereafter parents or guardian and a responsible  
8 individual representing the governing board as authority of  
9 the church or school be required to sign and file with the  
10 department the affidavits provided by this section that the  
11 parents or guardian have been notified by said responsible  
12 individual that the church or school has filed notice and is  
13 exempt from regulation by the department. The district  
14 attorney of the county in which the preschool program is  
15 located shall, upon proper presentment of charges, investigate  
16 at his discretion any allegations against any such church  
17 under the laws of the State of Alabama.

18 "Form of Affidavit for Parent/Guardian

19 "STATE OF ALABAMA

20 "COUNTY OF \_\_\_\_\_

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

24 "That affiant is the parent or legal guardian of the  
25 minor child/children \_\_\_\_\_; that affiant has been notified by  
26 \_\_\_\_\_, a representative of \_\_\_\_\_ church/school, that said

1 ~~church or school has filed notice and is exempt under law from~~  
2 ~~regulation by the Department of Human Resources.~~

3 "~~\_\_\_\_\_ Parent/Legal Guardian~~

4 "~~Sworn, or affirmed to and subscribed before me this~~  
5 ~~\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_~~

6 "~~Form of Affidavit for Church/School~~

7 "~~STATE OF ALABAMA~~

8 "~~COUNTY OF \_\_\_\_\_~~

9 ~~Before me, a notary public in and for said state and~~  
10 ~~county, appeared \_\_\_\_\_ and is known to me, after being duly~~  
11 ~~sworn or affirmed says as follows:~~

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

18 "~~\_\_\_\_\_ Representative~~

19 "~~Sworn or affirmed to and subscribed before me this~~  
20 ~~\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.~~

21 "~~\_\_\_\_\_ Notary Public~~

22 "~~§38-13-2.~~

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

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

26 "~~(2) ADULT CARE FACILITY. A person or entity holding~~  
27 ~~a Department of Human Resources license or approval or~~

1 certification to provide care, including foster care, for  
2 adults.

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

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

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

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

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

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

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

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

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

1                   "(12) CRIMINAL HISTORY BACKGROUND INFORMATION CHECK.

2                   The review of any and all records containing any information  
3                   collected and stored in the criminal record repository of the  
4                   Federal Bureau of Investigation, the Alabama Criminal Justice  
5                   Information Center, and the Alabama ~~Department of Public~~  
6                   ~~Safety~~ State Law Enforcement Agency involving an arrest or  
7                   conviction by a criminal justice agency, including, but not  
8                   limited to, child abuse crime information as defined by 42  
9                   U.S.C. § 5119, the National Child Protection Act of 1993,  
10                  conviction record information, fingerprint cards, correctional  
11                  data and release information, and identifiable descriptions  
12                  and notations of convictions. Criminal history background  
13                  information shall not include any analytical records or  
14                  investigative reports that contain intelligence information or  
15                  criminal investigation information.

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

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

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



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

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

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

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

21           "(20) INDIVIDUAL. A natural person.

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

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

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

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

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

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

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

9           "(28) REPORT. A written statement of criminal  
10 history background information.

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

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

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

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

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

23           "d. Promoting prostitution in the first or second  
24 degree, as proscribed by Section 13A-12-111 or Section  
25 13A-12-112.

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

1                    "f. Sexual misconduct, as proscribed by Section  
2 13A-6-65.

3                    "g. Sexual torture, as proscribed by Section  
4 13A-6-65.1.

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

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

9                    "j. Soliciting a child by computer for the purposes  
10 of committing a sexual act and transmitting obscene material  
11 to a child by computer as proscribed by Sections 13A-6-110 and  
12 13A-6-111.

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

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

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

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

26                    "(31) SUITABILITY CRITERIA.

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

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

6            "2. A sex crime.

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

10           "4. A crime committed against a child.

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

13           "6. Robbery.

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

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

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

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

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

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

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

20           "a. The name, address, date of birth, race, gender,  
21 and Social Security number appearing on a valid identification  
22 document as defined in subsection (d) of 18 U.S.C. § 1028. If  
23 the applicant does not have a Social Security number because  
24 of sincerely held personal beliefs, the Social Security number  
25 shall not be required and the Department of Human Resources  
26 and the ~~Department of Public Safety~~ Alabama State Law

1 Enforcement Agency shall provide an alternative means of  
2 identification and procedure.

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

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

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

14 "§38-13-3.

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

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

24 "(2) A current foster parent for a child or adult or  
25 adult household member of a foster family or applicant and an  
26 adult household member of a foster family seeking approval to  
27 operate as a foster parent or foster family home for a child

1 placing agency or the Department of Human Resources. Unless  
2 otherwise provided in this chapter, no criminal history  
3 background information check shall be conducted on a current  
4 foster parent or household member of a foster family if a  
5 Federal Bureau of Investigation and Alabama ~~Department of~~  
6 ~~Public Safety~~ State Law Enforcement Agency criminal history  
7 background information check has already been conducted under  
8 other law that meets the suitability criteria as provided in  
9 this chapter. Subsequent arrests or convictions of foster  
10 parents, or arrests or convictions entered into the automated  
11 system subsequent to the initial report, shall be sent by the  
12 ~~Department of Public Safety~~ Alabama State Law Enforcement  
13 Agency to the Department of Human Resources as provided in  
14 this chapter.

15 "(3) An applicant or employee, with the exception of  
16 those individuals on employed status on November 1, 2000, in a  
17 position in the Department of Human Resources which requires  
18 unsupervised access to children, the elderly, or individuals  
19 with disabilities as one of the essential functions of the  
20 job. All current employees of the Department of Human  
21 Resources shall be subjected to a criminal history background  
22 information check upon reasonable suspicion. Criminal history  
23 background information checks shall be required for  
24 prospective and current personnel under contract with the  
25 Department of Human Resources or working with another entity  
26 under contract with the Department of Human Resources,  
27 students, mentors, and volunteers in positions requiring



1       unsupervised access to children, the elderly, or persons with  
2       disabilities as one of the essential functions of the job. The  
3       Department of Human Resources shall pay any fees related to  
4       checks required pursuant to this subdivision.

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

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

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

26               "(b) An employer, child care facility, adult care  
27      facility, the Department of Human Resources, or a child

1 placing agency may only request a criminal history background  
2 information check by its chief executive officer, or his or  
3 her designee authorized in writing and notarized, and law  
4 enforcement shall render assistance, including assistance in  
5 obtaining fingerprints required for submission of a request to  
6 the ~~Department of Public Safety~~ Alabama State Law Enforcement  
7 Agency.

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

1 child care facility, adult care facility, or child placing  
2 agency.

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

1 criminal history background check conducted, the Department of  
2 Human Resources shall have the right to require employees of  
3 ~~license-exempt~~ child care or adult care facilities to submit  
4 each application for a criminal history background check and  
5 the results thereof when obtained."

6 Section 3. A child care facility that is an integral  
7 part of a church or nonprofit religious school shall be  
8 licensed in accordance with Chapter 7, Title 38, Code of  
9 Alabama 1975, no later than August 1, 2018.

10 Section 4. This act shall become effective  
11 immediately following its passage and approval by the  
12 Governor, or its otherwise becoming law, and the amendatory  
13 language of Section 38-7-3, relating to a child care facility  
14 that is an integral part of a church or nonprofit religious  
15 school, shall become operative August 1, 2018.