

1 HB76  
2 189397-1  
3 By Representatives Warren and Brown  
4 RFD: Children and Senior Advocacy  
5 First Read: 09-JAN-18  
6 PFD: 01/08/2018

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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,  
24 immunization verifications for all children, and medical  
25 history forms for all staff and children, and that the  
26 following information shall be available to parents or  
27 guardian prior to enrolling their children in said church

1 ~~ministry; staff~~ and certify that the records are being  
2 maintained by the church or school.

3 "(4) Provide the department within 30 days of any  
4 updated fire inspection report, health inspection report, new  
5 criminal background check suitability letter, or receipt of  
6 updated insurance information as required under subdivision  
7 (2).

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

11 "a. Staff qualifications.↯

12 "b. ~~pupil-staff~~ Pupil-staff ratio.↯

13 "c. ~~discipline~~ Discipline policies.↯

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

16 "e. ~~the~~ The religious teachings to be given each  
17 child.↯

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

1 ~~proper presentment of charges, investigate at his discretion~~  
2 ~~any allegations against any such church under the laws of the~~  
3 ~~State of Alabama.~~

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

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

15 "Form of Affidavit for Parent/Guardian

16 "STATE OF ALABAMA

17 "COUNTY OF \_\_\_\_\_

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

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

26 "\_\_\_\_\_ 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           "~~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, 2019.

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