

1 HB277  
2 185689-3  
3 By Representatives Warren, Brown, Holmes (M), Drake, England,  
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5 Johnson (K), Farley, Butler, Givan, Coleman, Scott, Moore (M),  
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

1 ENGROSSED

2  
3  
4 A BILL  
5 TO BE ENTITLED  
6 AN ACT  
7

8 Relating to child care facilities; to amend Sections  
9 13A-6-29, 38-7-2, 38-7-3, 38-13-2, and 38-13-3, Code of  
10 Alabama 1975; to establish the Child Care Safety Act; to  
11 revise the definition of day care center to include  
12 preschools; to remove the exemption from licensure by the  
13 Department of Human Resources of certain child care facilities  
14 that are part of a church or nonprofit religious school; to  
15 clarify that the licensing of a faith-based child care  
16 facility may not be construed to infringe upon the rights of  
17 the facility to teach or practice a religion; and to revise  
18 the criminal history background information check required for  
19 certain individuals.

20 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

23 Section 2. Sections 13A-6-29, 38-7-2, 38-7-3,  
24 38-13-2, and 38-13-3, Code of Alabama 1975, are amended to  
25 read as follows:

26 "§13A-6-29.

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

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

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

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

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

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

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

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

25           "§38-7-2.

26           "Terms used in this chapter, unless the context  
27 otherwise requires, have the meanings ascribed to them in this

1 section. When not inconsistent with the context, words used in  
2 the present tense include the future, words in the singular  
3 number include the plural number, and words in the plural  
4 number include the singular number, and the word "shall" is  
5 always mandatory and not merely directory:

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

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

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

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

22 "c. Any bona fide boarding school in which children  
23 are primarily taught branches of education corresponding to  
24 those taught in public schools, grades 1 through 12, or taught  
25 in public elementary schools, high schools, or both elementary  
26 and high schools.

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

14           "(4) DAY CARE CENTER. Any child-care facility  
15 receiving more than 12 children for daytime care during all or  
16 part of a day. The term ~~"day care center"~~ includes, but is not  
17 limited to, facilities commonly called "child-care centers,"  
18 "day nurseries," "nursery schools," "pre-kindergartens,"  
19 "preschools," "kindergartens," and "play groups," with or  
20 without stated educational purposes. The term further  
21 includes, but is not limited to, pre-kindergarten, preschool,  
22 kindergarten, or nursery schools or other daytime programs  
23 operated as a part of a private school and receiving children  
24 younger than lawful school age for daytime care for more than  
25 four hours a day, with or without stated educational purposes.  
26 The term does not include any of the following:

1            "a. Kindergartens or nursery schools or other  
2 daytime programs operated by public elementary systems or  
3 secondary level school units or institutions of higher  
4 learning.

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

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

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

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

23           "f. Special activities programs for children of  
24 lawful school age including, but not limited to, athletics,  
25 crafts instruction and similar activities conducted on an  
26 organized and periodic basis by civic, charitable, and

1 governmental organizations provided local and state fire and  
2 health requirements are met.

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

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

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

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

23 "a. Boarding home. A foster family home wherein the  
24 foster family receives a child or children and receives  
25 payment for their care. The number of children so received  
26 shall not exceed six, unless the children are of common  
27 parentage.

1            "b. Free home. A foster home which does not receive  
2 payment for the care of a child or children and which may or  
3 may not receive the child or children for the purpose of  
4 adoption.

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

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

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

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

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

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



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

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

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

15 "§38-7-3.

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

24 "(b) (1) Except as provided in subdivision (2), the  
25 licensure requirements of this chapter do not apply to  
26 preschool programs which are a child care facility that is  
27 operating as an integral part of a local church ministry or a

1 religious nonprofit elementary school, and ~~are~~ is so  
2 recognized in the church or school's documents, whether  
3 operated separately or as a part of a religious nonprofit  
4 elementary school unit, secondary school unit or institution  
5 of higher learning under the governing board or authority of  
6 ~~said~~ the local church or its convention, association, or  
7 regional body to which it may be subject., ~~provided that~~  
8 ~~notice is filed by the governing board or authority of the~~  
9 ~~church or school with the department that said church or~~  
10 ~~school meets the definition of a local church ministry or a~~  
11 ~~religious nonprofit elementary school under terms of this~~  
12 ~~section and are exempt from regulation by the department.~~

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

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

20 "(1) and a notice of intent to operate said programs  
21 is given Provide notice of operation on an annual basis to the  
22 appropriate fire and health departments so that ~~said~~  
23 facilities shall the facility may be inspected in accordance  
24 with the state and local fire and health requirements,  
25 provided the facility shall be inspected at least annually by  
26 the appropriate fire department and the appropriate health  
27 department. for such programs. In addition, all exempt

1 ~~churches hereunder shall publish annually, on church~~  
2 ~~letterhead, a notice to the department certifying that the~~  
3 ~~following records are being maintained by the church:~~

4 "(2) Provide to the department on or before October  
5 1, 2017, and annually thereafter, the following records and  
6 certify that the records are being maintained by the church or  
7 school:

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

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

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

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

18 "a. immunization Immunization verifications for all  
19 children,; medical

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

24 "(4) Provide the department within 30 days of any  
25 updated fire inspection report, health inspection report, new  
26 employee hire, or receipt of updated insurance information as  
27 required under subdivision (2).

1           "(5) Provide notice to parents or guardians of all  
2 of the following information prior to enrollment of a child in  
3 the child care facility:

4           "a. Staff qualifications.↗

5           "b. ~~pupil-staff~~ Pupil-staff ratio.↗

6           "c. ~~discipline~~ Discipline policies.↗

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

9           "e. ~~the~~ The religious teachings to be given each  
10 child.↗

11           "f. ~~and the~~ The type of lunch program available. ↗  
12 ~~provided further that prior to enrolling and annually~~  
13 ~~thereafter parents or guardian and a responsible individual~~  
14 ~~representing the governing board as authority of the church or~~  
15 ~~school be required to sign and file with the department the~~  
16 ~~affidavits provided by this section that the parents or~~  
17 ~~guardian have been notified by said responsible individual~~  
18 ~~that the church or school has filed notice and is exempt from~~  
19 ~~regulation by the department. The district attorney of the~~  
20 ~~county in which the preschool program is located shall, upon~~  
21 ~~proper presentment of charges, investigate at his discretion~~  
22 ~~any allegations against any such church under the laws of the~~  
23 ~~State of Alabama.~~

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

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

9                   "Form of Affidavit for Parent/Guardian

10                  "STATE OF ALABAMA

11                  "COUNTY OF \_\_\_\_\_

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

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

20                  "\_\_\_\_\_ Parent/Legal Guardian

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

23                  "(8) A responsible individual of the child care  
24                  facility shall file an affidavit annually with the department  
25                  certifying that it has satisfied all of the requirements of  
26                  this section. The affidavit shall be substantially in the  
27                  following form:

1 "Form of Affidavit for Church/School

2 "STATE OF ALABAMA

3 "COUNTY OF \_\_\_\_\_

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

7 "That affiant is the designated representative of  
8 \_\_\_\_\_ church/school and that the below listed  
9 parents/guardians have been notified prior to  
10 enrollment/reenrollment that \_\_\_\_\_ church/school has filed  
11 notice with and is exempt under law from regulation by the  
12 Department of Human Resources: \_\_\_\_\_

13 " \_\_\_\_\_ Representative

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

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

1                   " \_\_\_\_\_ Notary Public

2                   "(d) (1) On and after the effective date of the act  
3 adding this amendatory language, any church or nonprofit  
4 religious school intending to operate a new child care  
5 facility in the state shall notify the department at least 30  
6 days prior to operating, and the department shall inspect the  
7 facility and ensure compliance with this section before the  
8 facility may begin operating.

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

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

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

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

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

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

11           "§38-13-2.

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

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

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

19           "(3) APPLICANT. A person or entity who submits an  
20 application for license as a child care or adult care facility  
21 to the Department of Human Resources or a child placing  
22 agency, or an application for employment or for a volunteer  
23 position to a Department of Human Resources licensed child  
24 care or adult care facility. With regards to child care and  
25 adult care facilities in a home setting, the term includes an  
26 adult household member whose residence is in the home. The  
27 term also includes an individual who submits an application



1 for a volunteer position or for employment with the Department  
2 of Human Resources in a position in which the person has  
3 unsupervised access to children, adults, or individuals with  
4 disabilities as one of the essential functions of the job. The  
5 term also includes an applicant for approval as an adoptive  
6 parent of a child or as a foster parent of an adult or child.

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

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

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

25 "(7) CHIEF EXECUTIVE OFFICER. The Commissioner of  
26 the Department of Human Resources, the director of a county

1 department of human resources, or the head of an employer  
2 covered by this chapter, but not specifically enumerated.

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

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

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

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

17 "(12) CRIMINAL HISTORY BACKGROUND INFORMATION CHECK.  
18 The review of any and all records containing any information  
19 collected and stored in the criminal record repository of the  
20 Federal Bureau of Investigation, the Alabama Criminal Justice  
21 Information Center, and the Alabama ~~Department of Public~~  
22 ~~Safety~~ State Law Enforcement Agency involving an arrest or  
23 conviction by a criminal justice agency, including, but not  
24 limited to, child abuse crime information as defined by 42  
25 U.S.C. § 5119, the National Child Protection Act of 1993,  
26 conviction record information, fingerprint cards, correctional  
27 data and release information, and identifiable descriptions

1 and notations of convictions. Criminal history background  
2 information shall not include any analytical records or  
3 investigative reports that contain intelligence information or  
4 criminal investigation information.

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

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

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

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

22 "(17) EMPLOYER. An individual, person, group of  
23 persons, association, partnership, corporation, limited  
24 liability company or partnership, business, or other entity  
25 which hires employees, has volunteers, or contracts with  
26 others to provide personnel to work with or provide care to

1 children, adults, or individuals with disabilities in a  
2 caretaker setting.

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

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

10 "(20) INDIVIDUAL. A natural person.

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

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

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

24 "(24) LICENSED SOCIAL WORKER. A social worker  
25 licensed by the Alabama State Board of Social Work Examiners  
26 to conduct family home studies and psychosocial assessments in

1 adoptive or custody cases by court order or for treatment not  
2 otherwise required to conduct a criminal history check.

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

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

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

24 "(28) REPORT. A written statement of criminal  
25 history background information.

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

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

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

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

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

13          "d. Promoting prostitution in the first or second  
14 degree, as proscribed by Section 13A-12-111 or Section  
15 13A-12-112.

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

18          "f. Sexual misconduct, as proscribed by Section  
19 13A-6-65.

20          "g. Sexual torture, as proscribed by Section  
21 13A-6-65.1.

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

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

26          "j. ~~Soliciting a child by computer for the purposes~~  
27 ~~of committing a sexual act~~ Electronic solicitation of a child

1 and transmitting obscene material to a child by computer as  
2 proscribed by Sections ~~13A-6-110~~ 13A-6-122 and 13A-6-111.

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

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

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

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

16 "(31) SUITABILITY CRITERIA.

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

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

22 "2. A sex crime.

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

26 "4. A crime committed against a child.

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

3           "6. Robbery.

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

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

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

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

21           "(33) UNSUPERVISED ACCESS TO A CHILD OR CHILDREN,  
22 THE ELDERLY, OR AN INDIVIDUAL WITH DISABILITIES. Contacts,  
23 interviews, questions, examinations, interaction, or  
24 communications outside the presence, supervision, and control  
25 of someone other than a child or elderly or disabled  
26 individual in care during the provision of care, education,



1 training, instruction, supervision, or other employment or  
2 license related activities.

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

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

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

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

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

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

3 "§38-13-3.

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

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

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

1 ~~Department of Public Safety~~ Alabama State Law Enforcement  
2 Agency to the Department of Human Resources as provided in  
3 this chapter.

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

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

24 "(5) An adoptive parent applicant for a child  
25 adoptive placement through the Department of Human Resources  
26 or child placing agency and any Department of Human Resources  
27 or child placing agency approved adoptive parent prior to

1 entry of a final decree of adoption. Unless otherwise provided  
2 in this chapter, no criminal history background information  
3 check shall be conducted on a current adoptive parent or  
4 household member of an adoptive family if a Federal Bureau of  
5 Investigation and Alabama ~~Department of Public Safety~~ State  
6 Law Enforcement Agency criminal history background information  
7 check has already been conducted under other law that meets  
8 the suitability criteria as provided in this chapter.

9 Subsequent arrests or convictions of adoptive parents, or  
10 arrests or convictions entered into the automated system  
11 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 elsewhere  
14 provided in this chapter.

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

24 "(c) Every employee, volunteer or applicant, for  
25 employment or a volunteer position, licensee, Department of  
26 Human Resources adoptive parent applicant or approved adoptive  
27 parent, or applicant for a license to the Department of Human

1 Resources to operate a child care or adult care facility shall  
2 submit two sets of fingerprints and sign a written consent to  
3 obtain the criminal history background information.

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

18 "(d) ~~Child care facilities or adult~~ Adult care  
19 facilities exempt from Department of Human Resources licensing  
20 shall not be required to comply with this chapter, but may  
21 voluntarily collect and forward two complete acceptable sets  
22 of fingerprints, the written consent, and nonrefundable fee  
23 from applicants ~~or employees~~ to the ~~Department of Public~~  
24 ~~Safety~~ Alabama State Law Enforcement Agency to request a  
25 criminal history background information check which shall be  
26 processed pursuant to this chapter. Licensed social workers  
27 conducting home studies may also request a criminal history

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

21 Section 3. A child care facility that is an integral  
22 part of a church or nonprofit religious school, other than a  
23 child care facility exempt from licensure under subsection (b)  
24 of Section 38-7-3, Code of Alabama 1975, as amended by this  
25 act, shall be licensed in accordance with Chapter 7, Title 38,  
26 Code of Alabama 1975, no later than August 1, 2018.

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

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House of Representatives

Read for the first time and re-  
ferred to the House of Representa-  
tives committee on Children and Se-  
nior Advocacy..... . . . . 21-FEB-17

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

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

Yeas 88, Nays 9, Abstains 2

Jeff Woodard  
Clerk