

1 SB277  
2 198734-3  
3 By Senator Smitherman  
4 RFD: Children, Youth and Human Services  
5 First Read: 11-APR-19

1 SB277

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3  
4 ENROLLED, An Act,

5 Relating to criminal background checks; to amend  
6 Section 38-13-2, as last amended by Act 2018-278, 2018 Regular  
7 Session, and Section 38-13-4, Code of Alabama 1975; to require  
8 background checks for any adult working in a child care  
9 institution, group home, maternity center, or transitional  
10 living facility.

11 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

12 Section 1. Section 38-13-2, as last amended by Act  
13 2018-278, 2018 Regular Session, and Section 38-13-4, Code of  
14 Alabama 1975, are amended to read as follows:

15 "§38-13-2.

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

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

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

23 "(3) APPLICANT. A person or entity who submits an  
24 application for license as a child care or adult care facility  
25 to the Department of Human Resources or a child placing

1 agency, or an application for employment or for a volunteer  
2 position to a Department of Human Resources licensed child  
3 care or adult care facility. With regard to child care and  
4 adult care facilities in a home setting, the term includes an  
5 adult household member whose residence is in the home. The  
6 term also includes an individual who submits an application  
7 for a volunteer position or for employment with the Department  
8 of Human Resources in a position in which the person has  
9 unsupervised access to children, adults, or individuals with  
10 disabilities as one of the essential functions of the job. The  
11 term also includes an applicant for approval as an adoptive  
12 parent of a child or as a foster parent of an adult or child.  
13 The term also includes any adult working in a child care  
14 institution, group home, maternity center, or transitional  
15 living facility, as defined in Section 38-7-2.

16 "(4) AUTOMATED SYSTEM. The computerized, automated  
17 fingerprint identification system (AFIS) maintained by the  
18 Alabama State Law Enforcement Agency that allows for a  
19 computer search of the in-state database for criminal history  
20 background check information maintained by the Alabama  
21 Criminal Justice Information Center (ACJIC). The system  
22 contains criminal history background information for  
23 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 The term includes 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 issuing approvals to foster family homes and adoptive homes.

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

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

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

22           "(14) DAILY LIVING TASKS. Activities of daily  
23 living, including walking, working, learning, grooming and  
24 hygiene, bathing, dressing, eating, cooking, cleaning,  
25 shopping, transportation, managing money, maintaining a

1 residence, writing, and using telephones, computers, and other  
2 automated communication devices.

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

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

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

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

21 "(19) EXEMPT CARE FACILITY. A person or entity  
22 exempt by law from licensure by the Department of Human  
23 Resources, including adult care facilities.

24 "(20) INDIVIDUAL. A natural person.

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

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

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

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

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

23           "(26) PERSON or ENTITY. A natural person, sometimes  
24 referred to as an individual, an owner or operator of any  
25 adult care facility, child care facility, child placing

1 agency, or licensee, whether an individual, corporation,  
2 limited liability company or partnership, partnership,  
3 association, or other legal entity or group, and a board  
4 member, an officer, member, or partner of an entity who has  
5 direct contact with children, the elderly, or individuals with  
6 disabilities in care.

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

15 "(28) REPORT. A written statement of criminal  
16 history background information.

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

20 "(30) SEX CRIME. Includes any sex offense listed in  
21 Section 15-20A-5.

22 "(31) SUITABILITY CRITERIA.

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



1                   "1. A violent offense as defined in Section  
2 12-25-32.

3                   "2. A sex crime.

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

7                   "4. A crime committed against a child.

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

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

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

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

23                  "(32) SUITABILITY DETERMINATION. A decision that an  
24 individual is or is not suitable for employment, volunteer

1 work, or licensure based upon the existence of a prohibited  
2 criminal conviction.

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

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

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

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

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

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

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

12           "§38-13-4.

13           "(a) Every employer, child care facility, adult care  
14 facility, the Department of Human Resources, and child placing  
15 agency required to obtain a criminal history background  
16 information check pursuant to this chapter shall obtain, prior  
17 to or upon the date of employment, or issuance of a license or  
18 approval or renewal thereof, and maintain in the agency or  
19 personnel file, a request with written consent for the  
20 criminal history background information check and a statement  
21 signed by the applicant, volunteer, or employee indicating  
22 whether he or she has ever been convicted of a crime, and if  
23 so, fully disclosing all convictions. The statement shall  
24 include a notice and questionnaire the same as or similar to  
25 the following:

1           "(1) "MANDATORY CRIMINAL HISTORY CHECK NOTICE:

2 Alabama law requires that a criminal history background  
3 information check be conducted on all persons who hold a  
4 license or work in a Department of Human Resources licensed  
5 child care or adult care facility, a foster or adoptive home  
6 approved by the Department of Human Resources, or a licensed  
7 child placing agency, including all officers and agents of the  
8 entity. You are required to provide full, complete, and  
9 accurate information on your criminal conviction history upon  
10 application for a license or employment. This information  
11 shall be used to determine your suitability to provide care to  
12 children, the elderly, or disabled individuals. Unless a  
13 criminal history background information check report and  
14 suitability determination have previously been obtained, you  
15 must complete a written request and consent for a criminal  
16 history background information check with fingerprints at the  
17 time of application for employment. Refusal to complete these  
18 documents or providing false information may result in refusal  
19 of employment, approval, or licensure. The term conviction  
20 includes a determination of guilt by a trial, by a plea of  
21 guilty, or a plea of nolo contendere. You are required to  
22 notify your employer, licensing agency, or entity where you  
23 are performing volunteer work of any criminal conviction  
24 occurring subsequent to the date of completion of this notice.  
25 Any individual determined to have submitted false information

1 may be referred to the district attorney or law enforcement  
2 for investigation and possible prosecution. An individual who  
3 intentionally falsifies or provides any misleading information  
4 on the statement is guilty of a Class A misdemeanor,  
5 punishable by a fine of not more than two thousand dollars  
6 (\$2,000) and imprisonment for not more than one year.

7           "(2) Convictions for any of the following crimes  
8 shall make an individual unsuitable for employment, volunteer  
9 work, approval, or licensure:

10           "~~1. Murder, manslaughter, or criminally negligent~~  
11 ~~homicide~~ a. A violent offense as defined in Section 12-25-32.

12           "~~2. b.~~ A sex crime as defined in Section 15-20A-5.

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

16           "~~4. d.~~ A crime committed against a child as defined  
17 in Section 38-13-2.

18           "~~5. e.~~ A crime involving the sale or distribution  
19 of a controlled substance.

20           "~~A sex crime includes the following:~~

21           "~~a. Enticing a child to enter a vehicle, room,~~  
22 ~~house, office, or any other space for immoral purposes, as~~  
23 ~~proscribed by Section 13A-6-69 of the Code of Alabama 1975.~~

1           ~~""b. Incest, when the offender is an adult and the~~  
2 ~~victim is a minor, as proscribed by Section 13A-13-3 of the~~  
3 ~~Code of Alabama 1975.~~

4           ~~""c. Kidnapping of a minor, except by a parent, in~~  
5 ~~the first or second degree, as proscribed by Section 13A-6-43~~  
6 ~~or Section 13A-6-44 of the Code of Alabama 1975.~~

7           ~~""d. Promoting prostitution in the first or second~~  
8 ~~degree, as proscribed by Section 13A-12-111 or Section~~  
9 ~~13A-12-112 of the Code of Alabama 1975.~~

10          ~~""e. Rape in the first or second degree, as~~  
11 ~~proscribed by Section 13A-6-61 or Section 13A-6-62 of the Code~~  
12 ~~of Alabama 1975.~~

13          ~~""f. Sexual misconduct, as proscribed by Section~~  
14 ~~13A-6-65 of the Code of Alabama 1975.~~

15          ~~""g. Sexual torture, as proscribed by Section~~  
16 ~~13A-6-65.1 of the Code of Alabama 1975.~~

17          ~~""h. Sexual abuse in the first or second degree, as~~  
18 ~~proscribed by Section 13A-6-66 or Section 13A-6-67 of the Code~~  
19 ~~of Alabama 1975.~~

20          ~~""i. Sodomy in the first or second degree, as~~  
21 ~~proscribed by Section 13A-6-63 or Section 13A-6-64 of the Code~~  
22 ~~of Alabama 1975.~~

23          ~~""j. Soliciting a child by computer for the purposes~~  
24 ~~of committing a sexual act and transmittal of obscene material~~

1 ~~to a child by computer as proscribed by Sections 13A-6-110 and~~  
2 ~~13A-6-111 of the Code of Alabama 1975.~~

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 of the Code of Alabama 1975.~~

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 of the Code of Alabama 1975.~~

12 ~~""f. A crime or offense committed in another state~~  
13 ~~or under federal law which would constitute any of the above~~  
14 ~~crimes in this state.~~

15 ~~""6. g. Conviction for a crime listed in the federal~~  
16 ~~Adoption and Safe Families Act, pursuant to 42 U.S.C. Section~~  
17 ~~671(a)(20), shall disqualify as prohibiting a person from~~  
18 ~~being approved or continuing to be approved as a foster parent~~  
19 ~~or adoptive parent shall be deemed to make the and a convicted~~  
20 ~~person shall be deemed unsuitable for employment, volunteer~~  
21 ~~work, approval, or licensure as a foster parent or adoptive~~  
22 ~~parent.~~

23 ~~""7. Conviction for a violation or attempted~~  
24 ~~violation of an offense committed outside the State of Alabama~~  
25 ~~or under federal law is a sex crime or any other crime listed~~

1 ~~in this notice if the offense would be a crime listed in this~~  
2 ~~notice in Alabama.~~

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

7 "(3) "CRIMINAL HISTORY STATEMENT

8 ""Have you ever had a suitability determination made  
9 by the Department of Human Resources in connection with a  
10 previous criminal history information background check? Yes  
11 (\_\_) No (\_\_).

12 ""Have you ever been convicted of a crime? Yes (\_\_)  
13 No (\_\_). If yes, state the date, crime, location, punishment  
14 imposed, and whether the victim was a child or an elderly or  
15 disabled individual.

16 "" \_\_\_\_\_

17 "" \_\_\_\_\_

18 ""Date \_\_\_\_\_ Signature \_\_\_\_\_."

19 "(b) An individual who fails or refuses to provide a  
20 statement shall not be employed, allowed to work or volunteer,  
21 or issued a license or approval as defined in this chapter.  
22 Upon receipt of a signed criminal history statement which does  
23 not indicate conviction for a crime prohibiting employment  
24 under the suitability criteria, an employer, including the  
25 Department of Human Resources, may employ an applicant or



1 allow a volunteer or contract provider to work provisionally  
2 pending receipt of a suitability determination from the  
3 Department of Human Resources.

4 "(c) No later than the five business days after  
5 employment or a reasonable time after completion of  
6 application for a license or approval, an employer, the  
7 Department of Human Resources, or child placing agency shall  
8 mail or deliver a request for a criminal history background  
9 information check to the Alabama State Law Enforcement Agency  
10 accompanied by all of the following:

11 "(1) Two complete sets of fingerprints, properly  
12 executed by a law enforcement agency or an individual properly  
13 trained in fingerprinting techniques.

14 "(2) Written consent from the applicant, employee,  
15 or volunteer for the release of the criminal history  
16 background information to the Department of Human Resources.

17 "(3) The fee.

18 "(d) Upon receipt of a suitability determination  
19 from the Department of Human Resources that a person or entity  
20 is suitable for employment, volunteer work, licensure, or  
21 approval based on the criminal history background information  
22 check, an employer, a child care facility, adult care  
23 facility, a child placing agency, or the Department of Human  
24 Resources may make its own determination of employment,  
25 licensure, or approval. This chapter shall not create any

1 right to employment, work, approval, or licensure. Upon  
2 receipt of a determination from the Department of Human  
3 Resources that an individual is unsuitable for employment,  
4 licensure, approval, or volunteer work, an employer, the child  
5 care facility, adult care facility, child placing agency, or  
6 Department of Human Resources shall terminate the individual  
7 from employment or volunteer work or shall not employ or use  
8 the individual. Termination of employment may be delayed by  
9 the employer to allow the individual to challenge either the  
10 accuracy or completeness of the criminal history information  
11 background report or the suitability determination made by the  
12 Department of Human Resources. The Department of Human  
13 Resources or child placing agency shall suspend or revoke a  
14 license or approval or deny a license or approval application  
15 to an individual receiving an unsuitability determination. As  
16 an alternative to termination of employment, the Department of  
17 Human Resources may transfer a permanent Merit System employee  
18 to an available position for which the employee is qualified  
19 where unsupervised access to children, the elderly, or persons  
20 with disabilities shall not be an essential function of the  
21 job.

22 "(e) If a review of a criminal history background  
23 information check or other information received reveals that  
24 the person has submitted false information, the employer,  
25 child care facility, adult care facility, child placing

1 agency, or Department of Human Resources may terminate the  
2 employee or volunteer. The Department of Human Resources or  
3 child placing agency may revoke the approval or license of a  
4 person or entity when the person or entity submits false  
5 information in a review of criminal history background  
6 information check or other information. The Department of  
7 Human Resources shall be notified of the false information and  
8 may refer the case to an appropriate law enforcement agency or  
9 district attorney for investigation and prosecution.

10 "(f) Unless otherwise provided in this chapter, only  
11 one criminal history background information check shall be  
12 required on an individual regardless of subsequent changes in  
13 employment or licensing or approval status. Subsequent  
14 criminal history background information checks may be  
15 conducted by the employer or licensing or approval entity. The  
16 licensing or approval entity shall pay the cost for subsequent  
17 criminal history background information checks. If the  
18 statement signed by the applicant or employee states that a  
19 criminal history background information check has been  
20 performed and suitability determination issued on the  
21 individual pursuant to this chapter, the employer or licensing  
22 agency may request at the time of application only a  
23 suitability determination from the Department of Human  
24 Resources on the check previously performed, within five  
25 business days of employment, or completion of license or

1 approval application, submitting the same kind of information  
2 and consent for the request for suitability determination as  
3 required by the written consent for a criminal history  
4 background information check."

5 Section 2. This act shall become effective  
6 immediately following its passage and approval by the  
7 Governor, or its otherwise becoming law.

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President and Presiding Officer of the Senate

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Speaker of the House of Representatives

SB277

Senate 30-APR-19

I hereby certify that the within Act originated in and passed the Senate.

Patrick Harris,  
Secretary.

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House of Representatives  
Passed: 23-MAY-19

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By: Senator Smitherman