

1 HB76
2 190627-5
3 By Representatives Warren and Brown
4 RFD: Children and Senior Advocacy
5 First Read: 09-JAN-18
6 PFD: 01/08/2018

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

21 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

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

27 "§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 federal funds or is operating for profit is not exempt from
17 licensure under this subsection.

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

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

1 ~~department. for such programs. In addition, all exempt~~
2 ~~churches hereunder shall publish annually, on church~~
3 ~~letterhead, a notice to the department certifying that the~~
4 ~~following records are being maintained by the church:~~

5 "(2) Provide to the department on or before October
6 1, 2018, and annually thereafter, the following records and
7 certify that the records are being maintained by the church or
8 school:

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

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

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

16 "(3) Provide to the department, upon request,
17 immunization verifications for all children, and medical
18 history forms for all staff and children, and that the
19 following information shall be available to parents or
20 guardian prior to enrolling their children in said church
21 ministry; staff and certify that the records are being
22 maintained by the church or school.

23 "(4) Provide the department within 30 days of any
24 updated fire inspection report, health inspection report, new
25 criminal background check suitability letter, or receipt of
26 updated insurance information as required under subdivision
27 (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) at
11 any time if it has reasonable cause to believe the facility is
12 not in compliance with this section or the safety of a child
13 is at risk. If the department finds there exists a situation
14 that may put the safety of a child at risk, the department may
15 refer to the fire or health department or to the local
16 district attorney for the proper remedy or action.

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

23 "(f) The department, upon request, shall provide any
24 documentation necessary to confirm any of the information
25 relevant to a determination of whether a child care facility
26 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 any sex crime listed in
5 Section 15-20A-5. ~~the following:~~

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

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

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

14 ~~"d. Promoting prostitution in the first or second~~
15 ~~degree, as proscribed by Section 13A-12-111 or Section~~
16 ~~13A-12-112.~~

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

19 ~~"f. Sexual misconduct, as proscribed by Section~~
20 ~~13A-6-65.~~

21 ~~"g. Sexual torture, as proscribed by Section~~
22 ~~13A-6-65.1.~~

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

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

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

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

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

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

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

18 (31) SUITABILITY CRITERIA.

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

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

24 "2. A sex crime.

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

1 "4. A crime committed against a child.

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

4 ~~"6. Robbery.~~

5 "7.6. A crime or offense committed in another state
6 or under federal law which would constitute any of the above
7 crimes in this state.

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

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

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

22 "(33) UNSUPERVISED ACCESS TO A CHILD OR CHILDREN,
23 THE ELDERLY, OR AN INDIVIDUAL WITH DISABILITIES. Contacts,
24 interviews, questions, examinations, interaction, or
25 communications outside the presence, supervision, and control
26 of someone other than a child or elderly or disabled
27 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. Section 38-7-21 is added to the Code of
22 Alabama 1975, to read as follows:

23 §38-7-21.

24 A church, religious nonprofit entity, or religious
25 nonprofit school that has been operating a day care center or
26 preschool program without a license prior to the effective
27 date of the act adding this section that chooses to become a

1 licensed day care center under this chapter shall have 90 days
2 from the effective date of the act adding this section to come
3 into compliance with all licensing requirements of this
4 chapter and related rules adopted by the department, except
5 the church, religious nonprofit entity, or religious nonprofit
6 school shall not be required to meet minimum standards for
7 licensed day care centers or nighttime centers relating to
8 physical building design, size, and fixtures for existing
9 construction.

10 Section 4. A child care facility that is an integral
11 part of a church or nonprofit religious school, other than a
12 child care facility exempt from licensure under subsection (b)
13 of Section 38-7-3, Code of Alabama 1975, as amended by this
14 act, shall be licensed in accordance with Chapter 7, Title 38,
15 Code of Alabama 1975, no later than August 1, 2019.

16 Section 5. This act shall become effective
17 immediately following its passage and approval by the
18 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..... 09-JAN-18

Reported from Children and Senior
Advocacy as Favorable with 1 sub-
stitute..... 30-JAN-18

Read for the third time and passed
as amended..... 01-FEB-18

Yeas 86, Nays 5, Abstains 1

Jeff Woodard
Clerk