

1 HB403
2 198734-1
3 By Representative Lee
4 RFD: State Government
5 First Read: 11-APR-19

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8 SYNOPSIS: Under existing law, criminal history
9 background checks are required by the Department of
10 Human Resources for employment or to volunteer in
11 certain circumstances.

12 This bill would require any adult working in
13 a child care institution, group home, maternity
14 center, or transitional living facility to undergo
15 a criminal background check.

16
17 A BILL
18 TO BE ENTITLED
19 AN ACT
20

21 Relating to criminal background checks; to amend
22 Section 38-13-2, as last amended by Act 2018-278, 2018 Regular
23 Session, and Section 38-13-4, Code of Alabama 1975; to require
24 background checks for any adult working in a child care
25 institution, group home, maternity center, or transitional
26 living facility.

27 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

4 "§38-13-2.

5 "When used in this chapter, the following words
6 shall have the following meanings:

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

8 "(2) ADULT CARE FACILITY. A person or entity holding
9 a Department of Human Resources license or approval or
10 certification to provide care, including foster care, for
11 adults.

12 "(3) APPLICANT. A person or entity who submits an
13 application for license as a child care or adult care facility
14 to the Department of Human Resources or a child placing
15 agency, or an application for employment or for a volunteer
16 position to a Department of Human Resources licensed child
17 care or adult care facility. With regard to child care and
18 adult care facilities in a home setting, the term includes an
19 adult household member whose residence is in the home. The
20 term also includes an individual who submits an application
21 for a volunteer position or for employment with the Department
22 of Human Resources in a position in which the person has
23 unsupervised access to children, adults, or individuals with
24 disabilities as one of the essential functions of the job. The
25 term also includes an applicant for approval as an adoptive
26 parent of a child or as a foster parent of an adult or child.
27 The term also includes any adult working in a child care

1 institution, group home, maternity center, or transitional
2 living facility, as defined in Section 38-7-2.

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

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

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

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

25 "(8) CHILD or CHILDREN. An individual under 19 years
26 of age.

1 "(9) CHILD CARE FACILITY. A person or entity holding
2 a Department of Human Resources license, permit, or approval
3 to provide child care, including foster care, under Chapter 7.
4 The term includes exempt child care facilities.

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

8 "(11) CONVICTION. A determination of guilt as the
9 result of a plea, including a plea of nolo contendere, or a
10 trial.

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

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

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

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

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

18 "(17) EMPLOYER. An individual, person, group of
19 persons, association, partnership, corporation, limited
20 liability company or partnership, business, or other entity
21 which hires employees, has volunteers, or contracts with
22 others to provide personnel to work with or provide care to
23 children, adults, or individuals with disabilities in a
24 caretaker setting.

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

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

4 "(20) INDIVIDUAL. A natural person.

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

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

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

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

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

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

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

18 "(28) REPORT. A written statement of criminal
19 history background information.

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

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

25 "(31) SUITABILITY CRITERIA.

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

4 "1. A violent offense as defined in Section
5 12-25-32.

6 "2. A sex crime.

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

10 "4. A crime committed against a child.

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

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

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

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

26 "(32) SUITABILITY DETERMINATION. A decision that an
27 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.

26 "b. Notice to the applicant or employee of the right
27 to obtain a copy of the criminal history background

1 information check report, to challenge the accuracy and
2 completeness of any information contained in the report, and
3 to obtain a prompt determination as to the validity of a
4 challenge.

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

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

10 "§38-13-4.

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

24 "(1) "MANDATORY CRIMINAL HISTORY CHECK NOTICE:
25 Alabama law requires that a criminal history background
26 information check be conducted on all persons who hold a
27 license or work in a Department of Human Resources licensed

1 child care or adult care facility, a foster or adoptive home
2 approved by the Department of Human Resources, or a licensed
3 child placing agency, including all officers and agents of the
4 entity. You are required to provide full, complete, and
5 accurate information on your criminal conviction history upon
6 application for a license or employment. This information
7 shall be used to determine your suitability to provide care to
8 children, the elderly, or disabled individuals. Unless a
9 criminal history background information check report and
10 suitability determination have previously been obtained, you
11 must complete a written request and consent for a criminal
12 history background information check with fingerprints at the
13 time of application for employment. Refusal to complete these
14 documents or providing false information may result in refusal
15 of employment, approval, or licensure. The term conviction
16 includes a determination of guilt by a trial, by a plea of
17 guilty, or a plea of nolo contendere. You are required to
18 notify your employer, licensing agency, or entity where you
19 are performing volunteer work of any criminal conviction
20 occurring subsequent to the date of completion of this notice.
21 Any individual determined to have submitted false information
22 may be referred to the district attorney or law enforcement
23 for investigation and possible prosecution. An individual who
24 intentionally falsifies or provides any misleading information
25 on the statement is guilty of a Class A misdemeanor,
26 punishable by a fine of not more than two thousand dollars
27 (\$2,000) and imprisonment for not more than one year.

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

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

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

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

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

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

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

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

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

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

24 "~~d. Promoting prostitution in the first or second~~
25 ~~degree, as proscribed by Section 13A-12-111 or Section~~
26 ~~13A-12-112 of the Code of Alabama 1975.~~

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

4 ~~""f. Sexual misconduct, as proscribed by Section~~
5 ~~13A-6-65 of the Code of Alabama 1975.~~

6 ~~""g. Sexual torture, as proscribed by Section~~
7 ~~13A-6-65.1 of the Code of Alabama 1975.~~

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

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

14 ~~""j. Soliciting a child by computer for the purposes~~
15 ~~of committing a sexual act and transmittal of obscene material~~
16 ~~to a child by computer as proscribed by Sections 13A-6-110 and~~
17 ~~13A-6-111 of the Code of Alabama 1975.~~

18 ~~""k. Violation of the Alabama Child Pornography Act,~~
19 ~~as proscribed by Section 13A-12-191, 13A-12-192, 13A-12-196,~~
20 ~~or 13A-12-197 of the Code of Alabama 1975.~~

21 ~~""l. Any solicitation, attempt, or conspiracy to~~
22 ~~commit any of the offenses listed in paragraphs a. to k.,~~
23 ~~inclusive.~~

24 ~~""m. A crime listed in the Alabama Sex Offender~~
25 ~~Registration and Community Notification Act, Chapter 20A of~~
26 ~~Title 15 of the Code of Alabama 1975.~~

1 ""f. A crime or offense committed in another state
2 or under federal law which would constitute any of the above
3 crimes in this state.

4 ~~""6. g. Conviction for a crime listed in the federal~~
5 ~~Adoption and Safe Families Act, pursuant to 42 U.S.C. Section~~
6 ~~671(a)(20), shall disqualify as prohibiting a person from~~
7 ~~being approved or continuing to be approved as a foster parent~~
8 ~~or adoptive parent shall be deemed to make the and a convicted~~
9 ~~person shall be deemed unsuitable for employment, volunteer~~
10 ~~work, approval, or licensure as a foster parent or adoptive~~
11 ~~parent.~~

12 ~~""7. 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 listed~~
15 ~~in this notice if the offense would be a crime listed in this~~
16 ~~notice in Alabama.~~

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

21 ""(3) "CRIMINAL HISTORY STATEMENT

22 ~~""Have you ever had a suitability determination made~~
23 ~~by the Department of Human Resources in connection with a~~
24 ~~previous criminal history information background check? Yes~~
25 ~~(__) No (__).~~

26 ~~""Have you ever been convicted of a crime? Yes (__)~~
27 ~~No (__). If yes, state the date, crime, location, punishment~~

1 imposed, and whether the victim was a child or an elderly or
2 disabled individual.

3 " _____

4 " _____

5 "Date _____ Signature _____."

6 "(b) An individual who fails or refuses to provide a
7 statement shall not be employed, allowed to work or volunteer,
8 or issued a license or approval as defined in this chapter.
9 Upon receipt of a signed criminal history statement which does
10 not indicate conviction for a crime prohibiting employment
11 under the suitability criteria, an employer, including the
12 Department of Human Resources, may employ an applicant or
13 allow a volunteer or contract provider to work provisionally
14 pending receipt of a suitability determination from the
15 Department of Human Resources.

16 "(c) No later than the five business days after
17 employment or a reasonable time after completion of
18 application for a license or approval, an employer, the
19 Department of Human Resources, or child placing agency shall
20 mail or deliver a request for a criminal history background
21 information check to the Alabama State Law Enforcement Agency
22 accompanied by all of the following:

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

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

4 "(3) The fee.

5 "(d) Upon receipt of a suitability determination
6 from the Department of Human Resources that a person or entity
7 is suitable for employment, volunteer work, licensure, or
8 approval based on the criminal history background information
9 check, an employer, a child care facility, adult care
10 facility, a child placing agency, or the Department of Human
11 Resources may make its own determination of employment,
12 licensure, or approval. This chapter shall not create any
13 right to employment, work, approval, or licensure. Upon
14 receipt of a determination from the Department of Human
15 Resources that an individual is unsuitable for employment,
16 licensure, approval, or volunteer work, an employer, the child
17 care facility, adult care facility, child placing agency, or
18 Department of Human Resources shall terminate the individual
19 from employment or volunteer work or shall not employ or use
20 the individual. Termination of employment may be delayed by
21 the employer to allow the individual to challenge either the
22 accuracy or completeness of the criminal history information
23 background report or the suitability determination made by the
24 Department of Human Resources. The Department of Human
25 Resources or child placing agency shall suspend or revoke a
26 license or approval or deny a license or approval application
27 to an individual receiving an unsuitability determination. As

1 an alternative to termination of employment, the Department of
2 Human Resources may transfer a permanent Merit System employee
3 to an available position for which the employee is qualified
4 where unsupervised access to children, the elderly, or persons
5 with disabilities shall not be an essential function of the
6 job.

7 "(e) If a review of a criminal history background
8 information check or other information received reveals that
9 the person has submitted false information, the employer,
10 child care facility, adult care facility, child placing
11 agency, or Department of Human Resources may terminate the
12 employee or volunteer. The Department of Human Resources or
13 child placing agency may revoke the approval or license of a
14 person or entity when the person or entity submits false
15 information in a review of criminal history background
16 information check or other information. The Department of
17 Human Resources shall be notified of the false information and
18 may refer the case to an appropriate law enforcement agency or
19 district attorney for investigation and prosecution.

20 "(f) Unless otherwise provided in this chapter, only
21 one criminal history background information check shall be
22 required on an individual regardless of subsequent changes in
23 employment or licensing or approval status. Subsequent
24 criminal history background information checks may be
25 conducted by the employer or licensing or approval entity. The
26 licensing or approval entity shall pay the cost for subsequent
27 criminal history background information checks. If the

1 statement signed by the applicant or employee states that a
2 criminal history background information check has been
3 performed and suitability determination issued on the
4 individual pursuant to this chapter, the employer or licensing
5 agency may request at the time of application only a
6 suitability determination from the Department of Human
7 Resources on the check previously performed, within five
8 business days of employment, or completion of license or
9 approval application, submitting the same kind of information
10 and consent for the request for suitability determination as
11 required by the written consent for a criminal history
12 background information check."

13 Section 2. This act shall become effective
14 immediately following its passage and approval by the
15 Governor, or its otherwise becoming law.