

1 SB277  
2 198734-1  
3 By Senator Smitherman  
4 RFD: Children, Youth and Human Services  
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.