

1 HB277
2 182154-2
3 By Representatives Warren, Brown, Holmes (M), Drake, England,
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5 Johnson (K), Farley, Butler, Givan, Coleman, Scott, Moore (M),
6 Jackson, Boyd, McCampbell, Todd, Shiver, Polizos, Millican,
7 Gaston, Sessions, Ellis, Moore (B), Black, Ford, Grimsley
8 and Rowe
9 RFD: Children and Senior Advocacy
10 First Read: 21-FEB-17

8 SYNOPSIS: Under existing law, the term day care center
9 is defined as a child care facility that receives
10 more than 12 children for daytime care. The term
11 includes child care centers, day nurseries, nursery
12 schools, pre-kindergartens, kindergartens, and play
13 groups, including those that are operated as part
14 of a private school if they provide care for more
15 than four hours a day.

16 Also under existing law, child care
17 facilities that are part of a church or nonprofit
18 religious school are exempt from licensing by the
19 Department of Human Resources.

20 This bill would establish the Child Care
21 Safety Act.

22 This bill would revise the definition of day
23 care center to include preschools.

24 This bill would remove the exemption from
25 licensure for child care facilities that are part
26 of a church or nonprofit religious school by

1 requiring such facilities to be licensed by the
2 Department of Human Resources.

3 This bill would clarify that the licensing
4 of a faith-based child care facility may not be
5 construed to infringe upon the rights of the
6 facility to teach or practice a religion.

7 This bill would also revise the criminal
8 history background information check required for
9 certain individuals.

10
11 A BILL
12 TO BE ENTITLED
13 AN ACT

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

27 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

3 Section 2. Sections 13A-6-29, 38-7-2, 38-7-3,
4 38-13-2, and 38-13-3, Code of Alabama 1975, are amended to
5 read as follows:

6 "§13A-6-29.

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

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

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

14 "(b) There is established the crime of
15 administration of medication by the owner, operator, or
16 employee of a ~~licensed or statutorily exempt~~ child care
17 facility with the intent to drug the child or alter the
18 child's behavior beyond what is medically prescribed or with
19 the reckless disregard for the health, safety, and welfare of
20 the child.

21 "(c) A violation of subsection (b) is punishable as
22 follows:

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

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

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

6 "§38-7-2.

7 "Terms used in this chapter, unless the context
8 otherwise requires, have the meanings ascribed to them in this
9 section. When not inconsistent with the context, words used in
10 the present tense include the future, words in the singular
11 number include the plural number, and words in the plural
12 number include the singular number, and the word "shall" is
13 always mandatory and not merely directory:

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

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

24 "a. Any institution for child care which is under
25 the ownership or control, or both, of the State of Alabama, or
26 which is operated or certified or licensed by another agency
27 or department of the State of Alabama;

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

3 "c. Any bona fide boarding school in which children
4 are primarily taught branches of education corresponding to
5 those taught in public schools, grades 1 through 12, or taught
6 in public elementary schools, high schools, or both elementary
7 and high schools.

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

21 "(4) DAY CARE CENTER. Any child-care facility
22 receiving more than 12 children for daytime care during all or
23 part of a day. The term ~~"day care center"~~ includes, but is not
24 limited to, facilities commonly called "child-care centers,"
25 "day nurseries," "nursery schools," "pre-kindergartens,"
26 "preschools," "kindergartens," and "play groups," with or
27 without stated educational purposes. The term further

1 includes, but is not limited to, pre-kindergarten, preschool,
2 kindergarten, or nursery schools or other daytime programs
3 operated as a part of a private school and receiving children
4 younger than lawful school age for daytime care for more than
5 four hours a day, with or without stated educational purposes.
6 The term does not include any of the following:

7 "a. Kindergartens or nursery schools or other
8 daytime programs operated by public elementary systems or
9 secondary level school units or institutions of higher
10 learning.

11 "b. Kindergartens or nursery schools or other
12 daytime programs, with or without stated educational purposes,
13 operating no more than four hours a day and receiving children
14 younger than lawful school age.

15 "c. Kindergartens or nursery schools or other
16 daytime programs operated as a part of a private school and
17 receiving children younger than lawful school age for four
18 hours a day or less, with or without stated educational
19 purposes.

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

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

3 "f. Special activities programs for children of
4 lawful school age including, but not limited to, athletics,
5 crafts instruction and similar activities conducted on an
6 organized and periodic basis by civic, charitable, and
7 governmental organizations provided local and state fire and
8 health requirements are met.

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

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

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

23 "(8) FOSTER FAMILY HOME. A child-care facility in a
24 residence of a family where the family receives a child or
25 children, unrelated to that family, for the purpose of
26 providing family care or therapeutic family care and training,

1 or transitional living program services on a full-time basis.
2 The types of foster family homes are defined as follows:

3 "a. Boarding home. A foster family home wherein the
4 foster family receives a child or children and receives
5 payment for their care. The number of children so received
6 shall not exceed six, unless the children are of common
7 parentage.

8 "b. Free home. A foster home which does not receive
9 payment for the care of a child or children and which may or
10 may not receive the child or children for the purpose of
11 adoption.

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

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

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

25 "(12) NIGHT CARE FACILITY. A child-care facility
26 which is a center or a family home receiving a child or

1 children for care during the night. A "night care facility" is
2 further defined as follows:

3 "a. Nighttime center. A facility which is
4 established to receive more than 12 children for nighttime
5 care.

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

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

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

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

22 "§38-7-3.

23 "No person, group of persons, or corporation may
24 operate or conduct any facility for child care, as defined in
25 this chapter, without being licensed or approved as provided
26 in this chapter; provided, however, that nothing in this
27 section or in this chapter prohibits an employee of the

1 department from carrying out the duties of the department as
2 provided in this title or infringes upon the religious
3 teaching or practices of a licensed faith-based facility for
4 child care. ~~Provided, further, the provisions of this chapter~~
5 ~~shall not apply to preschool programs which are an integral~~
6 ~~part of a local church ministry or a religious nonprofit~~
7 ~~elementary school, and are so recognized in the church or~~
8 ~~school's documents, whether operated separately or as a part~~
9 ~~of a religious nonprofit elementary school unit, secondary~~
10 ~~school unit or institution of higher learning under the~~
11 ~~governing board or authority of said local church or its~~
12 ~~convention, association, or regional body to which it may be~~
13 ~~subject; provided that notice is filed by the governing board~~
14 ~~or authority of the church or school with the department that~~
15 ~~said church or school meets the definition of a local church~~
16 ~~ministry or a religious nonprofit elementary school under~~
17 ~~terms of this section and are exempt from regulation by the~~
18 ~~department and a notice of intent to operate said programs is~~
19 ~~given to the appropriate fire and health departments so that~~
20 ~~said facilities shall be inspected in accordance with the~~
21 ~~state and local fire and health requirements for such~~
22 ~~programs. In addition, all exempt churches hereunder shall~~
23 ~~publish annually, on church letterhead, a notice to the~~
24 ~~department certifying that the following records are being~~
25 ~~maintained by the church: fire and health inspection reports;~~
26 ~~immunization verifications for all children; medical history~~
27 ~~forms for all staff and children and that the following~~

1 ~~information shall be available to parents or guardian prior to~~
2 ~~enrolling their children in said church ministry; staff~~
3 ~~qualifications; pupil-staff ratio; discipline policies; type~~
4 ~~of curriculum used in the learning program; the religious~~
5 ~~teachings to be given each child; and the type of lunch~~
6 ~~program available; provided further that prior to enrolling~~
7 ~~and annually thereafter parents or guardian and a responsible~~
8 ~~individual representing the governing board as authority of~~
9 ~~the church or school be required to sign and file with the~~
10 ~~department the affidavits provided by this section that the~~
11 ~~parents or guardian have been notified by said responsible~~
12 ~~individual that the church or school has filed notice and is~~
13 ~~exempt from regulation by the department. The district~~
14 ~~attorney of the county in which the preschool program is~~
15 ~~located shall, upon proper presentment of charges, investigate~~
16 ~~at his discretion any allegations against any such church~~
17 ~~under the laws of the State of Alabama.~~

18 ~~"Form of Affidavit for Parent/Guardian~~

19 ~~"STATE OF ALABAMA~~

20 ~~"COUNTY OF _____~~

21 ~~"Before me, a notary public in and for said state~~
22 ~~and county, appeared _____ and is known to me, after being~~
23 ~~duly sworn or affirmed, says as follows:~~

24 ~~"That affiant is the parent or legal guardian of the~~
25 ~~minor child/children _____; that affiant has been notified by~~
26 ~~_____, a representative of _____ church/school, that said~~

1 ~~church or school has filed notice and is exempt under law from~~
2 ~~regulation by the Department of Human Resources.~~

3 ~~"_____ Parent/Legal Guardian~~

4 ~~"Sworn, or affirmed to and subscribed before me this~~
5 ~~_____ day of _____, 20__~~

6 ~~"Form of Affidavit for Church/School~~

7 ~~"STATE OF ALABAMA~~

8 ~~"COUNTY OF _____~~

9 ~~Before me, a notary public in and for said state and~~
10 ~~county, appeared _____ and is known to me, after being duly~~
11 ~~sworn or affirmed says as follows:~~

12 ~~"That affiant is the designated representative of~~
13 ~~_____ church/school and that the below listed~~
14 ~~parents/guardians have been notified prior to~~
15 ~~enrollment/reenrollment that _____ church/school has filed~~
16 ~~notice with and is exempt under law from regulation by the~~
17 ~~Department of Human Resources: _____~~

18 ~~"_____ Representative~~

19 ~~"Sworn or affirmed to and subscribed before me this~~
20 ~~_____ day of _____, 20__.~~

21 ~~"_____ Notary Public~~

22 ~~"§38-13-2.~~

23 ~~"When used in this chapter, the following words~~
24 ~~shall have the following meanings:~~

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

26 ~~"(2) ADULT CARE FACILITY. A person or entity holding~~
27 ~~a Department of Human Resources license or approval or~~

1 certification to provide care, including foster care, for
2 adults.

3 "(3) APPLICANT. A person or entity who submits an
4 application for license as a child care or adult care facility
5 to the Department of Human Resources or a child placing
6 agency, or an application for employment or for a volunteer
7 position to a Department of Human Resources licensed child
8 care or adult care facility. With regards to child care and
9 adult care facilities in a home setting, the term includes an
10 adult household member whose residence is in the home. The
11 term also includes an individual who submits an application
12 for a volunteer position or for employment with the Department
13 of Human Resources in a position in which the person has
14 unsupervised access to children, adults, or individuals with
15 disabilities as one of the essential functions of the job. The
16 term also includes an applicant for approval as an adoptive
17 parent of a child or as a foster parent of an adult or child.

18 "(4) AUTOMATED SYSTEM. The computerized, automated
19 fingerprint identification system (AFIS) maintained by the
20 ~~Department of Public Safety~~ Alabama State Law Enforcement
21 Agency that allows for a computer search of the in-state
22 database for criminal history background check information
23 maintained by the Alabama Criminal Justice Information Center
24 (ACJIC). The system contains criminal history background
25 information for fingerprint-based and name-based searches.

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

4 "(6) CARETAKER SETTING. A building, structure, or
5 location, public or private property, or vehicle, utilized for
6 or involved in the providing of care, education, training,
7 instruction, or supervision of children, adults, or
8 individuals with disabilities or transportation in connection
9 with activity provided by a licensed, approved, or certified
10 child or adult care facility.

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

15 "(8) CHILD or CHILDREN. An individual under 19 years
16 of age.

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

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

25 "(11) CONVICTION. A determination of guilt as the
26 result of a plea, including a plea of nolo contendere, or a
27 trial.

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

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

19 "(14) DAILY LIVING TASKS. Activities of daily
20 living, including walking, working, learning, grooming and
21 hygiene, bathing, dressing, eating, cooking, cleaning,
22 shopping, transportation, managing money, maintaining a
23 residence, writing, and using telephones, computers, and other
24 automated communication devices.

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

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

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

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

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

21 "(20) INDIVIDUAL. A natural person.

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

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

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

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

14 "(25) LICENSEE. Holder of a license or approval and
15 an adult household member whose residence is in the home in
16 regards to child care and adult care facilities in a home
17 setting.

18 "(26) PERSON or ENTITY. A natural person, sometimes
19 referred to as an individual, an owner or operator of any
20 adult care facility, child care facility, child placing
21 agency, ~~exempt child care facility~~, or licensee, whether an
22 individual, corporation, limited liability company or
23 partnership, partnership, association, or other legal entity
24 or group, and a board member, an officer, member, or partner
25 of an entity who has direct contact with children, the
26 elderly, or individuals with disabilities in care.

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

9 "(28) REPORT. A written statement of criminal
10 history background information.

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

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

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

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

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

23 "d. Promoting prostitution in the first or second
24 degree, as proscribed by Section 13A-12-111 or Section
25 13A-12-112.

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

1 "f. Sexual misconduct, as proscribed by Section
2 13A-6-65.

3 "g. Sexual torture, as proscribed by Section
4 13A-6-65.1.

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

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

9 "j. Soliciting a child by computer for the purposes
10 of committing a sexual act and transmitting obscene material
11 to a child by computer as proscribed by Sections 13A-6-110 and
12 13A-6-111.

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

16 "l. Any solicitation, attempt, or conspiracy to
17 commit any of the offenses listed in paragraphs a. to k.,
18 inclusive.

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

22 "n. Conviction for a violation or attempted
23 violation of an offense committed outside the State of Alabama
24 or under federal law is a sex crime or any other crime if the
25 offense would be a crime in Alabama.

26 "(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. Murder, manslaughter, or criminally negligent
5 homicide.

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. Robbery.

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

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

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

1 "(32) SUITABILITY DETERMINATION. A decision that an
2 individual is or is not suitable for employment, volunteer
3 work, or licensure based upon the existence of a prohibited
4 criminal conviction.

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

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

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

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

1 Enforcement Agency shall provide an alternative means of
2 identification and procedure.

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

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

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

14 "§38-13-3.

15 "(a) On November 1, 2000, every employer, child care
16 facility, adult care facility, the Department of Human
17 Resources, and child placing agency shall request the
18 ~~Department of Public Safety~~ Alabama State Law Enforcement
19 Agency to conduct a criminal history background information
20 check for the following:

21 "(1) An employment applicant, employee or volunteer
22 of an employer, child care facility, adult care facility, or
23 child placing agency.

24 "(2) A current foster parent for a child or adult or
25 adult household member of a foster family or applicant and an
26 adult household member of a foster family seeking approval to
27 operate as a foster parent or foster family home for a child

1 placing agency or the Department of Human Resources. Unless
2 otherwise provided in this chapter, no criminal history
3 background information check shall be conducted on a current
4 foster parent or household member of a foster family if a
5 Federal Bureau of Investigation and Alabama ~~Department of~~
6 ~~Public Safety~~ State Law Enforcement Agency criminal history
7 background information check has already been conducted under
8 other law that meets the suitability criteria as provided in
9 this chapter. Subsequent arrests or convictions of foster
10 parents, or arrests or convictions entered into the automated
11 system 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 provided in
14 this chapter.

15 "(3) An applicant or employee, with the exception of
16 those individuals on employed status on November 1, 2000, in a
17 position in the Department of Human Resources which requires
18 unsupervised access to children, the elderly, or individuals
19 with disabilities as one of the essential functions of the
20 job. All current employees of the Department of Human
21 Resources shall be subjected to a criminal history background
22 information check upon reasonable suspicion. Criminal history
23 background information checks shall be required for
24 prospective and current personnel under contract with the
25 Department of Human Resources or working with another entity
26 under contract with the Department of Human Resources,
27 students, mentors, and volunteers in positions requiring

1 unsupervised access to children, the elderly, or persons with
2 disabilities as one of the essential functions of the job. The
3 Department of Human Resources shall pay any fees related to
4 checks required pursuant to this subdivision.

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

8 "(5) An adoptive parent applicant for a child
9 adoptive placement through the Department of Human Resources
10 or child placing agency and any Department of Human Resources
11 or child placing agency approved adoptive parent prior to
12 entry of a final decree of adoption. Unless otherwise provided
13 in this chapter, no criminal history background information
14 check shall be conducted on a current adoptive parent or
15 household member of an adoptive family if a Federal Bureau of
16 Investigation and ~~Alabama Department of Public Safety~~ State
17 Law Enforcement Agency criminal history background information
18 check has already been conducted under other law that meets
19 the suitability criteria as provided in this chapter.

20 Subsequent arrests or convictions of adoptive parents, or
21 arrests or convictions entered into the automated system
22 subsequent to the initial report, shall be sent by the
23 ~~Department of Public Safety~~ Alabama State Law Enforcement
24 Agency to the Department of Human Resources as elsewhere
25 provided in this chapter.

26 "(b) An employer, child care facility, adult care
27 facility, the Department of Human Resources, or a child

1 placing agency may only request a criminal history background
2 information check by its chief executive officer, or his or
3 her designee authorized in writing and notarized, and law
4 enforcement shall render assistance, including assistance in
5 obtaining fingerprints required for submission of a request to
6 the ~~Department of Public Safety~~ Alabama State Law Enforcement
7 Agency.

8 "(c) Every employee, volunteer or applicant, for
9 employment or a volunteer position, licensee, Department of
10 Human Resources adoptive parent applicant or approved adoptive
11 parent, or applicant for a license to the Department of Human
12 Resources to operate a child care or adult care facility shall
13 submit two sets of fingerprints and sign a written consent to
14 obtain the criminal history background information.
15 Fingerprints shall not be required when a disability prevents
16 a person from being fingerprinted. Disabilities preventing
17 fingerprinting include the loss of both hands, severe scarring
18 of all fingers, closed paralytic hands, and similar
19 disabilities. In cases involving disability, a written consent
20 to obtain available criminal history background information by
21 name only shall be obtained. No one who fails or refuses to
22 give written consent or submit fingerprints necessary to
23 obtain criminal history background information may be
24 employed, allowed to perform volunteer or other work, approved
25 or issued a license, or allowed to retain a license or
26 approval by the Department of Human Resources, an employer,

1 child care facility, adult care facility, or child placing
2 agency.

3 "(d) ~~Child care facilities or adult~~ Adult care
4 facilities exempt from Department of Human Resources licensing
5 shall not be required to comply with this chapter, but may
6 voluntarily collect and forward two complete acceptable sets
7 of fingerprints, the written consent, and nonrefundable fee
8 from applicants ~~or employees~~ to the ~~Department of Public~~
9 ~~Safety~~ Alabama State Law Enforcement Agency to request a
10 criminal history background information check which shall be
11 processed pursuant to this chapter. Licensed social workers
12 conducting home studies may also request a criminal history
13 background check which shall be processed pursuant to this
14 chapter. ~~Provided, however, if a license exempt child care~~
15 ~~facility operated as part of a church ministry or religious~~
16 ~~school does not choose to comply with this chapter on a~~
17 ~~voluntary basis, then the employee or prospective employee of~~
18 ~~the child care facility shall request a criminal history~~
19 ~~background check, and the request shall be processed in the~~
20 ~~same manner as for other employees or applicants under the~~
21 ~~provisions of this chapter.~~ The Department of Human Resources
22 shall, prior to the disbursement of any subsidized child care
23 funds, require all employees and applicants of legally
24 operating child care facilities to submit verification of the
25 application for a criminal history background check and the
26 results thereof when obtained. Upon reasonable suspicion that
27 the individual has a criminal conviction or has not had a

1 criminal history background check conducted, the Department of
2 Human Resources shall have the right to require employees of
3 ~~license-exempt~~ child care or adult care facilities to submit
4 each application for a criminal history background check and
5 the results thereof when obtained."

6 Section 3. A child care facility that is an integral
7 part of a church or nonprofit religious school shall be
8 licensed in accordance with Chapter 7, Title 38, Code of
9 Alabama 1975, no later than August 1, 2018.

10 Section 4. This act shall become effective
11 immediately following its passage and approval by the
12 Governor, or its otherwise becoming law, and the amendatory
13 language of Section 38-7-3, relating to a child care facility
14 that is an integral part of a church or nonprofit religious
15 school, shall become operative August 1, 2018.