

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

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ENROLLED, An Act,

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

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

"§38-13-2.

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

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

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

"(3) APPLICANT. A person or entity who submits an application for license as a child care or adult care facility to the Department of Human Resources or a child placing agency, or an application for employment or for a volunteer position to a Department of Human Resources licensed child

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

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

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

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

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

12 "(8) CHILD or CHILDREN. An individual under 19 years
13 of age.

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

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

21 "(11) CONVICTION. A determination of guilt as the
22 result of a plea, including a plea of nolo contendere, or a
23 trial.

24 "(12) CRIMINAL HISTORY BACKGROUND INFORMATION CHECK.
25 The review of any and all records containing any information

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

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

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

23 "(15) ELDERLY. An individual 65 years of age or
24 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, including adult care facilities.

20 "(20) INDIVIDUAL. A natural person.

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

24 "(22) LAW ENFORCEMENT. The sheriff's department of a
25 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 regard 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, or licensee, whether an individual, corporation,
22 limited liability company or partnership, partnership,
23 association, or other legal entity or group, and a board
24 member, an officer, member, or partner of an entity who has

1 direct contact with children, the elderly, or individuals with
2 disabilities in care.

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

11 "(28) REPORT. A written statement of criminal
12 history background information.

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

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

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. A violent offense as defined in Section
23 12-25-32.

24 "2. A sex crime.

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

4 "4. A crime committed against a child.

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

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

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

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

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

24 "(33) UNSUPERVISED ACCESS TO A CHILD OR CHILDREN,
25 THE ELDERLY, OR AN INDIVIDUAL WITH DISABILITIES. Contacts,

1 interviews, questions, examinations, interaction, or
2 communications outside the presence, supervision, and control
3 of someone other than a child or elderly or disabled
4 individual in care during the provision of care, education,
5 training, instruction, supervision, or other employment or
6 license related activities.

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

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

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

22 "b. Notice to the applicant or employee of the right
23 to obtain a copy of the criminal history background
24 information check report, to challenge the accuracy and
25 completeness of any information contained in the report, and

1 to obtain a prompt determination as to the validity of a
2 challenge.

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

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

8 "§38-13-4.

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

22 "(1) "MANDATORY CRIMINAL HISTORY CHECK NOTICE:
23 Alabama law requires that a criminal history background
24 information check be conducted on all persons who hold a
25 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,

1 punishable by a fine of not more than two thousand dollars
 2 (\$2,000) and imprisonment for not more than one year.

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

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

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

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

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

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

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

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

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

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

1 ~~""d. Promoting prostitution in the first or second~~
2 ~~degree, as proscribed by Section 13A-12-111 or Section~~
3 ~~13A-12-112 of the Code of Alabama 1975.~~

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

7 ~~""f. Sexual misconduct, as proscribed by Section~~
8 ~~13A-6-65 of the Code of Alabama 1975.~~

9 ~~""g. Sexual torture, as proscribed by Section~~
10 ~~13A-6-65.1 of the Code of Alabama 1975.~~

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

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

17 ~~""j. Soliciting a child by computer for the purposes~~
18 ~~of committing a sexual act and transmittal of obscene material~~
19 ~~to a child by computer as proscribed by Sections 13A-6-110 and~~
20 ~~13A-6-111 of the Code of Alabama 1975.~~

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

1 ~~""1. Any solicitation, attempt, or conspiracy to~~
2 ~~commit any of the offenses listed in paragraphs a. to k.,~~
3 ~~inclusive.~~

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

7 ""f. A crime or offense committed in another state
8 or under federal law which would constitute any of the above
9 crimes in this state.

10 ~~""6. g. Conviction for a crime listed in the federal~~
11 ~~Adoption and Safe Families Act, pursuant to 42 U.S.C. Section~~
12 ~~671(a)(20), shall disqualify as prohibiting a person from~~
13 ~~being approved or continuing to be approved as a foster parent~~
14 ~~or adoptive parent shall be deemed to make the and a convicted~~
15 ~~person shall be deemed unsuitable for employment, volunteer~~
16 ~~work, approval, or licensure as a foster parent or adoptive~~
17 ~~parent.~~

18 ~~""7. Conviction for a violation or attempted~~
19 ~~violation of an offense committed outside the State of Alabama~~
20 ~~or under federal law is a sex crime or any other crime listed~~
21 ~~in this notice if the offense would be a crime listed in this~~
22 ~~notice in Alabama.~~

23 ""h. The Department of Human Resources may set other
24 disqualifying convictions by rule under the Administrative

1 Procedure Act, Section 41-22-1, et seq., for Department of
2 Human Resources licensed child or adult care facilities.

3 "(3) "CRIMINAL HISTORY STATEMENT

4 ""Have you ever had a suitability determination made
5 by the Department of Human Resources in connection with a
6 previous criminal history information background check? Yes
7 (__) No (__).

8 ""Have you ever been convicted of a crime? Yes (__)
9 No (__). If yes, state the date, crime, location, punishment
10 imposed, and whether the victim was a child or an elderly or
11 disabled individual.

12 "" _____

13 "" _____

14 ""Date _____ Signature _____."

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

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

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

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

14 "(3) The fee.

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

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

19 "(e) If a review of a criminal history background
20 information check or other information received reveals that
21 the person has submitted false information, the employer,
22 child care facility, adult care facility, child placing
23 agency, or Department of Human Resources may terminate the
24 employee or volunteer. The Department of Human Resources or
25 child placing agency may revoke the approval or license of a

1 person or entity when the person or entity submits false
2 information in a review of criminal history background
3 information check or other information. The Department of
4 Human Resources shall be notified of the false information and
5 may refer the case to an appropriate law enforcement agency or
6 district attorney for investigation and prosecution.

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

1 required by the written consent for a criminal history
2 background information check."

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

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Speaker of the House of Representatives

President and Presiding Officer of the Senate

House of Representatives

I hereby certify that the within Act originated in
and was passed by the House 30-APR-19.

Jeff Woodard
Clerk

Senate

23-MAY-19

Passed