

1 SB60
2 134686-3
3 By Senators Holtzclaw, Sanford, Orr, Ward, Waggoner, Pittman
4 and Brewbaker
5 RFD: Children, Youth Affairs, and Human Resources
6 First Read: 07-FEB-12
7 PFD: 11/10/2011

1 SB60

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4 ENROLLED, An Act,

5 To amend Sections 38-13-2, 38-13-3, 38-13-4, and
6 38-13-7, Code of Alabama 1975, to make clarifying changes to
7 the laws governing the use of criminal background checks for
8 certain individuals providing care for children, the elderly,
9 and the disabled; to provide for permissive prosecution of
10 certain individuals who inadvertently provide false
11 information regarding their criminal history; to clarify which
12 employees of the Department of Human Resources are required to
13 undergo criminal history background checks; to eliminate
14 certain requirements that the Department of Human Resources
15 request certain criminal background information from the
16 Department of Education; to provide for the transmission of
17 criminal history reports from the Department of Public Safety
18 to the Department of Human Resources by certain means; to
19 clarify certain duties of the Department of Public Safety with
20 regard to criminal background checks; and to clarify the types
21 of suitability determinations which may be considered for
22 reversal.

23 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

24 Section 1. Sections 38-13-2, 38-13-3, 38-13-4,
25 38-13-7, Code of Alabama 1975, are amended to read as follow:

1 "§38-13-2.

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

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

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

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

24 "(4) AUTOMATED SYSTEM. The computerized, automated
25 fingerprint identification system (AFIS) maintained by the

1 Department of Public Safety that allows for a computer search
2 of the in-state database for criminal history background check
3 information maintained by the Alabama Criminal Justice
4 Information Center (ACJIC). The system contains criminal
5 history background information for fingerprint-based and
6 name-based searches.

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

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

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

21 "(8) CHILD or CHILDREN. An individual under 19 years
22 of age.

23 "(9) CHILD CARE FACILITY. A person or entity holding
24 a Department of Human Resources license, permit, or approval

1 to provide child care, including foster care, under Chapter 7
2 of this title. The term excludes exempt child care facilities.

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

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

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

1 "(18) ESSENTIAL FUNCTIONS. The fundamental, not
2 merely marginal, job duties of the employment as determined by
3 a written job description or the judgement of the employer.

4 "(19) EXEMPT CARE FACILITY. A person or entity
5 exempt by law from licensure by the Department of Human
6 Resources or a child placing agency, including church day
7 care, child centers, or elder centers.

8 "(20) INDIVIDUAL. A natural person.

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

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

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

22 "(24) LICENSED SOCIAL WORKER. A social worker
23 licensed by the Alabama State Board of Social Work Examiners
24 to conduct family home studies and psychosocial assessments in

1 adoptive or custody cases by court order or for treatment not
2 otherwise required to conduct a criminal history check.

3 "(25) LICENSEE. Holder of a license or approval and
4 an adult household member whose residence is in the home in
5 regards to child care and adult care facilities in a home
6 setting.

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

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

24 "(28) REPORT. A written statement of criminal
25 history background information.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11 "m. A crime listed in the Community Notification
12 Act, Chapter 20 of Title 15.

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

17 "(31) SUITABILITY CRITERIA.

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

21 "1. Murder, manslaughter, or criminally negligent
22 homicide.

23 "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. Robbery.

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

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

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

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

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

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

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

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

1 information check report, 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 "§38-13-3.

11 "(a) On November 1, 2000, every employer, child care
12 facility, adult care facility, the Department of Human
13 Resources, and child placing agency shall request the
14 Department of Public Safety to conduct a criminal history
15 background information check for the following:

16 "(1) An employment applicant, employee or volunteer
17 of an employer, child care facility, adult care facility, or
18 child placing agency.

19 "(2) A current foster parent for a child or adult or
20 adult household member of a foster family or applicant and an
21 adult household member of a foster family seeking approval to
22 operate as a foster parent or foster family home for a child
23 placing agency or the Department of Human Resources. Unless
24 otherwise provided in this chapter, no criminal history
25 background information check shall be conducted on a current

1 foster parent or household member of a foster family if a
2 Federal Bureau of Investigation and Alabama Department of
3 Public Safety criminal history background information check
4 has already been conducted under other law that meets the
5 suitability criteria as provided in this chapter. Subsequent
6 arrests or convictions of foster parents, or arrests or
7 convictions entered into the automated system subsequent to
8 the initial report, shall be sent by the Department of Public
9 Safety to the Department of Human Resources as provided in
10 this chapter.

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

1 Department of Human Resources shall pay any fees related to
2 checks required pursuant to this subdivision.

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

6 "(5) An adoptive parent applicant for a child
7 adoptive placement through the Department of Human Resources
8 or child placing agency and any Department of Human Resources
9 or child placing agency approved adoptive parent prior to
10 entry of a final decree of adoption. Unless otherwise provided
11 in this chapter, no criminal history background information
12 check shall be conducted on a current adoptive parent or
13 household member of an adoptive family if a Federal Bureau of
14 Investigation and Alabama Department of Public Safety criminal
15 history background information check has already been
16 conducted under other law that meets the suitability criteria
17 as provided in this chapter. Subsequent arrests or convictions
18 of adoptive parents, or arrests or convictions entered into
19 the automated system subsequent to the initial report, shall
20 be sent by the Department of Public Safety to the Department
21 of Human Resources as elsewhere provided in this chapter.

22 "(b) An employer, child care facility, adult care
23 facility, the Department of Human Resources, or a child
24 placing agency may only request a criminal history background
25 information check by its chief executive officer, or his or

1 her designee authorized in writing and notarized, and law
2 enforcement shall render assistance, including assistance in
3 obtaining fingerprints required for submission of a request to
4 the Department of Public Safety.

5 "(c) Every employee, volunteer or applicant, for
6 employment or a volunteer position, licensee, Department of
7 Human Resources adoptive parent applicant or approved adoptive
8 parent, or applicant for a license to the Department of Human
9 Resources to operate a child care or adult care facility shall
10 submit two sets of fingerprints and sign a written consent to
11 obtain the criminal history background information.

12 Fingerprints shall not be required when a disability prevents
13 a person from being fingerprinted. Disabilities preventing
14 fingerprinting include the loss of both hands, severe scarring
15 of all fingers, closed paralytic hands, and similar
16 disabilities. In cases involving disability, a written consent
17 to obtain available criminal history background information by
18 name only shall be obtained. No one who fails or refuses to
19 give written consent or submit fingerprints necessary to
20 obtain criminal history background information may be
21 employed, allowed to perform volunteer or other work, approved
22 or issued a license, or allowed to retain a license or
23 approval by the Department of Human Resources, an employer,
24 child care facility, adult care facility, or child placing
25 agency.

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

1 Human Resources shall have the right to require employees of
2 license-exempt facilities to submit each application for a
3 criminal history background check and the results thereof when
4 obtained.

5 "§38-13-4.

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

19 ""MANDATORY CRIMINAL HISTORY CHECK NOTICE: Alabama
20 law requires that a criminal history background information
21 check be conducted on all persons who hold a license or work
22 in a Department of Human Resources licensed child care or
23 adult care facility, a foster or adoptive home approved by the
24 Department of Human Resources, or a licensed child placing
25 agency, including all officers and agents of the entity. You

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

1 "Convictions for any of the following crimes shall
2 make an individual unsuitable for employment, volunteer work,
3 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 "A sex crime includes the following:

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

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

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 of the Code of Alabama 1975.

23 "d. Promoting prostitution in the first or second
24 degree, as proscribed by Section 13A-12-111 or Section
25 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 Community Notification
25 Act, Chapter 20 of Title 15 of the Code of Alabama 1975.

1 ""6. Conviction for a crime listed in the federal
2 Adoption and Safe Families Act as prohibiting a person from
3 being a foster parent or adoptive parent shall be deemed to
4 make the convicted person unsuitable for employment, volunteer
5 work, approval, or licensure as a foster parent or adoptive
6 parent.

7 ""7. Conviction for a violation or attempted
8 violation of an offense committed outside the State of Alabama
9 or under federal law is a sex crime or any other crime listed
10 in this notice if the offense would be a crime listed in this
11 notice in Alabama.

12 ""CRIMINAL HISTORY STATEMENT

13 ""Have you ever had a suitability determination made
14 by the Department of Human Resources in connection with a
15 previous criminal history information background check? Yes
16 (__) No (__).

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

21 "" _____

22 "" _____

23 ""Date _____ Signature _____."

24 "(b) An individual who fails or refuses to provide a
25 statement shall not be employed, allowed to work or volunteer,

1 or issued a license or approval as defined in this chapter.
2 Upon receipt of a signed criminal history statement which does
3 not indicate conviction for a crime prohibiting employment
4 under the suitability criteria, an employer, including the
5 Department of Human Resources, may employ an applicant or
6 allow a volunteer or contract provider to work provisionally
7 pending receipt of a suitability determination from the
8 Department of Human Resources.

9 "(c) No later than the five business days after
10 employment or a reasonable time after completion of
11 application for a license or approval, an employer, the
12 Department of Human Resources, or child placing agency shall
13 mail or deliver a request for a criminal history background
14 information check to the Department of Public Safety
15 accompanied by the following:

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

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

22 "(3) The fee.

23 "(d) Upon receipt of a suitability determination
24 from the Department of Human Resources that a person or entity
25 is suitable for employment, volunteer work, licensure, or

1 approval based on the criminal history background information
2 check, an employer, a child care facility, adult care
3 facility, a child placing agency, or the Department of Human
4 Resources may make its own determination of employment,
5 licensure, or approval. This chapter shall not create any
6 right to employment, work, approval, or licensure. Upon
7 receipt of a determination from the Department of Human
8 Resources that an individual is unsuitable for employment,
9 licensure, approval, or volunteer work, an employer, the child
10 care facility, adult care facility, child placing agency, or
11 Department of Human Resources shall terminate the individual
12 from employment or volunteer work or shall not employ or use
13 the individual. Termination of employment may be delayed by
14 the employer to allow the individual to challenge either the
15 accuracy or completeness of the criminal history information
16 background report or the suitability determination made by the
17 Department of Human Resources. The Department of Human
18 Resources or child placing agency shall suspend or revoke a
19 license or approval or deny a license or approval application
20 to an individual receiving an unsuitability determination. As
21 an alternative to termination of employment, the Department of
22 Human Resources may transfer a permanent Merit System employee
23 to an available position for which the employee is qualified
24 where unsupervised access to children, the elderly, or persons

1 with disabilities shall not be an essential function of the
2 job.

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

16 "(f) Unless otherwise provided in this chapter, only
17 one criminal history background information check shall be
18 required on an individual regardless of subsequent changes in
19 employment or licensing or approval status. Subsequent
20 criminal history background information checks may be
21 conducted by the employer or licensing or approval entity. The
22 licensing or approval entity shall pay the cost for subsequent
23 criminal history background information checks. If the
24 statement signed by the applicant or employee states that a
25 criminal history background information check has been

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

11 "§38-13-7.

12 "(a) Criminal history background information checks
13 shall be performed by the Department of Public Safety upon
14 request by an employer, child care facility, adult care
15 facility, or child placing agency authorized to make a
16 request, or the Department of Human Resources. The Department
17 of Public Safety shall provide a criminal history background
18 check within a reasonable time of the receipt of the request.
19 National criminal history background checks shall be requested
20 by the Department of Public Safety from the Federal Bureau of
21 Investigation within a reasonable time of the request. The
22 Department of Public Safety, upon receipt of the criminal
23 history background report from the Federal Bureau of
24 Investigation, shall forward the report to the Department of
25 Human Resources within a reasonable period.

1 "(b) Criminal history background information reports
2 shall be sent from the Department of Public Safety to the
3 Department of Human Resources, directly or through its
4 designated agent, within a reasonable time from the receipt of
5 the report from the Federal Bureau of Investigation. A copy of
6 a criminal history report from the Department of Public Safety
7 and the Federal Bureau of Investigation that contains
8 potentially disqualifying crimes or disqualifying crimes shall
9 be sent by the Department of Human Resources to the applicant
10 or employee by certified mail. The Department of Human
11 Resources shall review the criminal history record information
12 report and other information received and determine whether
13 the applicant, employee, or volunteer meets the suitability
14 criteria for employment or licensure based on the criminal
15 history background information check. The Department of Human
16 Resources shall issue a written suitability determination to
17 the applicant or employee and to the licensing entity or chief
18 executive officer of the child care facility or adult care
19 facility requesting the criminal history background
20 information check. The Department of Public Safety shall
21 notify the Department of Human Resources of arrests or
22 convictions entered into the automated system subsequent to
23 the initial report, for a crime committed by an individual for
24 whom a criminal history background information report has been
25 previously requested, regardless of the existence, or lack

1 thereof, of a criminal history at the time of submission for a
2 criminal history background information check pursuant to this
3 chapter. The Alabama Criminal Justice Information Center shall
4 notify the Department of Public Safety which shall notify the
5 Department of Human Resources of the arrest or conviction
6 information for applicants that receive name-based criminal
7 history background information checks. The Department of Human
8 Resources shall include the arrests or convictions in an
9 amended or subsequent suitability determination.

10 "(c) A person may contest the accuracy or
11 completeness of the Alabama criminal history background
12 information check pertaining to him or her with the Department
13 of Public Safety according to procedures established by that
14 agency. The person or his or her legal counsel may review at
15 the Department of Human Resources a copy of the Alabama
16 criminal history background information report from the
17 Department of Public Safety. If, upon review by the Department
18 of Public Safety, the information is determined to be
19 incorrect or incomplete, the information shall be corrected
20 appropriately, and the Department of Human Resources shall be
21 provided with the corrected information.

22 "(d) The Department of Human Resources shall issue a
23 suitability determination and maintain a confidential file on
24 individuals for whom a criminal history background information
25 report or report updates have been received. The Department of

1 Human Resources may issue a suitability determination based
2 upon the criminal history report on file without the
3 requirement of a new criminal history background information
4 check. If no report or if only an incomplete criminal history
5 report can be located in the files of the Department of Human
6 Resources, the individual shall be required to submit to a new
7 criminal history background information check.

8 "(e) Within 30 days of the date of notification, an
9 individual determined to be unsuitable for approval,
10 licensure, employment, or volunteer work by the Department of
11 Human Resources based upon a disqualifying conviction may
12 request in writing reversal of the determination of
13 unsuitability if the conviction is not for a sex crime or a
14 crime committed against a child, an elderly individual, or an
15 individual with disabilities. An individual with a conviction
16 excluded by federal law from being approved as a foster or
17 adoptive parent, as any other child care or adult care
18 provider, or volunteer may not be considered for
19 reinstatement.

20 "(f) Notwithstanding the provisions in subsection
21 (e), the following shall apply to requests for reversal of the
22 determination of unsuitability:

23 "In the case of a felony conviction, 10 years shall
24 have lapsed since the sentence was served or the probation or
25 parole ended, whichever is later, with no subsequent

1 conviction. In the case of a misdemeanor conviction, five
2 years shall have lapsed since the sentence was served, or the
3 probation or parole ended, whichever is later, with no
4 subsequent conviction. In addition to the foregoing, the
5 individual shall affirmatively demonstrate to the Department
6 of Human Resources successful rehabilitation by clear and
7 convincing evidence. In determining whether an individual has
8 affirmatively demonstrated successful rehabilitation, all of
9 the following shall be considered:

10 "(1) Nature and responsibility of the position which
11 the convicted person would hold or has held.

12 "(2) Nature and seriousness of the offense
13 committed.

14 "(3) Circumstances under which the offense occurred.

15 "(4) Date of the offense.

16 "(5) Age of the person when the offense was
17 committed.

18 "(6) Whether the offense was an isolated or repeated
19 incident.

20 "(7) Social conditions which may have contributed to
21 the offense.

22 "(8) An available probation or parole record,
23 report, or recommendation.

24 "(9) Evidence of rehabilitation, including good
25 conduct in prison or in the community, counseling or

1 psychiatric treatment received, acquisition of additional
2 academic or vocational schooling, successful business or
3 employment history, and the recommendation of his or her
4 supervisors.

5 "(f) The Department of Human Resources and the
6 Department of Public Safety may adopt rules and regulations to
7 implement the procedures and requirements of this chapter
8 pursuant to the Administrative Procedure Act, Section 41-22-1,
9 et seq."

10 Section 2. This act shall become effective on the
11 first day of the third month following its passage and
12 approval by the Governor, or its otherwise becoming law.

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President and Presiding Officer of the Senate

Speaker of the House of Representatives

SB60
Senate 09-FEB-12
I hereby certify that the within Act originated in and passed
the Senate.

Patrick Harris
Secretary

House of Representatives
Passed: 23-FEB-12

By: Senator Holtzclaw