

By: Chaney, King

To: Education

## SENATE BILL NO. 2658

1 AN ACT TO AMEND SECTIONS 37-9-17 AND 37-9-59, MISSISSIPPI  
2 CODE OF 1972, TO REQUIRE FINGERPRINTING AND CRIMINAL RECORDS  
3 BACKGROUND CHECKS FOR NEW PUBLIC SCHOOL LICENSED AND NONLICENSED  
4 EMPLOYMENT APPLICANTS AND FOR CURRENT EMPLOYEES ON A PHASED-IN  
5 BASIS, TO PROHIBIT THE EMPLOYMENT OR CONTINUED EMPLOYMENT OF  
6 PERSONS DETERMINED THROUGH SUCH FINGERPRINTING OR BACKGROUND  
7 CHECKS TO BE GUILTY OF CERTAIN FELONIES, TO AUTHORIZE WAIVERS FOR  
8 MITIGATING CIRCUMSTANCES AND TO PROVIDE IMMUNITY TO SCHOOL  
9 DISTRICTS AND SCHOOL DISTRICT EMPLOYEES REGARDING CERTAIN  
10 EMPLOYMENT DECISIONS; TO AMEND SECTION 45-31-3, MISSISSIPPI CODE  
11 OF 1972, TO DELETE THE STATE DEPARTMENT OF EDUCATION AS THE  
12 EMPLOYER OF SCHOOL DISTRICT PERSONNEL FOR PURPOSES OF THE CRIMINAL  
13 BACKGROUND CHECK LAW; AND FOR RELATED PURPOSES.

14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

15 SECTION 1. Section 37-9-17, Mississippi Code of 1972, is  
16 amended as follows:[RDD1]

17 37-9-17. (1) On or before April 1 of each year, the  
18 principal of each school shall recommend to the superintendent of  
19 the school district the licensed employees or noninstructional  
20 employees to be employed for the school involved except those  
21 licensed employees or noninstructional employees who have been  
22 previously employed and who have a contract valid for the ensuing  
23 scholastic year. If such recommendations meet with the approval  
24 of the superintendent, the superintendent shall recommend the  
25 employment of such licensed employees or noninstructional  
26 employees to the school board, and, unless good reason to the  
27 contrary exists, the board shall elect the employees so  
28 recommended. If, for any reason, the school board shall decline  
29 to elect any employee so recommended, additional recommendations  
30 for the places to be filled shall be made by the principal to the  
31 superintendent and then by the superintendent to the school board

32 as provided above. The school board of any school district shall  
33 be authorized to designate a personnel supervisor or another  
34 principal employed by the school district to recommend to the  
35 superintendent licensed employees; however, this authorization  
36 shall be restricted to no more than two (2) positions for each  
37 employment period for each school in the school district. The  
38 school board of any school district shall be authorized to  
39 designate a personnel supervisor or another principal employed by  
40 the school district to accept the recommendations of principals or  
41 their designees for licensed employees and to transmit approved  
42 recommendations to the board; however, this authorization shall be  
43 restricted to no more than two (2) positions for each employment  
44 period for each school in the school district.

45 When the licensed employees have been elected as provided in  
46 the preceding paragraph, the superintendent of the district shall  
47 enter into a contract with such persons in the manner provided in  
48 this chapter.

49 If, at the commencement of the scholastic year, any licensed  
50 employee shall present to the superintendent a license of a higher  
51 grade than that specified in such individual's contract, such  
52 individual may, if funds are available from minimum education  
53 program funds of the district, or from district funds, be paid  
54 from such funds the amount to which such higher grade license  
55 would have entitled the individual, had the license been held at  
56 the time the contract was executed.

57 (2) The superintendent of the school district shall require  
58 that current criminal records background checks and current child  
59 abuse registry checks are obtained, and that such criminal record  
60 information and registry checks are on file for any applicant  
61 applying for employment as a licensed or nonlicensed employee at a  
62 school in such school district after July 1, 2000. In order to  
63 determine the applicant's suitability for employment, the  
64 applicant shall be fingerprinted. If no disqualifying record is  
65 identified at the state level, the fingerprints shall be forwarded  
66 by the Department of Public Safety to the FBI for a national  
67 criminal history record check. The fee for such fingerprinting  
68 and criminal history record check shall be paid by the applicant.

69       (3) The superintendent of the school district shall require  
70 that current criminal records background checks and current child  
71 abuse registry checks are obtained, and that such criminal record  
72 information and registry checks are on file for all currently  
73 employed licensed and nonlicensed school employees, to be  
74 performed on a phased-in basis resulting in all such employees  
75 obtaining such checks every five (5) years. In order to determine  
76 the current employee's suitability for employment, the employee  
77 shall be fingerprinted. If no disqualifying record is identified  
78 at the state level, the fingerprints shall be forwarded by the  
79 Department of Public Safety to the FBI for a national criminal  
80 history record check. The fee for such fingerprinting and  
81 criminal history record check for current employees shall be paid  
82 by the employee.

83       (4) If such fingerprinting or criminal record checks  
84 disclose a felony conviction, guilty plea or plea of nolo  
85 contendere to a felony of possession or sale of drugs, murder,  
86 manslaughter, armed robbery, rape, sexual battery, sex offense  
87 listed in Section 45-31-3(I), child abuse, arson, grand larceny,  
88 burglary, gratification of lust or aggravated assault which has  
89 not been reversed on appeal or for which a pardon has not been  
90 granted, the new applicant or current employee shall not be  
91 eligible to be employed at such school and shall not be  
92 recommended by the superintendent for employment. However, the  
93 school board may, in its discretion, allow any applicant aggrieved  
94 by the superintendent's decision under this section to appear  
95 before the board, or before a hearing officer designated for such  
96 purpose, to show mitigating circumstances which may exist and  
97 allow the applicant or employee to be employed or continue his  
98 employment at the school. The school board may grant waivers for  
99 such mitigating circumstances, which shall include but not be  
100 limited to: (a) age at which the crime was committed; (b)  
101 circumstances surrounding the crime; (c) length of time since the

102 conviction and criminal history since the conviction; (d) work  
103 history; (e) current employment and character references; (f)  
104 other evidence demonstrating the ability of the person to perform  
105 the employment responsibilities competently and that the person  
106 does not pose a threat to the health or safety of the children at  
107 the school.

108 (5) No school district or school district employee shall be  
109 held liable in any employment discrimination suit in which an  
110 allegation of discrimination is made regarding an employment  
111 decision authorized under this Section 37-9-17.

112 SECTION 2. Section 37-9-59, Mississippi Code of 1972, is  
113 amended as follows:[RDD2]

114 37-9-59. For incompetence, neglect of duty, immoral conduct,  
115 intemperance, brutal treatment of a pupil or other good cause the  
116 superintendent of schools may dismiss or suspend any licensed  
117 employee in any school district. The superintendent of schools  
118 may use fingerprinting or the criminal records background check  
119 procedure provided under Section 37-9-17 in investigating and  
120 taking employment action against licensed or nonlicensed employees  
121 under this section. Before being so dismissed or suspended any  
122 licensed employee shall be notified of the charges against him and  
123 he shall be advised that he is entitled to a public hearing upon  
124 said charges. In the event the continued presence of said  
125 employee on school premises poses a potential threat or danger to  
126 the health, safety or general welfare of the students, or, in the  
127 discretion of the superintendent, may interfere with or cause a  
128 disruption of normal school operations, the superintendent may  
129 immediately release said employee of all duties pending a hearing  
130 if one is requested by the employee. In the event a licensed  
131 employee is arrested, indicted or otherwise charged with a felony  
132 by a recognized law enforcement official, the continued presence  
133 of the licensed employee on school premises shall be deemed to  
134 constitute a disruption of normal school operations. The school

135 board, upon a request for a hearing by the person so suspended or  
136 removed shall set a date, time and place for such hearing which  
137 shall be not sooner than five (5) days nor later than thirty (30)  
138 days from the date of the request. The procedure for such hearing  
139 shall be as prescribed for hearings before the board or hearing  
140 officer in Section 37-9-111. From the decision made at said  
141 hearing, any licensed employee shall be allowed an appeal to the  
142 chancery court in the same manner as appeals are authorized in  
143 Section 37-9-113. Any party aggrieved by action of the chancery  
144 court may appeal to the Mississippi Supreme Court as provided by  
145 law. In the event that a licensed employee is immediately  
146 relieved of duties pending a hearing, as provided in this section,  
147 said employee shall be entitled to compensation for a period up to  
148 and including the date that the initial hearing is set by the  
149 school board, in the event that there is a request for such a  
150 hearing by the employee. In the event that an employee does not  
151 request a hearing within five (5) calendar days of the date of the  
152 notice of discharge or suspension, it shall constitute a waiver of  
153 all rights by said employee and such discharge or suspension shall  
154 be effective on the date set out in the notice to the employee.

155 The school board of every school district in this state is  
156 hereby prohibited from denying employment or reemployment to any  
157 person as a superintendent, principal or licensed employee, as  
158 defined in Section 37-19-1, or as a noninstructional personnel, as  
159 defined in Section 37-9-1, for the single reason that any eligible  
160 child of such person does not attend the school system in which  
161 such superintendent, principal, licensed employee or  
162 noninstructional personnel is employed.

163 SECTION 3. Section 45-31-3, Mississippi Code of 1972, is  
164 amended as follows:[RDD3]

165 45-31-3. As used in this chapter, the following words and  
166 phrases shall have the meanings indicated unless the context  
167 clearly indicates otherwise:

168           (a) "Authorized employer representative" shall mean the  
169 chief executive officer or chief staff member of an employer, as  
170 defined in paragraph (g) of this section, who has been authorized  
171 by the authorizing agency to receive on behalf of the employer sex  
172 offense criminal history record information about present and  
173 prospective employees of the employer.

174           (b) "Authorizing agency" shall mean the Office of the  
175 Attorney General which reviews, approves or disapproves  
176 applications from employer representatives for authorization to  
177 receive sex offense criminal history record information.

178           (c) "Responding agency" shall mean the Mississippi  
179 Highway Safety Patrol and local law enforcement agencies, which  
180 respond to requests from authorized employer representatives for  
181 sex offense criminal history record information.

182           (d) "Child" shall mean any person under eighteen (18)  
183 years of age.

184           (e) "Disposition" shall mean an official determination  
185 indefinitely postponing or terminating further action in a  
186 criminal proceeding or an official outcome of a criminal  
187 proceeding, including but not limited to acquittal, dismissal of  
188 the charge, finding of not guilty or acquittal by reason of  
189 insanity, nolle prosequi decision, pretrial diversion decision,  
190 appeal, or a determination of guilt based on a conviction, guilty  
191 plea, or plea of nolo contendere; any sentence imposed in  
192 connection with such determination; and any grant of executive  
193 clemency or pardon.

194           (f) "Employee" shall mean a person who renders time and  
195 services to an employer, and whose regular course of duties places  
196 that person in a position:

197               (i) To exercise supervisory or disciplinary  
198 control over children; or

199               (ii) To have direct access to or contact with  
200 children served by the employer; or

201 (iii) To have access to information and records  
202 maintained by the employer relating to identifiable children  
203 served by the employer.

204 For the purposes of this chapter, "employee" includes  
205 any volunteer, any prospective employee, and any prospective  
206 volunteer.

207 (g) "Employer" shall mean a business, nonprofit or  
208 volunteer organization, a unit of such business or organization,  
209 or a unit of government not responsible for law enforcement whose  
210 employees regularly render services to children, including but not  
211 limited to care, treatment, transportation, instruction,  
212 companionship, entertainment or custody. \* \* \*

213 (h) "Employer representative" shall mean the chief  
214 executive officer or chief staff member of an employer, as defined  
215 in paragraph (g) of this section, who applies to the authorizing  
216 agency for authorization to receive on behalf of the employer sex  
217 offense criminal history record information about present and  
218 prospective employees of the employer.

219 (i) "Sex offense" shall mean any of the following  
220 offenses:

221 Section 97-3-65, Mississippi Code of 1972, relating to  
222 the carnal knowledge of a child under fourteen (14) years of age;

223 Section 97-3-95, Mississippi Code of 1972, relating to  
224 sexual battery;

225 Section 97-5-21, Mississippi Code of 1972, relating to  
226 seduction of a child under age eighteen (18);

227 Section 97-5-23, Mississippi Code of 1972, relating to  
228 the touching of a child for lustful purposes;

229 Section 97-5-27, Mississippi Code of 1972, relating to  
230 the dissemination of sexually oriented material to children;

231 Section 97-5-33, Mississippi Code of 1972, relating to  
232 the exploitation of children;

233 Section 97-5-41, Mississippi Code of 1972, relating to

234 the carnal knowledge of a stepchild, adopted child, or child of a  
235 cohabitating partner;

236           Section 97-29-59, Mississippi Code of 1972, relating to  
237 unnatural intercourse; or

238           Any other offense committed in another jurisdiction  
239 which, if committed in this state, would be deemed to be such a  
240 crime without regard to its designation elsewhere.

241           (j) "Sex offense criminal history record information"  
242 shall mean information relating to any sex offense enumerated in  
243 paragraph (i) of this section which is specifically identifiable  
244 to an individual, consisting of descriptions and notations of  
245 arrests, charges, and all dispositions, if any.

246           SECTION 4. This act shall take effect and be in force from  
247 and after July 1, 2000.