

By: Chaney, King

To: Education

SENATE BILL NO. 2658  
(As Passed the Senate)

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, TO PROHIBIT THE EMPLOYMENT OF PERSONS  
5 DETERMINED THROUGH SUCH FINGERPRINTING OR BACKGROUND CHECKS TO BE  
6 GUILTY OF CERTAIN FELONIES, TO AUTHORIZE WAIVERS FOR MITIGATING  
7 CIRCUMSTANCES AND TO PROVIDE IMMUNITY TO SCHOOL DISTRICTS AND  
8 SCHOOL DISTRICT EMPLOYEES REGARDING CERTAIN EMPLOYMENT DECISIONS;  
9 TO AMEND SECTION 45-31-3, MISSISSIPPI CODE OF 1972, TO DELETE THE  
10 STATE DEPARTMENT OF EDUCATION AS THE EMPLOYER OF SCHOOL DISTRICT  
11 PERSONNEL FOR PURPOSES OF THE CRIMINAL BACKGROUND CHECK LAW; AND  
12 FOR RELATED PURPOSES.

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

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

16 37-9-17. (1) On or before April 1 of each year, the  
17 principal of each school shall recommend to the superintendent of  
18 the school district the licensed employees or noninstructional  
19 employees to be employed for the school involved except those  
20 licensed employees or noninstructional employees who have been  
21 previously employed and who have a contract valid for the ensuing  
22 scholastic year. If such recommendations meet with the approval  
23 of the superintendent, the superintendent shall recommend the  
24 employment of such licensed employees or noninstructional  
25 employees to the school board, and, unless good reason to the  
26 contrary exists, the board shall elect the employees so  
27 recommended. If, for any reason, the school board shall decline  
28 to elect any employee so recommended, additional recommendations  
29 for the places to be filled shall be made by the principal to the  
30 superintendent and then by the superintendent to the school board  
31 as provided above. The school board of any school district shall

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

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

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

56 (2) The superintendent of the school district shall require  
57 that current criminal records background checks and current child  
58 abuse registry checks are obtained, and that such criminal record  
59 information and registry checks are on file for any new hires  
60 applying for employment as a licensed or nonlicensed employee at a  
61 school not previously employed in such school district prior to  
62 July 1, 2000. In order to determine the applicant's suitability  
63 for employment, the applicant shall be fingerprinted. If no  
64 disqualifying record is identified at the state level, the  
65 fingerprints shall be forwarded by the Department of Public Safety  
66 to the FBI for a national criminal history record check. The fee  
67 for such fingerprinting and criminal history record check shall be  
68 paid by the applicant, not to exceed Fifty Dollars (\$50.00).

69       (3) If such fingerprinting or criminal record checks  
70 disclose a felony conviction, guilty plea or plea of nolo  
71 contendere to a felony of possession or sale of drugs, murder,  
72 manslaughter, armed robbery, rape, sexual battery, sex offense  
73 listed in Section 45-31-3(I), child abuse, arson, grand larceny,  
74 burglary, gratification of lust or aggravated assault which has  
75 not been reversed on appeal or for which a pardon has not been  
76 granted, the new hire shall not be eligible to be employed at such  
77 school. Any employment contract for a new hire executed by the  
78 superintendent of the local school district shall be voidable if  
79 the new hire receives a disqualifying criminal record check.  
80 However, the school board may, in its discretion, allow any  
81 applicant aggrieved by the employment decision under this section  
82 to appear before the board, or before a hearing officer designated  
83 for such purpose, to show mitigating circumstances which may exist  
84 and allow the new hire to be employed at the school. The school  
85 board may grant waivers for such mitigating circumstances, which  
86 shall include but not be limited to: (a) age at which the crime  
87 was committed; (b) circumstances surrounding the crime; (c) length  
88 of time since the conviction and criminal history since the  
89 conviction; (d) work history; (e) current employment and character  
90 references; (f) other evidence demonstrating the ability of the  
91 person to perform the employment responsibilities competently and  
92 that the person does not pose a threat to the health or safety of  
93 the children at the school.

94       (4) No school district or school district employee shall be  
95 held liable in any employment discrimination suit in which an  
96 allegation of discrimination is made regarding an employment  
97 decision authorized under this Section 37-9-17.

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

100       37-9-59. For incompetence, neglect of duty, immoral conduct,  
101 intemperance, brutal treatment of a pupil or other good cause the

102 superintendent of schools may dismiss or suspend any licensed  
103 employee in any school district. The superintendent of schools  
104 may use fingerprinting or the criminal records background check  
105 procedure provided under Section 37-9-17 in investigating and  
106 taking employment action against licensed or nonlicensed employees  
107 under this section. Before being so dismissed or suspended any  
108 licensed employee shall be notified of the charges against him and  
109 he shall be advised that he is entitled to a public hearing upon  
110 said charges. In the event the continued presence of said  
111 employee on school premises poses a potential threat or danger to  
112 the health, safety or general welfare of the students, or, in the  
113 discretion of the superintendent, may interfere with or cause a  
114 disruption of normal school operations, the superintendent may  
115 immediately release said employee of all duties pending a hearing  
116 if one is requested by the employee. In the event a licensed  
117 employee is arrested, indicted or otherwise charged with a felony  
118 by a recognized law enforcement official, the continued presence  
119 of the licensed employee on school premises shall be deemed to  
120 constitute a disruption of normal school operations. The school  
121 board, upon a request for a hearing by the person so suspended or  
122 removed shall set a date, time and place for such hearing which  
123 shall be not sooner than five (5) days nor later than thirty (30)  
124 days from the date of the request. The procedure for such hearing  
125 shall be as prescribed for hearings before the board or hearing  
126 officer in Section 37-9-111. From the decision made at said  
127 hearing, any licensed employee shall be allowed an appeal to the  
128 chancery court in the same manner as appeals are authorized in  
129 Section 37-9-113. Any party aggrieved by action of the chancery  
130 court may appeal to the Mississippi Supreme Court as provided by  
131 law. In the event that a licensed employee is immediately  
132 relieved of duties pending a hearing, as provided in this section,  
133 said employee shall be entitled to compensation for a period up to  
134 and including the date that the initial hearing is set by the

135 school board, in the event that there is a request for such a  
136 hearing by the employee. In the event that an employee does not  
137 request a hearing within five (5) calendar days of the date of the  
138 notice of discharge or suspension, it shall constitute a waiver of  
139 all rights by said employee and such discharge or suspension shall  
140 be effective on the date set out in the notice to the employee.

141 The school board of every school district in this state is  
142 hereby prohibited from denying employment or reemployment to any  
143 person as a superintendent, principal or licensed employee, as  
144 defined in Section 37-19-1, or as a noninstructional personnel, as  
145 defined in Section 37-9-1, for the single reason that any eligible  
146 child of such person does not attend the school system in which  
147 such superintendent, principal, licensed employee or  
148 noninstructional personnel is employed.

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

151 45-31-3. As used in this chapter, the following words and  
152 phrases shall have the meanings indicated unless the context  
153 clearly indicates otherwise:

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

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

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

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

170           (e) "Disposition" shall mean an official determination  
171 indefinitely postponing or terminating further action in a  
172 criminal proceeding or an official outcome of a criminal  
173 proceeding, including but not limited to acquittal, dismissal of  
174 the charge, finding of not guilty or acquittal by reason of  
175 insanity, nolle prosequi decision, pretrial diversion decision,  
176 appeal, or a determination of guilt based on a conviction, guilty  
177 plea, or plea of nolo contendere; any sentence imposed in  
178 connection with such determination; and any grant of executive  
179 clemency or pardon.

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

183                 (i) To exercise supervisory or disciplinary  
184 control over children; or

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

187                 (iii) To have access to information and records  
188 maintained by the employer relating to identifiable children  
189 served by the employer.

190           For the purposes of this chapter, "employee" includes  
191 any volunteer, any prospective employee, and any prospective  
192 volunteer.

193           (g) "Employer" shall mean a business, nonprofit or  
194 volunteer organization, a unit of such business or organization,  
195 or a unit of government not responsible for law enforcement whose  
196 employees regularly render services to children, including but not  
197 limited to care, treatment, transportation, instruction,  
198 companionship, entertainment or custody. \* \* \*

199           (h) "Employer representative" shall mean the chief  
200 executive officer or chief staff member of an employer, as defined

201 in paragraph (g) of this section, who applies to the authorizing  
202 agency for authorization to receive on behalf of the employer sex  
203 offense criminal history record information about present and  
204 prospective employees of the employer.

205 (i) "Sex offense" shall mean any of the following  
206 offenses:

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

209 Section 97-3-95, Mississippi Code of 1972, relating to  
210 sexual battery;

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

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

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

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

219 Section 97-5-41, Mississippi Code of 1972, relating to  
220 the carnal knowledge of a stepchild, adopted child, or child of a  
221 cohabitating partner;

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

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

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

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