

By: Chaney, King

To: Education

SENATE BILL NO. 2658
(As Sent to Governor)

1 AN ACT TO AMEND SECTION 37-9-17, MISSISSIPPI CODE OF 1972, TO
2 REQUIRE FINGERPRINTING AND CRIMINAL RECORDS BACKGROUND CHECKS FOR
3 NEW PUBLIC SCHOOL LICENSED AND NONLICENSED EMPLOYMENT APPLICANTS,
4 TO PROHIBIT THE EMPLOYMENT OF PERSONS DETERMINED THROUGH SUCH
5 FINGERPRINTING OR BACKGROUND CHECKS TO BE GUILTY OF CERTAIN
6 FELONIES, TO AUTHORIZE WAIVERS FOR MITIGATING CIRCUMSTANCES AND TO
7 PROVIDE IMMUNITY TO SCHOOL DISTRICTS AND SCHOOL DISTRICT EMPLOYEES
8 REGARDING CERTAIN EMPLOYMENT DECISIONS, TO AUTHORIZE THE SCHOOL
9 BOARD OF ANY SCHOOL DISTRICT TO DESIGNATE A PERSONNEL SUPERVISOR
10 OR ANOTHER PRINCIPAL EMPLOYED BY THE SCHOOL DISTRICT TO MAKE OR
11 ACCEPT RECOMMENDATIONS FOR THE EMPLOYMENT OF NONINSTRUCTIONAL
12 EMPLOYEES AND TO TRANSMIT APPROVED RECOMMENDATIONS TO THE BOARD;
13 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 or noninstructional employees;
36 however, this authorization shall be restricted to no more than
37 two (2) positions for each employment period for each school in
38 the school district. Any noninstructional employee employed upon
39 the recommendation of a personnel supervisor or another principal
40 employed by the school district must have been employed by the
41 school district at the time the superintendent was elected or
42 appointed to office; a noninstructional employee employed under
43 this authorization may not be paid compensation in excess of the
44 statewide average compensation for such noninstructional position
45 with comparable experience, as established by the State Department
46 of Education. The school board of any school district shall be
47 authorized to designate a personnel supervisor or another
48 principal employed by the school district to accept the
49 recommendations of principals or their designees for licensed
50 employees or noninstructional employees and to transmit approved
51 recommendations to the board; however, this authorization shall be
52 restricted to no more than two (2) positions for each employment
53 period for each school in the school district.

54 When the licensed employees have been elected as provided in
55 the preceding paragraph, the superintendent of the district shall
56 enter into a contract with such persons in the manner provided in
57 this chapter.

58 If, at the commencement of the scholastic year, any licensed
59 employee shall present to the superintendent a license of a higher
60 grade than that specified in such individual's contract, such
61 individual may, if funds are available from minimum education
62 program funds of the district, or from district funds, be paid
63 from such funds the amount to which such higher grade license
64 would have entitled the individual, had the license been held at
65 the time the contract was executed.

66 (2) The superintendent of the school district shall require
67 that current criminal records background checks and current child
68 abuse registry checks are obtained, and that such criminal record

69 information and registry checks are on file for any new hires
70 applying for employment as a licensed or nonlicensed employee at a
71 school not previously employed in such school district prior to
72 July 1, 2000. In order to determine the applicant's suitability
73 for employment, the applicant shall be fingerprinted. If no
74 disqualifying record is identified at the state level, the
75 fingerprints shall be forwarded by the Department of Public Safety
76 to the FBI for a national criminal history record check. The fee
77 for such fingerprinting and criminal history record check shall be
78 paid by the applicant, not to exceed Fifty Dollars (\$50.00);
79 however, the school board of the school district, in its
80 discretion, may elect to pay the fee for the fingerprinting and
81 criminal history record check on behalf of any applicant. Under
82 no circumstances shall a school district superintendent, school
83 board member or any individual other than the subject of the
84 criminal history record checks disseminate information received
85 through any such checks except insofar as required to fulfill the
86 purposes of this section.

87 (3) If such fingerprinting or criminal record checks
88 disclose a felony conviction, guilty plea or plea of nolo
89 contendere to a felony of possession or sale of drugs, murder,
90 manslaughter, armed robbery, rape, sexual battery, sex offense
91 listed in Section 45-31-3(i), child abuse, arson, grand larceny,
92 burglary, gratification of lust or aggravated assault which has
93 not been reversed on appeal or for which a pardon has not been
94 granted, the new hire shall not be eligible to be employed at such
95 school. Any employment contract for a new hire executed by the
96 superintendent of the local school district shall be voidable if
97 the new hire receives a disqualifying criminal record check.
98 However, the school board may, in its discretion, allow any
99 applicant aggrieved by the employment decision under this section
100 to appear before the board, or before a hearing officer designated
101 for such purpose, to show mitigating circumstances which may exist

102 and allow the new hire to be employed at the school. The school
103 board may grant waivers for such mitigating circumstances, which
104 shall include, but not be limited to: (a) age at which the crime
105 was committed; (b) circumstances surrounding the crime; (c) length
106 of time since the conviction and criminal history since the
107 conviction; (d) work history; (e) current employment and character
108 references; (f) other evidence demonstrating the ability of the
109 person to perform the employment responsibilities competently and
110 that the person does not pose a threat to the health or safety of
111 the children at the school.

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

116 (5) Subsections (2) through (5) of this section shall be
117 repealed on June 30, 2002.

118 SECTION 2. This act shall take effect and be in force from
119 and after July 1, 2000.