

By: Harden

To: Education

SENATE BILL NO. 2852

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 applicant
60 applying for employment as a licensed or nonlicensed employee at a
61 school in such school district after July 1, 2000. In order to
62 determine the applicant's suitability for employment, the
63 applicant shall be fingerprinted. If no disqualifying record is
64 identified at the state level, the fingerprints shall be forwarded
65 by the Department of Public Safety to the FBI for a national
66 criminal history record check. Fifty percent (50%) of the fee for
67 such fingerprinting and criminal history record check shall be
68 paid by the applicant and fifty percent (50%) of the fee for such

69 fingerprinting and criminal history record check shall be paid by
70 the school district from local district maintenance funds.

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

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

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

102 37-9-59. For incompetence, neglect of duty, immoral conduct,
103 intemperance, brutal treatment of a pupil or other good cause the
104 superintendent of schools may dismiss or suspend any licensed
105 employee in any school district. The superintendent of schools
106 may use fingerprinting or the criminal records background check
107 procedure provided under Section 37-9-17 in investigating and
108 taking employment action against licensed or nonlicensed employees
109 under this section. Before being so dismissed or suspended any
110 licensed employee shall be notified of the charges against him and
111 he shall be advised that he is entitled to a public hearing upon
112 said charges. In the event the continued presence of said
113 employee on school premises poses a potential threat or danger to
114 the health, safety or general welfare of the students, or, in the
115 discretion of the superintendent, may interfere with or cause a
116 disruption of normal school operations, the superintendent may
117 immediately release said employee of all duties pending a hearing
118 if one is requested by the employee. In the event a licensed
119 employee is arrested, indicted or otherwise charged with a felony
120 by a recognized law enforcement official, the continued presence
121 of the licensed employee on school premises shall be deemed to
122 constitute a disruption of normal school operations. The school
123 board, upon a request for a hearing by the person so suspended or
124 removed shall set a date, time and place for such hearing which
125 shall be not sooner than five (5) days nor later than thirty (30)
126 days from the date of the request. The procedure for such hearing
127 shall be as prescribed for hearings before the board or hearing
128 officer in Section 37-9-111. From the decision made at said
129 hearing, any licensed employee shall be allowed an appeal to the
130 chancery court in the same manner as appeals are authorized in
131 Section 37-9-113. Any party aggrieved by action of the chancery
132 court may appeal to the Mississippi Supreme Court as provided by
133 law. In the event that a licensed employee is immediately
134 relieved of duties pending a hearing, as provided in this section,

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

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

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

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

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

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

166 (c) "Responding agency" shall mean the Mississippi
167 Highway Safety Patrol and local law enforcement agencies, which

168 respond to requests from authorized employer representatives for
169 sex offense criminal history record information.

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

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

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

185 (i) To exercise supervisory or disciplinary
186 control over children; or

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

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

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

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

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

207 (i) "Sex offense" shall mean any of the following
208 offenses:

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

211 Section 97-3-95, Mississippi Code of 1972, relating to
212 sexual battery;

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

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

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

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

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

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

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

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

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