

**\*\*\*Adopted\*\*\***

**AMENDMENT No. 1 PROPOSED TO**

**Senate Bill NO. 2658**

**By Representative(s) Committee**

14           Amend by striking all after the enacting clause and inserting  
15 in lieu thereof the following:

16

17           SECTION 1. Section 37-9-17, Mississippi Code of 1972, is  
18 amended as follows:

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

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

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

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

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

72 however, the school board of the school district, in its  
73 discretion, may elect to pay the fee for the finger printing and  
74 criminal history record check on behalf of any applicant.

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

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

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

106 SECTION 2. Section 45-31-3, Mississippi Code of 1972, is

107 amended as follows:

108           45-31-3. As used in this chapter, the following words and  
109 phrases shall have the meanings indicated unless the context  
110 clearly indicates otherwise:

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

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

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

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

127           (e) "Disposition" shall mean an official determination  
128 indefinitely postponing or terminating further action in a  
129 criminal proceeding or an official outcome of a criminal  
130 proceeding, including but not limited to acquittal, dismissal of  
131 the charge, finding of not guilty or acquittal by reason of  
132 insanity, nolle prosequi decision, pretrial diversion decision,  
133 appeal, or a determination of guilt based on a conviction, guilty  
134 plea, or plea of nolo contendere; any sentence imposed in  
135 connection with such determination; and any grant of executive  
136 clemency or pardon.

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

140           (i) To exercise supervisory or disciplinary  
141 control over children; or

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

144 (iii) To have access to information and records  
145 maintained by the employer relating to identifiable children  
146 served by the employer.

147 For the purposes of this chapter, "employee" includes any  
148 volunteer, any prospective employee, and any prospective  
149 volunteer.

150 (g) "Employer" shall mean a business, nonprofit or  
151 volunteer organization, a unit of such business or organization,  
152 or a unit of government not responsible for law enforcement whose  
153 employees regularly render services to children, including but not  
154 limited to care, treatment, transportation, instruction,  
155 companionship, entertainment or custody. \* \* \*

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

162 (i) "Sex offense" shall mean any of the following  
163 offenses:

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

166 Section 97-3-95, Mississippi Code of 1972, relating to sexual  
167 battery;

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

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

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

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

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

177 carnal knowledge of a stepchild, adopted child, or child of a  
178 cohabitating partner;

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

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

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

189 SECTION 3. This act shall take effect and be in force from  
190 and after July 1, 2000.

**Further, amend by striking the title in its entirety and  
inserting in lieu thereof the following:**

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 AMEND SECTION 45-31-3,  
9 MISSISSIPPI CODE OF 1972, TO DELETE THE STATE DEPARTMENT OF  
10 EDUCATION AS THE EMPLOYER OF SCHOOL DISTRICT PERSONNEL FOR  
11 PURPOSES OF THE CRIMINAL BACKGROUND CHECK LAW; AND FOR RELATED  
12 PURPOSES.