

By: Representative Ford

To: Education

HOUSE BILL NO. 493

1 AN ACT TO REENACT SECTION 37-9-17, MISSISSIPPI CODE OF 1972,  
2 WHICH REQUIRES SCHOOL DISTRICTS TO FINGERPRINT AND OBTAIN CRIMINAL  
3 RECORDS BACKGROUND CHECKS ON APPLICANTS FOR EMPLOYMENT; TO AMEND  
4 REENACTED SECTION 37-9-17, MISSISSIPPI CODE OF 1972, TO EXTEND THE  
5 DATE OF REPEAL ON THE FINGERPRINTING AND BACKGROUND CHECKS  
6 PROVISIONS OF THAT SECTION FROM JUNE 30, 2002, TO JULY 1, 2003;  
7 AND FOR RELATED PURPOSES.

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

9 **SECTION 1.** Section 37-9-17, Mississippi Code of 1972, is  
10 reenacted and amended as follows:

11 37-9-17. (1) On or before April 1 of each year, the  
12 principal of each school shall recommend to the superintendent of  
13 the local school district the licensed employees or  
14 noninstructional employees to be employed for the school involved  
15 except those licensed employees or noninstructional employees who  
16 have been previously employed and who have a contract valid for  
17 the ensuing scholastic year. If such recommendations meet with  
18 the approval of the superintendent, the superintendent shall  
19 recommend the employment of such licensed employees or  
20 noninstructional employees to the local school board, and, unless  
21 good reason to the contrary exists, the board shall elect the  
22 employees so recommended. If, for any reason, the local school  
23 board shall decline to elect any employee so recommended,  
24 additional recommendations for the places to be filled shall be  
25 made by the principal to the superintendent and then by the  
26 superintendent to the local school board as provided above. The  
27 school board of any local school district shall be authorized to  
28 designate a personnel supervisor or another principal employed by  
29 the school district to recommend to the superintendent licensed



30 employees or noninstructional employees; however, this  
31 authorization shall be restricted to no more than two (2)  
32 positions for each employment period for each school in the local  
33 school district. Any noninstructional employee employed upon the  
34 recommendation of a personnel supervisor or another principal  
35 employed by the local school district must have been employed by  
36 the local school district at the time the superintendent was  
37 elected or appointed to office; a noninstructional employee  
38 employed under this authorization may not be paid compensation in  
39 excess of the statewide average compensation for such  
40 noninstructional position with comparable experience, as  
41 established by the State Department of Education. The school  
42 board of any local school district shall be authorized to  
43 designate a personnel supervisor or another principal employed by  
44 the school district to accept the recommendations of principals or  
45 their designees for licensed employees or noninstructional  
46 employees and to transmit approved recommendations to the local  
47 school board; however, this authorization shall be restricted to  
48 no more than two (2) positions for each employment period for each  
49 school in the local school district.

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

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



62           (2) Superintendents and directors of schools under the  
63 purview of the State Board of Education and the superintendent of  
64 the local school district shall require that current criminal  
65 records background checks and current child abuse registry checks  
66 are obtained, and that such criminal record information and  
67 registry checks are on file for any new hires applying for  
68 employment as a licensed or nonlicensed employee at a school not  
69 previously employed in such school under the purview of the State  
70 Board of Education or such local school district prior to July 1,  
71 2000. In order to determine the applicant's suitability for  
72 employment, the applicant shall be fingerprinted. If no  
73 disqualifying record is identified at the state level, the  
74 fingerprints shall be forwarded by the Department of Public Safety  
75 to the Federal Bureau of Investigation (FBI) for a national  
76 criminal history record check. The fee for such fingerprinting  
77 and criminal history record check shall be paid by the applicant,  
78 not to exceed Fifty Dollars (\$50.00); however, the State Board of  
79 Education or the school board of the local 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 member of the State Board of Education,  
83 superintendent or director of schools under the purview of the  
84 State Board of Education, local school district superintendent,  
85 local school board member or any individual other than the subject  
86 of the criminal history record checks disseminate information  
87 received through any such checks except insofar as required to  
88 fulfill the purposes of this section.

89           (3) If such fingerprinting or criminal record checks  
90 disclose a felony conviction, guilty plea or plea of nolo  
91 contendere to a felony of possession or sale of drugs, murder,  
92 manslaughter, armed robbery, rape, sexual battery, sex offense  
93 listed in Section 45-33-23(g), child abuse, arson, grand larceny,  
94 burglary, gratification of lust or aggravated assault which has



95 not been reversed on appeal or for which a pardon has not been  
96 granted, the new hire shall not be eligible to be employed at such  
97 school. Any employment contract for a new hire executed by the  
98 superintendent of the local school district or any employment of a  
99 new hire by a superintendent or director of a \* \* \* school under  
100 the purview of the State Board of Education shall be voidable if  
101 the new hire receives a disqualifying criminal record check.  
102 However, the State Board of Education or the school board may, in  
103 its discretion, allow any applicant aggrieved by the employment  
104 decision under this section to appear before the respective board,  
105 or before a hearing officer designated for such purpose, to show  
106 mitigating circumstances which may exist and allow the new hire to  
107 be employed at the school. The State Board of Education or local  
108 school board may grant waivers for such mitigating circumstances,  
109 which \* \* \* include, but are not \* \* \* limited to: (a) age at  
110 which the crime was committed; (b) circumstances surrounding the  
111 crime; (c) length of time since the conviction and criminal  
112 history since the conviction; (d) work history; (e) current  
113 employment and character references; and (f) other evidence  
114 demonstrating the ability of the person to perform the employment  
115 responsibilities competently and that the person does not pose a  
116 threat to the health or safety of the children at the school.

117 (4) No local school district or local school district  
118 employee or members of the State Board of Education or employee of  
119 a school under the purview of the State Board of Education shall  
120 be held liable in any employment discrimination suit in which an  
121 allegation of discrimination is made regarding an employment  
122 decision authorized under this section \* \* \*.

123 (5) Subsections (2) through (5) of this section shall be  
124 repealed on July 1, 2003.

125 **SECTION 2.** This act shall take effect and be in force from  
126 and after June 30, 2002.

