

By: Representative Ford

To: Education

HOUSE BILL NO. 493
(As Passed the House)

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 DELETE THE
5 REPEALER ON THE FINGERPRINTING AND BACKGROUND CHECKS PROVISIONS OF
6 THAT SECTION; AND FOR RELATED PURPOSES.

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

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

10 37-9-17. (1) On or before April 1 of each year, the
11 principal of each school shall recommend to the superintendent of
12 the local school district the licensed employees or
13 noninstructional employees to be employed for the school involved
14 except those licensed employees or noninstructional employees who
15 have been previously employed and who have a contract valid for
16 the ensuing scholastic year. If such recommendations meet with
17 the approval of the superintendent, the superintendent shall
18 recommend the employment of such licensed employees or
19 noninstructional employees to the local school board, and, unless
20 good reason to the contrary exists, the board shall elect the
21 employees so recommended. If, for any reason, the local school
22 board shall decline to elect any employee so recommended,
23 additional recommendations for the places to be filled shall be
24 made by the principal to the superintendent and then by the
25 superintendent to the local school board as provided above. The
26 school board of any local school district shall be authorized to
27 designate a personnel supervisor or another principal employed by
28 the school district to recommend to the superintendent licensed
29 employees or noninstructional employees; however, this



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

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

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

61 (2) Superintendents and directors of schools under the
62 purview of the State Board of Education and the superintendent of



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

88 (3) If such fingerprinting or criminal record checks
89 disclose a felony conviction, guilty plea or plea of nolo
90 contendere to a felony of possession or sale of drugs, murder,
91 manslaughter, armed robbery, rape, sexual battery, sex offense
92 listed in Section 45-33-23(g), child abuse, arson, grand larceny,
93 burglary, gratification of lust or aggravated assault which has
94 not been reversed on appeal or for which a pardon has not been
95 granted, the new hire shall not be eligible to be employed at such



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

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

122 * * *

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

