

By: Senator(s) Harden

To: Education

SENATE BILL NO. 2223
(As Sent to Governor)

1 AN ACT TO AMEND SECTION 37-9-17, MISSISSIPPI CODE OF 1972, TO
2 DELETE THE AUTOMATIC REPEALER ON THE FINGERPRINTING AND CRIMINAL
3 HISTORY RECORD CHECK PROGRAM FOR NEWLY HIRED SCHOOL EMPLOYEES; AND
4 FOR RELATED PURPOSES.

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

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

8 37-9-17. (1) On or before April 1 of each year, the
9 principal of each school shall recommend to the superintendent of
10 the local school district the licensed employees or
11 noninstructional employees to be employed for the school involved
12 except those licensed employees or noninstructional employees who
13 have been previously employed and who have a contract valid for
14 the ensuing scholastic year. If such recommendations meet with
15 the approval of the superintendent, the superintendent shall
16 recommend the employment of such licensed employees or
17 noninstructional employees to the local school board, and, unless
18 good reason to the contrary exists, the board shall elect the
19 employees so recommended. If, for any reason, the local school
20 board shall decline to elect any employee so recommended,
21 additional recommendations for the places to be filled shall be
22 made by the principal to the superintendent and then by the
23 superintendent to the local school board as provided above. The
24 school board of any local school district shall be authorized to
25 designate a personnel supervisor or another principal employed by
26 the school district to recommend to the superintendent licensed
27 employees or noninstructional employees; however, this
28 authorization shall be restricted to no more than two (2)



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



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

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



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

115 (4) No local school district or local school district
116 employee or members of the Mississippi Board of Education or
117 employee of a school under the purview of the Mississippi Board of
118 Education shall be held liable in any employment discrimination
119 suit in which an allegation of discrimination is made regarding an
120 employment decision authorized under this Section 37-9-17.

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

