

By: Senator(s) Harden

To: Education

SENATE BILL NO. 2988

1 AN ACT TO AMEND SECTION 37-9-17, MISSISSIPPI CODE OF 1972, TO  
2 INCLUDE SCHOOL VOLUNTEERS IN THE REQUIREMENT FOR A CRIMINAL RECORD  
3 BACKGROUND CHECK BY THE SUPERVISING SCHOOL DISTRICT; AND FOR  
4 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 not  
66 previously employed in such school under the purview of the  
67 Mississippi Board of Education or such local school district prior  
68 to July 1, 2000, and for any school volunteer. A school  
69 "volunteer" is defined for the purposes of this section as a  
70 nonfamily individual performing volunteer services without  
71 reimbursement, who is not under the direct control and supervision  
72 of school district personnel. In order to determine the  
73 applicant's suitability for employment, or a volunteer's  
74 suitability for service to the school district, the applicant  
75 shall be fingerprinted. If no disqualifying record is identified  
76 at the state level, the fingerprints shall be forwarded by the  
77 Department of Public Safety to the FBI for a national criminal  
78 history record check. The fee for such fingerprinting and  
79 criminal history record check shall be paid by the applicant or  
80 volunteer, not to exceed Fifty Dollars (\$50.00); however, the  
81 Mississippi Board of Education or the school board of the local  
82 school district, in its discretion, may elect to pay the fee for  
83 the fingerprinting and criminal history record check on behalf of  
84 any applicant or volunteer. Under no circumstances shall a member  
85 of the Mississippi Board of Education, superintendent/director of  
86 schools under the purview of the Mississippi Board of Education,  
87 local school district superintendent, local school board member or  
88 any individual other than the subject of the criminal history  
89 record checks disseminate information received through any such  
90 checks except insofar as required to fulfill the purposes of this  
91 section.

92 (3) If such fingerprinting or criminal record checks  
93 disclose a felony conviction, guilty plea or plea of nolo  
94 contendere to a felony of possession or sale of drugs, murder,



95 manslaughter, armed robbery, rape, sexual battery, sex offense  
96 listed in Section 45-33-23(g), child abuse, arson, grand larceny,  
97 burglary, gratification of lust or aggravated assault which has  
98 not been reversed on appeal or for which a pardon has not been  
99 granted, the new hire shall not be eligible to be employed, and  
100 the volunteer shall not be eligible to provide services, at such  
101 school. Any employment contract for a new hire executed by the  
102 superintendent of the local school district or any employment of a  
103 new hire by a superintendent/director of a new school under the  
104 purview of the Mississippi Board of Education shall be voidable if  
105 the new hire receives a disqualifying criminal record check.  
106 However, the Mississippi Board of Education or the school board  
107 may, in its discretion, allow any applicant or volunteer aggrieved  
108 by the \* \* \* decision under this section to appear before the  
109 respective board, or before a hearing officer designated for such  
110 purpose, to show mitigating circumstances which may exist and  
111 allow the new hire to be employed, or the volunteer to perform  
112 services, at the school. The Mississippi Board of Education or  
113 local school board may grant waivers for such mitigating  
114 circumstances, which shall include, but not be limited to: (a)  
115 age at which the crime was committed; (b) circumstances  
116 surrounding the crime; (c) length of time since the conviction and  
117 criminal history since the conviction; (d) work history; (e)  
118 current employment and character references; (f) other evidence  
119 demonstrating the ability of the person to perform the employment  
120 or volunteer responsibilities competently and that the person does  
121 not pose a threat to the health or safety of the children at the  
122 school.

123 (4) No local school district or local school district  
124 employee or members of the Mississippi Board of Education or  
125 employee of a school under the purview of the Mississippi Board of  
126 Education shall be held liable in any employment discrimination  
127 suit in which an allegation of discrimination is made regarding an



128 employment decision, or a volunteer service decision, authorized  
129 under this Section 37-9-17.

130 (5) Subsections (2) through (5) of this section shall be  
131 repealed on June 30, 2003.

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

