

By: Representatives Jennings, Baker (8th),
Hamilton (6th), Markham, Mayhall

To: Education

HOUSE BILL NO. 1188

1 AN ACT TO AMEND SECTION 37-9-17, MISSISSIPPI CODE OF 1972, TO
2 AUTHORIZE A PRIVATE FIRM THAT IS UNDER CONTRACT WITH A SCHOOL TO
3 PROVIDE PERSONNEL EMPLOYED BY THE FIRM TO PERFORM CERTAIN DUTIES
4 RELATING TO THE SUPERVISION OF STUDENTS TO HAVE BACKGROUND CHECKS
5 FOR EMPLOYMENT APPLICANTS WITH THE FIRM; AND FOR RELATED PURPOSES.

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

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

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

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

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

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

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

62 local school district shall require that current criminal records
63 background checks and current child abuse registry checks are
64 obtained, and that such criminal record information and registry
65 checks are on file for any new hires applying for employment as a
66 licensed or nonlicensed employee at a school and not previously
67 employed in such school under the purview of the State Board of
68 Education or at such local school district prior to July 1, 2000.
69 In order to determine the applicant's suitability for employment,
70 the applicant shall be fingerprinted. If no disqualifying record
71 is identified at the state level, the fingerprints shall be
72 forwarded by the Department of Public Safety to the FBI for a
73 national criminal history record check. The fee for such
74 fingerprinting and criminal history record check shall be paid by
75 the applicant, not to exceed Fifty Dollars (\$50.00); however, the
76 State Board of Education, the school board of the local school
77 district or the private firm, in its discretion, may elect to pay
78 the fee for the fingerprinting and criminal history record check
79 on behalf of any applicant. Under no circumstances shall a member
80 of the State Board of Education, superintendent/director of
81 schools under the purview of the State Board of Education, local
82 school district superintendent, local school board member, private
83 firm under contract with a school to provide personnel who
84 supervise or have direct, ongoing contact with students or any
85 individual other than the subject of the criminal history record
86 checks disseminate information received through any such checks
87 except insofar as required to fulfill the purposes of this
88 section. Any nonpublic school which is accredited or approved by
89 the State Board of Education may avail itself of the procedures
90 provided for herein and shall be responsible for the same fee
91 charged in the case of local public schools of this state. If a
92 private firm is under contract with a school to provide personnel
93 employed by the private firm to perform duties that include the
94 supervision of students or involve the direct, ongoing contact

95 with students, then the private firm may avail itself of the
96 procedures provided for in this subsection and directly send
97 requests for applicant background checks to the Department of
98 Public Safety for a state level check. In addition, the firm may
99 have fingerprints forwarded by the Department of Public Safety to
100 the FBI for a national criminal history record check, with the
101 results of these checks provided to the firm. The private firm
102 may collect the same applicant fee, not to exceed Fifty Dollars
103 (\$50.00), for the fingerprinting and criminal history record check
104 through the Department of Public Safety and the FBI as is the case
105 of local public schools of this state.

106 (3) If such fingerprinting or criminal record checks
107 disclose a felony conviction, guilty plea or plea of nolo
108 contendere to a felony of possession or sale of drugs, murder,
109 manslaughter, armed robbery, rape, sexual battery, sex offense
110 listed in Section 45-33-23(g), child abuse, arson, grand larceny,
111 burglary, gratification of lust or aggravated assault which has
112 not been reversed on appeal or for which a pardon has not been
113 granted, the new hire shall not be eligible to be employed at such
114 school. Any employment contract for a new hire executed by the
115 superintendent of the local school district or any employment of a
116 new hire by a superintendent/director of a new school under the
117 purview of the State Board of Education or by a private firm shall
118 be voidable if the new hire receives a disqualifying criminal
119 record check. However, the State Board of Education or the school
120 board may, in its discretion, allow any applicant aggrieved by the
121 employment decision under this section to appear before the
122 respective board, or before a hearing officer designated for such
123 purpose, to show mitigating circumstances which may exist and
124 allow the new hire to be employed at the school. The State Board
125 of Education or local school board may grant waivers for such
126 mitigating circumstances, which shall include, but not be limited
127 to: (a) age at which the crime was committed; (b) circumstances

128 surrounding the crime; (c) length of time since the conviction and
129 criminal history since the conviction; (d) work history; (e)
130 current employment and character references; (f) other evidence
131 demonstrating the ability of the person to perform the employment
132 responsibilities competently and that the person does not pose a
133 threat to the health or safety of the children at the school.

134 (4) No local school district or local school district
135 employee or members of the State Board of Education or employee of
136 a school under the purview of the State Board of Education or a
137 private firm supplying its personnel to work in a Mississippi
138 public or private school under contract with the school shall be
139 held liable in any employment discrimination suit in which an
140 allegation of discrimination is made regarding an employment
141 decision authorized under this Section 37-9-17.

142 **SECTION 2.** This act shall take effect and be in force from
143 and after July 1, 2004.