

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

To: Education

COMMITTEE SUBSTITUTE
FOR
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 LOCAL
3 SCHOOL DISTRICT TO PROVIDE SUBSTITUTE TEACHERS TO TEACH DURING THE
4 TEMPORARY ABSENCE OF THE REGULARLY EMPLOYED SCHOOL TEACHER TO HAVE
5 BACKGROUND CHECKS FOR EMPLOYMENT APPLICANTS WITH THE FIRM; AND FOR
6 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 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
58 from such funds the amount to which such higher grade license
59 would have entitled the individual, had the license been held at
60 the time the contract was executed.

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

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

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

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

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

135 (4) No local school district or local school district
136 employee or members of the State Board of Education or employee of
137 a school under the purview of the State Board of Education shall
138 be held liable in any employment discrimination suit in which an
139 allegation of discrimination is made regarding an employment
140 decision authorized under this Section 37-9-17.

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