

By: Representatives Moore, Barnett, Chism, Ellington, Fillingane, Formby, Gunn, Janus, Martinson, Nicholson, Rotenberry, Snowden, Staples, Turner, Zuber

To: Public Health and Human Services; Judiciary B

HOUSE BILL NO. 1300

1 AN ACT TO CREATE NEW SECTIONS TO BE CODIFIED AS SECTIONS
2 43-15-301 THROUGH 43-15-313, MISSISSIPPI CODE OF 1972, TO REQUIRE
3 APPLICANTS FOR EMPLOYMENT OR VOLUNTEER SERVICE WITH ANY EMPLOYER
4 THAT CONDUCTS A CHILD CARE SERVICE TO SUBMIT FINGERPRINTS, WHICH
5 THE EMPLOYER SHALL SUBMIT TO THE ATTORNEY GENERAL'S OFFICE TO
6 CHECK THE APPLICANT'S CRIMINAL HISTORY RECORDS; TO PROHIBIT
7 EMPLOYERS THAT CONDUCT A CHILD CARE SERVICE FROM EMPLOYING OR
8 PERMITTING TO VOLUNTEER ANY APPLICANT WHO HAS BEEN CONVICTED OF
9 CERTAIN FELONIES OR MISDEMEANORS; TO ALLOW EMPLOYERS THAT CONDUCT
10 A CHILD CARE SERVICE TO EMPLOY OR PERMIT TO VOLUNTEER APPLICANTS
11 WHO HAVE BEEN CONVICTED OF CERTAIN MISDEMEANORS IF A MINIMUM TIME
12 HAS EXPIRED FROM THE TIME OF DISCHARGE FROM THE SENTENCE; TO
13 PROVIDE THAT ANY PERSON WHO WOULD BE PROHIBITED FROM EMPLOYMENT OR
14 VOLUNTEER SERVICE BY A CHILD CARE SERVICE PROVIDER MAY NOT OWN OR
15 OPERATE A CHILD CARE SERVICE; TO PROVIDE THAT IT IS A FELONY FOR
16 ANY APPLICANT WHO HAS BEEN CONVICTED OF ANY OF THE PROHIBITED
17 OFFENSES TO KNOWINGLY UNDERTAKE EMPLOYMENT OR VOLUNTEER SERVICE OF
18 ANY TYPE INVOLVING THE CARE, INSTRUCTION OR GUIDANCE OF MINORS; TO
19 PROVIDE THAT IT IS A FELONY FOR ANY APPLICANT WHO HAS BEEN
20 CONVICTED OF ANY OF THE PROHIBITED OFFENSES TO KNOWINGLY PROVIDE
21 INFORMATION OF THE CONVICTION WHEN APPLYING FOR EMPLOYMENT OR
22 VOLUNTEER SERVICE OF ANY TYPE INVOLVING THE CARE, INSTRUCTION OR
23 GUIDANCE OF MINORS; TO AMEND SECTIONS 43-15-6 AND 43-20-8,
24 MISSISSIPPI CODE OF 1972, TO CONFORM TO THE PRECEDING PROVISIONS;
25 AND FOR RELATED PURPOSES.

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

27 **SECTION 1.** The following shall be codified as Section
28 43-15-301, Mississippi Code of 1972:

29 43-15-301. As used in this article:

30 (a) "Child care service" means any employment or
31 volunteer service involving the care, instruction or guidance of
32 minor children, including, but not limited to, service as a
33 teacher, a coach, or a worker of any type in child athletics, a
34 day care worker, a Boy or Girl Scout leader or master or worker, a
35 summer camp counselor or worker, a guidance counselor, or a school
36 administrator.

37 (b) "Employer" means every person, firm, association,
38 partnership, or corporation offering or conducting a child care
39 service.

40 (c) "Applicant" means any person who is being
41 considered for employment or volunteer service by an employer.

42 (d) "Convicted" means any adjudicated finding of guilt,
43 any adjudicated finding that the applicant is physically or
44 mentally incompetent, any adjudicated finding that the applicant
45 is not guilty by reason of insanity, or any plea of nolo
46 contendere.

47 **SECTION 2.** The following shall be codified as Section
48 43-15-303, Mississippi Code of 1972:

49 43-15-303. (1) Every employer offering or conducting a
50 child care service shall require each applicant for employment or
51 volunteer service to submit two (2) sets of fingerprints prepared
52 for submittal by the employer to the Attorney General's Office for
53 the purpose of obtaining criminal record summary information from
54 the Attorney General's Office and the Federal Bureau of
55 Investigation.

56 (2) Upon receiving the fingerprints of the applicant, the
57 Attorney General's Office shall ascertain whether the applicant
58 has been arrested or convicted of any crime insofar as the fact
59 can be determined from the information available to the office,
60 and shall forward the information to the employer submitting the
61 fingerprints not more than twenty (20) working days after
62 receiving the fingerprints.

63 (3) An employer shall not employ an applicant or permit an
64 applicant to volunteer until the Attorney General's Office
65 completes its check of the applicant's criminal history file, both
66 in this jurisdiction and other jurisdictions, as set forth in this
67 section.

68 **SECTION 3.** The following shall be codified as Section
69 43-15-305, Mississippi Code of 1972:

70 43-15-305. (1) An employer offering or conducting a child
71 care service shall not employ or permit to volunteer any applicant
72 who has been convicted of any felony prohibited under any of the
73 following provisions of the Mississippi Code of 1972, or under any
74 similar statute of another jurisdiction:

75 (a) All felonious crimes contained in Chapter 3 of
76 Title 97, Mississippi Code of 1972, relating to crimes against the
77 person.

78 (b) All felonious crimes contained in Chapter 5 of
79 Title 97, Mississippi Code of 1972, relating to offenses affecting
80 children.

81 (c) All felonious crimes contained in Chapter 29 of
82 Title 97, Mississippi Code of 1972, relating to crimes against
83 public morals and decency.

84 (d) All felonious crimes contained in Chapter 35 of
85 Title 97, Mississippi Code of 1972, relating to crimes against
86 public peace and safety.

87 (e) All felonious crimes contained in Chapter 37 of
88 Title 97, Mississippi Code of 1972, relating to weapons and
89 explosives.

90 (f) All felonious crimes contained in Chapter 41 of
91 Title 97, Mississippi Code of 1972, relating to cruelty to
92 animals.

93 (2) An employer offering or conducting a child care service
94 shall not employ or permit to volunteer any applicant who has been
95 convicted of any misdemeanor prohibited under any of the following
96 provisions of the Mississippi Code of 1972, or under any similar
97 state of another jurisdiction:

98 (a) Section 97-5-39(1), relating to the contribution to
99 the neglect or delinquency of any child.

100 (b) Section 97-27-31, relating to the sale of poisons
101 to minors.

102 (c) Section 97-29-31, relating to indecent exposure.

103 (d) Section 97-29-43, relating to the teaching of
104 polygamy.

105 (e) Section 97-29-45, relating to obscene telephone
106 communications.

107 (f) Section 97-29-101, relating to the distribution of
108 obscene materials.

109 (g) Section 97-29-105, relating to the distribution of
110 unlawful sexual devices.

111 (h) Section 97-35-11, relating to the disturbance of
112 another by abusive language or indecent exposure.

113 **SECTION 4.** The following shall be codified as Section
114 43-15-307, Mississippi Code of 1972:

115 43-15-307. (1) An employer offering or conducting a child
116 care service may employ or permit to volunteer an applicant who
117 was convicted of a misdemeanor prohibited under any of the
118 following provisions of the Mississippi Code of 1972 or under any
119 similar state of another jurisdiction, if at least two (2) years
120 have expired from the time of discharge from any sentence:

121 (a) Section 97-29-19, relating to the disinterment of
122 dead bodies.

123 (b) Section 97-29-23, relating to the opening of
124 graves.

125 (c) Section 97-29-25, relating to the desecration of
126 cemeteries.

127 (d) Section 97-29-47, relating to public profanity or
128 drunkenness.

129 (e) Section 97-35-1, relating to disorderly conduct,
130 intoxication or drinking intoxicating liquors on buses.

131 (2) An employer offering or conducting a child care service
132 may employ or permit to volunteer an applicant who was convicted
133 of a misdemeanor prohibited under any of the following provisions
134 of the Mississippi Code of 1972, or under any similar state of

135 another jurisdiction, if at least eight (8) years have expired
136 from the time of discharge from any sentence:

137 (a) Section 97-37-13, relating to providing weapons to
138 minors or intoxicated persons.

139 (b) Section 97-37-15, relating to parental duty to
140 prevent children from carrying certain weapons.

141 (c) Section 97-41-1, relating to cruelty to animals.

142 (d) Section 97-41-5, relating to carrying an animal in
143 a cruel manner.

144 (e) Section 97-41-7, relating to confinement and
145 depriving a creature of food or water.

146 (f) Section 97-41-9, relating to the failure to feed or
147 sustain an animal.

148 (g) Section 97-41-11, relating to the fighting of
149 animals.

150 (h) Section 97-41-16, relating to maliciously injuring
151 dogs.

152 (i) Section 97-41-17, relating to the poisoning of
153 animals.

154 (j) Section 97-41-21, relating to the harassment of
155 guide dogs.

156 **SECTION 5.** The following shall be codified as Section
157 43-15-309, Mississippi Code of 1972:

158 43-15-309. An employer offering or conducting a child care
159 service may not knowingly employ or permit to volunteer any
160 applicant who is suffering from habitual drunkenness or from
161 narcotic addiction or dependence.

162 **SECTION 6.** The following shall be codified as Section
163 43-15-311, Mississippi Code of 1972:

164 43-15-311. A person who would be prohibited from employment
165 or volunteer service by a child care service provider under
166 Section 43-15-305, 43-15-307 or 43-15-309 may not own or operate a
167 child care service after June 30, 2004.

168 **SECTION 7.** The following shall be codified as Section
169 43-15-313, Mississippi Code of 1972:

170 43-15-313. (1) (a) An applicant is guilty of a felony if,
171 having been convicted of one or more of the offenses listed in
172 Section 43-15-305 or 43-15-307, he knowingly undertakes employment
173 or volunteer service of any type involving the care, instruction,
174 or guidance of minor children, including, but not limited to, the
175 types of services set forth in the definition of "child care
176 service" in Section 43-15-301.

177 (b) Upon conviction under subsection (1) of this
178 section, a person shall be imprisoned in the State Penitentiary
179 for not less than five (5) years nor more than fifteen (15) years.

180 (2) (a) An applicant is guilty of a felony if, having
181 been convicted of one or more of the offenses listed in Section
182 43-15-305 or 43-15-307, he knowingly fails to provide information
183 of the conviction when applying for employment or volunteer
184 service of any type involving the care, instruction, or guidance
185 of minor children, including, but not limited to, the types of
186 services set forth in the definition of "child care service" in
187 Section 43-15-301.

188 (b) Upon conviction under subsection (2) of this
189 section, a person shall be imprisoned in the State Penitentiary
190 for not less than one (1) year nor more than five (5) years.

191 **SECTION 8.** Section 43-15-6, Mississippi Code of 1972, is
192 amended as follows:

193 43-15-6. (1) Any person, institution, facility, clinic,
194 organization or other entity that provides services to children in
195 a residential setting where care, lodging, maintenance, and
196 counseling or therapy for alcohol or controlled substance abuse or
197 for any other emotional disorder or mental illness is provided for
198 children, whether for compensation or not, that holds himself,
199 herself, or itself out to the public as providing those services,
200 and that is entrusted with the care of the children to whom he,

201 she, or it provides services, because of the nature of the
202 services and the setting in which the services are provided shall
203 be subject to the provisions of this section.

204 (2) Each entity to which this section applies shall
205 complete, through the appropriate governmental authority, a
206 national criminal history record information check and a child
207 abuse registry check for each owner, operator, employee,
208 prospective employee, volunteer or prospective volunteer of the
209 entity and/or any other that has or may have unsupervised access
210 to a child served by the entity. In order to determine the
211 applicant's suitability for employment, the entity shall ensure
212 that the applicant be fingerprinted by local law enforcement, and
213 the results forwarded to the Department of Public Safety. If no
214 disqualifying record is identified at the state level, the
215 fingerprints shall be forwarded by the Department of Public Safety
216 to the FBI for a national criminal history record check.

217 (3) An owner, operator, employee, prospective employee,
218 volunteer or prospective volunteer of the entity and/or any other
219 that has or may have unsupervised access to a child who has a
220 criminal history of conviction or pending indictment of a crime,
221 whether a misdemeanor or a felony, that bears upon an individual's
222 fitness to have responsibility for the safety and well-being of
223 children as set forth in this chapter may not provide child care
224 or operate, or be licensed as, a residential child care program,
225 foster parent, or foster home.

226 (4) All fees incurred in compliance with this section shall
227 be borne by the individual or entity to which subsection (1)
228 applies.

229 (5) The Department of Human Services shall have the
230 authority to set fees, to exclude a particular crime or crimes or
231 a substantiated finding of child abuse and/or neglect as
232 disqualifying individuals or entities from providing foster care
233 or residential child care, and adopt such other rules and

234 regulations as may be required to carry out the provisions of this
235 section.

236 (6) Any entity that violates the provisions of this section
237 by failure to complete sex offense criminal history record
238 information and felony conviction record information checks, as
239 required under subsection (3) of this section, shall be subject to
240 a penalty of up to Ten Thousand Dollars (\$10,000.00) for each such
241 violation and may be enjoined from further operation until it
242 complies with this section in actions maintained by the Attorney
243 General.

244 (7) The Department of Human Services and/or its officers,
245 employees, attorneys, agents and representatives shall not be held
246 civilly liable for any findings, recommendations or actions taken
247 under this section.

248 (8) Any entity to which this section applies shall be
249 subject to and shall comply with the provisions of Sections
250 43-15-301 through 43-15-313.

251 **SECTION 9.** Section 43-20-8, Mississippi Code of 1972, is
252 amended as follows:

253 43-20-8. (1) The licensing agency shall have powers and
254 duties as set forth below in addition to other duties prescribed
255 under this chapter:

256 (a) Promulgate rules and regulations concerning the
257 licensing and regulation of child-care facilities as defined
258 herein;

259 (b) Have the authority to issue, deny, suspend, revoke,
260 restrict or otherwise take disciplinary action against licensees
261 as provided for in this chapter;

262 (c) Set and collect fees and penalties as provided for
263 in this chapter; and

264 (d) Have such other powers as may be required to carry
265 out the provisions of this chapter.

266 (2) Child-care facilities shall assure that parents have
267 welcome access to the child-care facility at all times.

268 (3) Child-care facilities shall require that, for any
269 current or prospective caregiver, current criminal records
270 background checks and current child abuse registry checks are
271 obtained. In order to determine the applicant's suitability for
272 employment, the applicant shall be fingerprinted. If no
273 disqualifying record is identified at the state level, the
274 fingerprints shall be forwarded by the Department of Public Safety
275 to the FBI for a national criminal history record check.

276 (4) The licensing agency shall require to be performed a
277 criminal records background check and a child abuse registry check
278 for all operators of a child-care facility and any person living
279 in a residence used for child care. The Department of Human
280 Services shall have the authority to disclose to the State
281 Department of Health any potential applicant whose name is listed
282 on the Child Abuse Central Registry or has a pending
283 administrative review. The information shall remain confidential
284 by all parties. In order to determine the applicant's suitability
285 for employment, the applicant shall be fingerprinted. If no
286 disqualifying record is identified at the state level, the
287 fingerprints shall be forwarded by the Department of Public Safety
288 to the FBI for a national criminal history record check.

289 (5) The licensing agency shall have the authority to exclude
290 a particular crime or crimes or a substantiated finding of child
291 abuse and/or neglect as disqualifying individuals or entities for
292 prospective or current employment or licensure.

293 (6) The licensing agency and its agents, officers,
294 employees, attorneys and representatives shall not be held civilly
295 liable for any findings, recommendations or actions taken pursuant
296 to this section.

297 (7) All fees incurred in compliance with this section shall
298 be borne by the child-care facility. The licensing agency is

299 authorized to charge a fee that shall include the amount required
300 by the Federal Bureau of Investigation for the national criminal
301 history record check in compliance with the Child Protection Act
302 of 1993, as amended and any necessary costs incurred by the
303 licensing agency for the handling and administration of the
304 criminal history background checks.

305 (8) Child-care facilities shall be subject to and shall
306 comply with the provisions of Sections 43-15-301 through
307 43-15-313.

308 **SECTION 10.** This act shall take effect and be in force from
309 and after July 1, 2004.