

By: Senator(s) Simmons

To: Education

SENATE BILL NO. 2031
(As Passed the Senate)

1 AN ACT TO AMEND SECTIONS 37-9-17 AND 37-9-105, MISSISSIPPI
2 CODE OF 1972, TO REVISE THE DATE FOR WRITTEN NOTICE OF
3 REEMPLOYMENT OR NONREEMPLOYMENT FOR LICENSED 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 [From and after passage of this act, Section 37-9-17 shall
9 read as follows:]

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

29 noninstructional employees; however, this authorization shall be
30 restricted to no more than two (2) positions for each employment
31 period for each school in the local school district. Any
32 noninstructional employee employed upon the recommendation of a
33 personnel supervisor or another principal employed by the local
34 school district must have been employed by the local school
35 district at the time the superintendent was elected or appointed
36 to office; a noninstructional employee employed under this
37 authorization may not be paid compensation in excess of the
38 statewide average compensation for such noninstructional position
39 with comparable experience, as established by the State Department
40 of Education. The school board of any local school district shall
41 be authorized to designate a personnel supervisor or another
42 principal employed by the school district to accept the
43 recommendations of principals or their designees for licensed
44 employees or noninstructional employees and to transmit approved
45 recommendations to the local school board; however, this
46 authorization shall be restricted to no more than two (2)
47 positions for each employment period for each school in the local
48 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 minimum 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 or the school board of the local school
78 district, in its discretion, may elect to pay the fee for the
79 fingerprinting and criminal history record check on behalf of any
80 applicant. Under no circumstances shall a member of the State
81 Board of Education, superintendent/director of schools under the
82 purview of the State Board of Education, local school district
83 superintendent, local school board member or any individual other
84 than the subject of the criminal history record checks disseminate
85 information received through any such checks except insofar as
86 required to fulfill the purposes of this section. Any nonpublic
87 school which is accredited or approved by the State Board of
88 Education may avail itself of the procedures provided for herein
89 and shall be responsible for the same fee charged in the case of
90 local public schools of this state.

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

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

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

125 **[From and after January 1, 2005, Section 37-9-17 shall read**
126 **as follows:**

127 37-9-17. (1) On or before April 1 of each year, the
128 principal of each school shall recommend to the superintendent of
129 the local school district the licensed employees or
130 noninstructional employees to be employed for the school involved
131 except those licensed employees or noninstructional employees who
132 have been previously employed and who have a contract valid for
133 the ensuing scholastic year. If such recommendations meet with
134 the approval of the superintendent, the superintendent shall
135 recommend the employment of such licensed employees or
136 noninstructional employees to the local school board, and, unless
137 good reason to the contrary exists, the board shall elect the
138 employees so recommended. If, for any reason, the local school
139 board shall decline to elect any employee so recommended,
140 additional recommendations for the places to be filled shall be
141 made by the principal to the superintendent and then by the
142 superintendent to the local school board as provided above. The
143 school board of any local school district shall be authorized to
144 designate a personnel supervisor or another principal employed by
145 the school district to recommend to the superintendent licensed
146 employees or noninstructional employees; however, this
147 authorization shall be restricted to no more than two (2)
148 positions for each employment period for each school in the local
149 school district. Any noninstructional employee employed upon the
150 recommendation of a personnel supervisor or another principal
151 employed by the local school district must have been employed by
152 the local school district at the time the superintendent was
153 elected or appointed to office; a noninstructional employee
154 employed under this authorization may not be paid compensation in
155 excess of the statewide average compensation for such
156 noninstructional position with comparable experience, as
157 established by the State Department of Education. The school
158 board of any local school district shall be authorized to
159 designate a personnel supervisor or another principal employed by

160 the school district to accept the recommendations of principals or
161 their designees for licensed employees or noninstructional
162 employees and to transmit approved recommendations to the local
163 school board; however, this authorization shall be restricted to
164 no more than two (2) positions for each employment period for each
165 school in the local school district.

166 When the licensed employees have been elected as provided in
167 the preceding paragraph, the superintendent of the district shall
168 enter into a contract with such persons in the manner provided in
169 this chapter.

170 If, at the commencement of the scholastic year, any licensed
171 employee shall present to the superintendent a license of a higher
172 grade than that specified in such individual's contract, such
173 individual may, if funds are available from minimum education
174 program funds of the district, or from district funds, be paid
175 from such funds the amount to which such higher grade license
176 would have entitled the individual, had the license been held at
177 the time the contract was executed.

178 (2) Superintendents/directors of schools under the purview
179 of the State Board of Education and the superintendent of the
180 local school district shall require that current criminal records
181 background checks and current child abuse registry checks are
182 obtained, and that such criminal record information and registry
183 checks are on file for any new hires applying for employment as a
184 licensed or nonlicensed employee at a school and not previously
185 employed in such school under the purview of the State Board of
186 Education or at such local school district prior to July 1, 2000.
187 In order to determine the applicant's suitability for employment,
188 the applicant shall be fingerprinted. If no disqualifying record
189 is identified at the state level, the fingerprints shall be
190 forwarded by the Department of Public Safety to the FBI for a
191 national criminal history record check. The fee for such
192 fingerprinting and criminal history record check shall be paid by

193 the applicant, not to exceed Fifty Dollars (\$50.00); however, the
194 State Board of Education or the school board of the local school
195 district, in its discretion, may elect to pay the fee for the
196 fingerprinting and criminal history record check on behalf of any
197 applicant. Under no circumstances shall a member of the State
198 Board of Education, superintendent/director of schools under the
199 purview of the State Board of Education, local school district
200 superintendent, local school board member or any individual other
201 than the subject of the criminal history record checks disseminate
202 information received through any such checks except insofar as
203 required to fulfill the purposes of this section. Any nonpublic
204 school which is accredited or approved by the State Board of
205 Education may avail itself of the procedures provided for herein
206 and shall be responsible for the same fee charged in the case of
207 local public schools of this state.

208 (3) If such fingerprinting or criminal record checks
209 disclose a felony conviction, guilty plea or plea of nolo
210 contendere to a felony of possession or sale of drugs, murder,
211 manslaughter, armed robbery, rape, sexual battery, sex offense
212 listed in Section 45-33-23(g), child abuse, arson, grand larceny,
213 burglary, gratification of lust or aggravated assault which has
214 not been reversed on appeal or for which a pardon has not been
215 granted, the new hire shall not be eligible to be employed at such
216 school. Any employment contract for a new hire executed by the
217 superintendent of the local school district or any employment of a
218 new hire by a superintendent/director of a new school under the
219 purview of the State Board of Education shall be voidable if the
220 new hire receives a disqualifying criminal record check. However,
221 the State Board of Education or the school board may, in its
222 discretion, allow any applicant aggrieved by the employment
223 decision under this section to appear before the respective board,
224 or before a hearing officer designated for such purpose, to show
225 mitigating circumstances which may exist and allow the new hire to

226 be employed at the school. The State Board of Education or local
227 school board may grant waivers for such mitigating circumstances,
228 which shall include, but not be limited to: (a) age at which the
229 crime was committed; (b) circumstances surrounding the crime; (c)
230 length of time since the conviction and criminal history since the
231 conviction; (d) work history; (e) current employment and character
232 references; (f) other evidence demonstrating the ability of the
233 person to perform the employment responsibilities competently and
234 that the person does not pose a threat to the health or safety of
235 the children at the school.

236 (4) No local school district or local school district
237 employee or members of the State Board of Education or employee of
238 a school under the purview of the State Board of Education shall
239 be held liable in any employment discrimination suit in which an
240 allegation of discrimination is made regarding an employment
241 decision authorized under this Section 37-9-17.

242 **SECTION 2.** Section 37-9-105, Mississippi Code of 1972, is
243 amended as follows:

244 **[From and after passage of this act, Section 37-9-105 shall**
245 **read as follows:]**

246 37-9-105. In the event that a recommendation is made by the
247 school district not to offer an employee a renewal contract for a
248 successive year, written notice of the proposed nonreemployment
249 stating the reasons for the proposed nonreemployment shall be
250 given no later than the following:

251 (a) If the employee is a principal, the superintendent,
252 without further board action, shall give notice of nonreemployment
253 on or before March 1; or

254 (b) If the employee is a teacher, administrator or
255 other professional educator covered under Sections 37-9-101
256 through 37-9-113, the superintendent, without further board
257 action, shall give notice of nonreemployment on or before May 15.

258 An interim conservator appointed pursuant to the provisions
259 of Section 37-17-6(14)(a) or a school board acting on the
260 recommendation of a school district financial advisor appointed
261 pursuant to the provisions of Section 37-9-18 shall not be
262 required to comply with the time limitations prescribed in this
263 section for recommending the reemployment of principals, teachers,
264 administrators or other professional educators.

265 **[From and after January 1, 2005, Section 37-9-105 shall read**
266 **as follows:]**

267 37-9-105. In the event that a recommendation is made by the
268 school district not to offer an employee a renewal contract for a
269 successive year, written notice of the proposed nonreemployment
270 stating the reasons for the proposed nonreemployment shall be
271 given no later than the following:

272 (a) If the employee is a principal, the superintendent,
273 without further board action, shall give notice of nonreemployment
274 on or before March 1; or

275 (b) If the employee is a teacher, administrator or
276 other professional educator covered under Sections 37-9-101
277 through 37-9-113, the superintendent, without further board
278 action, shall give notice of nonreemployment on or before April
279 15.

280 An interim conservator appointed pursuant to the provisions
281 of Section 37-17-6(14)(a) or a school board acting on the
282 recommendation of a school district financial advisor appointed
283 pursuant to the provisions of Section 37-9-18 shall not be
284 required to comply with the time limitations prescribed in this
285 section for recommending the reemployment of principals, teachers,
286 administrators or other professional educators.

287 **SECTION 3.** This act shall take effect and be in force from
288 and after its passage.