

By: Senator(s) Chaney, Little, Butler

To: Education

SENATE BILL NO. 2498

1 AN ACT TO AMEND SECTION 37-9-17, MISSISSIPPI CODE OF 1972, TO
2 AUTHORIZE PRIVATE FIRMS UNDER CONTRACT TO PROVIDE EMPLOYEES TO
3 PUBLIC SCHOOL DISTRICTS TO SUBMIT FINGERPRINT CARDS OF APPLICANTS
4 FOR CRIMINAL BACKGROUND CHECKS; AND 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 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 State Board of Education and the superintendent of the
61 local school district shall require that current criminal records

62 background checks and current child abuse registry checks are
63 obtained, and that such criminal record information and registry
64 checks are on file for any personnel provided by a private company
65 who supervise or have direct ongoing contact with students or any
66 new hires applying for employment as a licensed or nonlicensed
67 employee at a school and not previously employed in such school
68 under the purview of the State Board of Education or at such local
69 school district prior to July 1, 2000. In order to determine the
70 applicant's suitability for employment, the applicant shall be
71 fingerprinted. If no disqualifying record is identified at the
72 state level, or if necessary, the fingerprints shall be forwarded
73 by the Department of Public Safety to the Federal Bureau of
74 Investigation for a national criminal history record check.
75 Private firms that are under contract with a school to provide
76 personnel to perform duties that include supervision of students
77 or involve direct, ongoing contact with students, shall submit
78 fingerprint cards of those personnel to the school for a criminal
79 history record check as provided in this section. The fingerprint
80 cards shall be provided by the school. The school shall forward
81 the prints to the Department of Public Safety for a check of the
82 state criminal records. If no disqualifying record is identified
83 at the state level, or if necessary, the fingerprints shall be
84 forwarded to the Federal Bureau of Investigation for a national
85 criminal history records check. The Department of Public Safety
86 shall disseminate the results to the submitting school. The
87 determination of eligibility to work at the school shall be made
88 by the school in the same manner as if the person was employed by
89 the school; the results of the check shall not be disseminated to
90 the private firm. The fee for such fingerprinting and criminal
91 history record check shall be paid by the applicant, not to exceed
92 Fifty Dollars (\$50.00); however, the State Board of Education or
93 the school board of the local school district, in its discretion,
94 may elect to pay the fee for the fingerprinting and criminal

95 history record check on behalf of any applicant. Under no
96 circumstances shall a member of the State Board of Education,
97 superintendent/director of schools under the purview of the State
98 Board of Education, local school district superintendent, local
99 school board member or any individual other than the subject of
100 the criminal history record checks disseminate information
101 received through any such checks except insofar as required to
102 fulfill the purposes of this section. Any nonpublic school which
103 is accredited or approved by the State Board of Education may
104 avail itself of the procedures provided for herein and shall be
105 responsible for the same fee charged in the case of local public
106 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 contract personnel provided by a private firm or the
115 new hire shall not be eligible to be employed or work at such
116 school. Any employment contract for a new hire executed by the
117 superintendent of the local school district or any employment of a
118 new hire by a superintendent/director of a new school under the
119 purview of the State Board of Education or by a private firm shall
120 be voidable if the new hire receives a disqualifying criminal
121 record check. However, the State Board of Education or the school
122 board may, in its discretion, allow any applicant aggrieved by the
123 employment decision under this section to appear before the
124 respective board, or before a hearing officer designated for such
125 purpose, to show mitigating circumstances which may exist and
126 allow the new hire to be employed at the school. The State Board
127 of Education or local school board may grant waivers for such

128 mitigating circumstances, which shall include, but not be limited
129 to: (a) age at which the crime was committed; (b) circumstances
130 surrounding the crime; (c) length of time since the conviction and
131 criminal history since the conviction; (d) work history; (e)
132 current employment and character references; (f) other evidence
133 demonstrating the ability of the person to perform the employment
134 responsibilities competently and that the person does not pose a
135 threat to the health or safety of the children at the school.

136 (4) No local school district or local school district
137 employee or members of the State Board of Education or employee of
138 a school under the purview of the State Board of Education shall
139 be 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.