

By: Senator(s) Chaney, Little, Butler

To: Education

SENATE BILL NO. 2498  
(As Sent to Governor)

1 AN ACT TO AMEND SECTION 37-9-17, MISSISSIPPI CODE OF 1972, TO  
2 REQUIRE A PRIVATE FIRM THAT IS UNDER CONTRACT WITH A LOCAL SCHOOL  
3 DISTRICT TO PROVIDE SUBSTITUTE TEACHERS TO TEACH DURING THE  
4 TEMPORARY ABSENCE OF THE REGULARLY EMPLOYED SCHOOLTEACHER TO  
5 REQUEST THE LOCAL SCHOOL DISTRICT TO SUBMIT CRIMINAL BACKGROUND  
6 CHECK INFORMATION REQUESTS FOR EMPLOYMENT APPLICANTS; AND FOR  
7 RELATED PURPOSES.

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

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

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

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

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

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

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

95 local public school district to provide substitute teachers to  
96 teach during the temporary absence of the regularly employed  
97 schoolteacher, then the private firm shall request the school  
98 district to submit the substitute teachers' fingerprint cards for  
99 a criminal history record check as provided in this section. The  
100 fingerprint cards shall be provided by the school district and  
101 shall be submitted to the Department of Public Safety for a check  
102 of the state criminal records. If no disqualifying record is  
103 identified at the state level, or if necessary, the fingerprints  
104 shall be forwarded to the Federal Bureau of Investigation for a  
105 national criminal history records check. The Department of Public  
106 Safety shall disseminate the results to the submitting public  
107 school district. The determination of whether the applicant has a  
108 disqualifying crime, as set forth in subsection (3) herein, shall  
109 be made by the public school district and the public school  
110 district shall notify the private firm of whether a disqualifying  
111 crime exists. The determination of eligibility to work in the  
112 public school district shall be made by the school district.

113       (3) If such fingerprinting or criminal record checks  
114 disclose a felony conviction, guilty plea or plea of nolo  
115 contendere to a felony of possession or sale of drugs, murder,  
116 manslaughter, armed robbery, rape, sexual battery, sex offense  
117 listed in Section 45-33-23(g), child abuse, arson, grand larceny,  
118 burglary, gratification of lust or aggravated assault which has  
119 not been reversed on appeal or for which a pardon has not been  
120 granted, the new hire shall not be eligible to be employed at such  
121 school. Any employment contract for a new hire executed by the  
122 superintendent of the local school district or any employment of a  
123 new hire by a superintendent/director of a new school under the  
124 purview of the State Board of Education or by a private firm shall  
125 be voidable if the new hire receives a disqualifying criminal  
126 record check. However, the State Board of Education or the school  
127 board may, in its discretion, allow any applicant aggrieved by the

128 employment decision under this section to appear before the  
129 respective board, or before a hearing officer designated for such  
130 purpose, to show mitigating circumstances which may exist and  
131 allow the new hire to be employed at the school. The State Board  
132 of Education or local school board may grant waivers for such  
133 mitigating circumstances, which shall include, but not be limited  
134 to: (a) age at which the crime was committed; (b) circumstances  
135 surrounding the crime; (c) length of time since the conviction and  
136 criminal history since the conviction; (d) work history; (e)  
137 current employment and character references; (f) other evidence  
138 demonstrating the ability of the person to perform the employment  
139 responsibilities competently and that the person does not pose a  
140 threat to the health or safety of the children at the school.

141 (4) No local school district, local school district  
142 employee, member of the State Board of Education or employee of a  
143 school under the purview of the State Board of Education shall be  
144 held liable in any employment discrimination suit in which an  
145 allegation of discrimination is made regarding an employment  
146 decision authorized under this Section 37-9-17.

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