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To: Judiciary, Division B

SENATE BILL NO. 2554

1 AN ACT TO CREATE NEW SECTION 43-15-301, MISSISSIPPI CODE OF
2 1972, TO ENACT DEFINITIONS; TO CREATE NEW SECTION 43-15-303,
3 MISSISSIPPI CODE OF 1972, TO REQUIRE EMPLOYERS OFFERING A CHILD
4 CARE SERVICE FOR A FEE TO OBTAIN A SEX OFFENDER REGISTRY CHECK ON
5 ALL APPLICANTS FOR EMPLOYMENT OR TO VOLUNTEER TO WORK IN THE CHILD
6 CARE SERVICE, AND TO PROVIDE PENALTIES FOR FAILURE TO DO SO; TO
7 CREATE NEW SECTION 43-15-305, MISSISSIPPI CODE OF 1972, TO
8 PROHIBIT SEX OFFENDERS FROM OWNING OR OPERATING A CHILD CARE
9 SERVICE, AND TO PROVIDE PENALTIES FOR VIOLATIONS; TO CREATE NEW
10 SECTION 43-15-307, MISSISSIPPI CODE OF 1972, TO PROHIBIT A SEX
11 OFFENDER FROM WORKING FOR OR VOLUNTEERING AT A CHILD CARE SERVICE,
12 AND TO PROVIDE PENALTIES FOR VIOLATIONS; TO AMEND SECTION 43-20-8,
13 MISSISSIPPI CODE OF 1972, TO CONFORM; AND FOR RELATED PURPOSES.

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

15 **SECTION 1.** The following shall be codified as Section
16 43-15-301, Mississippi Code of 1972:

17 43-15-301. As used in this act, the following words and
18 phrases shall have the meanings ascribed herein unless the context
19 clearly indicates otherwise:

20 (a) "Child care service" means any business or
21 volunteer service:

22 (i) Licensed by the state to perform child care;

23 or

24 (ii) Involving the care, instruction or guidance
25 of minor children for a fee.

26 (b) "Child care service employer" means every person,
27 firm, association, partnership, or corporation offering or
28 conducting a child care service.

29 (c) "Applicant" means any person who is being
30 considered for employment or as a volunteer by a child care
31 service employer.

32 (d) "Convicted" means an adjudication of guilt, an
33 adjudication that the applicant is physically or mentally
34 incompetent, an adjudication that the applicant is not guilty by
35 reason of insanity, or a plea of nolo contendere.

36 (e) "Sex offense" shall have the meaning ascribed in
37 Section 45-33-23.

38 **SECTION 2.** The following shall be codified as Section
39 43-15-303, Mississippi Code of 1972:

40 43-15-303. (1) A child care service employer offering or
41 conducting a child care service:

42 (a) Shall not knowingly employ or permit to volunteer
43 an applicant who is required to register as a sex offender under
44 Section 45-33-25; and

45 (b) Is required to submit an applicant's name to the
46 Mississippi Criminal Information Center to review the Mississippi
47 Sex Offender Registry for verification that the applicant is not a
48 sex offender.

49 (2) A child care service employer who knowingly employs or
50 permits to volunteer a person who is required to register as a sex
51 offender under Section 45-33-25, or who employs or permits to
52 volunteer a person who is reported to the employer by the
53 Mississippi Criminal Information Center as being a sex offender,
54 or who employs or permits to volunteer a person for whom no report
55 has been received from the Mississippi Criminal Information Center
56 as to sex offender status, is guilty of a misdemeanor, and upon
57 conviction shall be fined not more than Twenty-five Thousand
58 Dollars (\$25,000.00), imprisoned for a period not to exceed six
59 (6) months, or both.

60 **SECTION 3.** The following shall be codified as Section
61 43-15-305, Mississippi Code of 1972:

62 43-15-305. A person required to register as a sex offender
63 under Section 45-33-25 may not own or operate a child care
64 service. Any person who is required to register as a sex offender

65 under Section 45-33-25 who knowingly owns or operates a child care
66 service is guilty of a felony, and upon conviction shall be
67 imprisoned in the custody of the Department of Corrections for a
68 period not to exceed five (5) years.

69 **SECTION 4.** The following shall be codified as Section
70 43-15-307, Mississippi Code of 1972:

71 43-15-307. (1) A person required to register as a sex
72 offender under Section 45-33-25 may not be employed by or
73 volunteer at a child care service. Any person who is required to
74 register as a sex offender under Section 45-33-25 who knowingly
75 undertakes employment or volunteer service with a child care
76 service is guilty of a felony, and upon conviction shall be
77 imprisoned in the custody of the Department of Corrections for a
78 period not to exceed five (5) years.

79 (2) Any person who knowingly fails to inform a child care
80 service employer of a prior conviction of a sex offense when
81 applying or volunteering for any child care service, or who
82 applies for employment or as a volunteer for any child care
83 service, knowing that the person is required to register as a sex
84 offender under Section 45-33-25, shall be guilty of a felony, and
85 upon conviction shall be imprisoned in the custody of the
86 Department of Corrections for a period not to exceed five (5)
87 years.

88 **SECTION 5.** Section 43-20-8, Mississippi Code of 1972, is
89 amended as follows:

90 43-20-8. (1) The licensing agency shall have powers and
91 duties as set forth below in addition to other duties prescribed
92 under this chapter:

93 (a) Promulgate rules and regulations concerning the
94 licensing and regulation of child care facilities as defined
95 herein;

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

99 (c) Set and collect fees and penalties as provided for
100 in this chapter; and

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

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

105 (3) Child care facilities shall require that, for any
106 current or prospective caregiver, current criminal records
107 background and sex offender registry checks and current child
108 abuse registry checks are obtained. In order to determine the
109 applicant's suitability for employment, the applicant shall be
110 fingerprinted. If no disqualifying record is identified at the
111 state level, the fingerprints shall be forwarded by the Department
112 of Public Safety to the FBI for a national criminal history record
113 check.

114 (4) The licensing agency shall require to be performed a
115 criminal records background check and a child abuse registry check
116 for all operators of a child care facility and any person living
117 in a residence used for child care. The Department of Human
118 Services shall have the authority to disclose to the State
119 Department of Health any potential applicant whose name is listed
120 on the Child Abuse Central Registry or has a pending
121 administrative review. Such information shall remain confidential
122 by all parties. In order to determine the applicant's suitability
123 for employment, the applicant shall be fingerprinted. If no
124 disqualifying record is identified at the state level, the
125 fingerprints shall be forwarded by the Department of Public Safety
126 to the FBI for a national criminal history record check.

127 (5) The licensing agency shall have the authority to exclude
128 a particular crime or crimes or a substantiated finding of child

129 abuse and/or neglect as disqualifying individuals or entities for
130 prospective or current employment or licensure.

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

135 (7) All fees incurred in compliance with this section shall
136 be borne by the child care facility. The licensing agency is
137 authorized to charge a fee that shall include the amount required
138 by the Federal Bureau of Investigation for the national criminal
139 history record check in compliance with the Child Protection Act
140 of 1993, as amended and any necessary costs incurred by the
141 licensing agency for the handling and administration of the
142 criminal history background checks.

143 **SECTION 6.** Section 3 of this act shall take effect and be in
144 force from and after January 1, 2005; the remainder of this act
145 shall take effect and be in force from and after July 1, 2004.