

By: Representative Jennings

To: Education

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 1377

1 AN ACT TO AMEND SECTION 37-9-17, MISSISSIPPI CODE OF 1972, TO
2 PROVIDE THAT WHEN A PRIVATE FIRM IS UNDER CONTRACT WITH A LOCAL
3 PUBLIC SCHOOL DISTRICT TO PROVIDE SUBSTITUTE TEACHERS TO TEACH
4 DURING THE TEMPORARY ABSENCE OF THE REGULARLY EMPLOYED SCHOOL
5 TEACHER, THEN THE PRIVATE FIRM SHALL REQUEST LOCAL LAW ENFORCEMENT
6 TO SUBMIT THE SUBSTITUTE TEACHERS' FINGERPRINT CARDS FOR A
7 CRIMINAL HISTORY RECORD; AND FOR 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 local law
98 enforcement to submit the substitute teachers' fingerprint cards
99 for a criminal history record check as provided in this section.
100 The fingerprint cards shall be provided by the local law
101 enforcement and shall be submitted to the Department of Public
102 Safety for a check of the state criminal records. If no
103 disqualifying record is identified at the state level, or if
104 necessary, the fingerprints shall be forwarded to the Federal
105 Bureau of Investigation for a national criminal history records
106 check. The Department of Public Safety shall disseminate the
107 pass/fail results to the private firm. The private firm applicant
108 shall include the Department of Public Safety pass/fail report in
109 their application to the school district where they are applying.
110 The determination of whether the applicant has a disqualifying
111 crime, as set forth in subsection (3) herein, shall be made by the
112 public school district and the public school district shall notify
113 the private firm of whether a disqualifying crime exists. The
114 determination of eligibility to work in the public school district
115 shall be made by the school district.

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

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

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

150 **SECTION 2.** This act shall take effect and be in force from
151 and after July 1, 2005.