

By: Representative Jennings

To: Education

HOUSE BILL NO. 1377
(As Sent to Governor)

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; TO AMEND SECTION 97-3-82, MISSISSIPPI
8 CODE OF 1972, TO REVISE THE DEFINITIONS OF "OBTAIN" AND "PROPERTY"
9 AND TO ENACT A DEFINITION FOR "PUBLIC OFFICIAL," TO INCLUDE
10 EXTORTION TO OBTAIN A REWARD, FAVOR OR ADVANTAGE IN THE OFFENSE
11 AND TO REVISE PENALTIES; AND FOR RELATED PURPOSES.

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

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

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

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

54 When the licensed employees have been elected as provided in
55 the preceding paragraph, the superintendent of the district shall
56 enter into a contract with such persons in the manner provided in
57 this chapter.

58 If, at the commencement of the scholastic year, any licensed
59 employee shall present to the superintendent a license of a higher
60 grade than that specified in such individual's contract, such
61 individual may, if funds are available from adequate education
62 program funds of the district, or from district funds, be paid
63 from such funds the amount to which such higher grade license

64 would have entitled the individual, had the license been held at
65 the time the contract was executed.

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

97 received through any such checks except insofar as required to
98 fulfill the purposes of this section. Any nonpublic school which
99 is accredited or approved by the State Board of Education may
100 avail itself of the procedures provided for herein and shall be
101 responsible for the same fee charged in the case of local public
102 schools of this state. * * * The determination * * * whether the
103 applicant has a disqualifying crime, as set forth in subsection
104 (3) of this section, shall be made by the appropriate governmental
105 authority, and the appropriate governmental authority shall notify
106 the private firm * * * whether a disqualifying crime exists. * * *

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 new hire shall not be eligible to be employed at such
115 school. Any employment contract for a new hire executed by the
116 superintendent of the local school district or any employment of a
117 new hire by a superintendent/director of a new school under the
118 purview of the State Board of Education or by a private firm shall
119 be voidable if the new hire receives a disqualifying criminal
120 record check. However, the State Board of Education or the school
121 board may, in its discretion, allow any applicant aggrieved by the
122 employment decision under this section to appear before the
123 respective board, or before a hearing officer designated for such
124 purpose, to show mitigating circumstances which may exist and
125 allow the new hire to be employed at the school. The State Board
126 of Education or local school board may grant waivers for such
127 mitigating circumstances, which shall include, but not be limited
128 to: (a) age at which the crime was committed; (b) circumstances
129 surrounding the crime; (c) length of time since the conviction and

130 criminal history since the conviction; (d) work history; (e)
131 current employment and character references; (f) other evidence
132 demonstrating the ability of the person to perform the employment
133 responsibilities competently and that the person does not pose a
134 threat to the health or safety of the children at the school.

135 (4) No local school district, local school district
136 employee, member of the State Board of Education or employee of a
137 school under the purview of the State Board of Education shall be
138 held liable in any employment discrimination suit in which an
139 allegation of discrimination is made regarding an employment
140 decision authorized under this Section 37-9-17.

141 **SECTION 2.** Section 97-3-82, Mississippi Code of 1972, is
142 amended as follows:

143 97-3-82. (1) For the purposes of this section the following
144 words and phrases shall have the meanings ascribed herein, unless
145 the context clearly indicates otherwise:

146 (a) "Obtain" means: (i) in relation to property, to
147 bring about a transfer or purported transfer of a legal interest
148 in, or physical possession of, the property, whether to the
149 obtainer or another; or (ii) in relation to labor or service, or
150 any reward, favor, or advantage of any kind, to secure performance
151 thereof; or attempt to do (i) or (ii).

152 (b) "Property" means anything of value, including, but
153 not limited to, real estate, tangible and intangible personal
154 property, contract rights, choses-in-action, reputation of a
155 person and other interests in or claims to wealth, admission or
156 transportation tickets, captured or domestic animals, food and
157 drink, electric or other power.

158 (c) "Property of another" includes property in which
159 any person other than the actor has an interest which the actor is
160 not privileged to infringe, regardless of the fact that the actor
161 also has an interest in the property and regardless of the fact
162 that the other person might be precluded from civil recovery

163 because the property was used in an unlawful transaction or was
164 subject to forfeiture as contraband. Property in possession of
165 the actor shall not be deemed property of another who has only a
166 security interest therein, even if legal title is in the creditor
167 pursuant to a conditional sales contract or other security
168 agreement.

169 (d) "Public official" means any person elected or
170 appointed to any office, position or employment whereby the person
171 is paid a fee or salary by the State of Mississippi or any
172 political subdivision thereof or any agency or subdivision of the
173 government of the United States, regardless of the source or
174 sources of the funds for the payment.

175 (2) A person is guilty of extortion if he purposely obtains
176 or attempts to obtain property * * * of another or any reward,
177 favor, or advantage of any kind by threatening to inflict bodily
178 injury on any person or by committing or threatening to commit any
179 other criminal offense, violation of civil statute, or the public
180 or private revelation of information not previously in the public
181 domain for the purpose of humiliating or embarrassing the other
182 person, without regard to whether the revelation otherwise
183 constitutes a violation of a specific statute.

184 (3) (a) Except as provided in paragraph (d) of this
185 subsection, any person, whether a public official or not, who
186 commits the offense of extortion of property or things of value of
187 another under the value of Five Hundred Dollars (\$500.00) shall be
188 guilty of a misdemeanor and, upon conviction thereof, shall be
189 punished by imprisonment in the county jail not to exceed six (6)
190 months.

191 (b) Except as provided in paragraph (d) of this
192 subsection, any person, whether a public official or not, who
193 commits the offense of extortion of property or things of value of
194 another of the value of Five Hundred Dollars (\$500.00) or more
195 shall be guilty of a felony and, upon conviction thereof, shall be

196 punished by commitment to the custody of the Department of
197 Corrections for a term not to exceed fifteen (15) years.

198 (c) Except as provided in paragraph (d) of this
199 subsection, any person, whether a public official or not, who
200 commits the offense of extortion in order to obtain any intangible
201 reward, favor or advantage to which no monetary value is normally
202 given shall be guilty of a felony and, upon conviction thereof,
203 shall be punished by commitment to the custody of the Department
204 of Corrections for a term not to exceed fifteen (15) years.

205 (d) Any public official acting in his official capacity
206 or under color of his office who commits the offense of extortion
207 in order to obtain any intangible reward, favor or advantage to
208 which no monetary value is normally given, or who commits the
209 offense of extortion of tangible property, regardless of the value
210 of the property, shall be guilty of a felony and, upon conviction
211 thereof, shall be punished by commitment to the custody of the
212 Department of Corrections for a term not less than two (2) nor
213 more than twenty (20) years.

214 **SECTION 3.** This act shall take effect and be in force from
215 and after July 1, 2005.