

By: Senator(s) Ross, Albritton, Browning, Butler, Burton, Carmichael, Davis, Dearing, Flowers, Frazier, Gollott, Gordon, Harvey, Hewes, Jackson (15th), Jackson (11th), Jackson (32nd), Jordan, King, Lee (35th), Mettetal, Moffatt, Pickering, Posey, Thames, Tollison, Little

To: Judiciary, Division B

SENATE BILL NO. 2053  
(As Sent to Governor)

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 PROHIBIT EMPLOYERS OFFERING A CHILD  
4 CARE SERVICE FROM UTILIZING SEX OFFENDERS AS EMPLOYEES OR  
5 VOLUNTEERS, AND TO PROVIDE PENALTIES THEREFOR; TO CREATE NEW  
6 SECTION 43-15-305, MISSISSIPPI CODE OF 1972, TO PROHIBIT SEX  
7 OFFENDERS FROM OWNING OR OPERATING A CHILD CARE SERVICE, AND TO  
8 PROVIDE PENALTIES FOR VIOLATIONS; TO CREATE NEW SECTION 43-15-307,  
9 MISSISSIPPI CODE OF 1972, TO PROHIBIT A SEX OFFENDER FROM WORKING  
10 FOR OR VOLUNTEERING AT A CHILD CARE SERVICE, AND TO PROVIDE  
11 PENALTIES FOR VIOLATIONS; TO AMEND SECTION 43-20-8, MISSISSIPPI  
12 CODE OF 1972, TO CONFORM TO THE PRECEDING PROVISIONS AND TO  
13 PROVIDE THAT CHILD CARE FACILITIES SHALL REQUIRE THAT ALL CRIMINAL  
14 RECORDS CHECKS SHALL BE OBTAINED FOR ANY CAREGIVER; AND FOR  
15 RELATED PURPOSES.

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

17 **SECTION 1.** The following shall be codified as Section  
18 43-15-301, Mississippi Code of 1972:

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

22 (a) (i) "Child care service" means any school,  
23 business or volunteer service that is:

24 1. Licensed by the state to perform child  
25 care; or

26 2. Involves the care, instruction or guidance  
27 of minor children where a fee is charged for the care,  
28 instruction, guidance or participation of a child in the program  
29 or activity offered by the school, business or service; or

30 (ii) Any public school.

31 (b) "Child care service employer" means every person,  
32 firm, association, partnership, or corporation offering or  
33 conducting a child care service.

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

37 (d) "Convicted" means an adjudication of guilt or a  
38 plea of nolo contendere.

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

41 **SECTION 2.** The following shall be codified as Section  
42 43-15-303, Mississippi Code of 1972:

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

45 (a) Shall not employ or permit to volunteer an  
46 applicant who is listed on the sex offender registry as a sex  
47 offender under Section 45-33-25; and

48 (b) Shall not knowingly employ or permit to volunteer  
49 an applicant who has been convicted of a sex offense, who has been  
50 adjudicated not guilty of a sex offense by reason of insanity; or  
51 who has been adjudicated physically or mentally incompetent.

52 (2) (a) A child care service employer who violates this  
53 section is guilty of a misdemeanor, and upon conviction shall be  
54 fined not more than Twenty-five Thousand Dollars (\$25,000.00),  
55 imprisoned for a period not to exceed six (6) months, or both.

56 (b) An employer who obtains an official report from the  
57 Mississippi Justice Information Center that the applicant is not  
58 registered as a sex offender shall not be guilty of a violation of  
59 this section, absent the employer's actual knowledge that the  
60 applicant is a sex offender.

61 **SECTION 3.** The following shall be codified as Section  
62 43-15-305, Mississippi Code of 1972:

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

67 service is guilty of a felony, and upon conviction shall be  
68 imprisoned in the custody of the Department of Corrections for a  
69 period not to exceed five (5) years.

70 **SECTION 4.** The following shall be codified as Section  
71 43-15-307, Mississippi Code of 1972:

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

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

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

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

94 (a) Promulgate rules and regulations concerning the  
95 licensing and regulation of child care facilities as defined in  
96 Section 43-20-5;

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

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

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

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

106 (3) Each child care facility shall develop and maintain a  
107 current list of contact persons for each child provided care by  
108 that facility. An agreement may be made between the child care  
109 facility and the child's parent, guardian or contact person at the  
110 time of registration to inform the parent, guardian or contact  
111 person if the child does not arrive at the facility within a  
112 reasonable time.

113 (4) Child care facilities shall require that, for any  
114 current or prospective caregiver, all criminal records, background  
115 and sex offender registry checks and current child abuse registry  
116 checks are obtained. In order to determine the applicant's  
117 suitability for employment, the applicant shall be fingerprinted.  
118 If no disqualifying record is identified at the state level, the  
119 fingerprints shall be forwarded by the Department of Public Safety  
120 to the FBI for a national criminal history record check.

121 (5) The licensing agency shall require to be performed a  
122 criminal records background check and a child abuse registry check  
123 for all operators of a child care facility and any person living  
124 in a residence used for child care. The Department of Human  
125 Services shall have the authority to disclose to the State  
126 Department of Health any potential applicant whose name is listed  
127 on the Child Abuse Central Registry or has a pending  
128 administrative review. That information shall remain confidential  
129 by all parties. In order to determine the applicant's suitability  
130 for employment, the applicant shall be fingerprinted. If no  
131 disqualifying record is identified at the state level, the

132 fingerprints shall be forwarded by the Department of Public Safety  
133 to the FBI for a national criminal history record check.

134 (6) The licensing agency shall have the authority to exclude  
135 a particular crime or crimes or a substantiated finding of child  
136 abuse and/or neglect as disqualifying individuals or entities for  
137 prospective or current employment or licensure.

138 (7) The licensing agency and its agents, officers,  
139 employees, attorneys and representatives shall not be held civilly  
140 liable for any findings, recommendations or actions taken under  
141 this section.

142 (8) All fees incurred in compliance with this section shall  
143 be borne by the child care facility. The licensing agency is  
144 authorized to charge a fee that includes the amount required by  
145 the Federal Bureau of Investigation for the national criminal  
146 history record check in compliance with the Child Protection Act  
147 of 1993, as amended, and any necessary costs incurred by the  
148 licensing agency for the handling and administration of the  
149 criminal history background checks.

150 **SECTION 6.** Section 3 of this act shall take effect and be in  
151 force from and after January 1, 2006; the remainder of this act  
152 shall take effect and be in force from and after July 1, 2005.