

By: Representative Anderson

To: Workforce Development;
Judiciary A

HOUSE BILL NO. 1280

1 AN ACT TO PROHIBIT EMPLOYERS FROM INQUIRING EITHER ORALLY OR
2 IN WRITING REGARDING AN APPLICANT'S CRIMINAL HISTORY; TO PROVIDE
3 EXCEPTIONS; TO BRING FORWARD SECTIONS 47-27-12, 37-9-17, 37-13-89,
4 37-28-49, 37-33-157, 37-115-41, 37-173-23, 37-175-23, 41-4-7,
5 41-29-112, 41-125-11, 43-1-4, 43-11-13, 43-15-6, 43-20-8, 43-47-7,
6 67-1-57 AND 81-1-65, MISSISSIPPI CODE OF 1972, FOR THE PURPOSE OF
7 POSSIBLE AMENDMENT; AND FOR RELATED PURPOSES.

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

9 **SECTION 1.** It shall be an unlawful employment practice for
10 any employer, except for law enforcement agency positions or
11 positions related to law enforcement agencies, to inquire either
12 orally or in writing whether the applicant has ever been arrested,
13 charged or convicted of any crime; except:

14 (a) If a federal or state law or regulation creates a
15 mandatory or presumptive disqualification from employment based on
16 a person's conviction of one or more specified criminal offenses,
17 an employer may include a question or otherwise inquire whether
18 the applicant has ever been convicted of any of those offenses; or

19 (b) If a standard fidelity bond or an equivalent bond
20 is required for the position for which the applicant is seeking



21 employment and his or her conviction of one or more specified
22 criminal offenses would disqualify the applicant from obtaining
23 such a bond, an employer may include a question or otherwise
24 inquire whether the applicant has ever been convicted of any of
25 those offenses; and

26 (c) Notwithstanding the foregoing, any employer may ask
27 an applicant for information about his or her criminal convictions
28 at the first interview or thereafter, in accordance with all
29 applicable state and federal laws.

30 **SECTION 2.** Section 45-27-12, Mississippi Code of 1972, is
31 brought forward as follows:

32 45-27-12. (1) State conviction information and arrest
33 information which is contained in the center's database or the
34 nonexistence of such information in the center's database shall be
35 made available for the following noncriminal justice purposes:

36 (a) To any local, state or federal governmental agency
37 that requests the information for the enforcement of a local,
38 state or federal law;

39 (b) To any individual, nongovernmental entity or any
40 employer authorized either by the subject of record in writing or
41 by state or federal law to receive such information; and

42 (c) To any federal agency or central repository in
43 another state requesting the information for purposes authorized
44 by law.



45 (2) Information disseminated for noncriminal justice
46 purposes as specified in this section shall be used only for the
47 purpose for which it was made available and may not be
48 re-disseminated.

49 (3) No agency or individual shall confirm the existence or
50 nonexistence of criminal history record information to any person
51 or organization that would not be eligible to receive the
52 information pursuant to this section.

53 (4) Upon request for a check pursuant to this section, the
54 nongovernmental entity or employer must provide proper
55 identification and authorization information from the subject of
56 the record to be checked and adhere to policies established by the
57 center for such record checks.

58 (5) Any individual or his attorney who is the subject of the
59 record to be checked, upon positive verification of the
60 individual's identity, may request to review the disseminated
61 information and shall follow the procedure set forth in Section
62 45-27-11. If the individual wishes to correct the record as it
63 appears in the center's system, the person shall follow the
64 procedure set forth in Section 45-27-11. The right of a person to
65 review the person's criminal history record information shall not
66 be used by a prospective employer or others as a means to
67 circumvent procedures or fees for accessing records for
68 noncriminal justice purposes.



69 (6) The center may impose procedures, including the
70 submission of fingerprints, fees or restrictions, as are
71 reasonably necessary to assure the record's security, to verify
72 the identities of those who seek to inspect them, and to maintain
73 an orderly and efficient mechanism for access. All fees shall be
74 assessed and deposited in accordance with the provisions of
75 Section 45-27-8.

76 (7) Local agencies may release their own agency records
77 according to their own policies.

78 (8) Release of the above-described information for
79 noncriminal justice purposes shall be made only by the center,
80 under the limitations of this section, and such compiled records
81 will not be released or disclosed for noncriminal justice purposes
82 by other agencies in the state.

83 **SECTION 3.** Section 37-9-17, Mississippi Code of 1972, is
84 brought forward as follows:

85 37-9-17. (1) On or before April 1 of each year, the
86 principal of each school shall recommend to the superintendent of
87 the local school district the licensed employees or
88 noninstructional employees to be employed for the school involved
89 except those licensed employees or noninstructional employees who
90 have been previously employed and who have a contract valid for
91 the ensuing scholastic year. If such recommendations meet with
92 the approval of the superintendent, the superintendent shall
93 recommend the employment of such licensed employees or



94 noninstructional employees to the local school board, and, unless
95 good reason to the contrary exists, the board shall elect the
96 employees so recommended. If, for any reason, the local school
97 board shall decline to elect any employee so recommended,
98 additional recommendations for the places to be filled shall be
99 made by the principal to the superintendent and then by the
100 superintendent to the local school board as provided above. The
101 school board of any local school district shall be authorized to
102 designate a personnel supervisor or another principal employed by
103 the school district to recommend to the superintendent licensed
104 employees or noninstructional employees; however, this
105 authorization shall be restricted to no more than two (2)
106 positions for each employment period for each school in the local
107 school district. Any noninstructional employee employed upon the
108 recommendation of a personnel supervisor or another principal
109 employed by the local school district must have been employed by
110 the local school district at the time the superintendent was
111 elected or appointed to office; a noninstructional employee
112 employed under this authorization may not be paid compensation in
113 excess of the statewide average compensation for such
114 noninstructional position with comparable experience, as
115 established by the State Department of Education. The school
116 board of any local school district shall be authorized to
117 designate a personnel supervisor or another principal employed by
118 the school district to accept the recommendations of principals or



119 their designees for licensed employees or noninstructional
120 employees and to transmit approved recommendations to the local
121 school board; however, this authorization shall be restricted to
122 no more than two (2) positions for each employment period for each
123 school in the local school district.

124 When the licensed employees have been elected as provided in
125 the preceding paragraph, the superintendent of the district shall
126 enter into a contract with such persons in the manner provided in
127 this chapter.

128 If, at the commencement of the scholastic year, any licensed
129 employee shall present to the superintendent a license of a higher
130 grade than that specified in such individual's contract, such
131 individual may, if funds are available from adequate education
132 program funds of the district, or from district funds, be paid
133 from such funds the amount to which such higher grade license
134 would have entitled the individual, had the license been held at
135 the time the contract was executed.

136 (2) Superintendents/directors of schools under the purview
137 of the State Board of Education, the superintendent of the local
138 school district and any private firm under contract with the local
139 public school district to provide substitute teachers to teach
140 during the absence of a regularly employed schoolteacher shall
141 require, through the appropriate governmental authority, that
142 current criminal records background checks and current child abuse
143 registry checks are obtained, and that such criminal record



144 information and registry checks are on file for any new hires
145 applying for employment as a licensed or nonlicensed employee at a
146 school and not previously employed in such school under the
147 purview of the State Board of Education or at such local school
148 district prior to July 1, 2000. In order to determine the
149 applicant's suitability for employment, the applicant shall be
150 fingerprinted. If no disqualifying record is identified at the
151 state level, the fingerprints shall be forwarded by the Department
152 of Public Safety to the Federal Bureau of Investigation for a
153 national criminal history record check. The fee for such
154 fingerprinting and criminal history record check shall be paid by
155 the applicant, not to exceed Fifty Dollars (\$50.00); however, the
156 State Board of Education, the school board of the local school
157 district or a private firm under contract with a local school
158 district to provide substitute teachers to teach during the
159 temporary absence of the regularly employed schoolteacher, in its
160 discretion, may elect to pay the fee for the fingerprinting and
161 criminal history record check on behalf of any applicant. Under
162 no circumstances shall a member of the State Board of Education,
163 superintendent/director of schools under the purview of the State
164 Board of Education, local school district superintendent, local
165 school board member or any individual other than the subject of
166 the criminal history record checks disseminate information
167 received through any such checks except insofar as required to
168 fulfill the purposes of this section. Any nonpublic school which



169 is accredited or approved by the State Board of Education may
170 avail itself of the procedures provided for herein and shall be
171 responsible for the same fee charged in the case of local public
172 schools of this state. The determination whether the applicant
173 has a disqualifying crime, as set forth in subsection (3) of this
174 section, shall be made by the appropriate governmental authority,
175 and the appropriate governmental authority shall notify the
176 private firm whether a disqualifying crime exists.

177 (3) If such fingerprinting or criminal record checks
178 disclose a felony conviction, guilty plea or plea of nolo
179 contendere to a felony of possession or sale of drugs, murder,
180 manslaughter, armed robbery, rape, sexual battery, sex offense
181 listed in Section 45-33-23(h), child abuse, arson, grand larceny,
182 burglary, gratification of lust or aggravated assault which has
183 not been reversed on appeal or for which a pardon has not been
184 granted, the new hire shall not be eligible to be employed at such
185 school. Any employment contract for a new hire executed by the
186 superintendent of the local school district or any employment of a
187 new hire by a superintendent/director of a new school under the
188 purview of the State Board of Education or by a private firm shall
189 be voidable if the new hire receives a disqualifying criminal
190 record check. However, the State Board of Education or the school
191 board may, in its discretion, allow any applicant aggrieved by the
192 employment decision under this section to appear before the
193 respective board, or before a hearing officer designated for such



194 purpose, to show mitigating circumstances which may exist and
195 allow the new hire to be employed at the school. The State Board
196 of Education or local school board may grant waivers for such
197 mitigating circumstances, which shall include, but not be limited
198 to: (a) age at which the crime was committed; (b) circumstances
199 surrounding the crime; (c) length of time since the conviction and
200 criminal history since the conviction; (d) work history; (e)
201 current employment and character references; (f) other evidence
202 demonstrating the ability of the person to perform the employment
203 responsibilities competently and that the person does not pose a
204 threat to the health or safety of the children at the school.

205 (4) No local school district, local school district
206 employee, member of the State Board of Education or employee of a
207 school under the purview of the State Board of Education shall be
208 held liable in any employment discrimination suit in which an
209 allegation of discrimination is made regarding an employment
210 decision authorized under this Section 37-9-17.

211 **SECTION 4.** Section 37-13-89, Mississippi Code of 1972, is
212 brought forward as follows:

213 37-13-89. (1) In each school district within the state,
214 there shall be employed the number of school attendance officers
215 determined by the Office of Compulsory School Attendance
216 Enforcement to be necessary to adequately enforce the provisions
217 of the Mississippi Compulsory School Attendance Law; however, this
218 number shall not exceed one hundred fifty-three (153) school



219 attendance officers at any time. From and after July 1, 1998, all
220 school attendance officers employed pursuant to this section shall
221 be employees of the State Department of Education. The State
222 Department of Education shall employ all persons employed as
223 school attendance officers by district attorneys before July 1,
224 1998, and shall assign them to school attendance responsibilities
225 in the school district in which they were employed before July 1,
226 1998. The first twelve (12) months of employment for each school
227 attendance officer shall be the probationary period of state
228 service.

229 (2) (a) The State Department of Education shall obtain
230 current criminal records background checks and current child abuse
231 registry checks on all persons applying for the position of school
232 attendance officer after July 2, 2002. The criminal records
233 information and registry checks must be kept on file for any new
234 hires. In order to determine an applicant's suitability for
235 employment as a school attendance officer, the applicant must be
236 fingerprinted. If no disqualifying record is identified at the
237 state level, the Department of Public Safety shall forward the
238 fingerprints to the Federal Bureau of Investigation (FBI) for a
239 national criminal history record check. The applicant shall pay
240 the fee, not to exceed Fifty Dollars (\$50.00), for the
241 fingerprinting and criminal records background check; however, the
242 State Department of Education, in its discretion, may pay the fee
243 for the fingerprinting and criminal records background check on



244 behalf of any applicant. Under no circumstances may a member of
245 the State Board of Education, employee of the State Department of
246 Education or any person other than the subject of the criminal
247 records background check disseminate information received through
248 any such checks except insofar as required to fulfill the purposes
249 of this subsection.

250 (b) If the fingerprinting or criminal records check
251 discloses a felony conviction, guilty plea or plea of nolo
252 contendere to a felony of possession or sale of drugs, murder,
253 manslaughter, armed robbery, rape, sexual battery, sex offense
254 listed in Section 45-33-23(h), child abuse, arson, grand larceny,
255 burglary, gratification of lust or aggravated assault which has
256 not been reversed on appeal or for which a pardon has not been
257 granted, the applicant is not eligible to be employed as a school
258 attendance officer. Any employment of an applicant pending the
259 results of the fingerprinting and criminal records check is
260 voidable if the new hire receives a disqualifying criminal records
261 check. However, the State Board of Education, in its discretion,
262 may allow an applicant aggrieved by an employment decision under
263 this subsection to appear before the board, or before a hearing
264 officer designated for that purpose, to show mitigating
265 circumstances that may exist and allow the new hire to be employed
266 as a school attendance officer. The State Board of Education may
267 grant waivers for mitigating circumstances, which may include, but
268 are not necessarily limited to: (i) age at which the crime was



269 committed; (ii) circumstances surrounding the crime; (iii) length
270 of time since the conviction and criminal history since the
271 conviction; (iv) work history; (v) current employment and
272 character references; and (vi) other evidence demonstrating the
273 ability of the person to perform the responsibilities of a school
274 attendance officer competently and that the person does not pose a
275 threat to the health or safety of children.

276 (c) A member of the State Board of Education or
277 employee of the State Department of Education may not be held
278 liable in any employment discrimination suit in which an
279 allegation of discrimination is made regarding an employment
280 decision authorized under this section.

281 (3) Each school attendance officer shall possess a college
282 degree with a major in a behavioral science or a related field or
283 shall have no less than three (3) years combined actual experience
284 as a school teacher, school administrator, law enforcement officer
285 possessing such degree, and/or social worker; however, these
286 requirements shall not apply to persons employed as school
287 attendance officers before January 1, 1987. School attendance
288 officers also shall satisfy any additional requirements that may
289 be established by the State Personnel Board for the position of
290 school attendance officer.

291 (4) It shall be the duty of each school attendance officer
292 to:



293 (a) Cooperate with any public agency to locate and
294 identify all compulsory-school-age children who are not attending
295 school;

296 (b) Cooperate with all courts of competent
297 jurisdiction;

298 (c) Investigate all cases of nonattendance and unlawful
299 absences by compulsory-school-age children not enrolled in a
300 nonpublic school;

301 (d) Provide appropriate counseling to encourage all
302 school-age children to attend school until they have completed
303 high school;

304 (e) Attempt to secure the provision of social or
305 welfare services that may be required to enable any child to
306 attend school;

307 (f) Contact the home or place of residence of a
308 compulsory-school-age child and any other place in which the
309 officer is likely to find any compulsory-school-age child when the
310 child is absent from school during school hours without a valid
311 written excuse from school officials, and when the child is found,
312 the officer shall notify the parents and school officials as to
313 where the child was physically located;

314 (g) Contact promptly the home of each
315 compulsory-school-age child in the school district within the
316 officer's jurisdiction who is not enrolled in school or is not in
317 attendance at public school and is without a valid written excuse



318 from school officials; if no valid reason is found for the
319 nonenrollment or absence from the school, the school attendance
320 officer shall give written notice to the parent, guardian or
321 custodian of the requirement for the child's enrollment or
322 attendance;

323 (h) Collect and maintain information concerning
324 absenteeism, dropouts and other attendance-related problems, as
325 may be required by law or the Office of Compulsory School
326 Attendance Enforcement; and

327 (i) Perform all other duties relating to compulsory
328 school attendance established by the State Department of Education
329 or district school attendance supervisor, or both.

330 (5) While engaged in the performance of his duties, each
331 school attendance officer shall carry on his person a badge
332 identifying him as a school attendance officer under the Office of
333 Compulsory School Attendance Enforcement of the State Department
334 of Education and an identification card designed by the State
335 Superintendent of Public Education and issued by the school
336 attendance officer supervisor. Neither the badge nor the
337 identification card shall bear the name of any elected public
338 official.

339 (6) The State Personnel Board shall develop a salary scale
340 for school attendance officers as part of the variable
341 compensation plan. The various pay ranges of the salary scale
342 shall be based upon factors including, but not limited to,



343 education, professional certification and licensure, and number of
344 years of experience. School attendance officers shall be paid in
345 accordance with this salary scale. The minimum salaries under the
346 scale shall be no less than the following:

347 (a) For school attendance officers holding a bachelor's
348 degree or any other attendance officer who does not hold such a
349 degree, the annual salary shall be based on years of experience as
350 a school attendance officer or related field of service or
351 employment, no less than as follows:

352	Years of Experience	Salary
353	0 - 4 years	\$19,650.00
354	5 - 8 years	21,550.00
355	9 - 12 years	23,070.00
356	13 - 16 years	24,590.00
357	Over 17 years	26,110.00

358 (b) For school attendance officers holding a license as
359 a social worker, the annual salary shall be based on years of
360 experience as a school attendance officer or related field of
361 service or employment, no less than as follows:

362	Years of Experience	Salary
363	0 - 4 years	\$20,650.00
364	5 - 8 years	22,950.00
365	9 - 12 years	24,790.00
366	13 - 16 years	26,630.00
367	17 - 20 years	28,470.00



368 Over 21 years 30,310.00

369 (c) For school attendance officers holding a master's
370 degree in a behavioral science or a related field, the annual
371 salary shall be based on years of experience as a school
372 attendance officer or related field of service or employment, no
373 less than as follows:

374	Years of Experience	Salary
375	0 - 4 years	\$21,450.00
376	5 - 8 years	24,000.00
377	9 - 12 years	26,040.00
378	13 - 16 years	28,080.00
379	17 - 20 years	30,120.00
380	Over 21 years	32,160.00

381 (7) (a) Each school attendance officer employed by a
382 district attorney on June 30, 1998, who became an employee of the
383 State Department of Education on July 1, 1998, shall be awarded
384 credit for personal leave and major medical leave for his
385 continuous service as a school attendance officer under the
386 district attorney, and if applicable, the youth or family court or
387 a state agency. The credit for personal leave shall be in an
388 amount equal to one-third (1/3) of the maximum personal leave the
389 school attendance officer could have accumulated had he been
390 credited with such leave under Section 25-3-93 during his
391 employment with the district attorney, and if applicable, the
392 youth or family court or a state agency. The credit for major



393 medical leave shall be in an amount equal to one-half (1/2) of the
394 maximum major medical leave the school attendance officer could
395 have accumulated had he been credited with such leave under
396 Section 25-3-95 during his employment with the district attorney,
397 and if applicable, the youth or family court or a state agency.
398 However, if a district attorney who employed a school attendance
399 officer on June 30, 1998, certifies, in writing, to the State
400 Department of Education that the school attendance officer had
401 accumulated, pursuant to a personal leave policy or major medical
402 leave policy lawfully adopted by the district attorney, a number
403 of days of unused personal leave or major medical leave, or both,
404 which is greater than the number of days to which the school
405 attendance officer is entitled under this paragraph, the State
406 Department of Education shall authorize the school attendance
407 officer to retain the actual unused personal leave or major
408 medical leave, or both, certified by the district attorney,
409 subject to the maximum amount of personal leave and major medical
410 leave the school attendance officer could have accumulated had he
411 been credited with such leave under Sections 25-3-93 and 25-3-95.

412 (b) For the purpose of determining the accrual rate for
413 personal leave under Section 25-3-93 and major medical leave under
414 Section 25-3-95, the State Department of Education shall give
415 consideration to all continuous service rendered by a school
416 attendance officer before July 1, 1998, in addition to the service



417 rendered by the school attendance officer as an employee of the
418 department.

419 (c) In order for a school attendance officer to be
420 awarded credit for personal leave and major medical leave or to
421 retain the actual unused personal leave and major medical leave
422 accumulated by him before July 1, 1998, the district attorney who
423 employed the school attendance officer must certify, in writing,
424 to the State Department of Education the hire date of the school
425 attendance officer. For each school attendance officer employed
426 by the youth or family court or a state agency before being
427 designated an employee of the district attorney who has not had a
428 break in continuous service, the hire date shall be the date that
429 the school attendance officer was hired by the youth or family
430 court or state agency. The department shall prescribe the date by
431 which the certification must be received by the department and
432 shall provide written notice to all district attorneys of the
433 certification requirement and the date by which the certification
434 must be received.

435 (8) (a) School attendance officers shall maintain regular
436 office hours on a year-round basis; however, during the school
437 term, on those days that teachers in all of the school districts
438 served by a school attendance officer are not required to report
439 to work, the school attendance officer also shall not be required
440 to report to work. (For purposes of this subsection, a school
441 district's school term is that period of time identified as the



442 school term in contracts entered into by the district with
443 licensed personnel.) A school attendance officer shall be
444 required to report to work on any day recognized as an official
445 state holiday if teachers in any school district served by that
446 school attendance officer are required to report to work on that
447 day, regardless of the school attendance officer's status as an
448 employee of the State Department of Education, and compensatory
449 leave may not be awarded to the school attendance officer for
450 working during that day. However, a school attendance officer may
451 be allowed by the school attendance officer's supervisor to use
452 earned leave on such days.

453 (b) The State Department of Education annually shall
454 designate a period of six (6) consecutive weeks in the summer
455 between school years during which school attendance officers shall
456 not be required to report to work. A school attendance officer
457 who elects to work at any time during that period may not be
458 awarded compensatory leave for such work and may not opt to be
459 absent from work at any time other than during the six (6) weeks
460 designated by the department unless the school attendance officer
461 uses personal leave or major medical leave accrued under Section
462 25-3-93 or 25-3-95 for such absence.

463 (9) The State Department of Education shall provide all
464 continuing education and training courses that school attendance
465 officers are required to complete under state law or rules and
466 regulations of the department.



467 **SECTION 5.** Section 37-28-49, Mississippi Code of 1972, is
468 brought forward as follows:

469 37-28-49. (1) Charter school teachers and other school
470 personnel, as well as members of the governing board and any
471 education service provider with whom a charter school contracts,
472 are subject to criminal history record checks and fingerprinting
473 requirements applicable to employees of other public schools. The
474 authorizer shall require that current criminal records background
475 checks and current child abuse registry checks are obtained, and
476 that the criminal record information and registry checks are on
477 file at the charter school for any new hires applying for
478 employment. In order to determine an applicant's suitability for
479 employment, the applicant must be fingerprinted. If no
480 disqualifying record is identified at the state level, the
481 fingerprints must be forwarded by the Department of Public Safety
482 to the Federal Bureau of Investigation for a national criminal
483 history record check. Under no circumstances may a member of the
484 Mississippi Charter School Authorizer Board, member of the charter
485 school governing board or any individual other than the subject of
486 the criminal history record checks disseminate information
487 received through the checks except as may be required to fulfill
488 the purposes of this section. The determination whether the
489 applicant has a disqualifying crime, as set forth in subsection
490 (2) of this section, must be made by the appropriate state or



491 federal governmental authority, which must notify the charter
492 school whether a disqualifying crime exists.

493 (2) If the fingerprinting or criminal record checks disclose
494 a felony conviction, guilty plea or plea of nolo contendere to a
495 felony of possession or sale of drugs, murder, manslaughter, armed
496 robbery, rape, sexual battery, sex offense listed in Section
497 45-33-23(g), child abuse, arson, grand larceny, burglary,
498 gratification of lust or aggravated assault which has not been
499 reversed on appeal or for which a pardon has not been granted, the
500 new hire is not eligible to be employed at the charter school.
501 However, the charter school, in its discretion, may allow any
502 applicant aggrieved by the employment decision under this section
503 to show mitigating circumstances that exist and may allow, subject
504 to the approval of the Mississippi Charter School Authorizer
505 Board, the new hire to be employed at the school. The authorizer
506 may approve the employment depending on the mitigating
507 circumstances, which may include, but need not be limited to: (a)
508 age at which the crime was committed; (b) circumstances
509 surrounding the crime; (c) length of time since the conviction and
510 criminal history since the conviction; (d) work history; (e)
511 current employment and character references; and (f) other
512 evidence demonstrating the ability of the person to perform the
513 employment responsibilities competently and that the person does
514 not pose a threat to the health or safety of children.



515 (3) No charter school, charter school employee, member of
516 the charter school governing board, the Mississippi Charter School
517 Authorizer Board or member or employee of the Mississippi Charter
518 School Authorizer Board employee may be held liable in any
519 employment discrimination suit in which an allegation of
520 discrimination is made regarding an employment decision authorized
521 under this section.

522 (4) A charter school shall terminate any teacher or
523 administrator for committing one or more of the following acts:

524 (a) Engaging in unethical conduct relating to an
525 educator-student relationship as identified by the Mississippi
526 Charter School Authorizer Board;

527 (b) Fondling a student as described in Section 97-5-23
528 or engaging in any type of sexual involvement with a student as
529 described in Section 97-3-95; or

530 (c) Failure to report sexual involvement of a charter
531 school employee with a student as required by Section 97-5-24.

532 **SECTION 6.** Section 37-33-157, Mississippi Code of 1972, is
533 brought forward as follows:

534 37-33-157. The Department of Rehabilitation Services shall
535 provide the rehabilitation services authorized by law and by the
536 rules, regulations and policies of the board to every individual
537 determined to be eligible therefor, and in carrying out the
538 purposes of this chapter the department is authorized, when



539 consistent with the rules, regulations and policies of the State
540 Board of Rehabilitation Services:

541 (a) To expend funds received either by appropriation or
542 directly from federal or private sources.

543 (b) To cooperate with other departments, agencies and
544 institutions, both public and private, in providing the services
545 authorized by this chapter to disabled individuals, in studying
546 the problems involved therein, and in establishing, developing and
547 providing in conformity with the purposes of this chapter, such
548 programs, facilities and services as may be necessary or
549 desirable.

550 (c) To enter into reciprocal agreements with other
551 states to provide for the services authorized by this chapter to
552 residents of the states concerned.

553 (d) To conduct research and compile statistics relating
554 to the provision of services to or the need of services by
555 disabled individuals.

556 (e) To enter into contractual arrangements with the
557 federal government and with other authorized public agencies or
558 persons for performance of services related to rehabilitation.

559 (f) To contract with schools, hospitals and other
560 agencies, and with doctors, optometrists, nurses, technicians and
561 other persons, for training, physical restoration, transportation
562 and other rehabilitation services.



563 (g) To take such action as may be necessary to enable
564 the department to apply for, accept and receive for the state and
565 its residents the full benefits available under the federal
566 Vocational Rehabilitation Act, and any amendments thereto, and
567 under any other federal legislation or program having as its
568 purpose the providing of, improvement or extension of, vocational
569 rehabilitation services.

570 (h) To establish an Office on the Deaf and Hard of
571 Hearing to provide services and activities authorized under
572 Section 37-33-171.

573 (i) To own in the name of the State of Mississippi
574 certain real property described in Section 7 of Chapter 512, Laws
575 of 2005, and to construct, renovate or repair under the
576 supervision of the Department of Finance and Administration any
577 buildings on such property.

578 (j) To borrow money from the Mississippi Development
579 Bank or other financial institution for the purpose of
580 construction, repair and renovation, furnishing or equipping
581 facilities owned or under the supervision of the department;
582 however, the department shall certify the following to the
583 Mississippi Development Bank or other financial institution prior
584 to entering into any loan:

585 (i) The available revenue that the department
586 intends to utilize to repay the loan; and



587 (ii) That the department does not intend to
588 request an additional appropriation from state source funding to
589 pay debt service on any loan entered into under this paragraph.

590 (k) To fingerprint and perform a current criminal
591 history record check, child abuse registry check, sex offender
592 registry check, and vulnerable adult abuse or neglect check on any
593 person performing services for or on behalf of the department
594 including, but not limited to, every employee, volunteer,
595 contractual worker, and independent contractor.

596 (l) To use the results of the fingerprinting and
597 background checks performed under paragraph (k) for the purposes
598 of employment decisions and/or actions and service provision to
599 consumers of the department's services. The department and its
600 agents, officers, employees, attorneys and representatives shall
601 be exempt from liability for any findings, recommendations or
602 actions taken under this paragraph.

603 **SECTION 7.** Section 37-115-41, Mississippi Code of 1972, is
604 brought forward as follows:

605 37-115-41. (1) For the purposes of this section:

606 (a) "Applicant" means any person who is applying to
607 become an employee of UMMC.

608 (b) "Employee" means an employee, contractor, temporary
609 worker or consultant.

610 (c) "UMMC" means the University of Mississippi Medical
611 Center.



612 (2) The University of Mississippi Medical Center shall
613 fingerprint and perform a criminal history record check on all new
614 employees that work in or provide direct patient care. In
615 addition, UMMC shall perform a disciplinary check with the
616 professional licensing agency of the employee, if any, to
617 determine if any disciplinary action has been taken against the
618 employee by that agency. Except as otherwise provided in this
619 section, no employee of UMMC hired on or after July 1, 2004, shall
620 be permitted to provide direct patient care until the results of
621 the criminal history record check have revealed no disqualifying
622 record or the employee has been granted a waiver. In order to
623 determine the applicant's suitability for employment, the
624 applicant shall be fingerprinted. Fingerprints shall be submitted
625 to the Department of Public Safety by UMMC via scanning or other
626 electronic method, with the results processed through the
627 Department of Public Safety's Criminal Information Center. If no
628 disqualifying record is identified at the state level, the
629 applicant's fingerprints shall be forwarded by the Department of
630 Public Safety to the Federal Bureau of Investigation for a
631 national criminal history record check. If the criminal history
632 record check discloses a felony conviction, guilty plea or plea of
633 nolo contendere to a felony of possession or sale of drugs,
634 murder, manslaughter, armed robbery, rape, sexual battery, sex
635 offense listed in Section 45-33-23(h), child abuse, arson, grand
636 larceny, burglary, gratification of lust or aggravated assault, or



637 felonious abuse and/or battery of a vulnerable adult that has not
638 been reversed on appeal or for which a pardon has not been
639 granted, the applicant shall not be eligible to be employed at
640 UMMC.

641 (3) Notwithstanding the provisions of subsection (2) of this
642 section, any such applicant may be employed on a temporary basis
643 pending the results of the criminal history record check. Any
644 employment contract with an applicant during the application
645 process shall be voidable upon receipt of a disqualifying criminal
646 history record check if no waiver is granted under subsection (4)
647 of this section.

648 (4) UMMC may, in its discretion, allow any applicant
649 aggrieved by an employment decision under this section to appear
650 before the UMMC hiring officer, or his or her designee, to show
651 mitigating circumstances that may exist and allow the applicant to
652 be employed at UMMC. UMMC, upon report and recommendation of the
653 hiring officer, may grant waivers for those mitigating
654 circumstances, which shall include, but not be limited to: (a)
655 age at which the crime was committed; (b) circumstances
656 surrounding the crime; (c) length of time since the conviction and
657 criminal history since the conviction; (d) work history; (e)
658 current employment and character references; and (f) other
659 evidence demonstrating the ability of the individual to perform
660 the employment responsibilities competently and that the



661 individual does not pose a threat to the health or safety of the
662 patients admitted to UMMC.

663 (5) Upon the receipt of an applicant's criminal history
664 record check that reveals no disqualifying event, UMMC shall,
665 within two (2) weeks of the notification of no disqualifying
666 event, provide the applicant with a notarized letter signed by the
667 vice chancellor, or his or her authorized designee, confirming the
668 applicant's suitability for employment based on his or her
669 criminal history record check. An applicant or employee may use
670 that letter for a period of two (2) years from the date of the
671 letter to seek employment at any covered entity, as defined in
672 Section 43-11-13(5), without the necessity of an additional
673 criminal history record check under Section 43-11-13(5). Any
674 covered entity presented with the letter may rely on the letter
675 for a period of two (2) years from the date of the letter without
676 having to conduct or have conducted a criminal history record
677 check on the applicant or employee.

678 (6) UMMC may charge a fee not to exceed Fifty Dollars
679 (\$50.00) for fingerprinting applicants, students, employees,
680 contractors, consultants, outside agency personnel, visiting
681 faculty, researchers or any other individual(s) that may provide
682 direct services to UMMC.

683 (7) UMMC and its agents, officers, employees, attorneys and
684 representatives shall be presumed to be acting in good faith for
685 any employment decision or action taken under this section. The



686 presumption of good faith may be overcome by a preponderance of
687 the evidence in any civil action. UMMC or its agents, officers,
688 employees, attorneys and representatives shall not be held liable
689 in any employment decision or action based in whole or in part on
690 compliance with or attempts to comply in good faith with the
691 requirements of this section.

692 **SECTION 8.** Section 37-173-23, Mississippi Code of 1972, is
693 brought forward as follows:

694 37-173-23. Teachers and other school personnel shall be
695 subject to criminal history record checks and fingerprinting
696 requirements applicable to other public schools under Section
697 37-9-17(2) and (3).

698 **SECTION 9.** Section 37-175-23, Mississippi Code of 1972, is
699 brought forward as follows:

700 37-175-23. Teachers and other school personnel shall be
701 subject to criminal history record checks and fingerprinting
702 requirements applicable to other public schools under Section
703 37-9-17(2) and (3).

704 **SECTION 10.** Section 41-4-7, Mississippi Code of 1972, is
705 brought forward as follows:

706 41-4-7. The State Board of Mental Health shall have the
707 following powers and duties:

708 (a) To appoint a full-time Executive Director of the
709 Department of Mental Health, who shall be employed by the board
710 and shall serve as executive secretary to the board. The first



711 director shall be a duly licensed physician with special interest
712 and competence in psychiatry, and shall possess a minimum of three
713 (3) years' experience in clinical and administrative psychiatry.
714 Subsequent directors shall possess at least a master's degree or
715 its equivalent, and shall possess at least ten (10) years'
716 administrative experience in the field of mental health. The
717 salary of the executive director shall be determined by the board;

718 (b) To appoint a Medical Director for the Department of
719 Mental Health. The medical director shall provide clinical
720 oversight in the implementation of evidence-based and best
721 practices; provide clinical leadership in the integration of
722 mental health, intellectual disability and addiction services with
723 community partners in the public and private sectors; and provide
724 oversight regarding standards of care. The medical director shall
725 serve at the will and pleasure of the board, and will undergo an
726 annual review of job performance and future service to the
727 department;

728 (c) To cooperate with the Strategic Planning and Best
729 Practices Committee created in Section 41-4-10, Mississippi Code
730 of 1972, in establishing and implementing its state strategic
731 plan;

732 (d) To develop a strategic plan for the development of
733 services for persons with mental illness, persons with
734 developmental disabilities and other clients of the public mental
735 health system. Such strategic planning program shall require that



736 the board, acting through the Strategic Planning and Best
737 Practices Committee, perform the following functions respecting
738 the delivery of services:

739 (i) Establish measures for determining the
740 efficiency and effectiveness of the services specified in Section
741 41-4-1(2);

742 (ii) Conducting studies of community-based care in
743 other jurisdictions to determine which services offered in these
744 jurisdictions have the potential to provide the citizens of
745 Mississippi with more effective and efficient community-based
746 care;

747 (iii) Evaluating the efficiency and effectiveness
748 of the services specified in Section 41-4-1(2);

749 (iv) Recommending to the Legislature by January 1,
750 2014, any necessary additions, deletions or other changes
751 necessary to the services specified in Section 41-4-1(2);

752 (v) Implementing by July 1, 2012, a system of
753 performance measures for the services specified in Section
754 41-4-1(2);

755 (vi) Recommending to the Legislature any changes
756 that the department believes are necessary to the current laws
757 addressing civil commitment;

758 (vii) Conducting any other activities necessary to
759 the evaluation and study of the services specified in Section
760 41-4-1(2);



761 (viii) Assisting in conducting all necessary
762 strategic planning for the delivery of all other services of the
763 department. Such planning shall be conducted so as to produce a
764 single strategic plan for the services delivered by the public
765 mental health system and shall establish appropriate mission
766 statements, goals, objectives and performance indicators for all
767 programs and services of the public mental health system. For
768 services other than those specified in Section 41-4-1(2), the
769 committee shall recommend to the State Board of Mental Health a
770 strategic plan that the board may adopt or modify;

771 (e) To set up state plans for the purpose of
772 controlling and treating any and all forms of mental and emotional
773 illness, alcoholism, drug misuse and developmental disabilities;

774 (f) To supervise, coordinate and establish standards
775 for all operations and activities of the state related to mental
776 health and providing mental health services. Nothing in this
777 chapter shall preclude the services of a psychiatric/mental health
778 nurse practitioner in accordance with an established nurse
779 practitioner/physician protocol. A physician, licensed
780 psychologist, psychiatric/mental health nurse practitioner in
781 accordance with an established nurse practitioner/physician
782 protocol, physician assistant, licensed professional counselor,
783 licensed marriage and family therapists, or licensed clinical
784 social worker shall certify each client's record annually after
785 seeing the client in person or by telemedicine, and more often if



786 medically indicated by physically visiting the client and
787 certifying same in the record. The board shall have the authority
788 to develop and implement all standards and plans and shall have
789 the authority to establish appropriate actions, including
790 financially punitive actions, to ensure enforcement of these
791 established standards, in accordance with the Administrative
792 Procedures Law (Section 25-43-1.101 et seq.). The regional
793 community mental health/intellectual disability centers shall
794 comply with all of the board's established standards that are
795 applicable to those centers, and the board may withhold any state
796 funds that otherwise would be allocated or paid to any of those
797 centers that does not comply with the board's established
798 standards. This paragraph (f) shall stand repealed on July 1,
799 2017;

800 (g) To enter into contracts with any other state or
801 federal agency, or with any private person, organization or group
802 capable of contracting, if it finds such action to be in the
803 public interest;

804 (h) To collect reasonable fees for its services;
805 however, if it is determined that a person receiving services is
806 unable to pay the total fee, the department shall collect any
807 amount such person is able to pay;

808 (i) To certify, coordinate and establish minimum
809 standards and establish minimum required services, as specified in
810 Section 41-4-1(2), for regional mental health and intellectual



811 disability commissions and other community service providers for
812 community or regional programs and services in adult mental
813 health, children and youth mental health, intellectual
814 disabilities, alcoholism, drug misuse, developmental disabilities,
815 compulsive gambling, addictive disorders and related programs
816 throughout the state. Such regional mental health and
817 intellectual disability commissions and other community service
818 providers shall, on or before July 1 of each year, submit an
819 annual operational plan to the State Department of Mental Health
820 for approval or disapproval based on the minimum standards and
821 minimum required services established by the department for
822 certification and itemize the services specified in Section
823 41-4-1(2). As part of the annual operation plan required by this
824 paragraph (i) submitted by any regional community mental health
825 center or by any other reasonable certification deemed acceptable
826 by the department, the community mental health center shall state
827 those services specified in Section 41-4-1(2) that it will provide
828 and also those services that it will not provide. If the
829 department finds deficiencies in the plan of any regional
830 commission or community service provider based on the minimum
831 standards and minimum required services established for
832 certification, the department shall give the regional commission
833 or community service provider a six-month probationary period to
834 bring its standards and services up to the established minimum
835 standards and minimum required services. After the six-month



836 probationary period, if the department determines that the
837 regional commission or community service provider still does not
838 meet the minimum standards and minimum required services
839 established for certification, the department may remove the
840 certification of the commission or provider and from and after
841 July 1, 2011, the commission or provider shall be ineligible for
842 state funds from Medicaid reimbursement or other funding sources
843 for those services. However, the department shall not mandate a
844 standard or service, or decertify a regional commission or
845 community service provider for not meeting a standard or service,
846 if the standard or service does not have funding appropriated by
847 the Legislature or have a state, federal or local funding source
848 identified by the department. No county shall be required to levy
849 millage to provide a mandated standard or service above the
850 minimum rate required by Section 41-19-39. After the six-month
851 probationary period, the department may identify an appropriate
852 community service provider to provide any core services in that
853 county that are not provided by a community mental health center.
854 However, the department shall not offer reimbursement or other
855 accommodations to a community service provider of core services
856 that were not offered to the decertified community mental health
857 center for the same or similar services. The State Board of
858 Mental Health shall promulgate rules and regulations necessary to
859 implement the provisions of this paragraph (i), in accordance with
860 the Administrative Procedures Law (Section 25-43-1.101 et seq.);



861 (j) To establish and promulgate reasonable minimum
862 standards for the construction and operation of state and all
863 Department of Mental Health certified facilities, including
864 reasonable minimum standards for the admission, diagnosis, care,
865 treatment, transfer of patients and their records, and also
866 including reasonable minimum standards for providing day care,
867 outpatient care, emergency care, inpatient care and follow-up
868 care, when such care is provided for persons with mental or
869 emotional illness, an intellectual disability, alcoholism, drug
870 misuse and developmental disabilities;

871 (k) To implement best practices for all services
872 specified in Section 41-4-1(2), and to establish and implement all
873 other services delivered by the Department of Mental Health. To
874 carry out this responsibility, the board shall require the
875 department to establish a division responsible for developing best
876 practices based on a comprehensive analysis of the mental health
877 environment to determine what the best practices for each service
878 are. In developing best practices, the board shall consider the
879 cost and benefits associated with each practice with a goal of
880 implementing only those practices that are cost-effective
881 practices for service delivery. Such best practices shall be
882 utilized by the board in establishing performance standards and
883 evaluations of the community mental health centers' services
884 required by paragraph (d) of this section;



885 (1) To assist community or regional programs consistent
886 with the purposes of this chapter by making grants and contracts
887 from available funds;

888 (m) To establish and collect reasonable fees for
889 necessary inspection services incidental to certification or
890 compliance;

891 (n) To accept gifts, trusts, bequests, grants,
892 endowments or transfers of property of any kind;

893 (o) To receive monies coming to it by way of fees for
894 services or by appropriations;

895 (p) To serve as the single state agency in receiving
896 and administering any and all funds available from any source for
897 the purpose of service delivery, training, research and education
898 in regard to all forms of mental illness, intellectual
899 disabilities, alcoholism, drug misuse and developmental
900 disabilities, unless such funds are specifically designated to a
901 particular agency or institution by the federal government, the
902 Mississippi Legislature or any other grantor;

903 (q) To establish mental health holding centers for the
904 purpose of providing short-term emergency mental health treatment,
905 places for holding persons awaiting commitment proceedings or
906 awaiting placement in a state mental health facility following
907 commitment, and for diverting placement in a state mental health
908 facility. These mental health holding facilities shall be readily
909 accessible, available statewide, and be in compliance with



910 emergency services' minimum standards. They shall be
911 comprehensive and available to triage and make appropriate
912 clinical disposition, including the capability to access inpatient
913 services or less restrictive alternatives, as needed, as
914 determined by medical staff. Such facility shall have medical,
915 nursing and behavioral services available on a
916 twenty-four-hour-a-day basis. The board may provide for all or
917 part of the costs of establishing and operating the holding
918 centers in each district from such funds as may be appropriated to
919 the board for such use, and may participate in any plan or
920 agreement with any public or private entity under which the entity
921 will provide all or part of the costs of establishing and
922 operating a holding center in any district;

923 (r) To certify/license case managers, mental health
924 therapists, intellectual disability therapists, mental
925 health/intellectual disability program administrators, addiction
926 counselors and others as deemed appropriate by the board. Persons
927 already professionally licensed by another state board or agency
928 are not required to be certified/licensed under this section by
929 the Department of Mental Health. The department shall not use
930 professional titles in its certification/licensure process for
931 which there is an independent licensing procedure. Such
932 certification/licensure shall be valid only in the state mental
933 health system, in programs funded and/or certified by the
934 Department of Mental Health, and/or in programs certified/licensed



935 by the State Department of Health that are operated by the state
936 mental health system serving persons with mental illness, an
937 intellectual disability, a developmental disability or addictions,
938 and shall not be transferable;

939 (s) To develop formal mental health worker
940 qualifications for regional mental health and intellectual
941 disability commissions and other community service providers. The
942 State Personnel Board shall develop and promulgate a recommended
943 salary scale and career ladder for all regional mental
944 health/intellectual disability center therapists and case managers
945 who work directly with clients. The State Personnel Board shall
946 also develop and promulgate a career ladder for all direct care
947 workers employed by the State Department of Mental Health;

948 (t) The employees of the department shall be governed
949 by personnel merit system rules and regulations, the same as other
950 employees in state services;

951 (u) To establish such rules and regulations as may be
952 necessary in carrying out the provisions of this chapter,
953 including the establishment of a formal grievance procedure to
954 investigate and attempt to resolve consumer complaints;

955 (v) To grant easements for roads, utilities and any
956 other purpose it finds to be in the public interest;

957 (w) To survey statutory designations, building markers
958 and the names given to mental health/intellectual disability
959 facilities and proceedings in order to recommend deletion of



960 obsolete and offensive terminology relative to the mental
961 health/intellectual disability system. Based upon a
962 recommendation of the executive director, the board shall have the
963 authority to name/rename any facility operated under the auspices
964 of the Department of Mental Health for the sole purpose of
965 deleting such terminology;

966 (x) To ensure an effective case management system
967 directed at persons who have been discharged from state and
968 private psychiatric hospitals to ensure their continued well-being
969 in the community;

970 (y) To develop formal service delivery standards
971 designed to measure the quality of services delivered to community
972 clients, as well as the timeliness of services to community
973 clients provided by regional mental health/intellectual disability
974 commissions and other community services providers;

975 (z) To establish regional state offices to provide
976 mental health crisis intervention centers and services available
977 throughout the state to be utilized on a case-by-case emergency
978 basis. The regional services director, other staff and delivery
979 systems shall meet the minimum standards of the Department of
980 Mental Health;

981 (aa) To require performance contracts with community
982 mental health/intellectual disability service providers to contain
983 performance indicators to measure successful outcomes, including
984 diversion of persons from inpatient psychiatric hospitals,



985 rapid/timely response to emergency cases, client satisfaction with
986 services and other relevant performance measures;

987 (bb) To enter into interagency agreements with other
988 state agencies, school districts and other local entities as
989 determined necessary by the department to ensure that local mental
990 health service entities are fulfilling their responsibilities to
991 the overall state plan for behavioral services;

992 (cc) To establish and maintain a toll-free grievance
993 reporting telephone system for the receipt and referral for
994 investigation of all complaints by clients of state and community
995 mental health/intellectual disability facilities;

996 (dd) To establish a peer review/quality assurance
997 evaluation system that assures that appropriate assessment,
998 diagnosis and treatment is provided according to established
999 professional criteria and guidelines;

1000 (ee) To develop and implement state plans for the
1001 purpose of assisting with the care and treatment of persons with
1002 Alzheimer's disease and other dementia. This plan shall include
1003 education and training of service providers, caregivers in the
1004 home setting and others who deal with persons with Alzheimer's
1005 disease and other dementia, and development of adult day care,
1006 family respite care and counseling programs to assist families who
1007 maintain persons with Alzheimer's disease and other dementia in
1008 the home setting. No agency shall be required to provide any
1009 services under this section until such time as sufficient funds



1010 have been appropriated or otherwise made available by the
1011 Legislature specifically for the purposes of the treatment of
1012 persons with Alzheimer's and other dementia;

1013 (ff) Working with the advice and consent of the
1014 administration of Ellisville State School, to enter into
1015 negotiations with the Economic Development Authority of Jones
1016 County for the purpose of negotiating the possible exchange, lease
1017 or sale of lands owned by Ellisville State School to the Economic
1018 Development Authority of Jones County. It is the intent of the
1019 Mississippi Legislature that such negotiations shall ensure that
1020 the financial interest of the persons with an intellectual
1021 disability served by Ellisville State School will be held
1022 paramount in the course of these negotiations. The Legislature
1023 also recognizes the importance of economic development to the
1024 citizens of the State of Mississippi and Jones County, and
1025 encourages fairness to the Economic Development Authority of Jones
1026 County. Any negotiations proposed which would result in the
1027 recommendation for exchange, lease or sale of lands owned by
1028 Ellisville State School must have the approval of the State Board
1029 of Mental Health. The State Board of Mental Health may and has
1030 the final authority as to whether or not these negotiations result
1031 in the exchange, lease or sale of the properties it currently
1032 holds in trust for persons with an intellectual disability served
1033 at Ellisville State School.



1034 If the State Board of Mental Health authorizes the sale of
1035 lands owned by Ellisville State School, as provided for under this
1036 paragraph (ff), the monies derived from the sale shall be placed
1037 into a special fund that is created in the State Treasury to be
1038 known as the "Ellisville State School Client's Trust Fund." The
1039 principal of the trust fund shall remain inviolate and shall never
1040 be expended. Any interest earned on the principal may be expended
1041 solely for the benefits of clients served at Ellisville State
1042 School. The State Treasurer shall invest the monies of the trust
1043 fund in any of the investments authorized for the Mississippi
1044 Prepaid Affordable College Tuition Program under Section 37-155-9,
1045 and those investments shall be subject to the limitations
1046 prescribed by Section 37-155-9. Unexpended amounts remaining in
1047 the trust fund at the end of a fiscal year shall not lapse into
1048 the State General Fund, and any interest earned on amounts in the
1049 trust fund shall be deposited to the credit of the trust fund.
1050 The administration of Ellisville State School may use any interest
1051 earned on the principal of the trust fund, upon appropriation by
1052 the Legislature, as needed for services or facilities by the
1053 clients of Ellisville State School. Ellisville State School shall
1054 make known to the Legislature, through the Legislative Budget
1055 Committee and the respective Appropriations Committees of the
1056 House and Senate, its proposed use of interest earned on the
1057 principal of the trust fund for any fiscal year in which it
1058 proposes to make expenditures thereof. The State Treasurer shall



1059 provide Ellisville State School with an annual report on the
1060 Ellisville State School Client's Trust Fund to indicate the total
1061 monies in the trust fund, interest earned during the year,
1062 expenses paid from the trust fund and such other related
1063 information.

1064 Nothing in this section shall be construed as applying to or
1065 affecting mental health/intellectual disability services provided
1066 by hospitals as defined in Section 41-9-3(a), and/or their
1067 subsidiaries and divisions, which hospitals, subsidiaries and
1068 divisions are licensed and regulated by the Mississippi State
1069 Department of Health unless such hospitals, subsidiaries or
1070 divisions voluntarily request certification by the Mississippi
1071 State Department of Mental Health.

1072 All new programs authorized under this section shall be
1073 subject to the availability of funds appropriated therefor by the
1074 Legislature;

1075 (gg) Working with the advice and consent of the
1076 administration of Boswell Regional Center, to enter into
1077 negotiations with the Economic Development Authority of Simpson
1078 County for the purpose of negotiating the possible exchange, lease
1079 or sale of lands owned by Boswell Regional Center to the Economic
1080 Development Authority of Simpson County. It is the intent of the
1081 Mississippi Legislature that such negotiations shall ensure that
1082 the financial interest of the persons with an intellectual
1083 disability served by Boswell Regional Center will be held



1084 paramount in the course of these negotiations. The Legislature
1085 also recognizes the importance of economic development to the
1086 citizens of the State of Mississippi and Simpson County, and
1087 encourages fairness to the Economic Development Authority of
1088 Simpson County. Any negotiations proposed which would result in
1089 the recommendation for exchange, lease or sale of lands owned by
1090 Boswell Regional Center must have the approval of the State Board
1091 of Mental Health. The State Board of Mental Health may and has
1092 the final authority as to whether or not these negotiations result
1093 in the exchange, lease or sale of the properties it currently
1094 holds in trust for persons with an intellectual disability served
1095 at Boswell Regional Center. In any such exchange, lease or sale
1096 of such lands owned by Boswell Regional Center, title to all
1097 minerals, oil and gas on such lands shall be reserved, together
1098 with the right of ingress and egress to remove same, whether such
1099 provisions be included in the terms of any such exchange, lease or
1100 sale or not.

1101 If the State Board of Mental Health authorizes the sale of
1102 lands owned by Boswell Regional Center, as provided for under this
1103 paragraph (gg), the monies derived from the sale shall be placed
1104 into a special fund that is created in the State Treasury to be
1105 known as the "Boswell Regional Center Client's Trust Fund." The
1106 principal of the trust fund shall remain inviolate and shall never
1107 be expended. Any earnings on the principal may be expended solely
1108 for the benefits of clients served at Boswell Regional Center.



1109 The State Treasurer shall invest the monies of the trust fund in
1110 any of the investments authorized for the Mississippi Prepaid
1111 Affordable College Tuition Program under Section 37-155-9, and
1112 those investments shall be subject to the limitations prescribed
1113 by Section 37-155-9. Unexpended amounts remaining in the trust
1114 fund at the end of a fiscal year shall not lapse into the State
1115 General Fund, and any earnings on amounts in the trust fund shall
1116 be deposited to the credit of the trust fund. The administration
1117 of Boswell Regional Center may use any earnings on the principal
1118 of the trust fund, upon appropriation by the Legislature, as
1119 needed for services or facilities by the clients of Boswell
1120 Regional Center. Boswell Regional Center shall make known to the
1121 Legislature, through the Legislative Budget Committee and the
1122 respective Appropriations Committees of the House and Senate, its
1123 proposed use of the earnings on the principal of the trust fund
1124 for any fiscal year in which it proposes to make expenditures
1125 thereof. The State Treasurer shall provide Boswell Regional
1126 Center with an annual report on the Boswell Regional Center
1127 Client's Trust Fund to indicate the total monies in the trust
1128 fund, interest and other income earned during the year, expenses
1129 paid from the trust fund and such other related information.

1130 Nothing in this section shall be construed as applying to or
1131 affecting mental health/intellectual disability services provided
1132 by hospitals as defined in Section 41-9-3(a), and/or their
1133 subsidiaries and divisions, which hospitals, subsidiaries and



1134 divisions are licensed and regulated by the Mississippi State
1135 Department of Health unless such hospitals, subsidiaries or
1136 divisions voluntarily request certification by the Mississippi
1137 State Department of Mental Health.

1138 All new programs authorized under this section shall be
1139 subject to the availability of funds appropriated therefor by the
1140 Legislature;

1141 (hh) Notwithstanding any other section of the code, the
1142 Board of Mental Health shall be authorized to fingerprint and
1143 perform a criminal history record check on every employee or
1144 volunteer. Every employee and volunteer shall provide a valid
1145 current social security number and/or driver's license number
1146 which shall be furnished to conduct the criminal history record
1147 check. If no disqualifying record is identified at the state
1148 level, fingerprints shall be forwarded to the Federal Bureau of
1149 Investigation for a national criminal history record check;

1150 (ii) The Department of Mental Health shall have the
1151 authority for the development of a consumer friendly single point
1152 of intake and referral system within its service areas for persons
1153 with mental illness, an intellectual disability, developmental
1154 disabilities or alcohol or substance abuse who need assistance
1155 identifying or accessing appropriate services. The department
1156 will develop and implement a comprehensive evaluation procedure
1157 ensuring that, where appropriate, the affected person or their
1158 parent or legal guardian will be involved in the assessment and



1159 planning process. The department, as the point of intake and as
1160 service provider, shall have the authority to determine the
1161 appropriate institutional, hospital or community care setting for
1162 persons who have been diagnosed with mental illness, an
1163 intellectual disability, developmental disabilities and/or alcohol
1164 or substance abuse, and may provide for the least restrictive
1165 placement if the treating professional believes such a setting is
1166 appropriate, if the person affected or their parent or legal
1167 guardian wants such services, and if the department can do so with
1168 a reasonable modification of the program without creating a
1169 fundamental alteration of the program. The least restrictive
1170 setting could be an institution, hospital or community setting,
1171 based upon the needs of the affected person or their parent or
1172 legal guardian;

1173 (jj) To have the sole power and discretion to enter
1174 into, sign, execute and deliver long-term or multiyear leases of
1175 real and personal property owned by the Department of Mental
1176 Health to and from other state and federal agencies and private
1177 entities deemed to be in the public's best interest. Any monies
1178 derived from such leases shall be deposited into the funds of the
1179 Department of Mental Health for its exclusive use. Leases to
1180 private entities shall be approved by the Department of Finance
1181 and Administration and all leases shall be filed with the
1182 Secretary of State;



1183 (kk) To certify and establish minimum standards and
1184 minimum required services for county facilities used for housing,
1185 feeding and providing medical treatment for any person who has
1186 been involuntarily ordered admitted to a treatment center by a
1187 court of competent jurisdiction. The minimum standard for the
1188 initial assessment of those persons being housed in county
1189 facilities is for the assessment to be performed by a physician,
1190 preferably a psychiatrist, or by a nurse practitioner, preferably
1191 a psychiatric nurse practitioner. If the department finds
1192 deficiencies in any such county facility or its provider based on
1193 the minimum standards and minimum required services established
1194 for certification, the department shall give the county or its
1195 provider a six-month probationary period to bring its standards
1196 and services up to the established minimum standards and minimum
1197 required services. After the six-month probationary period, if
1198 the department determines that the county or its provider still
1199 does not meet the minimum standards and minimum required services,
1200 the department may remove the certification of the county or
1201 provider and require the county to contract with another county
1202 having a certified facility to hold those persons for that period
1203 of time pending transportation and admission to a state treatment
1204 facility. Any cost incurred by a county receiving an
1205 involuntarily committed person from a county with a decertified
1206 holding facility shall be reimbursed by the home county to the
1207 receiving county.



1208 **SECTION 11.** Section 41-29-112, Mississippi Code of 1972, is
1209 brought forward as follows:

1210 41-29-112. (1) The Director of the Bureau of Narcotics is
1211 authorized to retain on a contractual basis such persons as he
1212 shall deem necessary to detect and apprehend violators of the
1213 criminal statutes pertaining to the possession, sale or use of
1214 narcotics or other dangerous drugs.

1215 (2) Those persons contracting with the Director of the
1216 Bureau of Narcotics, pursuant to subsection (1), shall be known
1217 as, and are hereinafter referred to as, "special contract agents."

1218 (3) The investigative services provided for in this section
1219 shall be designed to support local law enforcement efforts.

1220 (4) Special contract investigators shall have all powers
1221 necessary and incidental to the fulfillment of their contractual
1222 obligations, including the power of arrest when authorized by the
1223 Director of the Bureau of Narcotics.

1224 (5) No person shall be a special contract investigator
1225 unless he is at least eighteen (18) years of age.

1226 (6) The Director of the Bureau of Narcotics shall conduct a
1227 background investigation of all potential special contract
1228 investigators. If the background investigation discloses a
1229 criminal record, the applicant shall not be retained without the
1230 express approval of the Director of the Bureau of Narcotics. Any
1231 matters pertaining to special contract investigators shall be



1232 exempt from the provisions of a law relating to meetings open to
1233 the public, approved as now or hereafter amended.

1234 (7) Any contract pursuant to subsection (1) shall be:

1235 (a) Reduced to writing; and

1236 (b) Terminable upon written notice by either party, and
1237 shall in any event terminate one (1) year from the date of
1238 signing; and

1239 (c) Approved as to form by the Attorney General.

1240 Such contracts shall not be public records and shall not be
1241 available for inspection under the provisions of a law providing
1242 for the inspection of public records as now or hereafter amended.

1243 (8) Special contract investigators shall not be considered
1244 employees of the Bureau of Narcotics for any purpose.

1245 (9) The Director of the Bureau of Narcotics shall have all
1246 powers necessary and incidental to the effective operation of this
1247 section.

1248 (10) Notwithstanding any other provisions contained in this
1249 section, all said contracts and related matters shall be made
1250 available to the Legislative Budget Office and the State Fiscal
1251 Management Board.

1252 **SECTION 12.** Section 41-125-11, Mississippi Code of 1972, is
1253 brought forward as follows:

1254 41-125-11. The licensing agency shall require criminal
1255 record background screening and fingerprinting for personnel by
1256 the Mississippi Department of Public Safety.



1257 **SECTION 13.** Section 43-1-4, Mississippi Code of 1972, is
1258 brought forward as follows:

1259 43-1-4. The Department of Human Services shall have the
1260 following powers and duties:

1261 (a) To provide basic services and assistance statewide
1262 to needy and disadvantaged individuals and families.

1263 (b) To promote integration of the many services and
1264 programs within its jurisdiction at the client level thus
1265 improving the efficiency and effectiveness of service delivery and
1266 providing easier access to clients.

1267 (c) To develop a statewide comprehensive service
1268 delivery plan in coordination with the Board of Health, the Board
1269 of Mental Health, and the Department of Finance and
1270 Administration. Such plan shall be developed and presented to the
1271 Governor by January 1, 1990.

1272 (d) To employ personnel and expend funds appropriated
1273 to the department to carry out the duties and responsibilities
1274 assigned to the department by law.

1275 (e) To fingerprint and perform a criminal history
1276 record check on every employee or volunteer (i) who has direct
1277 access to clients of the department who are children or vulnerable
1278 adults, or (ii) who is in a position of fiduciary responsibility.
1279 Every such employee and volunteer shall provide a valid current
1280 social security number and/or driver's license number which shall
1281 be furnished to conduct the criminal history record check. If no



1282 disqualifying record is identified at the state level,
1283 fingerprints shall be forwarded to the Federal Bureau of
1284 Investigation for a national criminal history record check.

1285 **SECTION 14.** Section 43-11-13, Mississippi Code of 1972, is
1286 brought forward as follows:

1287 43-11-13. (1) The licensing agency shall adopt, amend,
1288 promulgate and enforce such rules, regulations and standards,
1289 including classifications, with respect to all institutions for
1290 the aged or infirm to be licensed under this chapter as may be
1291 designed to further the accomplishment of the purpose of this
1292 chapter in promoting adequate care of individuals in those
1293 institutions in the interest of public health, safety and welfare.
1294 Those rules, regulations and standards shall be adopted and
1295 promulgated by the licensing agency and shall be recorded and
1296 indexed in a book to be maintained by the licensing agency in its
1297 main office in the State of Mississippi, entitled "Rules,
1298 Regulations and Minimum Standards for Institutions for the Aged or
1299 Infirm" and the book shall be open and available to all
1300 institutions for the aged or infirm and the public generally at
1301 all reasonable times. Upon the adoption of those rules,
1302 regulations and standards, the licensing agency shall mail copies
1303 thereof to all those institutions in the state that have filed
1304 with the agency their names and addresses for this purpose, but
1305 the failure to mail the same or the failure of the institutions to
1306 receive the same shall in no way affect the validity thereof. The



1307 rules, regulations and standards may be amended by the licensing
1308 agency, from time to time, as necessary to promote the health,
1309 safety and welfare of persons living in those institutions.

1310 (2) The licensee shall keep posted in a conspicuous place on
1311 the licensed premises all current rules, regulations and minimum
1312 standards applicable to fire protection measures as adopted by the
1313 licensing agency. The licensee shall furnish to the licensing
1314 agency at least once each six (6) months a certificate of approval
1315 and inspection by state or local fire authorities. Failure to
1316 comply with state laws and/or municipal ordinances and current
1317 rules, regulations and minimum standards as adopted by the
1318 licensing agency, relative to fire prevention measures, shall be
1319 prima facie evidence for revocation of license.

1320 (3) The State Board of Health shall promulgate rules and
1321 regulations restricting the storage, quantity and classes of drugs
1322 allowed in personal care homes and adult foster care facilities.
1323 Residents requiring administration of Schedule II Narcotics as
1324 defined in the Uniform Controlled Substances Law may be admitted
1325 to a personal care home. Schedule drugs may only be allowed in a
1326 personal care home if they are administered or stored utilizing
1327 proper procedures under the direct supervision of a licensed
1328 physician or nurse.

1329 (4) (a) Notwithstanding any determination by the licensing
1330 agency that skilled nursing services would be appropriate for a
1331 resident of a personal care home, that resident, the resident's



1332 guardian or the legally recognized responsible party for the
1333 resident may consent in writing for the resident to continue to
1334 reside in the personal care home, if approved in writing by a
1335 licensed physician. However, no personal care home shall allow
1336 more than two (2) residents, or ten percent (10%) of the total
1337 number of residents in the facility, whichever is greater, to
1338 remain in the personal care home under the provisions of this
1339 subsection (4). This consent shall be deemed to be appropriately
1340 informed consent as described in the regulations promulgated by
1341 the licensing agency. After that written consent has been
1342 obtained, the resident shall have the right to continue to reside
1343 in the personal care home for as long as the resident meets the
1344 other conditions for residing in the personal care home. A copy
1345 of the written consent and the physician's approval shall be
1346 forwarded by the personal care home to the licensing agency.

1347 (b) The State Board of Health shall promulgate rules
1348 and regulations restricting the handling of a resident's personal
1349 deposits by the director of a personal care home. Any funds given
1350 or provided for the purpose of supplying extra comforts,
1351 conveniences or services to any resident in any personal care
1352 home, and any funds otherwise received and held from, for or on
1353 behalf of any such resident, shall be deposited by the director or
1354 other proper officer of the personal care home to the credit of
1355 that resident in an account that shall be known as the Resident's
1356 Personal Deposit Fund. No more than one (1) month's charge for



1357 the care, support, maintenance and medical attention of the
1358 resident shall be applied from the account at any one time. After
1359 the death, discharge or transfer of any resident for whose benefit
1360 any such fund has been provided, any unexpended balance remaining
1361 in his personal deposit fund shall be applied for the payment of
1362 care, cost of support, maintenance and medical attention that is
1363 accrued. If any unexpended balance remains in that resident's
1364 personal deposit fund after complete reimbursement has been made
1365 for payment of care, support, maintenance and medical attention,
1366 and the director or other proper officer of the personal care home
1367 has been or shall be unable to locate the person or persons
1368 entitled to the unexpended balance, the director or other proper
1369 officer may, after the lapse of one (1) year from the date of that
1370 death, discharge or transfer, deposit the unexpended balance to
1371 the credit of the personal care home's operating fund.

1372 (c) The State Board of Health shall promulgate rules
1373 and regulations requiring personal care homes to maintain records
1374 relating to health condition, medicine dispensed and administered,
1375 and any reaction to that medicine. The director of the personal
1376 care home shall be responsible for explaining the availability of
1377 those records to the family of the resident at any time upon
1378 reasonable request.

1379 (5) (a) For the purposes of this subsection (5):



1380 (i) "Licensed entity" means a hospital, nursing
1381 home, personal care home, home health agency, hospice or adult
1382 foster care facility;

1383 (ii) "Covered entity" means a licensed entity or a
1384 health care professional staffing agency;

1385 (iii) "Employee" means any individual employed by
1386 a covered entity, and also includes any individual who by contract
1387 provides to the patients, residents or clients being served by the
1388 covered entity direct, hands-on, medical patient care in a
1389 patient's, resident's or client's room or in treatment or recovery
1390 rooms. The term "employee" does not include health care
1391 professional/vocational technical students performing clinical
1392 training in a licensed entity under contracts between their
1393 schools and the licensed entity, and does not include students at
1394 high schools located in Mississippi who observe the treatment and
1395 care of patients in a licensed entity as part of the requirements
1396 of an allied-health course taught in the high school, if:

1397 1. The student is under the supervision of a
1398 licensed health care provider; and

1399 2. The student has signed an affidavit that
1400 is on file at the student's school stating that he or she has not
1401 been convicted of or pleaded guilty or nolo contendere to a felony
1402 listed in paragraph (d) of this subsection (5), or that any such
1403 conviction or plea was reversed on appeal or a pardon was granted
1404 for the conviction or plea. Before any student may sign such an



1405 affidavit, the student's school shall provide information to the
1406 student explaining what a felony is and the nature of the felonies
1407 listed in paragraph (d) of this subsection (5).

1408 However, the health care professional/vocational technical
1409 academic program in which the student is enrolled may require the
1410 student to obtain criminal history record checks. In such
1411 incidences, paragraph (a)(iii)1 and 2 of this subsection (5) does
1412 not preclude the licensing entity from processing submitted
1413 fingerprints of students from healthcare-related
1414 professional/vocational technical programs who, as part of their
1415 program of study, conduct observations and provide clinical care
1416 and services in a covered entity.

1417 (b) Under regulations promulgated by the State Board of
1418 Health, the licensing agency shall require to be performed a
1419 criminal history record check on (i) every new employee of a
1420 covered entity who provides direct patient care or services and
1421 who is employed on or after July 1, 2003, and (ii) every employee
1422 of a covered entity employed before July 1, 2003, who has a
1423 documented disciplinary action by his or her present employer. In
1424 addition, the licensing agency shall require the covered entity to
1425 perform a disciplinary check with the professional licensing
1426 agency of each employee, if any, to determine if any disciplinary
1427 action has been taken against the employee by that agency.

1428 Except as otherwise provided in paragraph (c) of this
1429 subsection (5), no such employee hired on or after July 1, 2003,



1430 shall be permitted to provide direct patient care until the
1431 results of the criminal history record check have revealed no
1432 disqualifying record or the employee has been granted a waiver.
1433 In order to determine the employee applicant's suitability for
1434 employment, the applicant shall be fingerprinted. Fingerprints
1435 shall be submitted to the licensing agency from scanning, with the
1436 results processed through the Department of Public Safety's
1437 Criminal Information Center. The fingerprints shall then be
1438 forwarded by the Department of Public Safety to the Federal Bureau
1439 of Investigation for a national criminal history record check.
1440 The licensing agency shall notify the covered entity of the
1441 results of an employee applicant's criminal history record check.
1442 If the criminal history record check discloses a felony
1443 conviction, guilty plea or plea of nolo contendere to a felony of
1444 possession or sale of drugs, murder, manslaughter, armed robbery,
1445 rape, sexual battery, sex offense listed in Section 45-33-23(h),
1446 child abuse, arson, grand larceny, burglary, gratification of lust
1447 or aggravated assault, or felonious abuse and/or battery of a
1448 vulnerable adult that has not been reversed on appeal or for which
1449 a pardon has not been granted, the employee applicant shall not be
1450 eligible to be employed by the covered entity.

1451 (c) Any such new employee applicant may, however, be
1452 employed on a temporary basis pending the results of the criminal
1453 history record check, but any employment contract with the new
1454 employee shall be voidable if the new employee receives a



1455 disqualifying criminal history record check and no waiver is
1456 granted as provided in this subsection (5).

1457 (d) Under regulations promulgated by the State Board of
1458 Health, the licensing agency shall require every employee of a
1459 covered entity employed before July 1, 2003, to sign an affidavit
1460 stating that he or she has not been convicted of or pleaded guilty
1461 or nolo contendere to a felony of possession or sale of drugs,
1462 murder, manslaughter, armed robbery, rape, sexual battery, any sex
1463 offense listed in Section 45-33-23(h), child abuse, arson, grand
1464 larceny, burglary, gratification of lust, aggravated assault, or
1465 felonious abuse and/or battery of a vulnerable adult, or that any
1466 such conviction or plea was reversed on appeal or a pardon was
1467 granted for the conviction or plea. No such employee of a covered
1468 entity hired before July 1, 2003, shall be permitted to provide
1469 direct patient care until the employee has signed the affidavit
1470 required by this paragraph (d). All such existing employees of
1471 covered entities must sign the affidavit required by this
1472 paragraph (d) within six (6) months of the final adoption of the
1473 regulations promulgated by the State Board of Health. If a person
1474 signs the affidavit required by this paragraph (d), and it is
1475 later determined that the person actually had been convicted of or
1476 pleaded guilty or nolo contendere to any of the offenses listed in
1477 this paragraph (d) and the conviction or plea has not been
1478 reversed on appeal or a pardon has not been granted for the
1479 conviction or plea, the person is guilty of perjury. If the



1480 offense that the person was convicted of or pleaded guilty or nolo
1481 contendere to was a violent offense, the person, upon a conviction
1482 of perjury under this paragraph, shall be punished as provided in
1483 Section 97-9-61. If the offense that the person was convicted of
1484 or pleaded guilty or nolo contendere to was a nonviolent offense,
1485 the person, upon a conviction of perjury under this paragraph,
1486 shall be punished by a fine of not more than Five Hundred Dollars
1487 (\$500.00), or by imprisonment in the county jail for not more than
1488 six (6) months, or by both such fine and imprisonment.

1489 (e) The covered entity may, in its discretion, allow
1490 any employee who is unable to sign the affidavit required by
1491 paragraph (d) of this subsection (5) or any employee applicant
1492 aggrieved by an employment decision under this subsection (5) to
1493 appear before the covered entity's hiring officer, or his or her
1494 designee, to show mitigating circumstances that may exist and
1495 allow the employee or employee applicant to be employed by the
1496 covered entity. The covered entity, upon report and
1497 recommendation of the hiring officer, may grant waivers for those
1498 mitigating circumstances, which shall include, but not be limited
1499 to: (i) age at which the crime was committed; (ii) circumstances
1500 surrounding the crime; (iii) length of time since the conviction
1501 and criminal history since the conviction; (iv) work history; (v)
1502 current employment and character references; and (vi) other
1503 evidence demonstrating the ability of the individual to perform
1504 the employment responsibilities competently and that the



1505 individual does not pose a threat to the health or safety of the
1506 patients of the covered entity.

1507 (f) The licensing agency may charge the covered entity
1508 submitting the fingerprints a fee not to exceed Fifty Dollars
1509 (\$50.00), which covered entity may, in its discretion, charge the
1510 same fee, or a portion thereof, to the employee applicant. Any
1511 increase in the fee charged by the licensing agency under this
1512 paragraph shall be in accordance with the provisions of Section
1513 41-3-65. Any costs incurred by a covered entity implementing this
1514 subsection (5) shall be reimbursed as an allowable cost under
1515 Section 43-13-116.

1516 (g) If the results of an employee applicant's criminal
1517 history record check reveals no disqualifying event, then the
1518 covered entity shall, within two (2) weeks of the notification of
1519 no disqualifying event, provide the employee applicant with a
1520 notarized letter signed by the chief executive officer of the
1521 covered entity, or his or her authorized designee, confirming the
1522 employee applicant's suitability for employment based on his or
1523 her criminal history record check. An employee applicant may use
1524 that letter for a period of two (2) years from the date of the
1525 letter to seek employment with any covered entity without the
1526 necessity of an additional criminal history record check. Any
1527 covered entity presented with the letter may rely on the letter
1528 with respect to an employee applicant's criminal background and is
1529 not required for a period of two (2) years from the date of the



1530 letter to conduct or have conducted a criminal history record
1531 check as required in this subsection (5).

1532 (h) The licensing agency, the covered entity, and their
1533 agents, officers, employees, attorneys and representatives, shall
1534 be presumed to be acting in good faith for any employment decision
1535 or action taken under this subsection (5). The presumption of
1536 good faith may be overcome by a preponderance of the evidence in
1537 any civil action. No licensing agency, covered entity, nor their
1538 agents, officers, employees, attorneys and representatives shall
1539 be held liable in any employment decision or action based in whole
1540 or in part on compliance with or attempts to comply with the
1541 requirements of this subsection (5).

1542 (i) The licensing agency shall promulgate regulations
1543 to implement this subsection (5).

1544 (j) The provisions of this subsection (5) shall not
1545 apply to:

1546 (i) Applicants and employees of the University of
1547 Mississippi Medical Center for whom criminal history record checks
1548 and fingerprinting are obtained in accordance with Section
1549 37-115-41; or

1550 (ii) Health care professional/vocational technical
1551 students for whom criminal history record checks and
1552 fingerprinting are obtained in accordance with Section 37-29-232.



1553 (6) The State Board of Health shall promulgate rules,
1554 regulations and standards regarding the operation of adult foster
1555 care facilities.

1556 **SECTION 15.** Section 43-15-6, Mississippi Code of 1972, is
1557 brought forward as follows:

1558 43-15-6. (1) Any person, institution, facility, clinic,
1559 organization or other entity that provides services to children in
1560 a residential setting where care, lodging, maintenance, and
1561 counseling or therapy for alcohol or controlled substance abuse or
1562 for any other emotional disorder or mental illness is provided for
1563 children, whether for compensation or not, that holds himself,
1564 herself, or itself out to the public as providing such services,
1565 and that is entrusted with the care of the children to whom he,
1566 she, or it provides services, because of the nature of the
1567 services and the setting in which the services are provided shall
1568 be subject to the provisions of this section.

1569 (2) Each entity to which this section applies shall
1570 complete, through the appropriate governmental authority, a
1571 national criminal history record information check and a child
1572 abuse registry check for each owner, operator, employee,
1573 prospective employee, volunteer or prospective volunteer of the
1574 entity and/or any other that has or may have unsupervised access
1575 to a child served by the entity. In order to determine the
1576 applicant's suitability for employment, the entity shall ensure
1577 that the applicant be fingerprinted by local law enforcement, and



1578 the results forwarded to the Department of Public Safety. If no
1579 disqualifying record is identified at the state level, the
1580 fingerprints shall be forwarded by the Department of Public Safety
1581 to the FBI for a national criminal history record check.

1582 (3) An owner, operator, employee, prospective employee,
1583 volunteer or prospective volunteer of the entity and/or any other
1584 that has or may have unsupervised access to a child who has a
1585 criminal history of conviction or pending indictment of a crime,
1586 whether a misdemeanor or a felony, that bears upon an individual's
1587 fitness to have responsibility for the safety and well-being of
1588 children as set forth in this chapter may not provide child care
1589 or operate, or be licensed as, a residential child care program,
1590 foster parent, or foster home.

1591 (4) All fees incurred in compliance with this section shall
1592 be borne by the individual or entity to which subsection (1)
1593 applies.

1594 (5) The Department of Human Services shall have the
1595 authority to set fees, to exclude a particular crime or crimes or
1596 a substantiated finding of child abuse and/or neglect as
1597 disqualifying individuals or entities from providing foster care
1598 or residential child care, and adopt such other rules and
1599 regulations as may be required to carry out the provisions of this
1600 section.

1601 (6) Any entity that violates the provisions of this section
1602 by failure to complete sex offense criminal history record



1603 information and felony conviction record information checks, as
1604 required under subsection (3) of this section, shall be subject to
1605 a penalty of up to Ten Thousand Dollars (\$10,000.00) for each such
1606 violation and may be enjoined from further operation until it
1607 complies with this section in actions maintained by the Attorney
1608 General.

1609 (7) The Department of Human Services and/or its officers,
1610 employees, attorneys, agents and representatives shall not be held
1611 civilly liable for any findings, recommendations or actions taken
1612 pursuant to this section.

1613 **SECTION 16.** Section 43-20-8, Mississippi Code of 1972, is
1614 brought forward as follows:

1615 43-20-8. (1) The licensing agency shall have powers and
1616 duties as set forth below, in addition to other duties prescribed
1617 under this chapter:

1618 (a) Promulgate rules and regulations concerning the
1619 licensing and regulation of child care facilities as defined in
1620 Section 43-20-5;

1621 (b) Have the authority to issue, deny, suspend, revoke,
1622 restrict or otherwise take disciplinary action against licensees
1623 as provided for in this chapter;

1624 (c) Set and collect fees and penalties as provided for
1625 in this chapter; any increase in the fees charged by the licensing
1626 agency under this paragraph shall be in accordance with the
1627 provisions of Section 41-3-65; and



1628 (d) Have such other powers as may be required to carry
1629 out the provisions of this chapter.

1630 (2) Child care facilities shall assure that parents have
1631 welcome access to the child care facility at all times and shall
1632 comply with the provisions of Chapter 520, Laws of 2006.

1633 (3) Each child care facility shall develop and maintain a
1634 current list of contact persons for each child provided care by
1635 that facility. An agreement may be made between the child care
1636 facility and the child's parent, guardian or contact person at the
1637 time of registration to inform the parent, guardian or contact
1638 person if the child does not arrive at the facility within a
1639 reasonable time.

1640 (4) Child care facilities shall require that, for any
1641 current or prospective caregiver, all criminal records, background
1642 and sex offender registry checks and current child abuse registry
1643 checks are obtained. In order to determine the applicant's
1644 suitability for employment, the applicant shall be fingerprinted.
1645 If no disqualifying record is identified at the state level, the
1646 fingerprints shall be forwarded by the Department of Public Safety
1647 to the FBI for a national criminal history record check.

1648 (5) The licensing agency shall require to be performed a
1649 criminal records background check and a child abuse registry check
1650 for all operators of a child care facility and any person living
1651 in a residence used for child care. The Department of Human
1652 Services shall have the authority to disclose to the State



1653 Department of Health any potential applicant whose name is listed
1654 on the Child Abuse Central Registry or has a pending
1655 administrative review. That information shall remain confidential
1656 by all parties. In order to determine the applicant's suitability
1657 for employment, the applicant shall be fingerprinted. If no
1658 disqualifying record is identified at the state level, the
1659 fingerprints shall be forwarded by the Department of Public Safety
1660 to the FBI for a national criminal history record check.

1661 (6) The licensing agency shall have the authority to exclude
1662 a particular crime or crimes or a substantiated finding of child
1663 abuse and/or neglect as disqualifying individuals or entities for
1664 prospective or current employment or licensure.

1665 (7) The licensing agency and its agents, officers,
1666 employees, attorneys and representatives shall not be held civilly
1667 liable for any findings, recommendations or actions taken under
1668 this section.

1669 (8) All fees incurred in compliance with this section shall
1670 be borne by the child care facility. The licensing agency is
1671 authorized to charge a fee that includes the amount required by
1672 the Federal Bureau of Investigation for the national criminal
1673 history record check in compliance with the Child Protection Act
1674 of 1993, as amended, and any necessary costs incurred by the
1675 licensing agency for the handling and administration of the
1676 criminal history background checks.



1677 (9) From and after January 1, 2008, the State Board of
1678 Health shall develop regulations to ensure that all children
1679 enrolled or enrolling in a state licensed child care center
1680 receive age-appropriate immunization against invasive pneumococcal
1681 disease as recommended by the Advisory Committee on immunization
1682 practices of the Centers for Disease Control and Prevention. The
1683 State Board of Health shall include, within its regulations,
1684 protocols for children under the age of twenty-four (24) months to
1685 catch up on missed doses. If the State Board of Health has
1686 adopted regulations before January 1, 2008, that would otherwise
1687 meet the requirements of this subsection, then this subsection
1688 shall stand repealed on January 1, 2008.

1689 **SECTION 17.** Section 43-47-7, Mississippi Code of 1972, is
1690 brought forward as follows:

1691 43-47-7. (1) (a) Except as otherwise provided by Section
1692 43-47-37 for vulnerable persons in care facilities and by Section
1693 43-7-65 for the State Ombudsman Program, any person including, but
1694 not limited to, the following, who knows or suspects that a
1695 vulnerable person has been or is being abused, neglected or
1696 exploited shall immediately report such knowledge or suspicion to
1697 the Department of Human Services or to the county department of
1698 human services where the vulnerable person is located:

1699 (i) Attorney, physician, osteopathic physician,
1700 medical examiner, chiropractor or nurse engaged in the admission,
1701 examination, care or treatment of vulnerable persons;



1702 (ii) Health professional or mental health
1703 professional other than one listed in subparagraph (i);
1704 (iii) Practitioner who relies solely on spiritual
1705 means for healing;
1706 (iv) Social worker, family protection worker,
1707 family protection specialist or other professional care,
1708 residential or institutional staff;
1709 (v) State, county or municipal criminal justice
1710 employee or law enforcement officer;
1711 (vi) Human rights advocacy committee or long-term
1712 care ombudsman council member; or
1713 (vii) Accountant, stockbroker, financial advisor
1714 or consultant, insurance agent or consultant, investment advisor
1715 or consultant, financial planner, or any officer or employee of a
1716 bank, savings and loan, credit union or any other financial
1717 service provider.
1718 (b) To the extent possible, a report made pursuant to
1719 paragraph (a) must contain, but need not be limited to, the
1720 following information:
1721 (i) Name, age, race, sex, physical description and
1722 location of each vulnerable person alleged to have been abused,
1723 neglected or exploited.
1724 (ii) Names, addresses and telephone numbers of the
1725 vulnerable person's family members.



1726 (iii) Name, address and telephone number of each
1727 alleged perpetrator.

1728 (iv) Name, address and telephone number of the
1729 caregiver of the vulnerable person, if different from the alleged
1730 perpetrator.

1731 (v) Description of the neglect, exploitation,
1732 physical or psychological injuries sustained.

1733 (vi) Actions taken by the reporter, if any, such
1734 as notification of the criminal justice agency.

1735 (vii) Any other information available to the
1736 reporting person which may establish the cause of abuse, neglect
1737 or exploitation that occurred or is occurring.

1738 In addition to the above, any person or entity holding or
1739 required to hold a license as specified in Title 73, Professions
1740 and Vocations, Mississippi Code of 1972, shall be required to give
1741 his, her or its name, address and telephone number in the report
1742 of the alleged abuse, neglect or exploitation.

1743 (c) The department, or its designees, shall report to
1744 an appropriate criminal investigative or prosecutive authority any
1745 person required by this section to report or who fails to comply
1746 with this section. A person who fails to make a report as
1747 required under this subsection or who, because of the
1748 circumstances, should have known or suspected beyond a reasonable
1749 doubt that a vulnerable person suffers from exploitation, abuse,
1750 neglect or self-neglect but who knowingly fails to comply with



1751 this section shall, upon conviction, be guilty of a misdemeanor
1752 and shall be punished by a fine not exceeding Five Thousand
1753 Dollars (\$5,000.00), or by imprisonment in the county jail for not
1754 more than six (6) months, or both such fine and imprisonment.
1755 However, for purposes of this subsection (1), any recognized legal
1756 financial transaction shall not be considered cause to report the
1757 knowledge or suspicion of the financial exploitation of a
1758 vulnerable person. If a person convicted under this section is a
1759 member of a profession or occupation that is licensed, certified
1760 or regulated by the state, the court shall notify the appropriate
1761 licensing, certifying or regulating entity of the conviction.

1762 (2) Reports received by law enforcement authorities or other
1763 agencies shall be forwarded immediately to the Department of Human
1764 Services or the county department of human services. The
1765 Department of Human Services shall investigate the reported abuse,
1766 neglect or exploitation immediately and shall file a preliminary
1767 report of its findings with the Office of the Attorney General
1768 within forty-eight (48) hours if immediate attention is needed, or
1769 seventy-two (72) hours if the vulnerable person is not in
1770 immediate danger and shall make additional reports as new
1771 information or evidence becomes available. The Department of
1772 Human Services, upon request, shall forward a statement to the
1773 person making the initial report required by this section as to
1774 what action is being taken, if any.



1775 (3) The report may be made orally or in writing, but where
1776 made orally, it shall be followed up by a written report. A
1777 person who fails to report or to otherwise comply with this
1778 section, as provided herein, shall have no civil or criminal
1779 liability, other than that expressly provided for in this section,
1780 to any person or entity in connection with any failure to report
1781 or to otherwise comply with the requirements of this section.

1782 (4) Anyone who makes a report required by this section or
1783 who testifies or participates in any judicial proceedings arising
1784 from the report or who participates in a required investigation or
1785 evaluation shall be presumed to be acting in good faith and in so
1786 doing shall be immune from liability, civil or criminal, that
1787 might otherwise be incurred or imposed. However, the immunity
1788 provided under this subsection shall not apply to any suspect or
1789 perpetrator of any abuse, neglect or exploitation.

1790 (5) A person who intentionally makes a false report under
1791 the provisions of this section may be found liable in a civil suit
1792 for any actual damages suffered by the person or persons so
1793 reported and for any punitive damages set by the court or jury.

1794 (6) The Executive Director of the Department of Human
1795 Services shall establish a statewide central register of reports
1796 made pursuant to this section. The central register shall be
1797 capable of receiving reports of vulnerable persons in need of
1798 protective services seven (7) days a week, twenty-four (24) hours
1799 a day. To effectuate this purpose, the executive director shall



1800 establish a single toll-free statewide phone number that all
1801 persons may use to report vulnerable persons in need of protective
1802 services, and that all persons authorized by subsection (7) of
1803 this section may use for determining the existence of prior
1804 reports in order to evaluate the condition or circumstances of the
1805 vulnerable person before them. Such oral reports and evidence of
1806 previous reports shall be transmitted to the appropriate county
1807 department of human services. The central register shall include,
1808 but not be limited to, the following information: the name and
1809 identifying information of the individual reported, the county
1810 department of human services responsible for the investigation of
1811 each such report, the names, affiliations and purposes of any
1812 person requesting or receiving information which the executive
1813 director believes might be helpful in the furtherance of the
1814 purposes of this chapter, the name, address, birth date, social
1815 security number of the perpetrator of abuse, neglect and/or
1816 exploitation, and the type of abuse, neglect and/or exploitation
1817 of which there was substantial evidence upon investigation of the
1818 report. The central register shall inform the person making
1819 reports required under this section of his or her right to request
1820 statements from the department as to what action is being taken,
1821 if any.

1822 Each person, business, organization or other entity, whether
1823 public or private, operated for profit, operated for nonprofit or
1824 a voluntary unit of government not responsible for law enforcement



1825 providing care, supervision or treatment of vulnerable persons
1826 shall conduct criminal history records checks on each new employee
1827 of the entity who provides, and/or would provide direct patient
1828 care or services to adults or vulnerable persons, as provided in
1829 Section 43-11-13.

1830 The department shall not release data that would be harmful
1831 or detrimental to the vulnerable person or that would identify or
1832 locate a person who, in good faith, made a report or cooperated in
1833 a subsequent investigation unless ordered to do so by a court of
1834 competent jurisdiction.

1835 (7) Reports made pursuant to this section, reports written
1836 or photographs taken concerning such reports in the possession of
1837 the Department of Human Services or the county department of human
1838 services shall be confidential and shall only be made available
1839 to:

1840 (a) A physician who has before him a vulnerable person
1841 whom he reasonably suspects may be abused, neglected or exploited,
1842 as defined in Section 43-47-5;

1843 (b) A duly authorized agency having the responsibility
1844 for the care or supervision of a subject of the report;

1845 (c) A grand jury or a court of competent jurisdiction,
1846 upon finding that the information in the record is necessary for
1847 the determination of charges before the grand jury;

1848 (d) A district attorney or other law enforcement
1849 official.



1850 Notwithstanding the provisions of paragraph (b) of this
1851 subsection, the department may not disclose a report of the
1852 abandonment, exploitation, abuse, neglect or self-neglect of a
1853 vulnerable person to the vulnerable person's guardian,
1854 attorney-in-fact, surrogate decision maker, or caregiver who is a
1855 perpetrator or alleged perpetrator of the abandonment,
1856 exploitation, abuse or neglect of the vulnerable person.

1857 Any person given access to the names or other information
1858 identifying the subject of the report, except the subject of the
1859 report, shall not divulge or make public such identifying
1860 information unless he is a district attorney or other law
1861 enforcement official and the purpose is to initiate court action.
1862 Any person who willfully permits the release of any data or
1863 information obtained pursuant to this section to persons or
1864 agencies not permitted to such access by this section shall be
1865 guilty of a misdemeanor.

1866 (8) Upon reasonable cause to believe that a caretaker or
1867 other person has abused, neglected or exploited a vulnerable
1868 person, the department shall promptly notify the district attorney
1869 of the county in which the vulnerable person is located and the
1870 Office of the Attorney General, except as provided in Section
1871 43-47-37(2).

1872 **SECTION 18.** Section 67-1-57, Mississippi Code of 1972, is
1873 brought forward as follows:



1874 67-1-57. Before a permit is issued the department shall
1875 satisfy itself:

1876 (a) That the applicant, if an individual, or if a
1877 partnership, each of the members of the partnership, or if a
1878 corporation, each of its principal officers and directors, or if a
1879 limited liability company, each member of the limited liability
1880 company, is of good moral character and, in addition, enjoys a
1881 reputation of being a peaceable, law-abiding citizen of the
1882 community in which he resides, and is generally fit for the trust
1883 to be reposed in him, is not less than twenty-one (21) years of
1884 age, and has not been convicted of a felony in any state or
1885 federal court.

1886 (b) That, except in the case of an application for a
1887 solicitor's permit, the applicant is the true and actual owner of
1888 the business for which the permit is desired, and that he intends
1889 to carry on the business authorized for himself and not as the
1890 agent of any other person, and that he intends to superintend in
1891 person the management of the business or that he will designate a
1892 manager to manage the business for him. All managers must be
1893 approved by the department prior to completing any managerial
1894 tasks on behalf of the permittee and must possess all of the
1895 qualifications required of a permittee; however, a felony
1896 conviction, other than a crime of violence, does not automatically
1897 disqualify a person from being approved as a manager if the person
1898 was released from incarceration at least three (3) years prior to



1899 application for approval as a manager. A felony conviction, other
1900 than a crime of violence, may be considered by the department in
1901 determining whether all other qualifications are met.

1902 (c) That the applicant for a package retailer's permit,
1903 if an individual, is a resident of the State of Mississippi. If
1904 the applicant is a partnership, each member of the partnership
1905 must be a resident of the state. If the applicant is a limited
1906 liability company, each member of the limited liability company
1907 must be a resident of the state. If the applicant is a
1908 corporation, the designated manager of the corporation must be a
1909 resident of the state.

1910 (d) That the place for which the permit is to be issued
1911 is an appropriate one considering the character of the premises
1912 and the surrounding neighborhood.

1913 (e) That the place for which the permit is to be issued
1914 is within the corporate limits of an incorporated municipality or
1915 qualified resort area or club which comes within the provisions of
1916 this chapter.

1917 (f) That the applicant is not indebted to the state for
1918 any taxes, fees or payment of penalties imposed by any law of the
1919 State of Mississippi or by any rule or regulation of the
1920 commission.

1921 (g) That the applicant is not in the habit of using
1922 alcoholic beverages to excess and is not physically or mentally



1923 incapacitated, and that the applicant has the ability to read and
1924 write the English language.

1925 (h) That the commission does not believe and has no
1926 reason to believe that the applicant will sell or knowingly permit
1927 any agent, servant or employee to unlawfully sell liquor in a dry
1928 area or in any other manner contrary to law.

1929 (i) That the applicant is not residentially domiciled
1930 with any person whose permit or license has been cancelled for
1931 cause within the twelve (12) months next preceding the date of the
1932 present application for a permit.

1933 (j) That the commission has not, in the exercise of its
1934 discretion which is reserved and preserved to it, refused to grant
1935 permits under the restrictions of this section, as well as under
1936 any other pertinent provision of this chapter.

1937 (k) That there are not sufficient legal reasons to deny
1938 a permit on the ground that the premises for which the permit is
1939 sought has previously been operated, used or frequented for any
1940 purpose or in any manner that is lewd, immoral or offensive to
1941 public decency. In the granting or withholding of any permit to
1942 sell alcoholic beverages at retail, the commission in forming its
1943 conclusions may give consideration to any recommendations made in
1944 writing by the district or county attorney or county, circuit or
1945 chancery judge of the county, or the sheriff of the county, or the
1946 mayor or chief of police of an incorporated city or town wherein



1947 the applicant proposes to conduct his business and to any
1948 recommendations made by representatives of the commission.
1949 (1) That the applicant and the applicant's key
1950 employees, as determined by the commission, do not have a
1951 disqualifying criminal record. In order to obtain a criminal
1952 record history check, the applicant shall submit to the commission
1953 a set of fingerprints from any local law enforcement agency for
1954 each person for whom the records check is required. The
1955 commission shall forward the fingerprints to the Mississippi
1956 Department of Public Safety. If no disqualifying record is
1957 identified at the state level, the Department of Public Safety
1958 shall forward the fingerprints to the Federal Bureau of
1959 Investigation for a national criminal history record check. Costs
1960 for processing the set or sets of fingerprints shall be borne by
1961 the applicant. The commission shall not deny employment to an
1962 employee of the applicant prior to the identification of a
1963 disqualifying record or other disqualifying information.

1964 **SECTION 19.** Section 81-1-65, Mississippi Code of 1972, is
1965 brought forward as follows:

1966 81-1-65. The commissioner shall employ such assistants, to
1967 be known as state banking examiners, as may be necessary for the
1968 efficient operation of the department, to aid him in the discharge
1969 of the duties and responsibilities imposed upon him by law. The
1970 minimum qualifications for such employment shall be possession of
1971 a bachelor's degree from a recognized college or university, or



1972 three (3) years' experience as a bank examiner, bank officer or
1973 employee, small loan company officer or employee, or other
1974 consumer finance officer or employee and such other qualifications
1975 set out for banking examiners in the plan for the state personnel
1976 system. However, notwithstanding any provisions to the contrary,
1977 any person who is serving as a state banking examiner in the
1978 former Department of Bank Supervision on March 21, 1980, shall be
1979 qualified to serve as a state banking examiner in the department.
1980 The state bank examiners shall not, directly or indirectly, be
1981 connected with any banking business in Mississippi or elsewhere
1982 during their respective terms of office, after four (4) months
1983 from the time of qualifying as an examiner.

1984 The commissioner may employ such additional employees as may
1985 be necessary to carry out those duties and responsibilities
1986 imposed upon him by law, who shall possess such qualifications set
1987 out for their particular position in the plan for the state
1988 personnel system.

1989 No examiner or other employee related by consanguinity or
1990 affinity to the commissioner within the third degree computed
1991 according to the civil law shall be employed by him.

1992 The examiners and all other persons employed by the
1993 commissioner under the provisions of this section shall be
1994 compensated as provided in the compensation plan for the state
1995 personnel system, unless otherwise provided by law. The



1996 compensation for such employees shall be payable monthly out of
1997 the funds of the department.

1998 The commissioner shall be responsible for all acts of the
1999 examiners and the other employees. Any examiner or other employee
2000 may be dismissed only in accordance with the laws, rules and
2001 regulations applicable to the state personnel system.

2002 As a condition of employment with the department, the
2003 commissioner shall require all employees and applicants for
2004 employment with the department to be fingerprinted to determine
2005 their suitability for employment as examiners or assistants as
2006 needed. If no disqualifying record is identified at the state
2007 level, the Department of Public Safety shall forward the
2008 fingerprints to the Federal Bureau of Investigation (FBI) for a
2009 national criminal history record check. The Department of Banking
2010 and Consumer Finance shall pay all of the costs in connection with
2011 the criminal history record check procedure. These record checks
2012 shall not be used by the Department of Banking and Consumer
2013 Finance for any purpose other than to determine suitability for
2014 employment with the department.

2015 **SECTION 20.** This act shall take effect and be in force from
2016 and after July 1, 2018.

