

By: Senator(s) Harden

To: Education

SENATE BILL NO. 2223

1 AN ACT TO AMEND SECTION 37-9-17, MISSISSIPPI CODE OF 1972, TO
2 INCLUDE SCHOOL ATTENDANCE OFFICERS IN THE REQUIREMENT FOR
3 FINGERPRINTING AND CURRENT CRIMINAL RECORDS BACKGROUND CHECK FOR
4 NEW HIRES, AND TO DELETE THE AUTOMATIC REPEALER ON THE
5 FINGERPRINTING AND CRIMINAL HISTORY RECORD CHECK PROGRAM; AND FOR
6 RELATED PURPOSES.

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

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

10 37-9-17. (1) On or before April 1 of each year, the
11 principal of each school shall recommend to the superintendent of
12 the local school district the licensed employees or
13 noninstructional employees to be employed for the school involved
14 except those licensed employees or noninstructional employees who
15 have been previously employed and who have a contract valid for
16 the ensuing scholastic year. If such recommendations meet with
17 the approval of the superintendent, the superintendent shall
18 recommend the employment of such licensed employees or
19 noninstructional employees to the local school board, and, unless
20 good reason to the contrary exists, the board shall elect the
21 employees so recommended. If, for any reason, the local school
22 board shall decline to elect any employee so recommended,
23 additional recommendations for the places to be filled shall be
24 made by the principal to the superintendent and then by the
25 superintendent to the local school board as provided above. The
26 school board of any local school district shall be authorized to
27 designate a personnel supervisor or another principal employed by
28 the school district to recommend to the superintendent licensed
29 employees or noninstructional employees; however, this



authorization shall be restricted to no more than two (2) positions for each employment period for each school in the local school district. Any noninstructional employee employed upon the recommendation of a personnel supervisor or another principal employed by the local school district must have been employed by the local school district at the time the superintendent was elected or appointed to office; a noninstructional employee employed under this authorization may not be paid compensation in excess of the statewide average compensation for such noninstructional position with comparable experience, as established by the State Department of Education. The school board of any local school district shall be authorized to designate a personnel supervisor or another principal employed by the school district to accept the recommendations of principals or their designees for licensed employees or noninstructional employees and to transmit approved recommendations to the local school board; however, this authorization shall be restricted to no more than two (2) positions for each employment period for each school in the local school district.

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

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

(2) Superintendents/directors of schools under the purview of the Mississippi Board of Education, the State Department of



63 Education and the superintendent of the local school district
64 shall require that current criminal records background checks and
65 current child abuse registry checks are obtained, and that such
66 criminal record information and registry checks are on file for
67 any new hires applying for employment as a licensed or nonlicensed
68 employee at a school and not previously employed in such school
69 under the purview of the Mississippi Board of Education, or a
70 school attendance officer not previously employed by the State
71 Department of Education or at such local school district prior to
72 July 1, 2000. In order to determine the applicant's suitability
73 for employment, the applicant shall be fingerprinted. If no
74 disqualifying record is identified at the state level, the
75 fingerprints shall be forwarded by the Department of Public Safety
76 to the FBI for a national criminal history record check. The fee
77 for such fingerprinting and criminal history record check shall be
78 paid by the applicant, not to exceed Fifty Dollars (\$50.00);
79 however, the Mississippi Board of Education or the school board of
80 the local school district, in its discretion, may elect to pay the
81 fee for the fingerprinting and criminal history record check on
82 behalf of any applicant. Under no circumstances shall a member of
83 the Mississippi Board of Education, superintendent/director of
84 schools under the purview of the Mississippi Board of Education,
85 employee of the State Department of Education, local school
86 district superintendent, local school board member or any
87 individual other than the subject of the criminal history record
88 checks disseminate information received through any such checks
89 except insofar as required to fulfill the purposes of this
90 section.

91 (3) If such fingerprinting or criminal record checks
92 disclose a felony conviction, guilty plea or plea of nolo
93 contendere to a felony of possession or sale of drugs, murder,
94 manslaughter, armed robbery, rape, sexual battery, sex offense
95 listed in Section 45-33-23(g), child abuse, arson, grand larceny,



burglary, gratification of lust or aggravated assault which has not been reversed on appeal or for which a pardon has not been granted, the new hire shall not be eligible to be employed at such school. Any employment contract for a new hire executed by the superintendent of the local school district or by the State Department of Education or any employment of a new hire by a superintendent/director of a new school under the purview of the Mississippi Board of Education shall be voidable if the new hire receives a disqualifying criminal record check. However, the Mississippi Board of Education or the school board may, in its discretion, allow any applicant aggrieved by the employment decision under this section to appear before the respective board, or before a hearing officer designated for such purpose, to show mitigating circumstances which may exist and allow the new hire to be employed at the school. The Mississippi Board of Education or local school board may grant waivers for such mitigating circumstances, which shall include, but not be limited to: (a) age at which the crime was committed; (b) circumstances surrounding the crime; (c) length of time since the conviction and criminal history since the conviction; (d) work history; (e) current employment and character references; (f) other evidence demonstrating the ability of the person to perform the employment responsibilities competently and that the person does not pose a threat to the health or safety of the children at the school.

(4) No local school district or local school district employee or members of the Mississippi Board of Education or employee of the State Department of Education or employee of a school under the purview of the Mississippi Board of Education shall be held liable in any employment discrimination suit in which an allegation of discrimination is made regarding an employment decision authorized under this Section 37-9-17.

* * *



128 **SECTION 2.** This act shall take effect and be in force from
129 and after June 30, 2002.

