MISSISSIPPI LEGISLATURE REGULAR SESSION 2004

By: Senator(s) Chaney, Little, Butler To: Education

# SENATE BILL NO. 2498

AN ACT TO AMEND SECTION 37-9-17, MISSISSIPPI CODE OF 1972, TO AUTHORIZE PRIVATE FIRMS UNDER CONTRACT TO PROVIDE EMPLOYEES TO PUBLIC SCHOOL DISTRICTS TO SUBMIT FINGERPRINT CARDS OF APPLICANTS FOR CRIMINAL BACKGROUND CHECKS; AND FOR RELATED PURPOSES.

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

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

37-9-17. (1) On or before April 1 of each year, the principal of each school shall recommend to the superintendent of the local school district the licensed employees or noninstructional employees to be employed for the school involved except those licensed employees or noninstructional employees who have been previously employed and who have a contract valid for the ensuing scholastic year. If such recommendations meet with the approval of the superintendent, the superintendent shall recommend the employment of such licensed employees or noninstructional employees to the local school board, and, unless good reason to the contrary exists, the board shall elect the employees so recommended. If, for any reason, the local school board shall decline to elect any employee so recommended, additional recommendations for the places to be filled shall be made by the principal to the superintendent and then by the superintendent to the local school board as provided above. 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 recommend to the superintendent licensed 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 <u>State</u> Board of Education and the superintendent of the local school district shall require that current criminal records

background checks and current child abuse registry checks are obtained, and that such criminal record information and registry checks are on file for any personnel provided by a private company who supervise or have direct ongoing contact with students or any new hires applying for employment as a licensed or nonlicensed employee at a school and not previously employed in such school under the purview of the State Board of Education or at such local school district prior to July 1, 2000. In order to determine the applicant's suitability for employment, the applicant shall be fingerprinted. If no disqualifying record is identified at the state level, or if necessary, the fingerprints shall be forwarded by the Department of Public Safety to the Federal Bureau of Investigation for a national criminal history record check. Private firms that are under contract with a school to provide personnel to perform duties that include supervision of students or involve direct, ongoing contact with students, shall submit fingerprint cards of those personnel to the school for a criminal history record check as provided in this section. The fingerprint cards shall be provided by the school. The school shall forward the prints to the Department of Public Safety for a check of the state criminal records. If no disqualifying record is identified at the state level, or if necessary, the fingerprints shall be forwarded to the Federal Bureau of Investigation for a national criminal history records check. The Department of Public Safety shall disseminate the results to the submitting school. The determination of eligibility to work at the school shall be made by the school in the same manner as if the person was employed by the school; the results of the check shall not be disseminated to the private firm. The fee for such fingerprinting and criminal history record check shall be paid by the applicant, not to exceed Fifty Dollars ($50.00); however, the State Board of Education or the school board of the local school district, in its discretion, may elect to pay the fee for the fingerprinting and criminal

history record check on behalf of any applicant. Under no circumstances shall a member of the State Board of Education, superintendent/director of schools under the purview of the State Board of Education, local school district superintendent, local school board member or any individual other than the subject of the criminal history record checks disseminate information received through any such checks except insofar as required to fulfill the purposes of this section. Any nonpublic school which is accredited or approved by the State Board of Education may avail itself of the procedures provided for herein and shall be responsible for the same fee charged in the case of local public schools of this state.

(3) If such fingerprinting or criminal record checks disclose a felony conviction, guilty plea or plea of nolo contendere to a felony of possession or sale of drugs, murder, manslaughter, armed robbery, rape, sexual battery, sex offense 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 contract personnel provided by a private firm or the new hire shall not be eligible to be employed or work at such school. Any employment contract for a new hire executed by the superintendent of the local school district or any employment of a new hire by a superintendent/director of a new school under the purview of the State Board of Education or by a private firm shall be voidable if the new hire receives a disqualifying criminal record check. However, the State 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 State 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 State Board of Education or employee of a school under the purview of the State 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.

**SECTION 2.** This act shall take effect and be in force from and after July 1, 2004.