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To: Judiciary, Division B

SENATE BILL NO. 2554  
(As Passed the Senate)

1 AN ACT TO CREATE NEW SECTION 43-15-301, MISSISSIPPI CODE OF  
2 1972, TO ENACT DEFINITIONS; TO CREATE NEW SECTION 43-15-303,  
3 MISSISSIPPI CODE OF 1972, TO PROHIBIT EMPLOYERS OFFERING A CHILD  
4 CARE SERVICE FROM UTILIZING SEX OFFENDERS AS EMPLOYEES OR  
5 VOLUNTEERS, AND TO PROVIDE PENALTIES THEREFOR; TO CREATE NEW  
6 SECTION 43-15-305, MISSISSIPPI CODE OF 1972, TO PROHIBIT SEX  
7 OFFENDERS FROM OWNING OR OPERATING A CHILD CARE SERVICE, AND TO  
8 PROVIDE PENALTIES FOR VIOLATIONS; TO CREATE NEW SECTION 43-15-307,  
9 MISSISSIPPI CODE OF 1972, TO PROHIBIT A SEX OFFENDER FROM WORKING  
10 FOR OR VOLUNTEERING AT A CHILD CARE SERVICE, AND TO PROVIDE  
11 PENALTIES FOR VIOLATIONS; TO AMEND SECTION 43-20-8, MISSISSIPPI  
12 CODE OF 1972, TO CONFORM; AND FOR RELATED PURPOSES.

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

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

16 43-15-301. As used in this act, the following words and  
17 phrases shall have the meanings ascribed herein unless the context  
18 clearly indicates otherwise:

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

21 1. Licensed by the state to perform child  
22 care; or

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

27 . (ii) Any public school.

28 (b) "Child care service employer" means every person,  
29 firm, association, partnership, or corporation offering or  
30 conducting a child care service.

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

34 (d) "Convicted" means an adjudication of guilt, an  
35 adjudication that the applicant is physically or mentally  
36 incompetent, an adjudication that the applicant is not guilty by  
37 reason of insanity, or a plea of nolo contendere.

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

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

42 43-15-303. (1) A child care service employer offering or  
43 conducting a child care service:

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

47 (b) Shall not knowingly employ or permit to volunteer  
48 an applicant who has been convicted of a sex offense.

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

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

58 **SECTION 3.** The following shall be codified as Section  
59 43-15-305, Mississippi Code of 1972:

60 43-15-305. A person required to register as a sex offender  
61 under Section 45-33-25 may not own or operate a child care  
62 service. Any person who is required to register as a sex offender  
63 under Section 45-33-25 who knowingly owns or operates a child care

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

67 **SECTION 4.** The following shall be codified as Section  
68 43-15-307, Mississippi Code of 1972:

69 43-15-307. (1) A person required to register as a sex  
70 offender under Section 45-33-25 may not be employed by or  
71 volunteer at a child care service. Any person who is required to  
72 register as a sex offender under Section 45-33-25 who knowingly  
73 undertakes employment or volunteer service with a child care  
74 service is guilty of a felony, and upon conviction shall be  
75 imprisoned in the custody of the Department of Corrections for a  
76 period not to exceed five (5) years.

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

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

88 43-20-8. (1) The licensing agency shall have powers and  
89 duties as set forth below in addition to other duties prescribed  
90 under this chapter:

91 (a) Promulgate rules and regulations concerning the  
92 licensing and regulation of child care facilities as defined  
93 herein;

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

97 (c) Set and collect fees and penalties as provided for  
98 in this chapter; and

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

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

103 (3) Child care facilities shall require that, for any  
104 current or prospective caregiver, current criminal records  
105 background and sex offender registry checks and current child  
106 abuse registry checks are obtained. In order to determine the  
107 applicant's suitability for employment, the applicant shall be  
108 fingerprinted. If no disqualifying record is identified at the  
109 state level, the fingerprints shall be forwarded by the Department  
110 of Public Safety to the FBI for a national criminal history record  
111 check.

112 (4) The licensing agency shall require to be performed a  
113 criminal records background check and a child abuse registry check  
114 for all operators of a child care facility and any person living  
115 in a residence used for child care. The Department of Human  
116 Services shall have the authority to disclose to the State  
117 Department of Health any potential applicant whose name is listed  
118 on the Child Abuse Central Registry or has a pending  
119 administrative review. Such information shall remain confidential  
120 by all parties. In order to determine the applicant's suitability  
121 for employment, the applicant shall be fingerprinted. If no  
122 disqualifying record is identified at the state level, the  
123 fingerprints shall be forwarded by the Department of Public Safety  
124 to the FBI for a national criminal history record check.

125 (5) The licensing agency shall have the authority to exclude  
126 a particular crime or crimes or a substantiated finding of child  
127 abuse and/or neglect as disqualifying individuals or entities for  
128 prospective or current employment or licensure.

129           (6) The licensing agency and its agents, officers,  
130 employees, attorneys and representatives shall not be held civilly  
131 liable for any findings, recommendations or actions taken pursuant  
132 to this section.

133           (7) All fees incurred in compliance with this section shall  
134 be borne by the child care facility. The licensing agency is  
135 authorized to charge a fee that shall include the amount required  
136 by the Federal Bureau of Investigation for the national criminal  
137 history record check in compliance with the Child Protection Act  
138 of 1993, as amended and any necessary costs incurred by the  
139 licensing agency for the handling and administration of the  
140 criminal history background checks.

141           **SECTION 6.** Section 3 of this act shall take effect and be in  
142 force from and after January 1, 2005; the remainder of this act  
143 shall take effect and be in force from and after July 1, 2004.