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To: Public Health and Human
Services

HOUSE BILL NO. 1165

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 SECTIONS 43-20-8, 45-33-33,
12 45-33-35 and 45-33-41, MISSISSIPPI CODE OF 1972, TO CONFORM; TO
13 REPEAL SECTION 45-33-32, MISSISSIPPI CODE OF 1972, WHICH REQUIRES
14 SEX OFFENDERS TO NOTIFY VOLUNTEER ORGANIZATIONS TO WHICH THEY MAY
15 VOLUNTEER OF SUCH OFFENDER STATUS; AND FOR RELATED PURPOSES.

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

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

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

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

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

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

30 . (ii) Any public school.

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

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

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

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

43 **SECTION 2.** The following shall be codified as Section
44 43-15-303, Mississippi Code of 1972:

45 43-15-303. (1) A child care service employer offering or
46 conducting a child care service:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

151 **SECTION 6.** Section 45-33-33, Mississippi Code of 1972, is
152 amended as follows:

153 45-33-33. (1) The failure of an offender to provide any
154 registration or other information, including, but not limited to,
155 initial registration, reregistration or change of address
156 information, * * * as required by this chapter, is a violation of
157 the law. Additionally, forgery of information or submission of
158 information under false pretenses is also a violation of the law.

159 (2) Unless otherwise specified, a violation of this chapter
160 shall be considered a felony and shall be punishable by a fine not
161 more than Five Thousand Dollars (\$5,000.00) or imprisonment in the
162 State Penitentiary for not more than five (5) years, or both fine
163 and imprisonment.

164 (3) Whenever it appears that an offender has failed to
165 comply with the duty to register or reregister, the department

166 shall promptly notify the sheriff of the county of the last known
167 address of the offender. Upon notification, the sheriff shall
168 attempt to locate the offender at his last known address.

169 (a) If the sheriff locates the offender, he shall
170 enforce the provisions of this chapter. The sheriff shall then
171 notify the department with the current information regarding the
172 offender.

173 (b) If the sheriff is unable to locate the offender,
174 the sheriff shall promptly notify the department and initiate a
175 criminal prosecution against the offender for the failure to
176 register or reregister. The sheriff shall make the appropriate
177 transactions into the Federal Bureau of Investigation's
178 wanted-person database.

179 (4) A first violation of this chapter may result in the
180 arrest of the offender. Upon any second or subsequent violation
181 of this chapter, the offender shall be arrested for such
182 violation.

183 (5) Any prosecution for a violation of this section shall be
184 brought by a prosecutor in the county of such violation.

185 **SECTION 7.** Section 45-33-35, Mississippi Code of 1972, is
186 amended as follows:

187 45-33-35. (1) The Mississippi Department of Public Safety
188 shall maintain a central registry of sex offender information as
189 defined in Section 45-33-25 and shall adopt rules and regulations
190 necessary to carry out this section. The responsible agencies
191 shall provide the information required in Section 45-33-25 on a
192 form developed by the department to ensure accurate information is
193 maintained.

194 (2) Upon conviction, adjudication or acquittal by reason of
195 insanity of any sex offender, if the sex offender is not
196 immediately confined or not sentenced to a term of imprisonment,
197 the clerk of the court which convicted and sentenced the sex
198 offender shall inform the person of the duty to register and shall

199 perform the registration duties as described in Section 45-33-23
200 and forward the information to the department.

201 (3) Upon release from prison, placement on parole or
202 supervised release, the Department of Corrections shall inform the
203 person of the duty to register and shall perform the registration
204 duties as described in Section 45-33-23 and forward the
205 information to the Department of Public Safety.

206 (4) Upon release from confinement in a mental institution
207 following an acquittal by reason of insanity, the director of the
208 facility shall inform the offender of the duty to register and
209 shall notify the Department of Public Safety of the offender's
210 release.

211 (5) Upon release from a youthful offender facility, the
212 director of the facility shall inform the person of the duty to
213 register and shall perform the registration duties as described in
214 Section 45-33-23 and forward the information to the Department of
215 Public Safety.

216 (6) In addition to performing the registration duties, the
217 responsible agency shall:

218 (a) Inform the person having a duty to register that:

219 (i) The person shall report in writing any change
220 of address to the department ten (10) days before changing
221 address.

222 (ii) Any change of address to another state shall
223 be reported to the department in writing no less than ten (10)
224 days before the change of address. The offender shall comply with
225 any registration requirement in the new state.

226 (iii) The person must register in any state where
227 the person is employed, carries on a vocation, is stationed in the
228 military or is a student.

229 (iv) All address verifications must be returned to
230 the department within the required time period.

231 (v) Any change in status of a registrant's
232 enrollment, employment or vocation at any institution of higher
233 learning shall be reported to the department in writing within ten
234 (10) days of the change.

235 * * *

236 (b) Require the person to read and sign a form stating
237 that the duty of the person to register under this chapter has
238 been explained.

239 (c) Obtain or facilitate the obtaining of a biological
240 sample from every registrant as required by this chapter if such
241 biological sample has not already been provided to the Mississippi
242 Crime Lab.

243 **SECTION 8.** Section 45-33-41, Mississippi Code of 1972, is
244 amended as follows:

245 45-33-41. (1) The Department of Corrections or any person
246 having charge of a county or municipal jail or any juvenile
247 detention facility shall provide written notification to an inmate
248 or offender in the custody of the jail or other facility due to a
249 conviction of or adjudication for a sex offense of the
250 registration * * * requirements of Sections 45-33-25 and
251 45-33-31 * * * at the time of the inmate's or offender's
252 confinement and release from confinement, and shall receive a
253 signed acknowledgment of receipt on both occasions.

254 (2) At least ten (10) days prior to the inmate's release
255 from confinement, the Department of Corrections shall notify the
256 victim of the offense or a designee of the immediate family of the
257 victim regarding the date when the offender's release shall occur,
258 provided a current address of the victim or designated family
259 member has been furnished in writing to the Director of Records
260 for such purpose.

261 **SECTION 9.** Section 45-33-32, Mississippi Code of 1972, which
262 requires sex offenders who volunteer with volunteer organizations
263 to notify the organization of convictions, is repealed.

264 **SECTION 10.** This act shall take effect and be in force from
265 and after July 1, 2005.