

By: Senator(s) Ross

To: Judiciary, Division B

SENATE BILL NO. 2053

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 in  
93 Section 43-20-5;

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

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

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

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

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

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

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

148 **SECTION 6.** Section 3 of this act shall take effect and be in  
149 force from and after January 1, 2006; the remainder of this act  
150 shall take effect and be in force from and after July 1, 2005.