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To: Judiciary, Division B

COMMITTEE SUBSTITUTE
FOR
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 or a
35 plea of nolo contendere.

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

38 **SECTION 2.** The following shall be codified as Section
39 43-15-303, Mississippi Code of 1972:

40 43-15-303. (1) A child care service employer offering or
41 conducting a child care service:

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

45 (b) Shall not knowingly employ or permit to volunteer
46 an applicant who has been convicted of a sex offense, who has been
47 adjudicated not guilty of a sex offense by reason of insanity; or
48 who has been adjudicated physically or mentally incompetent.

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.