

By: Senator(s) Chaney

To: Education

SENATE BILL NO. 2542

1 AN ACT TO AMEND SECTION 37-9-17, MISSISSIPPI CODE OF 1972, TO  
2 REVISE CERTAIN PROCEDURES RELATING TO CRIMINAL RECORD BACKGROUND  
3 CHECKS FOR TEACHERS AND SUBSTITUTES; AND FOR RELATED PURPOSES.

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

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

7 37-9-17. (1) On or before April 1 of each year, the  
8 principal of each school shall recommend to the superintendent of  
9 the local school district the licensed employees or  
10 noninstructional employees to be employed for the school involved  
11 except those licensed employees or noninstructional employees who  
12 have been previously employed and who have a contract valid for  
13 the ensuing scholastic year. If such recommendations meet with  
14 the approval of the superintendent, the superintendent shall  
15 recommend the employment of such licensed employees or  
16 noninstructional employees to the local school board, and, unless  
17 good reason to the contrary exists, the board shall elect the  
18 employees so recommended. If, for any reason, the local school  
19 board shall decline to elect any employee so recommended,  
20 additional recommendations for the places to be filled shall be  
21 made by the principal to the superintendent and then by the  
22 superintendent to the local school board as provided above. The  
23 school board of any local school district shall be authorized to  
24 designate a personnel supervisor or another principal employed by  
25 the school district to recommend to the superintendent licensed  
26 employees or noninstructional employees; however, this  
27 authorization shall be restricted to no more than two (2)

28 positions for each employment period for each school in the local  
29 school district. Any noninstructional employee employed upon the  
30 recommendation of a personnel supervisor or another principal  
31 employed by the local school district must have been employed by  
32 the local school district at the time the superintendent was  
33 elected or appointed to office; a noninstructional employee  
34 employed under this authorization may not be paid compensation in  
35 excess of the statewide average compensation for such  
36 noninstructional position with comparable experience, as  
37 established by the State Department of Education. The school  
38 board of any local school district shall be authorized to  
39 designate a personnel supervisor or another principal employed by  
40 the school district to accept the recommendations of principals or  
41 their designees for licensed employees or noninstructional  
42 employees and to transmit approved recommendations to the local  
43 school board; however, this authorization shall be restricted to  
44 no more than two (2) positions for each employment period for each  
45 school in the local school district.

46 When the licensed employees have been elected as provided in  
47 the preceding paragraph, the superintendent of the district shall  
48 enter into a contract with such persons in the manner provided in  
49 this chapter.

50 If, at the commencement of the scholastic year, any licensed  
51 employee shall present to the superintendent a license of a higher  
52 grade than that specified in such individual's contract, such  
53 individual may, if funds are available from adequate education  
54 program funds of the district, or from district funds, be paid  
55 from such funds the amount to which such higher grade license  
56 would have entitled the individual, had the license been held at  
57 the time the contract was executed.

58 (2) Superintendents/directors of schools under the purview  
59 of the State Board of Education and the superintendent of the  
60 local school district shall require that current criminal records

61 background checks and current child abuse registry checks are  
62 obtained, and that such criminal record information and registry  
63 checks are on file for any new hires applying for employment as a  
64 licensed or nonlicensed employee at a school and not previously  
65 employed in such school under the purview of the State Board of  
66 Education or at such local school district prior to July 1, 2000.  
67 In order to determine the applicant's suitability for employment,  
68 the applicant shall be fingerprinted. If no disqualifying record  
69 is identified at the state level, the fingerprints shall be  
70 forwarded by the Department of Public Safety to the FBI for a  
71 national criminal history record check. The fee for such  
72 fingerprinting and criminal history record check shall be paid by  
73 the applicant, not to exceed Fifty Dollars (\$50.00); however, the  
74 State Board of Education, the school board of the local school  
75 district or a private firm under contract with a local school  
76 district to provide substitute teachers to teach during the  
77 temporary absence of the regularly employed schoolteacher, in its  
78 discretion, may elect to pay the fee for the fingerprinting and  
79 criminal history record check on behalf of any applicant. Under  
80 no circumstances shall a member of the State Board of Education,  
81 superintendent/director of schools under the purview of the State  
82 Board of Education, local school district superintendent, local  
83 school board member or any individual other than the subject of  
84 the criminal history record checks disseminate information  
85 received through any such checks except insofar as required to  
86 fulfill the purposes of this section. Any nonpublic school which  
87 is accredited or approved by the State Board of Education may  
88 avail itself of the procedures provided for herein and shall be  
89 responsible for the same fee charged in the case of local public  
90 schools of this state. If a private firm is under contract with a  
91 local public school district to provide substitute teachers to  
92 teach during the temporary absence of the regularly employed  
93 schoolteacher, then the private firm shall request local

94 enforcement authorities to submit the substitute teachers'  
95 fingerprint cards for a criminal history record check as provided  
96 in this section. The fingerprint cards shall be provided by local  
97 law enforcement authorities and shall be submitted to the  
98 Department of Public Safety for a check of the state criminal  
99 records. If no disqualifying record is identified at the state  
100 level, or if necessary, the fingerprints shall be forwarded to the  
101 Federal Bureau of Investigation for a national criminal history  
102 records check. The Department of Public Safety shall disseminate  
103 the results to the \* \* \* public school district where the  
104 applicant is applying. The determination of whether the applicant  
105 has a disqualifying crime, as set forth in subsection (3) herein,  
106 shall be made by the public school district and the public school  
107 district shall notify the private firm of whether a disqualifying  
108 crime exists. The determination of eligibility to work in the  
109 public school district shall be made by the school district.

110 (3) If such fingerprinting or criminal record checks  
111 disclose a felony conviction, guilty plea or plea of nolo  
112 contendere to a felony of possession or sale of drugs, murder,  
113 manslaughter, armed robbery, rape, sexual battery, sex offense  
114 listed in Section 45-33-23(g), child abuse, arson, grand larceny,  
115 burglary, gratification of lust or aggravated assault which has  
116 not been reversed on appeal or for which a pardon has not been  
117 granted, the new hire shall not be eligible to be employed at such  
118 school. Any employment contract for a new hire executed by the  
119 superintendent of the local school district or any employment of a  
120 new hire by a superintendent/director of a new school under the  
121 purview of the State Board of Education or by a private firm shall  
122 be voidable if the new hire receives a disqualifying criminal  
123 record check. However, the State Board of Education or the school  
124 board may, in its discretion, allow any applicant aggrieved by the  
125 employment decision under this section to appear before the  
126 respective board, or before a hearing officer designated for such

127 purpose, to show mitigating circumstances which may exist and  
128 allow the new hire to be employed at the school. The State Board  
129 of Education or local school board may grant waivers for such  
130 mitigating circumstances, which shall include, but not be limited  
131 to: (a) age at which the crime was committed; (b) circumstances  
132 surrounding the crime; (c) length of time since the conviction and  
133 criminal history since the conviction; (d) work history; (e)  
134 current employment and character references; (f) other evidence  
135 demonstrating the ability of the person to perform the employment  
136 responsibilities competently and that the person does not pose a  
137 threat to the health or safety of the children at the school.

138 (4) No local school district, local school district  
139 employee, member of the State Board of Education or employee of a  
140 school under the purview of the State Board of Education shall be  
141 held liable in any employment discrimination suit in which an  
142 allegation of discrimination is made regarding an employment  
143 decision authorized under this Section 37-9-17.

144 **SECTION 2.** This act shall take effect and be in force from  
145 and after July 1, 2005.