COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 1160

AN ACT TO AMEND SECTION 43-11-13, MISSISSIPPI CODE OF 1972,
TO REQUIRE CURRENT AND NEW EMPLOYEES AT LICENSED HEALTH CARE
FACILITIES TO SIGN AN AFFIDAVIT STATING THAT THEY HAVE NOT BEEN
CONVICTED OF OR PLEADED GUILTY TO CERTAIN SPECIFIED CRIMINAL
OFFENSES; TO PROVIDE THAT IF A PERSON HAS BEEN CONVICTED OF OR
PLEADED GUILTY TO ANY OF THE SPECIFIED OFFENSES, THE PERSON SHALL
NOT BE EMPLOYED AT A HEALTH CARE FACILITY; TO PROVIDE THAT IF A
PERSON SIGNS THE AFFIDAVIT AND IT IS LATER DETERMINED THAT THE
PERSON ACTUALLY HAD BEEN CONVICTED OF OR PLEADED GUILTY TO ANY OF
THE SPECIFIED OFFENSES, THE PERSON IS GUILTY OF PERJURY AND SHALL
BE PUNISHED AS PROVIDED BY LAW; TO PROVIDE CIVIL IMMUNITY TO
HEALTH CARE FACILITIES FOR MAKING EMPLOYMENT DECISIONS ALLOWED BY
THIS ACT; AND FOR RELATED PURPOSES.

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

SECTION 1. Section 43-11-13, Mississippi Code of 1972, is
amended as follows:

43-11-13. (1) The licensing agency shall adopt, amend,
promulgate and enforce such rules, regulations and standards,
including classifications, with respect to all institutions for
the aged or infirm to be licensed under this chapter as may be
designed to further the accomplishment of the purpose of this
chapter in promoting adequate care of individuals in those
institutions in the interest of public health, safety and welfare.
Those rules, regulations and standards shall be adopted and
promulgated by the licensing agency and shall be recorded and
indexed in a book to be maintained by the licensing agency in its
main office in the State of Mississippi, entitled "Rules,
Regulations and Minimum Standards for Institutions for the Aged or
Infirm" and the book shall be open and available to all
institutions for the aged or infirm and the public generally at
all reasonable times. Upon the adoption of those rules,
thereof to all those institutions in the state that have filed
with the agency their names and addresses for this purpose, but
the failure to mail the same or the failure of the institutions to
receive the same shall in no way affect the validity thereof. The
rules, regulations and standards may be amended by the licensing
agency, from time to time, as necessary to promote the health,
safety and welfare of persons living in those institutions.

(2) The licensee shall keep posted in a conspicuous place on
the licensed premises all current rules, regulations and minimum
standards applicable to fire protection measures as adopted by the
licensing agency. The licensee shall furnish to the licensing
agency at least once each six (6) months a certificate of approval
and inspection by state or local fire authorities. Failure to
comply with state laws and/or municipal ordinances and current
rules, regulations and minimum standards as adopted by the
licensing agency, relative to fire prevention measures, shall be
prima facie evidence for revocation of license.

(3) The State Board of Health shall promulgate rules and
regulations restricting the storage, quantity and classes of drugs
allowed in personal care homes. Residents requiring
administration of Schedule II Narcotics as defined in the Uniform
Controlled Substances Law may be admitted to a personal care home.
Schedule drugs may only be allowed in a personal care home if they
are administered or stored utilizing proper procedures under the
direct supervision of a licensed physician or nurse.

(4) (a) Notwithstanding any determination by the licensing
agency that skilled nursing services would be appropriate for a
resident of a personal care home, that resident, the resident's
guardian or the legally recognized responsible party for the
resident may consent in writing for the resident to continue to
reside in the personal care home, if approved in writing by a
licensed physician. * * * However, * * * no personal care home
shall allow more than two (2) residents, or ten percent (10%) of
the total number of residents in the facility, whichever is
greater, to remain in the personal care home under the provisions
of this subsection (4). This consent shall be deemed to be
appropriately informed consent as described in the regulations
promulgated by the licensing agency. After that written consent
has been obtained, the resident shall have the right to continue
to reside in the personal care home for as long as the resident
meets the other conditions for residing in the personal care home.
A copy of the written consent and the physician's approval shall
be forwarded by the personal care home to the licensing agency.

(b) The State Board of Health shall promulgate rules
and regulations restricting the handling of a resident's personal
deposits by the director of a personal care home. Any funds given
or provided for the purpose of supplying extra comforts,
conveniences or services to any resident in any personal care
home, and any funds otherwise received and held from, for or on
behalf of any such resident, shall be deposited by the director or
other proper officer of the personal care home to the credit of
that resident in an account that shall be known as the Resident's
Personal Deposit Fund. No more than one (1) month's charge for
the care, support, maintenance and medical attention of the
resident shall be applied from the account at any one time. After
the death, discharge or transfer of any resident for whose benefit
any such fund has been provided, any unexpended balance remaining
in his personal deposit fund shall be applied for the payment of
care, cost of support, maintenance and medical attention that is
accrued. If any unexpended balance remains in that resident's
personal deposit fund after complete reimbursement has been made
for payment of care, support, maintenance and medical attention, and the director or other proper officer of the personal care home
has been or shall be unable to locate the person or persons
entitled to the unexpended balance, the director or other proper
officer may, after the lapse of one (1) year from the date of that
(c) The State Board of Health shall promulgate rules and regulations requiring personal care homes to maintain records relating to health condition, medicine dispensed and administered, and any reaction to that medicine. The director of the personal care home shall be responsible for explaining the availability of those records to the family of the resident at any time upon reasonable request.

(d) The State Board of Health shall evaluate the effects of this section as it promotes adequate care of individuals in personal care homes in the interest of public health, safety and welfare. It shall report its findings to the Chairmen of the Public Health and Welfare Committees of the House and Senate by January 1, 2003. This subsection (4) shall stand repealed June 30, 2003.

(5) (a) For the purposes of this subsection, the term "licensed entity" means a hospital, nursing home, personal care home, home health agency or hospice. For the purposes of this subsection, the term "employee" means any person employed by a licensed entity either directly, or if on a contractual basis, those persons that provide direct patient care to the persons being served by the licensed entity.

(b) Under regulations promulgated by the State Board of Health, the licensing agency shall require ** every ** employee of a licensed entity to sign an affidavit stating that he or she has not been convicted of or pleaded guilty or nolo contendere to a felony of possession or sale of drugs, murder, manslaughter, armed robbery, rape, sexual battery, any sex offense listed in Section 45-33-23(f), child abuse, arson, grand larceny, burglary, gratification of lust, aggravated assault, or felonious abuse and/or battery of a vulnerable adult, or that any such conviction or plea was reversed on appeal or a pardon was granted.
for the conviction or plea. No new employee of a licensed entity hired on or after July 1, 2002, shall be permitted to provide direct patient care until the employee has signed the affidavit required by this paragraph. All existing employees of licensed entities must sign the affidavit required by this paragraph on or before December 31, 2002.

(c) If a person has been convicted of or pleaded guilty or nolo contendere to any of the offenses listed in paragraph (b) of this subsection and the conviction or plea has not been reversed on appeal or a pardon has not been granted for the conviction or plea, the person shall not be employed at a licensed entity. If a person signs the affidavit required by paragraph (b) of this subsection, and it is later determined that the person actually had been convicted of or pleaded guilty or nolo contendere to any of the offenses listed in paragraph (b) of this subsection and the conviction or plea has not been reversed on appeal or a pardon has not been granted for the conviction or plea, the person is guilty of perjury and, upon conviction therefor, shall be punished as provided in Section 97-9-61.

(d) The licensing agency, the licensed entity, and their agents, officers, employees, attorneys and representatives, shall be presumed to be acting in good faith for any employment decision or action taken under this subsection. The presumption of good faith may be overcome by a preponderance of the evidence in any civil action. No licensing agency, licensed entity, nor their agents, officers, employees, attorneys and representatives shall be held liable in any employment discrimination suit in which an allegation of discrimination is made regarding an employment decision authorized under this section.

(e) The licensing agency shall promulgate regulations to implement this subsection (5).
**SECTION 2.** This act shall take effect and be in force from and after July 1, 2002.