

## REPORT OF CONFERENCE COMMITTEE

MADAM PRESIDENT AND MR. SPEAKER:

We, the undersigned conferees, have had under consideration the amendments to the following entitled BILL:

S. B. No. 2191: Criminal record background check requirement for licensed health facilities; revise definitions, make technical amendments.

We, therefore, respectfully submit the following report and recommendation:

1. That the House recede from its Amendment No. 1.
2. That the Senate and House adopt the following amendment:

Amend by striking all after the enacting clause and inserting in lieu thereof the following:

16           **SECTION 1.** Section 43-11-13, Mississippi Code of 1972, is  
17 amended as follows:  
18           43-11-13. (1) The licensing agency shall adopt, amend,  
19 promulgate and enforce such rules, regulations and standards,  
20 including classifications, with respect to all institutions for  
21 the aged or infirm to be licensed under this chapter as may be  
22 designed to further the accomplishment of the purpose of this  
23 chapter in promoting adequate care of individuals in those  
24 institutions in the interest of public health, safety and welfare.  
25 Those rules, regulations and standards shall be adopted and  
26 promulgated by the licensing agency and shall be recorded and  
27 indexed in a book to be maintained by the licensing agency in its  
28 main office in the State of Mississippi, entitled "Rules,  
29 Regulations and Minimum Standards for Institutions for the Aged or  
30 Infirm" and the book shall be open and available to all  
31 institutions for the aged or infirm and the public generally at  
32 all reasonable times. Upon the adoption of those rules,  
33 regulations and standards, the licensing agency shall mail copies  
34 thereof to all those institutions in the state that have filed  
35 with the agency their names and addresses for this purpose, but  
36 the failure to mail the same or the failure of the institutions to

37 receive the same shall in no way affect the validity thereof. The  
38 rules, regulations and standards may be amended by the licensing  
39 agency, from time to time, as necessary to promote the health,  
40 safety and welfare of persons living in those institutions.

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

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

59 (4) (a) Notwithstanding any determination by the licensing  
60 agency that skilled nursing services would be appropriate for a  
61 resident of a personal care home, that resident, the resident's  
62 guardian or the legally recognized responsible party for the  
63 resident may consent in writing for the resident to continue to  
64 reside in the personal care home, if approved in writing by a  
65 licensed physician. \* \* \* However, \* \* \* no personal care home  
66 shall allow more than two (2) residents, or ten percent (10%) of  
67 the total number of residents in the facility, whichever is  
68 greater, to remain in the personal care home under the provisions  
69 of this subsection (4). This consent shall be deemed to be  
70 appropriately informed consent as described in the regulations  
71 promulgated by the licensing agency. After that written consent  
72 has been obtained, the resident shall have the right to continue

73 to reside in the personal care home for as long as the resident  
74 meets the other conditions for residing in the personal care home.

75 A copy of the written consent and the physician's approval shall  
76 be forwarded by the personal care home to the licensing agency.

77 (b) The State Board of Health shall promulgate rules  
78 and regulations restricting the handling of a resident's personal  
79 deposits by the director of a personal care home. Any funds given  
80 or provided for the purpose of supplying extra comforts,  
81 conveniences or services to any resident in any personal care  
82 home, and any funds otherwise received and held from, for or on  
83 behalf of any such resident, shall be deposited by the director or  
84 other proper officer of the personal care home to the credit of  
85 that resident in an account that shall be known as the Resident's  
86 Personal Deposit Fund. No more than one (1) month's charge for  
87 the care, support, maintenance and medical attention of the  
88 resident shall be applied from the account at any one time. After  
89 the death, discharge or transfer of any resident for whose benefit  
90 any such fund has been provided, any unexpended balance remaining  
91 in his personal deposit fund shall be applied for the payment of  
92 care, cost of support, maintenance and medical attention that is  
93 accrued. If any unexpended balance remains in that resident's  
94 personal deposit fund after complete reimbursement has been made  
95 for payment of care, support, maintenance and medical attention,  
96 and the director or other proper officer of the personal care home  
97 has been or shall be unable to locate the person or persons  
98 entitled to the unexpended balance, the director or other proper  
99 officer may, after the lapse of one (1) year from the date of that  
100 death, discharge or transfer, deposit the unexpended balance to  
101 the credit of the personal care home's operating fund.

102 (c) The State Board of Health shall promulgate rules  
103 and regulations requiring personal care homes to maintain records  
104 relating to health condition, medicine dispensed and administered,  
105 and any reaction to that medicine. The director of the personal  
106 care home shall be responsible for explaining the availability of  
107 those records to the family of the resident at any time upon  
108 reasonable request.

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

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

123           (b) Pursuant to regulations promulgated by the State  
124 Department of Health, the licensing agency shall require to be  
125 performed a criminal history record check of (i) every new  
126 employee of a licensed entity who provides direct patient care or  
127 services and who is employed after July 1, 2002, and (ii) every  
128 employee of a licensed entity employed prior to July 1, 2002, who  
129 has a documented disciplinary action by his or her present  
130 employer. Except as otherwise provided, no such \* \* \* employee  
131 hired after July 1, 2002, shall be permitted to provide direct  
132 patient care \* \* \* until the results of the criminal history  
133 record check have revealed no disqualifying record. In order to  
134 determine the applicant's suitability for employment, the  
135 applicant shall be fingerprinted. If no disqualifying record is  
136 identified at the state level, the fingerprints shall be forwarded  
137 by the Department of Public Safety to the Federal Bureau of  
138 Investigation for a national criminal history record check. If  
139 such criminal history record check discloses a felony conviction,  
140 guilty plea or plea of nolo contendere to a felony of possession  
141 or sale of drugs, murder, manslaughter, armed robbery, rape,  
142 sexual battery, sex offense listed in Section 45-31-3(i), child  
143 abuse, arson, grand larceny, burglary, gratification of lust or  
144 aggravated assault, or felonious abuse and/or battery of a

145 vulnerable adult which has not been reversed on appeal or for  
146 which a pardon has not been granted, the new employee shall not be  
147 eligible to be employed at such licensed entity. Any such new  
148 employee may be employed on a temporary basis pending the results  
149 of the criminal history record check but any employment contract  
150 with such employee shall be voidable if the new employee receives  
151 a disqualifying criminal record check.

152 \* \* \*

153 (c) Under regulations promulgated by the State Board of  
154 Health, the licensing agency shall require \* \* \* every \* \* \*  
155 employee of a licensed entity employed prior to July 1, 2002, to  
156 sign an affidavit stating that he or she has not been convicted of  
157 or pleaded guilty or nolo contendere to a felony of possession or  
158 sale of drugs, murder, manslaughter, armed robbery, rape, sexual  
159 battery, any sex offense listed in Section 45-33-23(f), child  
160 abuse, arson, grand larceny, burglary, gratification of lust,  
161 aggravated assault, or felonious abuse and/or battery of a  
162 vulnerable adult, or that any such conviction or plea was reversed  
163 on appeal or a pardon was granted for the conviction or plea.  
164 No \* \* \* such employee of a licensed entity hired before July 1,  
165 2002, shall be permitted to provide direct patient care \* \* \*  
166 until the employee has signed the affidavit required by this  
167 paragraph. All such existing employees of licensed entities must  
168 sign the affidavit required by this paragraph on or before  
169 December 31, 2002. If a person signs the affidavit required by  
170 paragraph (b) of this subsection, and it is later determined that  
171 the person actually had been convicted of or pleaded guilty or  
172 nolo contendere to any of the offenses listed in this paragraph  
173 (c) of this subsection and the conviction or plea has not been  
174 reversed on appeal or a pardon has not been granted for the  
175 conviction or plea, the person is guilty of perjury. If the  
176 offense that the person was convicted of or pleaded guilty or nolo  
177 contendere to was a violent offense, the person, upon a conviction  
178 of perjury under this paragraph, shall be punished as provided in  
179 Section 97-9-61. If the offense that the person was convicted of  
180 or pleaded guilty or nolo contendere to was a nonviolent offense,

181 the person, upon a conviction of perjury under this paragraph,  
182 shall be punished by a fine of not more than Five Hundred Dollars  
183 (\$500.00), or by imprisonment in the county jail for not more than  
184 six (6) months, or by both such fine and imprisonment.

185 (d) All fees incurred in compliance with this section  
186 shall be borne by the licensed entity requesting the criminal  
187 history record check. \* \* \* Costs incurred by a licensed entity  
188 implementing this section shall be reimbursed as an allowable cost  
189 under Section 43-13-116.

190 (e) The licensing agency, the licensed entity, and  
191 their agents, officers, employees, attorneys and representatives,  
192 shall be presumed to be acting in good faith for any employment  
193 decision or action taken under \* \* \* this subsection. The  
194 presumption of good faith may be overcome by a preponderance of  
195 the evidence in any civil action. No licensing agency, licensed  
196 entity, nor their agents, officers, employees, attorneys and  
197 representatives shall be held liable in any employment  
198 discrimination suit in which an allegation of discrimination is  
199 made regarding an employment decision authorized under this  
200 section.

201 (f) The licensing agency shall promulgate regulations  
202 to implement this subsection (5).

203 **SECTION 2.** This act shall take effect and be in force from  
204 and after July 1, 2002.

**Further, amend by striking the title in its entirety and  
inserting in lieu thereof the following:**

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

CONFEREES FOR THE SENATE

**X**  
\_\_\_\_\_  
Robert G. Huggins

**X**  
\_\_\_\_\_  
Terry C. Burton

\_\_\_\_\_  
Billy Thames

CONFEREES FOR THE HOUSE

**X**  
\_\_\_\_\_  
Frances Fredericks

**X**  
\_\_\_\_\_  
Joey Hudson

**X**  
\_\_\_\_\_  
Bobby Moody