

By: Representative Moody

To: Public Health and  
Welfare

HOUSE BILL NO. 1022

1 AN ACT TO AMEND SECTION 43-11-13, MISSISSIPPI CODE OF 1972,  
2 TO DELETE THE AUTOMATIC REPEALER ON CERTAIN LICENSURE STANDARDS  
3 FOR PERSONAL CARE HOMES; AND FOR RELATED PURPOSES.

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

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

7 43-11-13. (1) The licensing agency shall adopt, amend,  
8 promulgate and enforce such rules, regulations and standards,  
9 including classifications, with respect to all institutions for  
10 the aged or infirm to be licensed under this chapter as may be  
11 designed to further the accomplishment of the purpose of this  
12 chapter in promoting adequate care of individuals in those  
13 institutions in the interest of public health, safety and welfare.  
14 Those rules, regulations and standards shall be adopted and  
15 promulgated by the licensing agency and shall be recorded and  
16 indexed in a book to be maintained by the licensing agency in its  
17 main office in the State of Mississippi, entitled "Rules,  
18 Regulations and Minimum Standards for Institutions for the Aged or  
19 Infirm," and the book shall be open and available to all  
20 institutions for the aged or infirm and the public generally at  
21 all reasonable times. Upon the adoption of those rules,  
22 regulations and standards, the licensing agency shall mail copies  
23 thereof to all those institutions in the state that have filed  
24 with the agency their names and addresses for this purpose, but  
25 the failure to mail the same or the failure of the institutions to  
26 receive the same shall in no way affect the validity thereof. The  
27 rules, regulations and standards may be amended by the licensing



28 agency, from time to time, as necessary to promote the health,  
29 safety and welfare of persons living in those institutions.

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

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

48 (4) (a) Notwithstanding any determination by the licensing  
49 agency that skilled nursing services would be appropriate for a  
50 resident of a personal care home, that resident, the resident's  
51 guardian or the legally recognized responsible party for the  
52 resident may consent in writing for the resident to continue to  
53 reside in the personal care home, if approved in writing by a  
54 licensed physician. However, no personal care home shall allow  
55 more than two (2) residents, or ten percent (10%) of the total  
56 number of residents in the facility, whichever is greater, to  
57 remain in the personal care home under the provisions of this  
58 subsection (4). This consent shall be deemed to be appropriately  
59 informed consent as described in the regulations promulgated by  
60 the licensing agency. After that written consent has been



61 obtained, the resident shall have the right to continue to reside  
62 in the personal care home for as long as the resident meets the  
63 other conditions for residing in the personal care home. A copy  
64 of the written consent and the physician's approval shall be  
65 forwarded by the personal care home to the licensing agency.

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

91 (c) The State Board of Health shall promulgate rules  
92 and regulations requiring personal care homes to maintain records  
93 relating to health condition, medicine dispensed and administered,



94 and any reaction to that medicine. The director of the personal  
95 care home shall be responsible for explaining the availability of  
96 those records to the family of the resident at any time upon  
97 reasonable request.

98 (d) The State Board of Health shall evaluate the  
99 effects of this section as it promotes adequate care of  
100 individuals in personal care homes in the interest of public  
101 health, safety and welfare. It shall report its findings to the  
102 Chairmen of the Public Health and Welfare Committees of the House  
103 and Senate by January 1, 2003. \* \* \*

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

111 (b) Under regulations promulgated by the State  
112 Department of Health, the licensing agency shall require to be  
113 performed a criminal history record check on (i) every new  
114 employee of a licensed entity who provides direct patient care or  
115 services and who is employed on or after July 1, 2002, and (ii)  
116 every employee of a licensed entity employed before July 1, 2002,  
117 who has a documented disciplinary action by his or her present  
118 employer. Except as otherwise provided, no such employee hired on  
119 or after July 1, 2002, shall be permitted to provide direct  
120 patient care until the results of the criminal history record  
121 check have revealed no disqualifying record. In order to  
122 determine the applicant's suitability for employment, the  
123 applicant shall be fingerprinted. If no disqualifying record is  
124 identified at the state level, the fingerprints shall be forwarded  
125 by the Department of Public Safety to the Federal Bureau of  
126 Investigation for a national criminal history record check. If



127 the criminal history record check discloses a felony conviction,  
128 guilty plea or plea of nolo contendere to a felony of possession  
129 or sale of drugs, murder, manslaughter, armed robbery, rape,  
130 sexual battery, sex offense listed in Section 45-33-23(f), child  
131 abuse, arson, grand larceny, burglary, gratification of lust or  
132 aggravated assault, or felonious abuse and/or battery of a  
133 vulnerable adult that has not been reversed on appeal or for which  
134 a pardon has not been granted, the new employee shall not be  
135 eligible to be employed at the licensed entity. Any such new  
136 employee may be employed on a temporary basis pending the results  
137 of the criminal history record check, but any employment contract  
138 with the employee shall be voidable if the new employee receives a  
139 disqualifying criminal record check.

140 (c) Under regulations promulgated by the State Board of  
141 Health, the licensing agency shall require every employee of a  
142 licensed entity employed before July 1, 2002, to sign an affidavit  
143 stating that he or she has not been convicted of or pleaded guilty  
144 or nolo contendere to a felony of possession or sale of drugs,  
145 murder, manslaughter, armed robbery, rape, sexual battery, any sex  
146 offense listed in Section 45-33-23(f), child abuse, arson, grand  
147 larceny, burglary, gratification of lust, aggravated assault, or  
148 felonious abuse and/or battery of a vulnerable adult, or that any  
149 such conviction or plea was reversed on appeal or a pardon was  
150 granted for the conviction or plea. No such employee of a  
151 licensed entity hired before July 1, 2002, shall be permitted to  
152 provide direct patient care until the employee has signed the  
153 affidavit required by this paragraph. All such existing employees  
154 of licensed entities must sign the affidavit required by this  
155 paragraph on or before December 31, 2002. If a person signs the  
156 affidavit required by paragraph (b) of this subsection, and it is  
157 later determined that the person actually had been convicted of or  
158 pleaded guilty or nolo contendere to any of the offenses listed in  
159 this paragraph (c) of this subsection and the conviction or plea



160 has not been reversed on appeal or a pardon has not been granted  
161 for the conviction or plea, the person is guilty of perjury. If  
162 the offense that the person was convicted of or pleaded guilty or  
163 nolo contendere to was a violent offense, the person, upon a  
164 conviction of perjury under this paragraph, shall be punished as  
165 provided in Section 97-9-61. If the offense that the person was  
166 convicted of or pleaded guilty or nolo contendere to was a  
167 nonviolent offense, the person, upon a conviction of perjury under  
168 this paragraph, shall be punished by a fine of not more than Five  
169 Hundred Dollars (\$500.00), or by imprisonment in the county jail  
170 for not more than six (6) months, or by both that fine and  
171 imprisonment.

172 (d) All fees incurred in compliance with this  
173 subsection shall be borne by the licensed entity requesting the  
174 criminal history record check. Costs incurred by a licensed  
175 entity implementing this subsection shall be reimbursed as an  
176 allowable cost under Section 43-13-116.

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

187 (f) The licensing agency shall promulgate regulations  
188 to implement this subsection (5).

189 **SECTION 2.** This act shall take effect and be in force from  
190 and after June 30, 2003.

