AN ACT TO AMEND SECTION 43-11-13, MISSISSIPPI CODE OF 1972, TO AUTHORIZE THE STATE DEPARTMENT OF HEALTH TO REQUIRE ELECTRONIC MONITORING DEVICES IN THE ROOMS OF RESIDENTS OF NURSING HOMES AT THE REQUEST OF THE RESIDENT OR THE RESIDENT'S GUARDIAN; TO AUTHORIZE THE DEPARTMENT OF HEALTH TO ISSUE REGULATIONS; TO PROVIDE CRIMINAL PENALTIES FOR VIOLATIONS OF 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, regulations and standards, the licensing agency shall mail copies 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 death, discharge or transfer, deposit the unexpended balance to the credit of the personal care home's operating fund.
(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) Pursuant to regulations promulgated by the State Department of Health, the licensing agency shall require to be performed a criminal history record check on (i) every new employee of a licensed entity who provides direct patient care or services and who is employed after July 1, 2002, and (ii) every employee of a licensed entity employed prior to July 1, 2002, who has a documented disciplinary action by his or her present employer. Except as otherwise provided, no such employee hired after July 1, 2002, shall be permitted to provide direct patient care until the results of the criminal history record check have revealed no disqualifying record. In order to determine the applicant's suitability for employment, the applicant shall be
fingerprinted. If no disqualifying record is identified at the state level, the fingerprints shall be forwarded by the Department of Public Safety to the Federal Bureau of Investigation for a national criminal history record check. If such criminal history record check discloses a felony conviction, guilty plea or plea of nolo contendere to a felony of possession or sale of drugs, murder, manslaughter, armed robbery, rape, sexual battery, sex offense listed in Section 45-33-23(f), child abuse, arson, grand larceny, burglary, gratification of lust or aggravated assault, or felonious abuse and/or battery of a vulnerable adult which has not been reversed on appeal or for which a pardon has not been granted, the new employee shall not be eligible to be employed at such licensed entity. Any such new employee may be employed on a temporary basis pending the results of the criminal history record check but any employment contract with such employee shall be voidable if the new employee receives a disqualifying criminal record check.

(c) Under regulations promulgated by the State Board of Health, the licensing agency shall require every employee of a licensed entity employed prior to July 1, 2002, 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 such employee of a licensed entity hired before July 1, 2002, shall be permitted to provide direct patient care until the employee has signed the affidavit required by this paragraph. All such existing employees of licensed entities must sign the affidavit required by this paragraph on or before December 31,
2002. 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 this paragraph (c) 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. If the offense that the person was convicted of or pleaded guilty or nolo contendere to was a violent offense, the person, upon a conviction of perjury under this paragraph, shall be punished as provided in Section 97-9-61. If the offense that the person was convicted of or pleaded guilty or nolo contendere to was a nonviolent offense, the person, upon a conviction of perjury under this paragraph, shall be punished by a fine of not more than Five Hundred Dollars ($500.00), or by imprisonment in the county jail for not more than six (6) months, or by both such fine and imprisonment.

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

(e) 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.

(f) The licensing agency shall promulgate regulations to implement this subsection (5).
(6) (a) An institution for the aged or infirm shall permit a resident, the resident's next of kin at the request of the resident, or the resident's guardian to monitor the room of the resident through the use of electronic monitoring devices.

(b) (i) The institution shall require a resident who conducts electronic monitoring or the resident's guardian to post a notice on the door of the resident's room.

(ii) The notice must state that the room is being monitored by an electronic monitoring device.

(c) Electronic monitoring conducted under this section:

(i) Is not compulsory and may be conducted only at the request of the resident or the resident's guardian;

(ii) Must be paid for by the resident or the resident's guardian; and

(iii) Must protect the privacy rights of other residents and visitors to the institution to the extent reasonably possible.

(d) An institution may not refuse to admit an individual to residency in the institution and may not remove a resident from the institution because of a request to conduct electronic monitoring.

(e) An institution shall make reasonable physical accommodation for electronic monitoring, including:

(i) Providing a reasonably secure place to mount the video surveillance camera or other monitoring device; and

(ii) Providing access to power sources for the video surveillance camera or other electronic monitoring device.

(f) An institution shall inform a resident or the resident's guardian of the resident's right to conduct electronic monitoring.

(g) If electronic monitoring is conducted, the institution may require the resident, the resident's next of kin,
or the resident's guardian to conduct the electronic monitoring in
plain view.

(h) An institution may require that a request to
conduct electronic monitoring be made in writing.

(i) Subject to applicable rules of evidence and
procedure, a tape or recording created through the use of
electronic monitoring conducted under this section may be admitted
into evidence in a civil or criminal court action or
administrative proceeding.

(j) An administrator of an institution who knowingly
refuses to permit a resident, the resident's next of kin at the
request of the resident, or the resident's guardian to monitor the
room of the resident in accordance with this section through the
use of electronic monitoring devices is guilty of a misdemeanor,
and upon conviction, shall be fined an amount not to exceed Five
Thousand Dollars ($5,000.00).

(k) An administrator of an institution who knowingly
refuses to admit an individual to residency in the institution, or
who knowingly allows the removal of a resident from the
institution, because of a request to conduct electronic monitoring
under this section is guilty of a misdemeanor and upon conviction,
shall be fined an amount not to exceed Five Thousand Dollars
($5,000.00).

(l) (i) A person who intentionally hampers, obstructs,
tamper with, or destroys an electronic monitoring device
installed in a resident's room in accordance with this section or
a tape or recording made by the device is guilty of a misdemeanor
and upon conviction, shall be fined an amount not to exceed Five
Thousand Dollars ($5,000.00).

(ii) It is an affirmative defense to prosecution
under this subsection that the person took the action with the
consent of the resident on whose behalf the electronic monitoring
device was installed, the resident's guardian, or the resident's
next of kin if the next of kin was conducting the monitoring at
the request of the resident.

(m) The licensing agency shall promulgate regulations
to enforce the provisions of this subsection (6).

(n) For purposes of this subsection (6), "electronic
monitoring device" includes:

(i) Video surveillance cameras installed in the
room of a resident; and

(ii) Audio devices installed in the room of a
resident designed to acquire communications or other sounds
occurring in the room.

SECTION 2. This act shall take effect and be in force from
and after July 1, 2003.