

By: Representative Watson

To: Public Health and Human
Services

HOUSE BILL NO. 290

1 AN ACT TO AMEND SECTION 43-11-13, MISSISSIPPI CODE OF 1972,
2 TO EXTEND THE DATE OF REPEAL ON THE PROVISIONS OF LAW WHICH ALLOW
3 PERSONAL CARE HOME RESIDENTS TO CONTINUE TO RESIDE THERE EVEN IF
4 THEY ARE DETERMINED TO NEED SKILLED NURSING SERVICES, REGULATE THE
5 HANDLING OF RESIDENTS' PERSONAL DEPOSITS, AND REQUIRE CERTAIN
6 RECORDS TO BE MAINTAINED; AND FOR RELATED PURPOSES.

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

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

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

30 rules, regulations and standards may be amended by the licensing
31 agency, from time to time, as necessary to promote the health,
32 safety and welfare of persons living in those institutions.

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

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

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

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

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

94 (c) The State Board of Health shall promulgate rules
95 and regulations requiring personal care homes to maintain records

96 relating to health condition, medicine dispensed and administered,
97 and any reaction to that medicine. The director of the personal
98 care home shall be responsible for explaining the availability of
99 those records to the family of the resident at any time upon
100 reasonable request.

101 (d) The State Board of Health shall evaluate the
102 effects of this section as it promotes adequate care of
103 individuals in personal care homes in the interest of public
104 health, safety and welfare. It shall report its findings to the
105 Chairmen of the Public Health and Welfare Committees of the House
106 and Senate by January 1, 2003. This subsection (4) shall stand
107 repealed June 30, 2006.

108 (5) (a) For the purposes of this subsection (5), the term
109 "licensed entity" means a hospital, nursing home, personal care
110 home, home health agency or hospice. For the purposes of this
111 subsection (5), the term "employee" means any individual employed
112 by a licensed entity. The term "employee" also includes any
113 individual who by contract provides to the patients, residents or
114 clients being served by the licensed entity direct, hands-on,
115 medical patient care in a patient's, resident's or client's room
116 or in treatment or recovery rooms.

117 (b) Under regulations promulgated by the State Board of
118 Health, the licensing agency shall require to be performed a
119 criminal history record check on (i) every new employee of a
120 licensed entity who provides direct patient care or services and
121 who is employed on or after July 1, 2003, and (ii) every employee
122 of a licensed entity employed before July 1, 2003, who has a
123 documented disciplinary action by his or her present employer.

124 Except as otherwise provided in paragraph (c) of this
125 subsection (5), no such employee hired on or after July 1, 2003,
126 shall be permitted to provide direct patient care until the
127 results of the criminal history record check have revealed no
128 disqualifying record or the employee has been granted a waiver.

129 In order to determine the employee applicant's suitability for
130 employment, the applicant shall be fingerprinted. Fingerprints
131 shall be submitted to the licensing agency from scanning, with the
132 results processed through the Department of Public Safety's
133 Criminal Information Center. If no disqualifying record is
134 identified at the state level, the fingerprints shall be forwarded
135 by the Department of Public Safety to the Federal Bureau of
136 Investigation for a national criminal history record check. The
137 licensing agency shall notify the licensed entity of the results
138 of an employee applicant's criminal history record check. If the
139 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 45-33-23(f), 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 that has not been reversed on appeal or for which
146 a pardon has not been granted, the employee applicant shall not be
147 eligible to be employed at the licensed entity.

148 (c) Any such new employee applicant may, however, be
149 employed on a temporary basis pending the results of the criminal
150 history record check, but any employment contract with the new
151 employee shall be voidable if the new employee receives a
152 disqualifying criminal record check and no waiver is granted as
153 provided in this subsection (5).

154 (d) Under regulations promulgated by the State Board of
155 Health, the licensing agency shall require every employee of a
156 licensed entity employed before July 1, 2003, to sign an affidavit
157 stating that he or she has not been convicted of or pleaded guilty
158 or nolo contendere to a felony of possession or sale of drugs,
159 murder, manslaughter, armed robbery, rape, sexual battery, any sex
160 offense listed in Section 45-33-23(f), child abuse, arson, grand
161 larceny, burglary, gratification of lust, aggravated assault, or

162 felonious abuse and/or battery of a vulnerable adult, or that any
163 such conviction or plea was reversed on appeal or a pardon was
164 granted for the conviction or plea. No such employee of a
165 licensed entity hired before July 1, 2003, shall be permitted to
166 provide direct patient care until the employee has signed the
167 affidavit required by this paragraph (d). All such existing
168 employees of licensed entities must sign the affidavit required by
169 this paragraph (d) within six (6) months of the final adoption of
170 the regulations promulgated by the State Board of Health. If a
171 person signs the affidavit required by this paragraph (d), and it
172 is later determined that the person actually had been convicted of
173 or pleaded guilty or nolo contendere to any of the offenses listed
174 in this paragraph (d) and the conviction or plea has not been
175 reversed on appeal or a pardon has not been granted for the
176 conviction or plea, the person is guilty of perjury. If the
177 offense that the person was convicted of or pleaded guilty or nolo
178 contendere to was a violent offense, the person, upon a conviction
179 of perjury under this paragraph, shall be punished as provided in
180 Section 97-9-61. If the offense that the person was convicted of
181 or pleaded guilty or nolo contendere to was a nonviolent offense,
182 the person, upon a conviction of perjury under this paragraph,
183 shall be punished by a fine of not more than Five Hundred Dollars
184 (\$500.00), or by imprisonment in the county jail for not more than
185 six (6) months, or by both such fine and imprisonment.

186 (e) The licensed entity may, in its discretion, allow
187 any employee who is unable to sign the affidavit required by
188 paragraph (d) of this subsection (5) or any employee applicant
189 aggrieved by the employment decision under this subsection (5) to
190 appear before the licensed entity's hiring officer, or his or her
191 designee, to show mitigating circumstances that may exist and
192 allow the employee or employee applicant to be employed at the
193 licensed entity. The licensed entity, upon report and
194 recommendation of the hiring officer, may grant waivers for those

195 mitigating circumstances, which shall include, but not be limited
196 to: (i) age at which the crime was committed; (ii) circumstances
197 surrounding the crime; (iii) length of time since the conviction
198 and criminal history since the conviction; (iv) work history; (v)
199 current employment and character references; and (vi) other
200 evidence demonstrating the ability of the individual to perform
201 the employment responsibilities competently and that the
202 individual does not pose a threat to the health or safety of the
203 patients in the licensed entity.

204 (f) The licensing agency may charge the licensed entity
205 submitting the fingerprints a fee not to exceed Fifty Dollars
206 (\$50.00), which licensed entity may, in its discretion, charge the
207 same fee, or a portion thereof, to the employee applicant. Any
208 costs incurred by a licensed entity implementing this subsection
209 (5) shall be reimbursed as an allowable cost under Section
210 43-13-116.

211 (g) If the results of an employee applicant's criminal
212 history record check reveals no disqualifying event, then the
213 licensed entity shall, within two (2) weeks of the notification of
214 no disqualifying event, provide the employee applicant with a
215 notarized letter signed by the chief executive officer of the
216 licensed entity, or his or her authorized designee, confirming the
217 employee applicant's suitability for employment based on his or
218 her criminal history record check. An employee applicant may use
219 that letter for a period of two (2) years from the date of the
220 letter to seek employment at any licensed entity without the
221 necessity of an additional criminal record check. Any licensed
222 entity presented with the letter may rely on the letter with
223 respect to an employee applicant's criminal background and is not
224 required for a period of two (2) years from the date of the letter
225 to conduct or have conducted a criminal history record check as
226 required in this subsection (5).

227 (h) The licensing agency, the licensed entity, and
228 their agents, officers, employees, attorneys and representatives,
229 shall be presumed to be acting in good faith for any employment
230 decision or action taken under this subsection (5). The
231 presumption of good faith may be overcome by a preponderance of
232 the evidence in any civil action. No licensing agency, licensed
233 entity, nor their agents, officers, employees, attorneys and
234 representatives shall be held liable in any employment decision or
235 action based in whole or in part on compliance with or attempts to
236 comply with the requirements of this subsection (5).

237 (i) The licensing agency shall promulgate regulations
238 to implement this subsection (5).

239 **SECTION 2.** This act shall take effect and be in force from
240 and after July 1, 2004.