

By: Representative Holland

To: Public Health and Human Services

HOUSE BILL NO. 1013
(As Passed the House)

1 AN ACT TO REQUIRE CRIMINAL BACKGROUND CHECKS AND
2 FINGERPRINTING FOR HEALTH CARE PROFESSIONAL/VOCATIONAL TECHNICAL
3 STUDENTS; TO AMEND SECTION 43-11-13, MISSISSIPPI CODE OF 1972, TO
4 PROVIDE THAT THE REQUIREMENT FOR PERFORMING CRIMINAL HISTORY
5 RECORD CHECKS AND FINGERPRINTING UNDER THAT SECTION DO NOT APPLY
6 TO HEALTH CARE PROFESSIONAL/VOCATIONAL TECHNICAL STUDENTS FOR WHOM
7 CRIMINAL HISTORY RECORD CHECKS AND FINGERPRINTING ARE OBTAINED IN
8 ACCORDANCE WITH THE PROVISIONS OF THIS ACT; TO PROVIDE THAT
9 NURSING AND OTHER ALLIED-HEALTH STUDENTS PERFORMING CLINICAL
10 TRAINING, AND HIGH SCHOOL ALLIED-HEALTH STUDENTS WHO OBSERVE
11 TREATMENT OF PATIENTS, ARE NOT SUBJECT TO CRIMINAL HISTORY RECORD
12 CHECKS AND FINGERPRINTING UNDER CERTAIN CONDITIONS; AND FOR
13 RELATED PURPOSES.

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

15 **SECTION 1.** (1) For the purposes of this section:

16 (a) "Health care professional/vocational technical,
17 academic program" means an academic program in medicine, nursing,
18 dentistry, occupational therapy, physical therapy, social
19 services, nutrition services, speech therapy, or other
20 allied-health professional whose purpose is to prepare
21 professionals to render patient care services.

22 (b) "Health care professional/vocational technical
23 student" means a student enrolled in a health
24 professional/vocational technical academic program.

25 (2) The dean or director of the health care
26 professional/vocational technical academic program shall ensure
27 that criminal history record checks and fingerprinting are
28 obtained on their students before the students begin any clinical
29 rotation in a licensed health care entity and that the criminal
30 history record check information and registry checks are on file
31 at the academic institution. In order to determine the student's
32 suitability for the clinical rotation, the student shall be

33 fingerprinted. If no disqualifying record is identified at the
34 state level, the fingerprints shall be forwarded by the Department
35 of Public Safety, the Department of Health, or any other legally
36 authorized entity to the FBI for a national criminal history
37 record check. The fee for the fingerprinting and criminal history
38 record check shall be paid by the applicant, not to exceed One
39 Hundred Dollars (\$100.00); however, the academic institution in
40 which the student is enrolled, in its discretion, may elect to pay
41 the fee for the fingerprinting and criminal history record check
42 on behalf of any applicant. Under no circumstances shall the
43 academic institution representative or any individual other than
44 the subject of the criminal history record checks disseminate
45 information received through any such checks except insofar as
46 required to fulfill the purposes of this section.

47 (3) If the fingerprinting or criminal history record checks
48 disclose a felony conviction, guilty plea or plea of nolo
49 contendere to a felony of possession or sale of drugs, murder,
50 manslaughter, armed robbery, rape, sexual battery, sex offense
51 listed in Section 45-33-23(f), child abuse, arson, grand larceny,
52 burglary, gratification of lust or aggravated assault, or
53 felonious abuse and/or battery of a vulnerable adult that has not
54 been reversed on appeal or for which a pardon has not been
55 granted, the student shall not be eligible to be admitted to the
56 health care professional/vocational technical academic program of
57 study. Any preadmission agreement executed by the health care
58 professional/vocational technical academic program shall be
59 voidable if the student receives a disqualifying criminal history
60 record check. However, the administration of the health care
61 professional/vocational technical academic program may, in its
62 discretion, allow any applicant aggrieved by the admissions
63 decision under this section to appear before an appeals committee
64 or before a hearing officer designated for that purpose, to show
65 mitigating circumstances that may exist and allow the student to

66 be admitted to or continue in the program of study. The health
67 care professional/vocational technical academic program may grant
68 waivers for those mitigating circumstances, which shall include,
69 but not be limited to: (a) age at which the crime was committed;
70 (b) circumstances surrounding the crime; (c) length of time since
71 the conviction and criminal history since the conviction; (d) work
72 history; (e) current employment and character references;
73 (f) other evidence demonstrating the ability of the student to
74 perform the clinical responsibilities competently and that the
75 student does not pose a threat to the health or safety of patients
76 in the licensed health care entities in which they will be
77 conducting clinical experiences. The health care
78 professional/vocational technical academic program shall provide
79 assurance to the licensed health care entity in which the clinical
80 rotation is planned that the results of a health
81 professional/vocational student's criminal history record check
82 would not prohibit the student from being able to conduct his or
83 her clinical activities in the facility, institution, or
84 organization. The criminal history record check shall be valid
85 for the course of academic study, provided that annual disclosure
86 statements are provided to the health care professional/vocational
87 technical academic program regarding any criminal activity that
88 may have occurred during the student's tenure with the health care
89 professional/vocational technical academic program. The criminal
90 history record check may be repeated at the discretion of the
91 health care professional/vocational technical academic program
92 based on information obtained during the annual disclosure
93 statements. In extenuating circumstances, if a criminal history
94 record check is initiated and the results are not available at the
95 time the clinical rotation begins, the academic institution in
96 which the student is enrolled, at its discretion, may require a
97 signed affidavit from the student assuring compliance with this

98 section. The affidavit will be considered void within sixty (60)
99 days of its signature.

100 (4) Criminal history record checks that are done as part of
101 the requirements for participation in the health care
102 professional/vocational technical academic program may not be used
103 for any other purpose than those activities associated with their
104 program of study. Students who may be employed as health care
105 professionals outside of their program of study may be required to
106 obtain additional criminal history record checks as part of their
107 employment agreement.

108 (5) No health professional/vocational technical academic
109 program or academic program employee shall be held liable in any
110 admissions discrimination suit in which an allegation of
111 discrimination is made regarding an admissions decision authorized
112 under this section.

113 **SECTION 2.** Section 43-11-13, Mississippi Code of 1972, is
114 amended as follows:

115 43-11-13. (1) The licensing agency shall adopt, amend,
116 promulgate and enforce such rules, regulations and standards,
117 including classifications, with respect to all institutions for
118 the aged or infirm to be licensed under this chapter as may be
119 designed to further the accomplishment of the purpose of this
120 chapter in promoting adequate care of individuals in those
121 institutions in the interest of public health, safety and welfare.
122 Those rules, regulations and standards shall be adopted and
123 promulgated by the licensing agency and shall be recorded and
124 indexed in a book to be maintained by the licensing agency in its
125 main office in the State of Mississippi, entitled "Rules,
126 Regulations and Minimum Standards for Institutions for the Aged or
127 Infirm" and the book shall be open and available to all
128 institutions for the aged or infirm and the public generally at
129 all reasonable times. Upon the adoption of those rules,
130 regulations and standards, the licensing agency shall mail copies

131 thereof to all those institutions in the state that have filed
132 with the agency their names and addresses for this purpose, but
133 the failure to mail the same or the failure of the institutions to
134 receive the same shall in no way affect the validity thereof. The
135 rules, regulations and standards may be amended by the licensing
136 agency, from time to time, as necessary to promote the health,
137 safety and welfare of persons living in those institutions.

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

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

156 (4) (a) Notwithstanding any determination by the licensing
157 agency that skilled nursing services would be appropriate for a
158 resident of a personal care home, that resident, the resident's
159 guardian or the legally recognized responsible party for the
160 resident may consent in writing for the resident to continue to
161 reside in the personal care home, if approved in writing by a
162 licensed physician. However, no personal care home shall allow
163 more than two (2) residents, or ten percent (10%) of the total

164 number of residents in the facility, whichever is greater, to
165 remain in the personal care home under the provisions of this
166 subsection (4). This consent shall be deemed to be appropriately
167 informed consent as described in the regulations promulgated by
168 the licensing agency. After that written consent has been
169 obtained, the resident shall have the right to continue to reside
170 in the personal care home for as long as the resident meets the
171 other conditions for residing in the personal care home. A copy
172 of the written consent and the physician's approval shall be
173 forwarded by the personal care home to the licensing agency.

174 (b) The State Board of Health shall promulgate rules
175 and regulations restricting the handling of a resident's personal
176 deposits by the director of a personal care home. Any funds given
177 or provided for the purpose of supplying extra comforts,
178 conveniences or services to any resident in any personal care
179 home, and any funds otherwise received and held from, for or on
180 behalf of any such resident, shall be deposited by the director or
181 other proper officer of the personal care home to the credit of
182 that resident in an account that shall be known as the Resident's
183 Personal Deposit Fund. No more than one (1) month's charge for
184 the care, support, maintenance and medical attention of the
185 resident shall be applied from the account at any one time. After
186 the death, discharge or transfer of any resident for whose benefit
187 any such fund has been provided, any unexpended balance remaining
188 in his personal deposit fund shall be applied for the payment of
189 care, cost of support, maintenance and medical attention that is
190 accrued. If any unexpended balance remains in that resident's
191 personal deposit fund after complete reimbursement has been made
192 for payment of care, support, maintenance and medical attention,
193 and the director or other proper officer of the personal care home
194 has been or shall be unable to locate the person or persons
195 entitled to the unexpended balance, the director or other proper
196 officer may, after the lapse of one (1) year from the date of that

197 death, discharge or transfer, deposit the unexpended balance to
198 the credit of the personal care home's operating fund.

199 (c) The State Board of Health shall promulgate rules
200 and regulations requiring personal care homes to maintain records
201 relating to health condition, medicine dispensed and administered,
202 and any reaction to that medicine. The director of the personal
203 care home shall be responsible for explaining the availability of
204 those records to the family of the resident at any time upon
205 reasonable request.

206 (d) The State Board of Health shall evaluate the
207 effects of this section as it promotes adequate care of
208 individuals in personal care homes in the interest of public
209 health, safety and welfare. It shall report its findings to the
210 Chairmen of the Public Health and Welfare Committees of the House
211 and Senate by January 1, 2003. This subsection (4) shall stand
212 repealed June 30, 2004.

213 (5) (a) For the purposes of this subsection (5):

214 (i) "Licensed entity" means a hospital, nursing
215 home, personal care home, home health agency or hospice;

216 (ii) "Employee" means any individual employed by a
217 licensed entity, and also includes any individual who by contract
218 provides to the patients, residents or clients being served by the
219 licensed entity direct, hands-on, medical patient care in a
220 patient's, resident's or client's room or in treatment or recovery
221 rooms. The term "employee" does not include nursing and other
222 allied-health students performing clinical training in a licensed
223 entity under contracts between their schools and the licensed
224 entity, and does not include students at high schools located in
225 Mississippi who observe the treatment and care of patients in a
226 licensed entity as part of the requirements of an allied-health
227 course taught in the high school, if:

228 1. The student is under the direct and
229 immediate supervision of a licensed health care provider; and

230 2. The student has signed an affidavit that
231 is on file at the student's school stating that he or she has not
232 been convicted of or pleaded guilty or nolo contendere to a felony
233 listed in paragraph (d) of this subsection (5), or that any such
234 conviction or plea was reversed on appeal or a pardon was granted
235 for the conviction or plea. Before any student may sign such an
236 affidavit, the student's school shall provide information to the
237 student explaining what a felony is and the nature of the felonies
238 listed in paragraph (d) of this subsection (5).

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

246 Except as otherwise provided in paragraph (c) of this
247 subsection (5), no such employee hired on or after July 1, 2003,
248 shall be permitted to provide direct patient care until the
249 results of the criminal history record check have revealed no
250 disqualifying record or the employee has been granted a waiver.
251 In order to determine the employee applicant's suitability for
252 employment, the applicant shall be fingerprinted. Fingerprints
253 shall be submitted to the licensing agency from scanning, with the
254 results processed through the Department of Public Safety's
255 Criminal Information Center. If no disqualifying record is
256 identified at the state level, the fingerprints shall be forwarded
257 by the Department of Public Safety to the Federal Bureau of
258 Investigation for a national criminal history record check. The
259 licensing agency shall notify the licensed entity of the results
260 of an employee applicant's criminal history record check. If the
261 criminal history record check discloses a felony conviction,
262 guilty plea or plea of nolo contendere to a felony of possession

263 or sale of drugs, murder, manslaughter, armed robbery, rape,
264 sexual battery, sex offense listed in Section 45-33-23(f), child
265 abuse, arson, grand larceny, burglary, gratification of lust or
266 aggravated assault, or felonious abuse and/or battery of a
267 vulnerable adult that has not been reversed on appeal or for which
268 a pardon has not been granted, the employee applicant shall not be
269 eligible to be employed at the licensed entity.

270 (c) Any such new employee applicant may, however, be
271 employed on a temporary basis pending the results of the criminal
272 history record check, but any employment contract with the new
273 employee shall be voidable if the new employee receives a
274 disqualifying criminal history record check and no waiver is
275 granted as provided in this subsection (5).

276 (d) Under regulations promulgated by the State Board of
277 Health, the licensing agency shall require every employee of a
278 licensed entity employed before July 1, 2003, to sign an affidavit
279 stating that he or she has not been convicted of or pleaded guilty
280 or nolo contendere to a felony of possession or sale of drugs,
281 murder, manslaughter, armed robbery, rape, sexual battery, any sex
282 offense listed in Section 45-33-23(f), child abuse, arson, grand
283 larceny, burglary, gratification of lust, aggravated assault, or
284 felonious abuse and/or battery of a vulnerable adult, or that any
285 such conviction or plea was reversed on appeal or a pardon was
286 granted for the conviction or plea. No such employee of a
287 licensed entity hired before July 1, 2003, shall be permitted to
288 provide direct patient care until the employee has signed the
289 affidavit required by this paragraph (d). All such existing
290 employees of licensed entities must sign the affidavit required by
291 this paragraph (d) within six (6) months of the final adoption of
292 the regulations promulgated by the State Board of Health. If a
293 person signs the affidavit required by this paragraph (d), and it
294 is later determined that the person actually had been convicted of
295 or pleaded guilty or nolo contendere to any of the offenses listed

296 in this paragraph (d) and the conviction or plea has not been
297 reversed on appeal or a pardon has not been granted for the
298 conviction or plea, the person is guilty of perjury. If the
299 offense that the person was convicted of or pleaded guilty or nolo
300 contendere to was a violent offense, the person, upon a conviction
301 of perjury under this paragraph, shall be punished as provided in
302 Section 97-9-61. If the offense that the person was convicted of
303 or pleaded guilty or nolo contendere to was a nonviolent offense,
304 the person, upon a conviction of perjury under this paragraph,
305 shall be punished by a fine of not more than Five Hundred Dollars
306 (\$500.00), or by imprisonment in the county jail for not more than
307 six (6) months, or by both such fine and imprisonment.

308 (e) The licensed entity may, in its discretion, allow
309 any employee who is unable to sign the affidavit required by
310 paragraph (d) of this subsection (5) or any employee applicant
311 aggrieved by the employment decision under this subsection (5) to
312 appear before the licensed entity's hiring officer, or his or her
313 designee, to show mitigating circumstances that may exist and
314 allow the employee or employee applicant to be employed at the
315 licensed entity. The licensed entity, upon report and
316 recommendation of the hiring officer, may grant waivers for those
317 mitigating circumstances, which shall include, but not be limited
318 to: (i) age at which the crime was committed; (ii) circumstances
319 surrounding the crime; (iii) length of time since the conviction
320 and criminal history since the conviction; (iv) work history; (v)
321 current employment and character references; and (vi) other
322 evidence demonstrating the ability of the individual to perform
323 the employment responsibilities competently and that the
324 individual does not pose a threat to the health or safety of the
325 patients in the licensed entity.

326 (f) The licensing agency may charge the licensed entity
327 submitting the fingerprints a fee not to exceed Fifty Dollars
328 (\$50.00), which licensed entity may, in its discretion, charge the

329 same fee, or a portion thereof, to the employee applicant. Any
330 costs incurred by a licensed entity implementing this subsection
331 (5) shall be reimbursed as an allowable cost under Section
332 43-13-116.

333 (g) If the results of an employee applicant's criminal
334 history record check reveals no disqualifying event, then the
335 licensed entity shall, within two (2) weeks of the notification of
336 no disqualifying event, provide the employee applicant with a
337 notarized letter signed by the chief executive officer of the
338 licensed entity, or his or her authorized designee, confirming the
339 employee applicant's suitability for employment based on his or
340 her criminal history record check. An employee applicant may use
341 that letter for a period of two (2) years from the date of the
342 letter to seek employment at any licensed entity without the
343 necessity of an additional criminal history record check. Any
344 licensed entity presented with the letter may rely on the letter
345 with respect to an employee applicant's criminal background and is
346 not required for a period of two (2) years from the date of the
347 letter to conduct or have conducted a criminal history record
348 check as required in this subsection (5).

349 (h) The licensing agency, the licensed entity, and
350 their agents, officers, employees, attorneys and representatives,
351 shall be presumed to be acting in good faith for any employment
352 decision or action taken under this subsection (5). The
353 presumption of good faith may be overcome by a preponderance of
354 the evidence in any civil action. No licensing agency, licensed
355 entity, nor their agents, officers, employees, attorneys and
356 representatives shall be held liable in any employment decision or
357 action based in whole or in part on compliance with or attempts to
358 comply with the requirements of this subsection (5).

359 (i) The licensing agency shall promulgate regulations
360 to implement this subsection (5).

361 (j) The provisions of this subsection (5) shall not
362 apply to health care professional/vocational technical students
363 for whom criminal history record checks and fingerprinting are
364 obtained in accordance with Section 1 of this act.

365 **SECTION 3.** This act shall take effect and be in force from
366 and after July 1, 2004.