

By: Representative Montgomery

To: Public Health and Human Services

HOUSE BILL NO. 1274

1 AN ACT TO AMEND SECTION 43-11-13, MISSISSIPPI CODE OF 1972,
2 TO PROVIDE THAT NURSING STUDENTS AND OTHER ALLIED-HEALTH STUDENTS
3 AT MISSISSIPPI COLLEGES AND UNIVERSITIES WHO PROVIDE DIRECT
4 PATIENT CARE AT HEALTH CARE FACILITIES AS PART OF THEIR REQUIRED
5 CLINICAL TRAINING, AND MISSISSIPPI HIGH SCHOOL STUDENTS WHO
6 OBSERVE THE TREATMENT AND CARE OF PATIENTS IN HEALTH CARE
7 FACILITIES AS PART OF THE REQUIREMENTS OF AN ALLIED HEALTH COURSE,
8 SHALL BE EXEMPT FROM THE REQUIREMENT FOR CRIMINAL HISTORY RECORD
9 CHECKS; AND FOR RELATED PURPOSES.

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

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

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

31 the failure to mail the same or the failure of the institutions to
32 receive the same shall in no way affect the validity thereof. The
33 rules, regulations and standards may be amended by the licensing
34 agency, from time to time, as necessary to promote the health,
35 safety and welfare of persons living in those institutions.

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

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

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

64 subsection (4). This consent shall be deemed to be appropriately
65 informed consent as described in the regulations promulgated by
66 the licensing agency. After that written consent has been
67 obtained, the resident shall have the right to continue to reside
68 in the personal care home for as long as the resident meets the
69 other conditions for residing in the personal care home. A copy
70 of the written consent and the physician's approval shall be
71 forwarded by the personal care home to the licensing agency.

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

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

104 (d) The State Board of Health shall evaluate the
105 effects of this section as it promotes adequate care of
106 individuals in personal care homes in the interest of public
107 health, safety and welfare. It shall report its findings to the
108 Chairmen of the Public Health and Welfare Committees of the House
109 and Senate by January 1, 2003. This subsection (4) shall stand
110 repealed June 30, 2004.

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

112 (i) "Licensed entity" means a hospital, nursing
113 home, personal care home, home health agency or hospice.

114 (ii) "Employee" means any individual employed by a
115 licensed entity, and also includes any individual who by contract
116 provides to the patients, residents or clients being served by the
117 licensed entity direct, hands-on, medical patient care in a
118 patient's, resident's or client's room or in treatment or recovery
119 rooms. The term "employee" does not include a nursing student or
120 other allied-health student at a university, college or community
121 college located in Mississippi who provides direct patient care or
122 services at a licensed entity as part of clinical training
123 required by the university, college or community college in the
124 nursing or other allied-health program, and does not include a
125 student at a high school located in Mississippi who observes the
126 treatment and care of patients in a licensed entity as part of the
127 requirements of an allied-health course taught in the high school.

128 (b) Under regulations promulgated by the State Board of
129 Health, the licensing agency shall require to be performed a

130 criminal history record check on (i) every new employee of a
131 licensed entity who provides direct patient care or services and
132 who is employed on or after July 1, 2003, and (ii) every employee
133 of a licensed entity employed before July 1, 2003, who has a
134 documented disciplinary action by his or her present employer.

135 Except as otherwise provided in paragraph (c) of this
136 subsection (5), no such employee hired on or after July 1, 2003,
137 shall be permitted to provide direct patient care until the
138 results of the criminal history record check have revealed no
139 disqualifying record or the employee has been granted a waiver.
140 In order to determine the employee applicant's suitability for
141 employment, the applicant shall be fingerprinted. Fingerprints
142 shall be submitted to the licensing agency from scanning, with the
143 results processed through the Department of Public Safety's
144 Criminal Information Center. If no disqualifying record is
145 identified at the state level, the fingerprints shall be forwarded
146 by the Department of Public Safety to the Federal Bureau of
147 Investigation for a national criminal history record check. The
148 licensing agency shall notify the licensed entity of the results
149 of an employee applicant's criminal history record check. If the
150 criminal history record check discloses a felony conviction,
151 guilty plea or plea of nolo contendere to a felony of possession
152 or sale of drugs, murder, manslaughter, armed robbery, rape,
153 sexual battery, sex offense listed in Section 45-33-23(f), child
154 abuse, arson, grand larceny, burglary, gratification of lust or
155 aggravated assault, or felonious abuse and/or battery of a
156 vulnerable adult that has not been reversed on appeal or for which
157 a pardon has not been granted, the employee applicant shall not be
158 eligible to be employed at the licensed entity.

159 (c) Any such new employee applicant may, however, be
160 employed on a temporary basis pending the results of the criminal
161 history record check, but any employment contract with the new
162 employee shall be voidable if the new employee receives a

163 disqualifying criminal history record check and no waiver is
164 granted as provided in this subsection (5).

165 (d) Under regulations promulgated by the State Board of
166 Health, the licensing agency shall require every employee of a
167 licensed entity employed before July 1, 2003, to sign an affidavit
168 stating that he or she has not been convicted of or pleaded guilty
169 or nolo contendere to a felony of possession or sale of drugs,
170 murder, manslaughter, armed robbery, rape, sexual battery, any sex
171 offense listed in Section 45-33-23(f), child abuse, arson, grand
172 larceny, burglary, gratification of lust, aggravated assault, or
173 felonious abuse and/or battery of a vulnerable adult, or that any
174 such conviction or plea was reversed on appeal or a pardon was
175 granted for the conviction or plea. No such employee of a
176 licensed entity hired before July 1, 2003, shall be permitted to
177 provide direct patient care until the employee has signed the
178 affidavit required by this paragraph (d). All such existing
179 employees of licensed entities must sign the affidavit required by
180 this paragraph (d) within six (6) months of the final adoption of
181 the regulations promulgated by the State Board of Health. If a
182 person signs the affidavit required by this paragraph (d), and it
183 is later determined that the person actually had been convicted of
184 or pleaded guilty or nolo contendere to any of the offenses listed
185 in this paragraph (d) and the conviction or plea has not been
186 reversed on appeal or a pardon has not been granted for the
187 conviction or plea, the person is guilty of perjury. If the
188 offense that the person was convicted of or pleaded guilty or nolo
189 contendere to was a violent offense, the person, upon a conviction
190 of perjury under this paragraph, shall be punished as provided in
191 Section 97-9-61. If the offense that the person was convicted of
192 or pleaded guilty or nolo contendere to was a nonviolent offense,
193 the person, upon a conviction of perjury under this paragraph,
194 shall be punished by a fine of not more than Five Hundred Dollars

195 (\$500.00), or by imprisonment in the county jail for not more than
196 six (6) months, or by both such fine and imprisonment.

197 (e) The licensed entity may, in its discretion, allow
198 any employee who is unable to sign the affidavit required by
199 paragraph (d) of this subsection (5) or any employee applicant
200 aggrieved by the employment decision under this subsection (5) to
201 appear before the licensed entity's hiring officer, or his or her
202 designee, to show mitigating circumstances that may exist and
203 allow the employee or employee applicant to be employed at the
204 licensed entity. The licensed entity, upon report and
205 recommendation of the hiring officer, may grant waivers for those
206 mitigating circumstances, which shall include, but not be limited
207 to: (i) age at which the crime was committed; (ii) circumstances
208 surrounding the crime; (iii) length of time since the conviction
209 and criminal history since the conviction; (iv) work history; (v)
210 current employment and character references; and (vi) other
211 evidence demonstrating the ability of the individual to perform
212 the employment responsibilities competently and that the
213 individual does not pose a threat to the health or safety of the
214 patients in the licensed entity.

215 (f) The licensing agency may charge the licensed entity
216 submitting the fingerprints a fee not to exceed Fifty Dollars
217 (\$50.00), which licensed entity may, in its discretion, charge the
218 same fee, or a portion thereof, to the employee applicant. Any
219 costs incurred by a licensed entity implementing this subsection
220 (5) shall be reimbursed as an allowable cost under Section
221 43-13-116.

222 (g) If the results of an employee applicant's criminal
223 history record check reveals no disqualifying event, then the
224 licensed entity shall, within two (2) weeks of the notification of
225 no disqualifying event, provide the employee applicant with a
226 notarized letter signed by the chief executive officer of the
227 licensed entity, or his or her authorized designee, confirming the

228 employee applicant's suitability for employment based on his or
229 her criminal history record check. An employee applicant may use
230 that letter for a period of two (2) years from the date of the
231 letter to seek employment at any licensed entity without the
232 necessity of an additional criminal history record check. Any
233 licensed entity presented with the letter may rely on the letter
234 with respect to an employee applicant's criminal background and is
235 not required for a period of two (2) years from the date of the
236 letter to conduct or have conducted a criminal history record
237 check as required in this subsection (5).

238 (h) The licensing agency, the licensed entity, and
239 their agents, officers, employees, attorneys and representatives,
240 shall be presumed to be acting in good faith for any employment
241 decision or action taken under this subsection (5). The
242 presumption of good faith may be overcome by a preponderance of
243 the evidence in any civil action. No licensing agency, licensed
244 entity, nor their agents, officers, employees, attorneys and
245 representatives shall be held liable in any employment decision or
246 action based in whole or in part on compliance with or attempts to
247 comply with the requirements of this subsection (5).

248 (i) The licensing agency shall promulgate regulations
249 to implement this subsection (5).

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