

By: Senator(s) Nunnelee

To: Public Health and  
Welfare

SENATE BILL NO. 2434

1 AN ACT TO AMEND SECTION 43-11-13, MISSISSIPPI CODE OF 1972,  
2 TO EXTEND 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. This subsection (4) shall stand  
104 repealed June 30, 2006.

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

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

121 Except as otherwise provided in paragraph (c) of this  
122 subsection (5), no such employee hired on or after July 1, 2003,  
123 shall be permitted to provide direct patient care until the  
124 results of the criminal history record check have revealed no  
125 disqualifying record or the employee has been granted a waiver.  
126 In order to determine the employee applicant's suitability for

127 employment, the applicant shall be fingerprinted. Fingerprints  
128 shall be submitted to the licensing agency from scanning, with the  
129 results processed through the Department of Public Safety's  
130 Criminal Information Center. If no disqualifying record is  
131 identified at the state level, the fingerprints shall be forwarded  
132 by the Department of Public Safety to the Federal Bureau of  
133 Investigation for a national criminal history record check. The  
134 licensing agency shall notify the licensed entity of the results  
135 of an employee applicant's criminal history record check. If the  
136 criminal history record check discloses a felony conviction,  
137 guilty plea or plea of nolo contendere to a felony of possession  
138 or sale of drugs, murder, manslaughter, armed robbery, rape,  
139 sexual battery, sex offense listed in Section 45-33-23(f), child  
140 abuse, arson, grand larceny, burglary, gratification of lust or  
141 aggravated assault, or felonious abuse and/or battery of a  
142 vulnerable adult that has not been reversed on appeal or for which  
143 a pardon has not been granted, the employee applicant shall not be  
144 eligible to be employed at the licensed entity.

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

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

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

183 (e) The licensed entity may, in its discretion, allow  
184 any employee who is unable to sign the affidavit required by  
185 paragraph (d) of this subsection (5) or any employee applicant  
186 aggrieved by the employment decision under this subsection (5) to  
187 appear before the licensed entity's hiring officer, or his or her  
188 designee, to show mitigating circumstances that may exist and  
189 allow the employee or employee applicant to be employed at the  
190 licensed entity. The licensed entity, upon report and  
191 recommendation of the hiring officer, may grant waivers for those  
192 mitigating circumstances, which shall include, but not be limited

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

201 (f) The licensing agency may charge the licensed entity  
202 submitting the fingerprints a fee not to exceed Fifty Dollars  
203 (\$50.00), which licensed entity may, in its discretion, charge the  
204 same fee, or a portion thereof, to the employee applicant. Any  
205 costs incurred by a licensed entity implementing this subsection  
206 (5) shall be reimbursed as an allowable cost under Section  
207 43-13-116.

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

224 (h) The licensing agency, the licensed entity, and  
225 their agents, officers, employees, attorneys and representatives,

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

234 (i) The licensing agency shall promulgate regulations  
235 to implement this subsection (5).

236 **SECTION 2.** This act shall take effect and be in force from  
237 and after June 30, 2004.