

By: Senator(s) Nunnelee

To: Public Health and Welfare

SENATE BILL NO. 2569

1 AN ACT TO AMEND SECTION 43-11-13, MISSISSIPPI CODE OF 1972,  
2 TO PROVIDE THAT THE HEALTH CARE EMPLOYEE CRIMINAL BACKGROUND CHECK  
3 LAW MAY BE UTILIZED BY PROFESSIONAL STAFFING AGENCIES; AND FOR  
4 RELATED PURPOSES.

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

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

8 43-11-13. (1) The licensing agency shall adopt, amend,  
9 promulgate and enforce such rules, regulations and standards,  
10 including classifications, with respect to all institutions for  
11 the aged or infirm to be licensed under this chapter as may be  
12 designed to further the accomplishment of the purpose of this  
13 chapter in promoting adequate care of individuals in those  
14 institutions in the interest of public health, safety and welfare.  
15 Those rules, regulations and standards shall be adopted and  
16 promulgated by the licensing agency and shall be recorded and  
17 indexed in a book to be maintained by the licensing agency in its  
18 main office in the State of Mississippi, entitled "Rules,  
19 Regulations and Minimum Standards for Institutions for the Aged or  
20 Infirm" and the book shall be open and available to all  
21 institutions for the aged or infirm and the public generally at  
22 all reasonable times. Upon the adoption of those rules,  
23 regulations and standards, the licensing agency shall mail copies  
24 thereof to all those institutions in the state that have filed  
25 with the agency their names and addresses for this purpose, but  
26 the failure to mail the same or the failure of the institutions to  
27 receive the same shall in no way affect the validity thereof. The  
28 rules, regulations and standards may be amended by the licensing

29 agency, from time to time, as necessary to promote the health,  
30 safety and welfare of persons living in those institutions.

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

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

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

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

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

92 (c) The State Board of Health shall promulgate rules  
93 and regulations requiring personal care homes to maintain records  
94 relating to health condition, medicine dispensed and administered,

95 and any reaction to that medicine. The director of the personal  
96 care home shall be responsible for explaining the availability of  
97 those records to the family of the resident at any time upon  
98 reasonable request.

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

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

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

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

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

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

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

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

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

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

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

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

225 (h) The licensing agency, the covered entity, and their  
226 agents, officers, employees, attorneys and representatives, shall

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

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

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