

By: Senator(s) Burton

To: Public Health and Welfare

COMMITTEE SUBSTITUTE
FOR
SENATE BILL NO. 2607

1 AN ACT TO AMEND SECTION 43-11-13, MISSISSIPPI CODE OF 1972,
2 TO PROVIDE THAT NURSING AND OTHER ALLIED HEALTH STUDENTS
3 PERFORMING CLINICAL TRAINING ARE NOT SUBJECT TO CRIMINAL RECORD
4 BACKGROUND CHECK REQUIREMENTS UNDER CERTAIN CONDITIONS; TO CODIFY
5 SECTION 37-29-232, MISSISSIPPI CODE OF 1972, TO REQUIRE
6 FINGERPRINTING AND CRIMINAL BACKGROUND CHECKS FOR HEALTH CARE
7 PROFESSIONAL/VOCATIONAL TECHNICAL STUDENTS UNDER CERTAIN
8 CONDITIONS; AND FOR RELATED PURPOSES.

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

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

12 43-11-13. (1) The licensing agency shall adopt, amend,
13 promulgate and enforce such rules, regulations and standards,
14 including classifications, with respect to all institutions for
15 the aged or infirm to be licensed under this chapter as may be
16 designed to further the accomplishment of the purpose of this
17 chapter in promoting adequate care of individuals in those
18 institutions in the interest of public health, safety and welfare.
19 Those rules, regulations and standards shall be adopted and
20 promulgated by the licensing agency and shall be recorded and
21 indexed in a book to be maintained by the licensing agency in its
22 main office in the State of Mississippi, entitled "Rules,
23 Regulations and Minimum Standards for Institutions for the Aged or
24 Infirm" and the book shall be open and available to all
25 institutions for the aged or infirm and the public generally at
26 all reasonable times. Upon the adoption of those rules,
27 regulations and standards, the licensing agency shall mail copies
28 thereof to all those institutions in the state that have filed
29 with the agency their names and addresses for this purpose, but
30 the failure to mail the same or the failure of the institutions to

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

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

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

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

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

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

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

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

110 (5) (a) For the purposes of this subsection (5), the term
111 "licensed entity" means a hospital, nursing home, personal care
112 home, home health agency or hospice. For the purposes of this
113 subsection (5), the term "employee" means any individual employed
114 by a licensed entity. The term "employee" also includes any
115 individual who by contract provides to the patients, residents or
116 clients being served by the licensed entity direct, hands-on,
117 medical patient care in a patient's, resident's or client's room
118 or in treatment or recovery rooms. Nursing and other allied
119 health students performing clinical training in a licensed entity
120 under contracts between their schools and the licensed entity are
121 not "employees" for the purposes of this subsection, if (i) such
122 student is under the direct and immediate supervision of a
123 licensed health care provider, and (ii) the student has signed an
124 affidavit which is on file at the student's school stating that he
125 or she has not been convicted of or pleaded guilty or nolo
126 contendere to a felony listed in paragraph (d) of this subsection
127 (5), or that any such conviction or plea was reversed on appeal or
128 a pardon was granted for the conviction or plea. Provided,

129 however, that the health care professional/vocational technical
130 academic program in which the student is enrolled may require such
131 student to obtain criminal records background checks pursuant to
132 the provisions of Section 37-29-232, Mississippi Code of 1972.

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

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

162 a pardon has not been granted, the employee applicant shall not be
163 eligible to be employed at the licensed entity.

164 (c) Any such new employee applicant may, however, be
165 employed on a temporary basis pending the results of the criminal
166 history record check, but any employment contract with the new
167 employee shall be voidable if the new employee receives a
168 disqualifying criminal record check and no waiver is granted as
169 provided in this subsection (5).

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

195 of perjury under this paragraph, shall be punished as provided in
196 Section 97-9-61. If the offense that the person was convicted of
197 or pleaded guilty or nolo contendere to was a nonviolent offense,
198 the person, upon a conviction of perjury under this paragraph,
199 shall be punished by a fine of not more than Five Hundred Dollars
200 (\$500.00), or by imprisonment in the county jail for not more than
201 six (6) months, or by both such fine and imprisonment.

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

220 (f) The licensing agency may charge the licensed entity
221 submitting the fingerprints a fee not to exceed Fifty Dollars
222 (\$50.00), which licensed entity may, in its discretion, charge the
223 same fee, or a portion thereof, to the employee applicant. Any
224 costs incurred by a licensed entity implementing this subsection
225 (5) shall be reimbursed as an allowable cost under Section
226 43-13-116.

227 (g) If the results of an employee applicant's criminal
228 history record check reveals no disqualifying event, then the
229 licensed entity shall, within two (2) weeks of the notification of
230 no disqualifying event, provide the employee applicant with a
231 notarized letter signed by the chief executive officer of the
232 licensed entity, or his or her authorized designee, confirming the
233 employee applicant's suitability for employment based on his or
234 her criminal history record check. An employee applicant may use
235 that letter for a period of two (2) years from the date of the
236 letter to seek employment at any licensed entity without the
237 necessity of an additional criminal record check. Any licensed
238 entity presented with the letter may rely on the letter with
239 respect to an employee applicant's criminal background and is not
240 required for a period of two (2) years from the date of the letter
241 to conduct or have conducted a criminal history record check as
242 required in this subsection (5).

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

253 (i) The licensing agency shall promulgate regulations
254 to implement this subsection (5).

255 **SECTION 2.** The following provision shall be codified as
256 Section 37-29-232, Mississippi Code of 1972:

257 37-29-232. (1) For purposes of this section, health care
258 professional/vocational technical student shall be defined as a
259 student enrolled in an academic program in medicine, nursing,

260 dentistry, occupational therapy, physical therapy, social
261 services, nutrition services, speech therapy, or other allied
262 health professional whose purpose is to prepare professionals to
263 render patient care services.

264 (2) The dean or director of the health care
265 professional/vocational technical academic program is authorized
266 to ensure that criminal records background checks and
267 fingerprinting are obtained on their students prior to their
268 beginning any clinical rotation in a licensed health care entity
269 and that such criminal record information and registry checks are
270 on file at the academic institution. In order to determine the
271 student's suitability for the clinical rotation, the student shall
272 be fingerprinted. If no disqualifying record is identified at the
273 state level, the fingerprints shall be forwarded by the Department
274 of Public Safety, the Department of Health, or any other legally
275 authorized entity to the FBI for a national criminal history
276 record check. The fee for such fingerprinting and criminal
277 history record check shall be paid by the applicant, not to exceed
278 One Hundred Dollars (\$100.00); however, the academic institution
279 in which the student is enrolled, in its discretion, may elect to
280 pay the fee for the fingerprinting and criminal record check on
281 behalf of any applicant. Under no circumstances shall the
282 academic institution representative or any individual other than
283 the subject of the criminal history record checks disseminate
284 information received through any such checks except insofar as
285 required to fulfill the purposes of this section.

286 (3) If such fingerprinting or criminal record checks
287 disclose a felony conviction, guilty plea or plea of nolo
288 contendere to a felony possession or sale of drugs, murder,
289 manslaughter, armed robbery, rape, sexual battery, sex offense
290 listed in Section 45-31-3(I), child abuse, arson, grand larceny,
291 burglary, gratification of lust or aggravated assault which has
292 not been reversed on appeal or for which a pardon has not been

293 granted, the student shall not be eligible to be admitted to such
294 health professional academic program of study. Any preadmission
295 agreement executed by the health professional academic program
296 shall be voidable if the student receives a disqualifying criminal
297 record check. However, the academic health program administration
298 may, in its discretion, allow any applicant aggrieved by the
299 admissions decision under this section to appear before an appeals
300 committee or before a hearing officer designated for such purpose,
301 to show mitigating circumstances which may exist and allow the
302 student to be admitted to or continue in the program of study.
303 The health profession academic program may grant waivers for such
304 mitigating circumstances, which shall include, but not be limited
305 to: (a) age at which the crime was committed; (b) circumstances
306 surrounding the crime; (c) length of time since the conviction and
307 criminal history since the conviction; (d) work history; (e)
308 current employment and character references; (f) other evidence
309 demonstrating the ability of the student to perform the clinical
310 responsibilities competently and that the student does not pose a
311 threat to the health or safety of patients in the licensed
312 entities in which they will be conducting clinical experiences.
313 The health professional academic program shall provide assurance
314 to the licensed entity in which the clinical rotation is planned
315 that the results of a health professional student's criminal
316 history record check would not prohibit their being able to
317 conduct their clinical activities in the facility, institution, or
318 organization. Such criminal history record check shall be valid
319 for the course of academic study provided that annual disclosure
320 statements are provided to the health professional academic
321 program regarding any criminal activity that may have occurred
322 during the student's tenure with the health professional academic
323 program. The criminal history record check may be repeated at the
324 discretion of the health professional academic program based on
325 information obtained during the annual disclosure statements. In

326 extenuating circumstances, should a criminal history record check
327 be initiated and the results not be available at the time the
328 clinical rotation begins, the academic institution in which the
329 student is enrolled, at its discretion, may require a signed
330 affidavit from the student assuring compliance with this act.
331 Said affidavit will be considered null and void within sixty (60)
332 days of its signature.

333 (4) Criminal history record checks that are done as part of
334 the requirements for participation in the health professional/
335 vocational technical academic program may not be used for any
336 other purpose than those activities associated with their program
337 of study. Students who may be employed as health professionals
338 outside of their program of study may be required to obtain
339 additional criminal history record checks as part of their
340 employment agreement.

341 (5) No health professional/vocational technical academic
342 program or academic health program employee shall be held liable
343 in any admissions discrimination suit in which an allegation of
344 discrimination is made regarding an admissions decision authorized
345 under this section.

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