

By: Senator(s) Burton

To: Public Health and Welfare

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; AND FOR  
5 RELATED PURPOSES.

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

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

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

29 rules, regulations and standards may be amended by the licensing  
30 agency, from time to time, as necessary to promote the health,  
31 safety and welfare of persons living in those institutions.

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

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

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

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

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

93 (c) The State Board of Health shall promulgate rules  
94 and regulations requiring personal care homes to maintain records

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

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

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

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

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

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

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

161 disqualifying criminal record check and no waiver is granted as  
162 provided in this subsection (5).

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

193 (\$500.00), or by imprisonment in the county jail for not more than  
194 six (6) months, or by both such fine and imprisonment.

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

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

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

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

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

246 (i) The licensing agency shall promulgate regulations  
247 to implement this subsection (5).

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