

By: Senator(s) Burton

To: Public Health and Welfare

SENATE BILL NO. 2607  
(As Sent to Governor)

1 AN ACT TO CODIFY SECTION 37-29-232, MISSISSIPPI CODE OF 1972,  
2 TO REQUIRE CRIMINAL HISTORY RECORD CHECKS AND FINGERPRINTING FOR  
3 HEALTH CARE PROFESSIONAL/VOCATIONAL TECHNICAL STUDENTS; TO CODIFY  
4 NEW SECTION 37-115-41, MISSISSIPPI CODE OF 1972, TO REQUIRE THE  
5 UNIVERSITY OF MISSISSIPPI MEDICAL CENTER (UMMC) TO FINGERPRINT AND  
6 PERFORM CRIMINAL HISTORY RECORD CHECKS ON ALL NEW EMPLOYEES THAT  
7 WORK IN OR PROVIDE DIRECT PATIENT CARE; TO REQUIRE UMMC TO PERFORM  
8 DISCIPLINARY CHECKS WITH THE PROFESSIONAL LICENSING AGENCIES OF  
9 THOSE EMPLOYEES; TO PROVIDE THAT NO NEW EMPLOYEE OF UMMC SHALL BE  
10 PERMITTED TO PROVIDE DIRECT PATIENT CARE UNTIL THE RESULTS OF THE  
11 CRIMINAL HISTORY RECORD CHECK HAVE REVEALED NO DISQUALIFYING  
12 RECORD OR THE EMPLOYEE HAS BEEN GRANTED A WAIVER; TO PROVIDE THAT  
13 IF THE CRIMINAL HISTORY RECORD CHECK DISCLOSES CERTAIN CONVICTIONS  
14 OR PLEAS, THE APPLICANT SHALL NOT BE ELIGIBLE TO BE EMPLOYED AT  
15 UMMC; TO PROVIDE THAT APPLICANTS AGGRIEVED BY AN EMPLOYMENT  
16 DECISION OF UMMC MAY SHOW MITIGATING CIRCUMSTANCES THAT ALLOW THE  
17 APPLICANT TO BE EMPLOYED, AND UMMC MAY GRANT WAIVERS FOR THOSE  
18 MITIGATING CIRCUMSTANCES; TO PROVIDE THAT UPON THE RECEIPT OF A  
19 CRIMINAL HISTORY RECORD CHECK THAT REVEALS NO DISQUALIFYING EVENT,  
20 UMMC SHALL PROVIDE THE APPLICANT WITH A NOTARIZED LETTER THAT THE  
21 APPLICANT MAY USE FOR A PERIOD OF TWO YEARS TO SEEK EMPLOYMENT AT  
22 ANY LICENSED HEALTH CARE ENTITY WITHOUT THE NECESSITY OF AN  
23 ADDITIONAL CRIMINAL HISTORY RECORD CHECK; TO PROVIDE THAT UMMC OR  
24 ITS AGENTS SHALL NOT BE HELD LIABLE IN ANY EMPLOYMENT DECISION OR  
25 ACTION BASED ON COMPLIANCE WITH OR ATTEMPTS TO COMPLY WITH THIS  
26 ACT; TO AMEND SECTION 43-11-13, MISSISSIPPI CODE OF 1972, AS  
27 AMENDED BY SENATE BILL NO. 2434, 2004 REGULAR SESSION, TO INCLUDE  
28 HEALTH CARE PROFESSIONAL STAFFING AGENCIES IN THOSE ENTITIES THAT  
29 MUST HAVE CRIMINAL HISTORY RECORD CHECKS OF THEIR EMPLOYEES BEFORE  
30 THE EMPLOYEES MAY PROVIDE DIRECT PATIENT CARE OR SERVICES; TO  
31 REQUIRE DISCIPLINARY CHECKS TO BE PERFORMED WITH THE PROFESSIONAL  
32 LICENSING AGENCIES OF EMPLOYEES OF COVERED ENTITIES; TO PROVIDE  
33 THAT HEALTH CARE PROFESSIONAL/VOCATIONAL TECHNICAL STUDENTS  
34 PERFORMING CLINICAL TRAINING, AND HIGH SCHOOL ALLIED-HEALTH  
35 STUDENTS WHO OBSERVE TREATMENT OF PATIENTS, ARE NOT SUBJECT TO  
36 CRIMINAL HISTORY RECORD CHECKS AND FINGERPRINTING UNDER CERTAIN  
37 CONDITIONS; TO PROVIDE THAT THE REQUIREMENT FOR PERFORMING  
38 CRIMINAL HISTORY RECORD CHECKS AND FINGERPRINTING UNDER THAT  
39 SECTION DO NOT APPLY TO HEALTH CARE PROFESSIONAL/VOCATIONAL  
40 TECHNICAL STUDENTS FOR WHOM CRIMINAL HISTORY RECORD CHECKS AND  
41 FINGERPRINTING ARE OBTAINED IN ACCORDANCE WITH THE PROVISIONS OF  
42 SECTION 37-29-232 OR TO APPLICANTS OR EMPLOYEES OF UMMC FOR WHOM  
43 CRIMINAL HISTORY RECORD CHECKS AND FINGERPRINTING ARE OBTAINED IN  
44 ACCORDANCE WITH THE PROVISIONS OF SECTION 37-115-41; AND FOR  
45 RELATED PURPOSES.

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

47 **SECTION 1.** The following shall be codified as Section  
48 37-29-232, Mississippi Code of 1972:

49           37-29-232. (1) For the purposes of this section:

50           (a) "Health care professional/vocational technical  
51 academic program" means an academic program in medicine, nursing,  
52 dentistry, occupational therapy, physical therapy, social  
53 services, nutrition services, speech therapy, or other  
54 allied-health professional whose purpose is to prepare  
55 professionals to render patient care services.

56           (b) "Health care professional/vocational technical  
57 student" means a student enrolled in a health care  
58 professional/vocational technical academic program.

59           (2) The dean or director of the health care  
60 professional/vocational technical academic program is authorized  
61 to ensure that criminal history record checks and fingerprinting  
62 are obtained on their students before the students begin any  
63 clinical rotation in a licensed health care entity and that the  
64 criminal history record check information and registry checks are  
65 on file at the academic institution. In order to determine the  
66 student's suitability for the clinical rotation, the student shall  
67 be fingerprinted. If no disqualifying record is identified at the  
68 state level, the fingerprints shall be forwarded by the Department  
69 of Public Safety, the Department of Health, or any other legally  
70 authorized entity to the FBI for a national criminal history  
71 record check. The fee for the fingerprinting and criminal history  
72 record check shall be paid by the applicant, not to exceed Fifty  
73 Dollars (\$50.00); however, the academic institution in which the  
74 student is enrolled, in its discretion, may elect to pay the fee  
75 for the fingerprinting and criminal history record check on behalf  
76 of any applicant. Under no circumstances shall the academic  
77 institution representative or any individual other than the  
78 subject of the criminal history record checks disseminate  
79 information received through any such checks except insofar as  
80 required to fulfill the purposes of this section.

81           (3) If the fingerprinting or criminal history record checks  
82 disclose a felony conviction, guilty plea or plea of nolo  
83 contendere to a felony of possession or sale of drugs, murder,  
84 manslaughter, armed robbery, rape, sexual battery, sex offense  
85 listed in Section 45-33-23(g), child abuse, arson, grand larceny,  
86 burglary, gratification of lust or aggravated assault, or  
87 felonious abuse and/or battery of a vulnerable adult that has not  
88 been reversed on appeal or for which a pardon has not been  
89 granted, the student shall not be eligible to be admitted to the  
90 health care professional/vocational technical academic program of  
91 study. Any preadmission agreement executed by the health care  
92 professional/vocational technical academic program shall be  
93 voidable if the student receives a disqualifying criminal history  
94 record check. However, the administration of the health care  
95 professional/vocational technical academic program may, in its  
96 discretion, allow any applicant aggrieved by the admissions  
97 decision under this section to appear before an appeals committee  
98 or before a hearing officer designated for that purpose, to show  
99 mitigating circumstances that may exist and allow the student to  
100 be admitted to or continue in the program of study. The health  
101 care professional/vocational technical academic program may grant  
102 waivers for those mitigating circumstances, which shall include,  
103 but not be limited to: (a) age at which the crime was committed;  
104 (b) circumstances surrounding the crime; (c) length of time since  
105 the conviction and criminal history since the conviction; (d) work  
106 history; (e) current employment and character references;  
107 (f) other evidence demonstrating the ability of the student to  
108 perform the clinical responsibilities competently and that the  
109 student does not pose a threat to the health or safety of patients  
110 in the licensed health care entities in which they will be  
111 conducting clinical experiences. The health care  
112 professional/vocational technical academic program shall provide  
113 assurance to the licensed health care entity in which the clinical

114 rotation is planned that the results of a health care  
115 professional/vocational technical student's criminal history  
116 record check would not prohibit the student from being able to  
117 conduct his or her clinical activities in the facility,  
118 institution, or organization. The criminal history record check  
119 shall be valid for the course of academic study, provided that  
120 annual disclosure statements are provided to the health care  
121 professional/vocational technical academic program regarding any  
122 criminal activity that may have occurred during the student's  
123 tenure with the health care professional/vocational technical  
124 academic program. The criminal history record check may be  
125 repeated at the discretion of the health care  
126 professional/vocational technical academic program based on  
127 information obtained during the annual disclosure statements. In  
128 extenuating circumstances, if a criminal history record check is  
129 initiated and the results are not available at the time the  
130 clinical rotation begins, the academic institution in which the  
131 student is enrolled, at its discretion, may require a signed  
132 affidavit from the student assuring compliance with this section.  
133 The affidavit will be considered void within sixty (60) days of  
134 its signature.

135 (4) Criminal history record checks that are done as part of  
136 the requirements for participation in the health care  
137 professional/vocational technical academic program may not be used  
138 for any other purpose than those activities associated with their  
139 program of study. Students who may be employed as health care  
140 professionals outside of their program of study may be required to  
141 obtain additional criminal history record checks as part of their  
142 employment agreement.

143 (5) No health care professional/vocational technical  
144 academic program or academic program employee shall be held liable  
145 in any admissions discrimination suit in which an allegation of

146 discrimination is made regarding an admissions decision authorized  
147 under this section.

148         **SECTION 2.** The following shall be codified as Section  
149 37-115-41, Mississippi Code of 1972:

150         37-115-41. (1) For the purposes of this section:

151                 (a) "Applicant" means any person who is applying to  
152 become an employee of UMMC.

153                 (b) "Employee" means an employee, contractor, temporary  
154 worker or consultant.

155                 (c) "UMMC" means the University of Mississippi Medical  
156 Center.

157         (2) The University of Mississippi Medical Center shall  
158 fingerprint and perform a criminal history record check on all new  
159 employees that work in or provide direct patient care. In  
160 addition, UMMC shall perform a disciplinary check with the  
161 professional licensing agency of the employee, if any, to  
162 determine if any disciplinary action has been taken against the  
163 employee by that agency. Except as otherwise provided in this  
164 section, no employee of UMMC hired on or after July 1, 2004, shall  
165 be permitted to provide direct patient care until the results of  
166 the criminal history record check have revealed no disqualifying  
167 record or the employee has been granted a waiver. In order to  
168 determine the applicant's suitability for employment, the  
169 applicant shall be fingerprinted. Fingerprints shall be submitted  
170 to the Department of Public Safety by UMMC via scanning or other  
171 electronic method, with the results processed through the  
172 Department of Public Safety's Criminal Information Center. If no  
173 disqualifying record is identified at the state level, the  
174 applicant's fingerprints shall be forwarded by the Department of  
175 Public Safety to the Federal Bureau of Investigation for a  
176 national criminal history record check. If the criminal history  
177 record check discloses a felony conviction, guilty plea or plea of  
178 nolo contendere to a felony of possession or sale of drugs,

179 murder, manslaughter, armed robbery, rape, sexual battery, sex  
180 offense listed in Section 45-33-23(g), child abuse, arson, grand  
181 larceny, burglary, gratification of lust or aggravated assault, or  
182 felonious abuse and/or battery of a vulnerable adult that has not  
183 been reversed on appeal or for which a pardon has not been  
184 granted, the applicant shall not be eligible to be employed at  
185 UMMC.

186 (3) Notwithstanding the provisions of subsection (2) of this  
187 section, any such applicant may be employed on a temporary basis  
188 pending the results of the criminal history record check. Any  
189 employment contract with an applicant during the application  
190 process shall be voidable upon receipt of a disqualifying criminal  
191 history record check if no waiver is granted under subsection (4)  
192 of this section.

193 (4) UMMC may, in its discretion, allow any applicant  
194 aggrieved by an employment decision under this section to appear  
195 before the UMMC hiring officer, or his or her designee, to show  
196 mitigating circumstances that may exist and allow the applicant to  
197 be employed at UMMC. UMMC, upon report and recommendation of the  
198 hiring officer, may grant waivers for those mitigating  
199 circumstances, which shall include, but not be limited to: (a)  
200 age at which the crime was committed; (b) circumstances  
201 surrounding the crime; (c) length of time since the conviction and  
202 criminal history since the conviction; (d) work history; (e)  
203 current employment and character references; and (f) other  
204 evidence demonstrating the ability of the individual to perform  
205 the employment responsibilities competently and that the  
206 individual does not pose a threat to the health or safety of the  
207 patients admitted to UMMC.

208 (5) Upon the receipt of an applicant's criminal history  
209 record check that reveals no disqualifying event, UMMC shall,  
210 within two (2) weeks of the notification of no disqualifying  
211 event, provide the applicant with a notarized letter signed by the

212 vice chancellor, or his or her authorized designee, confirming the  
213 applicant's suitability for employment based on his or her  
214 criminal history record check. An applicant or employee may use  
215 that letter for a period of two (2) years from the date of the  
216 letter to seek employment at any covered entity, as defined in  
217 Section 43-11-13(5), without the necessity of an additional  
218 criminal history record check under Section 43-11-13(5). Any  
219 covered entity presented with the letter may rely on the letter  
220 for a period of two (2) years from the date of the letter without  
221 having to conduct or have conducted a criminal history record  
222 check on the applicant or employee.

223 (6) UMMC may charge a fee not to exceed Fifty Dollars  
224 (\$50.00) for fingerprinting applicants, students, employees,  
225 contractors, consultants, outside agency personnel, visiting  
226 faculty, researchers or any other individual(s) that may provide  
227 direct services to UMMC.

228 (7) UMMC and its agents, officers, employees, attorneys and  
229 representatives shall be presumed to be acting in good faith for  
230 any employment decision or action taken under this section. The  
231 presumption of good faith may be overcome by a preponderance of  
232 the evidence in any civil action. UMMC or its agents, officers,  
233 employees, attorneys and representatives shall not be held liable  
234 in any employment decision or action based in whole or in part on  
235 compliance with or attempts to comply in good faith with the  
236 requirements of this section.

237 **SECTION 3.** Section 43-11-13, Mississippi Code of 1972, as  
238 amended by Senate Bill No. 2434, 2004 Regular Session, is amended  
239 as follows:

240 43-11-13. (1) The licensing agency shall adopt, amend,  
241 promulgate and enforce such rules, regulations and standards,  
242 including classifications, with respect to all institutions for  
243 the aged or infirm to be licensed under this chapter as may be  
244 designed to further the accomplishment of the purpose of this

245 chapter in promoting adequate care of individuals in those  
246 institutions in the interest of public health, safety and welfare.  
247 Those rules, regulations and standards shall be adopted and  
248 promulgated by the licensing agency and shall be recorded and  
249 indexed in a book to be maintained by the licensing agency in its  
250 main office in the State of Mississippi, entitled "Rules,  
251 Regulations and Minimum Standards for Institutions for the Aged or  
252 Infirm" and the book shall be open and available to all  
253 institutions for the aged or infirm and the public generally at  
254 all reasonable times. Upon the adoption of those rules,  
255 regulations and standards, the licensing agency shall mail copies  
256 thereof to all those institutions in the state that have filed  
257 with the agency their names and addresses for this purpose, but  
258 the failure to mail the same or the failure of the institutions to  
259 receive the same shall in no way affect the validity thereof. The  
260 rules, regulations and standards may be amended by the licensing  
261 agency, from time to time, as necessary to promote the health,  
262 safety and welfare of persons living in those institutions.

263 (2) The licensee shall keep posted in a conspicuous place on  
264 the licensed premises all current rules, regulations and minimum  
265 standards applicable to fire protection measures as adopted by the  
266 licensing agency. The licensee shall furnish to the licensing  
267 agency at least once each six (6) months a certificate of approval  
268 and inspection by state or local fire authorities. Failure to  
269 comply with state laws and/or municipal ordinances and current  
270 rules, regulations and minimum standards as adopted by the  
271 licensing agency, relative to fire prevention measures, shall be  
272 prima facie evidence for revocation of license.

273 (3) The State Board of Health shall promulgate rules and  
274 regulations restricting the storage, quantity and classes of drugs  
275 allowed in personal care homes. Residents requiring  
276 administration of Schedule II Narcotics as defined in the Uniform  
277 Controlled Substances Law may be admitted to a personal care home.



278 Schedule drugs may only be allowed in a personal care home if they  
279 are administered or stored utilizing proper procedures under the  
280 direct supervision of a licensed physician or nurse.

281 (4) (a) Notwithstanding any determination by the licensing  
282 agency that skilled nursing services would be appropriate for a  
283 resident of a personal care home, that resident, the resident's  
284 guardian or the legally recognized responsible party for the  
285 resident may consent in writing for the resident to continue to  
286 reside in the personal care home, if approved in writing by a  
287 licensed physician. However, no personal care home shall allow  
288 more than two (2) residents, or ten percent (10%) of the total  
289 number of residents in the facility, whichever is greater, to  
290 remain in the personal care home under the provisions of this  
291 subsection (4). This consent shall be deemed to be appropriately  
292 informed consent as described in the regulations promulgated by  
293 the licensing agency. After that written consent has been  
294 obtained, the resident shall have the right to continue to reside  
295 in the personal care home for as long as the resident meets the  
296 other conditions for residing in the personal care home. A copy  
297 of the written consent and the physician's approval shall be  
298 forwarded by the personal care home to the licensing agency.

299 (b) The State Board of Health shall promulgate rules  
300 and regulations restricting the handling of a resident's personal  
301 deposits by the director of a personal care home. Any funds given  
302 or provided for the purpose of supplying extra comforts,  
303 conveniences or services to any resident in any personal care  
304 home, and any funds otherwise received and held from, for or on  
305 behalf of any such resident, shall be deposited by the director or  
306 other proper officer of the personal care home to the credit of  
307 that resident in an account that shall be known as the Resident's  
308 Personal Deposit Fund. No more than one (1) month's charge for  
309 the care, support, maintenance and medical attention of the  
310 resident shall be applied from the account at any one time. After

311 the death, discharge or transfer of any resident for whose benefit  
312 any such fund has been provided, any unexpended balance remaining  
313 in his personal deposit fund shall be applied for the payment of  
314 care, cost of support, maintenance and medical attention that is  
315 accrued. If any unexpended balance remains in that resident's  
316 personal deposit fund after complete reimbursement has been made  
317 for payment of care, support, maintenance and medical attention,  
318 and the director or other proper officer of the personal care home  
319 has been or shall be unable to locate the person or persons  
320 entitled to the unexpended balance, the director or other proper  
321 officer may, after the lapse of one (1) year from the date of that  
322 death, discharge or transfer, deposit the unexpended balance to  
323 the credit of the personal care home's operating fund.

324 (c) The State Board of Health shall promulgate rules  
325 and regulations requiring personal care homes to maintain records  
326 relating to health condition, medicine dispensed and administered,  
327 and any reaction to that medicine. The director of the personal  
328 care home shall be responsible for explaining the availability of  
329 those records to the family of the resident at any time upon  
330 reasonable request.

331 (d) The State Board of Health shall evaluate the  
332 effects of this section as it promotes adequate care of  
333 individuals in personal care homes in the interest of public  
334 health, safety and welfare. It shall report its findings to the  
335 Chairmen of the Public Health and Welfare Committees of the House  
336 and Senate by January 1, 2003. This subsection (4) shall stand  
337 repealed June 30, 2006.

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

339 (i) \* \* \* "Licensed entity" means a hospital,  
340 nursing home, personal care home, home health agency or hospice;

341 (ii) "Covered entity" means a licensed entity or a  
342 health care professional staffing agency;

343                    (iii) \* \* \* "Employee" means any individual  
344 employed by a covered entity, and also includes any individual who  
345 by contract provides to the patients, residents or clients being  
346 served by the covered entity direct, hands-on, medical patient  
347 care in a patient's, resident's or client's room or in treatment  
348 or recovery rooms. The term "employee" does not include health  
349 care professional/vocational technical students, as defined in  
350 Section 37-29-232, performing clinical training in a licensed  
351 entity under contracts between their schools and the licensed  
352 entity, and does not include students at high schools located in  
353 Mississippi who observe the treatment and care of patients in a  
354 licensed entity as part of the requirements of an allied-health  
355 course taught in the high school, if:

356                    1. The student is under the supervision of a  
357 licensed health care provider; and

358                    2. The student has signed an affidavit that  
359 is on file at the student's school stating that he or she has not  
360 been convicted of or pleaded guilty or nolo contendere to a felony  
361 listed in paragraph (d) of this subsection (5), or that any such  
362 conviction or plea was reversed on appeal or a pardon was granted  
363 for the conviction or plea. Before any student may sign such an  
364 affidavit, the student's school shall provide information to the  
365 student explaining what a felony is and the nature of the felonies  
366 listed in paragraph (d) of this subsection (5).

367                    However, the health care professional/vocational technical  
368 academic program in which the student is enrolled may require the  
369 student to obtain criminal history record checks under the  
370 provisions of Section 37-29-232.

371                    (b) Under regulations promulgated by the State Board of  
372 Health, the licensing agency shall require to be performed a  
373 criminal history record check on (i) every new employee of a  
374 covered entity who provides direct patient care or services and  
375 who is employed on or after July 1, 2003, and (ii) every employee

376 of a covered entity employed before July 1, 2003, who has a  
377 documented disciplinary action by his or her present employer. In  
378 addition, the licensing agency shall require the covered entity to  
379 perform a disciplinary check with the professional licensing  
380 agency of each employee, if any, to determine if any disciplinary  
381 action has been taken against the employee by that agency.

382       Except as otherwise provided in paragraph (c) of this  
383 subsection (5), no such employee hired on or after July 1, 2003,  
384 shall be permitted to provide direct patient care until the  
385 results of the criminal history record check have revealed no  
386 disqualifying record or the employee has been granted a waiver.  
387 In order to determine the employee applicant's suitability for  
388 employment, the applicant shall be fingerprinted. Fingerprints  
389 shall be submitted to the licensing agency from scanning, with the  
390 results processed through the Department of Public Safety's  
391 Criminal Information Center. If no disqualifying record is  
392 identified at the state level, the fingerprints shall be forwarded  
393 by the Department of Public Safety to the Federal Bureau of  
394 Investigation for a national criminal history record check. The  
395 licensing agency shall notify the covered entity of the results of  
396 an employee applicant's criminal history record check. If the  
397 criminal history record check discloses a felony conviction,  
398 guilty plea or plea of nolo contendere to a felony of possession  
399 or sale of drugs, murder, manslaughter, armed robbery, rape,  
400 sexual battery, sex offense listed in Section 45-33-23(g), child  
401 abuse, arson, grand larceny, burglary, gratification of lust or  
402 aggravated assault, or felonious abuse and/or battery of a  
403 vulnerable adult that has not been reversed on appeal or for which  
404 a pardon has not been granted, the employee applicant shall not be  
405 eligible to be employed by the covered entity.

406       (c) Any such new employee applicant may, however, be  
407 employed on a temporary basis pending the results of the criminal  
408 history record check, but any employment contract with the new

409 employee shall be voidable if the new employee receives a  
410 disqualifying criminal history record check and no waiver is  
411 granted as provided in this subsection (5).

412 (d) Under regulations promulgated by the State Board of  
413 Health, the licensing agency shall require every employee of a  
414 covered entity employed before July 1, 2003, to sign an affidavit  
415 stating that he or she has not been convicted of or pleaded guilty  
416 or nolo contendere to a felony of possession or sale of drugs,  
417 murder, manslaughter, armed robbery, rape, sexual battery, any sex  
418 offense listed in Section 45-33-23(g), child abuse, arson, grand  
419 larceny, burglary, gratification of lust, aggravated assault, or  
420 felonious abuse and/or battery of a vulnerable adult, or that any  
421 such conviction or plea was reversed on appeal or a pardon was  
422 granted for the conviction or plea. No such employee of a covered  
423 entity hired before July 1, 2003, shall be permitted to provide  
424 direct patient care until the employee has signed the affidavit  
425 required by this paragraph (d). All such existing employees of  
426 covered entities must sign the affidavit required by this  
427 paragraph (d) within six (6) months of the final adoption of the  
428 regulations promulgated by the State Board of Health. If a person  
429 signs the affidavit required by this paragraph (d), and it is  
430 later determined that the person actually had been convicted of or  
431 pleaded guilty or nolo contendere to any of the offenses listed in  
432 this paragraph (d) and the conviction or plea has not been  
433 reversed on appeal or a pardon has not been granted for the  
434 conviction or plea, the person is guilty of perjury. If the  
435 offense that the person was convicted of or pleaded guilty or nolo  
436 contendere to was a violent offense, the person, upon a conviction  
437 of perjury under this paragraph, shall be punished as provided in  
438 Section 97-9-61. If the offense that the person was convicted of  
439 or pleaded guilty or nolo contendere to was a nonviolent offense,  
440 the person, upon a conviction of perjury under this paragraph,  
441 shall be punished by a fine of not more than Five Hundred Dollars

442 (\$500.00), or by imprisonment in the county jail for not more than  
443 six (6) months, or by both such fine and imprisonment.

444 (e) The covered entity may, in its discretion, allow  
445 any employee who is unable to sign the affidavit required by  
446 paragraph (d) of this subsection (5) or any employee applicant  
447 aggrieved by an employment decision under this subsection (5) to  
448 appear before the covered entity's hiring officer, or his or her  
449 designee, to show mitigating circumstances that may exist and  
450 allow the employee or employee applicant to be employed by the  
451 covered entity. The covered entity, upon report and  
452 recommendation of the hiring officer, may grant waivers for those  
453 mitigating circumstances, which shall include, but not be limited  
454 to: (i) age at which the crime was committed; (ii) circumstances  
455 surrounding the crime; (iii) length of time since the conviction  
456 and criminal history since the conviction; (iv) work history; (v)  
457 current employment and character references; and (vi) other  
458 evidence demonstrating the ability of the individual to perform  
459 the employment responsibilities competently and that the  
460 individual does not pose a threat to the health or safety of the  
461 patients of the covered entity.

462 (f) The licensing agency may charge the covered entity  
463 submitting the fingerprints a fee not to exceed Fifty Dollars  
464 (\$50.00), which covered entity may, in its discretion, charge the  
465 same fee, or a portion thereof, to the employee applicant. Any  
466 costs incurred by a covered entity implementing this subsection  
467 (5) shall be reimbursed as an allowable cost under Section  
468 43-13-116.

469 (g) If the results of an employee applicant's criminal  
470 history record check reveals no disqualifying event, then the  
471 covered entity shall, within two (2) weeks of the notification of  
472 no disqualifying event, provide the employee applicant with a  
473 notarized letter signed by the chief executive officer of the  
474 covered entity, or his or her authorized designee, confirming the

475 employee applicant's suitability for employment based on his or  
476 her criminal history record check. An employee applicant may use  
477 that letter for a period of two (2) years from the date of the  
478 letter to seek employment with any covered entity without the  
479 necessity of an additional criminal history record check. Any  
480 covered entity presented with the letter may rely on the letter  
481 with respect to an employee applicant's criminal background and is  
482 not required for a period of two (2) years from the date of the  
483 letter to conduct or have conducted a criminal history record  
484 check as required in this subsection (5).

485 (h) The licensing agency, the covered entity, and their  
486 agents, officers, employees, attorneys and representatives, shall  
487 be presumed to be acting in good faith for any employment decision  
488 or action taken under this subsection (5). The presumption of  
489 good faith may be overcome by a preponderance of the evidence in  
490 any civil action. No licensing agency, covered entity, nor their  
491 agents, officers, employees, attorneys and representatives shall  
492 be held liable in any employment decision or action based in whole  
493 or in part on compliance with or attempts to comply with the  
494 requirements of this subsection (5).

495 (i) The licensing agency shall promulgate regulations  
496 to implement this subsection (5).

497 (j) The provisions of this subsection (5) shall not  
498 apply to:

499 (i) Applicants and employees of the University of  
500 Mississippi Medical Center for whom criminal history record checks  
501 and fingerprinting are obtained in accordance with Section  
502 37-115-41; or

503 (ii) Health care professional/vocational technical  
504 students for whom criminal history record checks and  
505 fingerprinting are obtained in accordance with Section 37-29-232.

506 **SECTION 4.** This act shall take effect and be in force from  
507 and after July 1, 2004.