

By: Senator(s) Doxey, Gollott, Cuevas, Lee  
(47th), Brown

To: Public Health and  
Welfare

SENATE BILL NO. 2715

1 AN ACT TO AMEND SECTION 43-11-13, MISSISSIPPI CODE OF 1972,  
2 TO PROVIDE THAT ANY INVESTIGATION OF AN INJURY TO A NURSING HOME  
3 RESIDENT SHALL IMMEDIATELY BE FURNISHED TO THE RESIDENT'S NEXT OF  
4 KIN OR CAREGIVER; AND FOR 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 promulgate rules  
100 and regulations to require the results of any investigation of an  
101 injury to a nursing home resident by the nursing home itself to  
102 immediately be furnished to the next of kin, guardian or legally-  
103 recognized responsible parties for each resident in the nursing  
104 home. A nursing home resident may list one or more legally-  
105 recognized responsible parties for notification purposes, but any  
106 notification of more than one (1) party for any resident shall be  
107 requested in writing.

108 (e) The State Board of Health shall evaluate the  
109 effects of this section as it promotes adequate care of  
110 individuals in personal care homes in the interest of public  
111 health, safety and welfare. It shall report its findings to the  
112 Chairmen of the Public Health and Welfare Committees of the House  
113 and Senate by January 1, 2003. This subsection (4) shall stand  
114 repealed June 30, 2005.

115 (5) (a) For the purposes of this subsection (5), the term  
116 "licensed entity" means a hospital, nursing home, personal care  
117 home, home health agency or hospice. For the purposes of this  
118 subsection (5), the term "employee" means any individual employed  
119 by a licensed entity. The term "employee" also includes any  
120 individual who by contract provides to the patients, residents or  
121 clients being served by the licensed entity direct, hands-on,  
122 medical patient care in a patient's, resident's or client's room  
123 or in treatment or recovery rooms.

124 (b) Under regulations promulgated by the State Board of  
125 Health, the licensing agency shall require to be performed a  
126 criminal history record check on (i) every new employee of a  
127 licensed entity who provides direct patient care or services and

128 who is employed on or after July 1, 2003, and (ii) every employee  
129 of a licensed entity employed before July 1, 2003, who has a  
130 documented disciplinary action by his or her present employer.

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

155 (c) Any such new employee applicant may, however, be  
156 employed on a temporary basis pending the results of the criminal  
157 history record check, but any employment contract with the new  
158 employee shall be voidable if the new employee receives a  
159 disqualifying criminal record check and no waiver is granted as  
160 provided in this subsection (5).

161           (d) Under regulations promulgated by the State Board of  
162 Health, the licensing agency shall require every employee of a  
163 licensed entity employed before July 1, 2003, to sign an affidavit  
164 stating that he or she has not been convicted of or pleaded guilty  
165 or nolo contendere to a felony of possession or sale of drugs,  
166 murder, manslaughter, armed robbery, rape, sexual battery, any sex  
167 offense listed in Section 45-33-23(f), child abuse, arson, grand  
168 larceny, burglary, gratification of lust, aggravated assault, or  
169 felonious abuse and/or battery of a vulnerable adult, or that any  
170 such conviction or plea was reversed on appeal or a pardon was  
171 granted for the conviction or plea. No such employee of a  
172 licensed entity hired before July 1, 2003, shall be permitted to  
173 provide direct patient care until the employee has signed the  
174 affidavit required by this paragraph (d). All such existing  
175 employees of licensed entities must sign the affidavit required by  
176 this paragraph (d) within six (6) months of the final adoption of  
177 the regulations promulgated by the State Board of Health. If a  
178 person signs the affidavit required by this paragraph (d), and it  
179 is later determined that the person actually had been convicted of  
180 or pleaded guilty or nolo contendere to any of the offenses listed  
181 in this paragraph (d) and the conviction or plea has not been  
182 reversed on appeal or a pardon has not been granted for the  
183 conviction or plea, the person is guilty of perjury. If the  
184 offense that the person was convicted of or pleaded guilty or nolo  
185 contendere to was a violent offense, the person, upon a conviction  
186 of perjury under this paragraph, shall be punished as provided in  
187 Section 97-9-61. If the offense that the person was convicted of  
188 or pleaded guilty or nolo contendere to was a nonviolent offense,  
189 the person, upon a conviction of perjury under this paragraph,  
190 shall be punished by a fine of not more than Five Hundred Dollars  
191 (\$500.00), or by imprisonment in the county jail for not more than  
192 six (6) months, or by both such fine and imprisonment.

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

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

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

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

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

244 (i) The licensing agency shall promulgate regulations  
245 to implement this subsection (5).

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