

House Amendments to Senate Bill No. 2607

TO THE SECRETARY OF THE SENATE:

THIS IS TO INFORM YOU THAT THE HOUSE HAS ADOPTED THE AMENDMENTS SET OUT BELOW:

AMENDMENT NO. 1

Amend by striking all after the enacting clause and inserting in lieu thereof the following:

16 **SECTION 1.** Section 43-11-13, Mississippi Code of 1972, is
17 amended as follows:
18 43-11-13. (1) The licensing agency shall adopt, amend,
19 promulgate and enforce such rules, regulations and standards,
20 including classifications, with respect to all institutions for
21 the aged or infirm to be licensed under this chapter as may be
22 designed to further the accomplishment of the purpose of this
23 chapter in promoting adequate care of individuals in those
24 institutions in the interest of public health, safety and welfare.
25 Those rules, regulations and standards shall be adopted and
26 promulgated by the licensing agency and shall be recorded and
27 indexed in a book to be maintained by the licensing agency in its
28 main office in the State of Mississippi, entitled "Rules,
29 Regulations and Minimum Standards for Institutions for the Aged or
30 Infirm" and the book shall be open and available to all
31 institutions for the aged or infirm and the public generally at
32 all reasonable times. Upon the adoption of those rules,
33 regulations and standards, the licensing agency shall mail copies
34 thereof to all those institutions in the state that have filed
35 with the agency their names and addresses for this purpose, but
36 the failure to mail the same or the failure of the institutions to
37 receive the same shall in no way affect the validity thereof. The
38 rules, regulations and standards may be amended by the licensing
39 agency, from time to time, as necessary to promote the health,
40 safety and welfare of persons living in those institutions.

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

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

59 (4) (a) Notwithstanding any determination by the licensing
60 agency that skilled nursing services would be appropriate for a
61 resident of a personal care home, that resident, the resident's
62 guardian or the legally recognized responsible party for the
63 resident may consent in writing for the resident to continue to
64 reside in the personal care home, if approved in writing by a
65 licensed physician. However, no personal care home shall allow
66 more than two (2) residents, or ten percent (10%) of the total
67 number of residents in the facility, whichever is greater, to
68 remain in the personal care home under the provisions of this
69 subsection (4). This consent shall be deemed to be appropriately
70 informed consent as described in the regulations promulgated by
71 the licensing agency. After that written consent has been
72 obtained, the resident shall have the right to continue to reside
73 in the personal care home for as long as the resident meets the
74 other conditions for residing in the personal care home. A copy

75 of the written consent and the physician's approval shall be
76 forwarded by the personal care home to the licensing agency.

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

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

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

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

117 (i) "Licensed entity" means a hospital, nursing
118 home, personal care home, home health agency or hospice;

119 (ii) "Employee" means any individual employed by a
120 licensed entity, and also includes any individual who by contract
121 provides to the patients, residents or clients being served by the
122 licensed entity direct, hands-on, medical patient care in a
123 patient's, resident's or client's room or in treatment or recovery
124 rooms. The term "employee" does not include nursing and other
125 health care professional students performing clinical training in
126 a licensed entity under contracts between their schools and the
127 licensed entity, and does not include students at high schools
128 located in Mississippi who observe the treatment and care of
129 patients in a licensed entity as part of the requirements of an
130 allied-health course taught in the high school, if:

131 1. The student is under the direct and
132 immediate supervision of a licensed health care provider; and

133 2. The student has signed an affidavit that
134 is on file at the student's school stating that he or she has not
135 been convicted of or pleaded guilty or nolo contendere to a felony
136 listed in paragraph (d) of this subsection (5), or that any such
137 conviction or plea was reversed on appeal or a pardon was granted
138 for the conviction or plea. Before any student may sign such an
139 affidavit, the student's school shall provide information to the
140 student explaining what a felony is and the nature of the felonies
141 listed in paragraph (d) of this subsection (5).

142 However, the health care professional/vocational technical
143 academic program in which the student is enrolled may require the

144 student to obtain criminal history record checks under the
145 provisions of Section 37-29-232.

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

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

177 (c) Any such new employee applicant may, however, be
178 employed on a temporary basis pending the results of the criminal

179 history record check, but any employment contract with the new
180 employee shall be voidable if the new employee receives a
181 disqualifying criminal history record check and no waiver is
182 granted as provided in this subsection (5).

183 (d) Under regulations promulgated by the State Board of
184 Health, the licensing agency shall require every employee of a
185 licensed entity employed before July 1, 2003, to sign an affidavit
186 stating that he or she has not been convicted of or pleaded guilty
187 or nolo contendere to a felony of possession or sale of drugs,
188 murder, manslaughter, armed robbery, rape, sexual battery, any sex
189 offense listed in Section 45-33-23(f), child abuse, arson, grand
190 larceny, burglary, gratification of lust, aggravated assault, or
191 felonious abuse and/or battery of a vulnerable adult, or that any
192 such conviction or plea was reversed on appeal or a pardon was
193 granted for the conviction or plea. No such employee of a
194 licensed entity hired before July 1, 2003, shall be permitted to
195 provide direct patient care until the employee has signed the
196 affidavit required by this paragraph (d). All such existing
197 employees of licensed entities must sign the affidavit required by
198 this paragraph (d) within six (6) months of the final adoption of
199 the regulations promulgated by the State Board of Health. If a
200 person signs the affidavit required by this paragraph (d), and it
201 is later determined that the person actually had been convicted of
202 or pleaded guilty or nolo contendere to any of the offenses listed
203 in this paragraph (d) and the conviction or plea has not been
204 reversed on appeal or a pardon has not been granted for the
205 conviction or plea, the person is guilty of perjury. If the
206 offense that the person was convicted of or pleaded guilty or nolo
207 contendere to was a violent offense, the person, upon a conviction
208 of perjury under this paragraph, shall be punished as provided in
209 Section 97-9-61. If the offense that the person was convicted of
210 or pleaded guilty or nolo contendere to was a nonviolent offense,
211 the person, upon a conviction of perjury under this paragraph,
212 shall be punished by a fine of not more than Five Hundred Dollars

213 (\$500.00), or by imprisonment in the county jail for not more than
214 six (6) months, or by both such fine and imprisonment.

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

233 (f) The licensing agency may charge the licensed entity
234 submitting the fingerprints a fee not to exceed Fifty Dollars
235 (\$50.00), which licensed entity may, in its discretion, charge the
236 same fee, or a portion thereof, to the employee applicant. Any
237 costs incurred by a licensed entity implementing this subsection
238 (5) shall be reimbursed as an allowable cost under Section
239 43-13-116.

240 (g) If the results of an employee applicant's criminal
241 history record check reveals no disqualifying event, then the
242 licensed entity shall, within two (2) weeks of the notification of
243 no disqualifying event, provide the employee applicant with a
244 notarized letter signed by the chief executive officer of the
245 licensed entity, or his or her authorized designee, confirming the
246 employee applicant's suitability for employment based on his or
247 her criminal history record check. An employee applicant may use

248 that letter for a period of two (2) years from the date of the
249 letter to seek employment at any licensed entity without the
250 necessity of an additional criminal history record check. Any
251 licensed entity presented with the letter may rely on the letter
252 with respect to an employee applicant's criminal background and is
253 not required for a period of two (2) years from the date of the
254 letter to conduct or have conducted a criminal history record
255 check as required in this subsection (5).

256 (h) The licensing agency, the licensed entity, and
257 their agents, officers, employees, attorneys and representatives,
258 shall be presumed to be acting in good faith for any employment
259 decision or action taken under this subsection (5). The
260 presumption of good faith may be overcome by a preponderance of
261 the evidence in any civil action. No licensing agency, licensed
262 entity, nor their agents, officers, employees, attorneys and
263 representatives shall be held liable in any employment decision or
264 action based in whole or in part on compliance with or attempts to
265 comply with the requirements of this subsection (5).

266 (i) The licensing agency shall promulgate regulations
267 to implement this subsection (5).

268 (j) The provisions of this subsection (5) shall not
269 apply to health care professional/vocational technical students
270 for whom criminal history record checks and fingerprinting are
271 obtained in accordance with Section 37-29-232.

272 **SECTION 2.** The following shall be codified as Section
273 37-29-232, Mississippi Code of 1972:

274 37-29-232. (1) For the purposes of this section:

275 (a) "Health care professional/vocational technical
276 academic program" means an academic program in medicine, nursing,
277 dentistry, occupational therapy, physical therapy, social
278 services, nutrition services, speech therapy, or other
279 allied-health professional whose purpose is to prepare
280 professionals to render patient care services.

281 (b) "Health care professional/vocational technical
282 student" means a student enrolled in a health care
283 professional/vocational technical academic program.

284 (2) The dean or director of the health care
285 professional/vocational technical academic program is authorized
286 to ensure that criminal history record checks and fingerprinting
287 are obtained on their students before the students begin any
288 clinical rotation in a licensed health care entity and that the
289 criminal history record check information and registry checks are
290 on file at the academic institution. In order to determine the
291 student's suitability for the clinical rotation, the student shall
292 be fingerprinted. If no disqualifying record is identified at the
293 state level, the fingerprints shall be forwarded by the Department
294 of Public Safety, the Department of Health, or any other legally
295 authorized entity to the FBI for a national criminal history
296 record check. The fee for the fingerprinting and criminal history
297 record check shall be paid by the applicant, not to exceed One
298 Hundred Dollars (\$100.00); however, the academic institution in
299 which the student is enrolled, in its discretion, may elect to pay
300 the fee for the fingerprinting and criminal history record check
301 on behalf of any applicant. Under no circumstances shall the
302 academic institution representative or any individual other than
303 the subject of the criminal history record checks disseminate
304 information received through any such checks except insofar as
305 required to fulfill the purposes of this section.

306 (3) If the fingerprinting or criminal history record checks
307 disclose a felony conviction, guilty plea or plea of nolo
308 contendere to a felony of possession or sale of drugs, murder,
309 manslaughter, armed robbery, rape, sexual battery, sex offense
310 listed in Section 45-33-23(f), child abuse, arson, grand larceny,
311 burglary, gratification of lust or aggravated assault, or
312 felonious abuse and/or battery of a vulnerable adult that has not
313 been reversed on appeal or for which a pardon has not been
314 granted, the student shall not be eligible to be admitted to the
315 health care professional/vocational technical academic program of

316 study. Any preadmission agreement executed by the health care
317 professional/vocational technical academic program shall be
318 voidable if the student receives a disqualifying criminal history
319 record check. However, the administration of the health care
320 professional/vocational technical academic program may, in its
321 discretion, allow any applicant aggrieved by the admissions
322 decision under this section to appear before an appeals committee
323 or before a hearing officer designated for that purpose, to show
324 mitigating circumstances that may exist and allow the student to
325 be admitted to or continue in the program of study. The health
326 care professional/vocational technical academic program may grant
327 waivers for those mitigating circumstances, which shall include,
328 but not be limited to: (a) age at which the crime was committed;
329 (b) circumstances surrounding the crime; (c) length of time since
330 the conviction and criminal history since the conviction; (d) work
331 history; (e) current employment and character references;
332 (f) other evidence demonstrating the ability of the student to
333 perform the clinical responsibilities competently and that the
334 student does not pose a threat to the health or safety of patients
335 in the licensed health care entities in which they will be
336 conducting clinical experiences. The health care
337 professional/vocational technical academic program shall provide
338 assurance to the licensed health care entity in which the clinical
339 rotation is planned that the results of a health care
340 professional/vocational student's criminal history record check
341 would not prohibit the student from being able to conduct his or
342 her clinical activities in the facility, institution, or
343 organization. The criminal history record check shall be valid
344 for the course of academic study, provided that annual disclosure
345 statements are provided to the health care professional/vocational
346 technical academic program regarding any criminal activity that
347 may have occurred during the student's tenure with the health care
348 professional/vocational technical academic program. The criminal
349 history record check may be repeated at the discretion of the
350 health care professional/vocational technical academic program

351 based on information obtained during the annual disclosure
352 statements. In extenuating circumstances, if a criminal history
353 record check is initiated and the results are not available at the
354 time the clinical rotation begins, the academic institution in
355 which the student is enrolled, at its discretion, may require a
356 signed affidavit from the student assuring compliance with this
357 section. The affidavit will be considered void within sixty (60)
358 days of its signature.

359 (4) Criminal history record checks that are done as part of
360 the requirements for participation in the health care
361 professional/vocational technical academic program may not be used
362 for any other purpose than those activities associated with their
363 program of study. Students who may be employed as health care
364 professionals outside of their program of study may be required to
365 obtain additional criminal history record checks as part of their
366 employment agreement.

367 (5) No health care professional/vocational technical
368 academic program or academic program employee shall be held liable
369 in any admissions discrimination suit in which an allegation of
370 discrimination is made regarding an admissions decision authorized
371 under this section.

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

**Further, amend by striking the title in its entirety and
inserting in lieu thereof the following:**

1 AN ACT TO AMEND SECTION 43-11-13, MISSISSIPPI CODE OF 1972,
2 TO PROVIDE THAT NURSING AND OTHER HEALTH CARE PROFESSIONAL
3 STUDENTS PERFORMING CLINICAL TRAINING, AND HIGH SCHOOL
4 ALLIED-HEALTH STUDENTS WHO OBSERVE TREATMENT OF PATIENTS, ARE NOT
5 SUBJECT TO CRIMINAL HISTORY RECORD CHECKS AND FINGERPRINTING UNDER
6 CERTAIN CONDITIONS; TO PROVIDE THAT THE REQUIREMENT FOR PERFORMING
7 CRIMINAL HISTORY RECORD CHECKS AND FINGERPRINTING UNDER THAT
8 SECTION DO NOT APPLY TO HEALTH CARE PROFESSIONAL/VOCATIONAL
9 TECHNICAL STUDENTS FOR WHOM CRIMINAL HISTORY RECORD CHECKS AND
10 FINGERPRINTING ARE OBTAINED IN ACCORDANCE WITH THE PROVISIONS OF
11 SECTION 37-29-232; TO CODIFY SECTION 37-29-232, MISSISSIPPI CODE
12 OF 1972, TO REQUIRE CRIMINAL HISTORY RECORD CHECKS AND
13 FINGERPRINTING FOR HEALTH CARE PROFESSIONAL/VOCATIONAL TECHNICAL
14 STUDENTS; AND FOR RELATED PURPOSES.

HR03\SB2607A.1J

Don Richardson
Clerk of the House of Representatives