

By: Senator(s) Doxey

To: Public Health and  
Welfare

SENATE BILL NO. 2245

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  
103 legally-recognized responsible parties for each resident in the  
104 nursing home. A nursing home resident may list one or more  
105 legally-recognized responsible parties for notification purposes,  
106 but any notification of more than one (1) party for any resident  
107 shall be 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, 2006.

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

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

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

120 (iii) "Employee" means any individual employed by  
121 a covered entity, and also includes any individual who by contract  
122 provides to the patients, residents or clients being served by the  
123 covered entity direct, hands-on, medical patient care in a  
124 patient's, resident's or client's room or in treatment or recovery  
125 rooms. The term "employee" does not include health care  
126 professional/vocational technical students, as defined in Section  
127 37-29-232, performing clinical training in a licensed entity under

128 contracts between their schools and the licensed entity, and does  
129 not include students at high schools located in Mississippi who  
130 observe the treatment and care of patients in a licensed entity as  
131 part of the requirements of an allied-health course taught in the  
132 high school, if:

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

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

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

148           (b) Under regulations promulgated by the State Board of  
149 Health, the licensing agency shall require to be performed a  
150 criminal history record check on (i) every new employee of a  
151 covered entity who provides direct patient care or services and  
152 who is employed on or after July 1, 2003, and (ii) every employee  
153 of a covered entity employed before July 1, 2003, who has a  
154 documented disciplinary action by his or her present employer. In  
155 addition, the licensing agency shall require the covered entity to  
156 perform a disciplinary check with the professional licensing  
157 agency of each employee, if any, to determine if any disciplinary  
158 action has been taken against the employee by that agency.

159           Except as otherwise provided in paragraph (c) of this  
160 subsection (5), no such employee hired on or after July 1, 2003,

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

183 (c) Any such new employee applicant may, however, be  
184 employed on a temporary basis pending the results of the criminal  
185 history record check, but any employment contract with the new  
186 employee shall be voidable if the new employee receives a  
187 disqualifying criminal history record check and no waiver is  
188 granted as provided in this subsection (5).

189 (d) Under regulations promulgated by the State Board of  
190 Health, the licensing agency shall require every employee of a  
191 covered entity employed before July 1, 2003, to sign an affidavit  
192 stating that he or she has not been convicted of or pleaded guilty  
193 or nolo contendere to a felony of possession or sale of drugs,

194 murder, manslaughter, armed robbery, rape, sexual battery, any sex  
195 offense listed in Section 45-33-23(g), child abuse, arson, grand  
196 larceny, burglary, gratification of lust, aggravated assault, or  
197 felonious abuse and/or battery of a vulnerable adult, or that any  
198 such conviction or plea was reversed on appeal or a pardon was  
199 granted for the conviction or plea. No such employee of a covered  
200 entity hired before July 1, 2003, shall be permitted to provide  
201 direct patient care until the employee has signed the affidavit  
202 required by this paragraph (d). All such existing employees of  
203 covered entities must sign the affidavit required by this  
204 paragraph (d) within six (6) months of the final adoption of the  
205 regulations promulgated by the State Board of Health. If a person  
206 signs the affidavit required by this paragraph (d), and it is  
207 later determined that the person actually had been convicted of or  
208 pleaded guilty or nolo contendere to any of the offenses listed in  
209 this paragraph (d) and the conviction or plea has not been  
210 reversed on appeal or a pardon has not been granted for the  
211 conviction or plea, the person is guilty of perjury. If the  
212 offense that the person was convicted of or pleaded guilty or nolo  
213 contendere to was a violent offense, the person, upon a conviction  
214 of perjury under this paragraph, shall be punished as provided in  
215 Section 97-9-61. If the offense that the person was convicted of  
216 or pleaded guilty or nolo contendere to was a nonviolent offense,  
217 the person, upon a conviction of perjury under this paragraph,  
218 shall be punished by a fine of not more than Five Hundred Dollars  
219 (\$500.00), or by imprisonment in the county jail for not more than  
220 six (6) months, or by both such fine and imprisonment.

221 (e) The covered entity may, in its discretion, allow  
222 any employee who is unable to sign the affidavit required by  
223 paragraph (d) of this subsection (5) or any employee applicant  
224 aggrieved by an employment decision under this subsection (5) to  
225 appear before the covered entity's hiring officer, or his or her  
226 designee, to show mitigating circumstances that may exist and

227 allow the employee or employee applicant to be employed by the  
228 covered entity. The covered entity, upon report and  
229 recommendation of the hiring officer, may grant waivers for those  
230 mitigating circumstances, which shall include, but not be limited  
231 to: (i) age at which the crime was committed; (ii) circumstances  
232 surrounding the crime; (iii) length of time since the conviction  
233 and criminal history since the conviction; (iv) work history; (v)  
234 current employment and character references; and (vi) other  
235 evidence demonstrating the ability of the individual to perform  
236 the employment responsibilities competently and that the  
237 individual does not pose a threat to the health or safety of the  
238 patients of the covered entity.

239 (f) The licensing agency may charge the covered entity  
240 submitting the fingerprints a fee not to exceed Fifty Dollars  
241 (\$50.00), which covered entity may, in its discretion, charge the  
242 same fee, or a portion thereof, to the employee applicant. Any  
243 costs incurred by a covered entity implementing this subsection  
244 (5) shall be reimbursed as an allowable cost under Section  
245 43-13-116.

246 (g) If the results of an employee applicant's criminal  
247 history record check reveals no disqualifying event, then the  
248 covered entity shall, within two (2) weeks of the notification of  
249 no disqualifying event, provide the employee applicant with a  
250 notarized letter signed by the chief executive officer of the  
251 covered entity, or his or her authorized designee, confirming the  
252 employee applicant's suitability for employment based on his or  
253 her criminal history record check. An employee applicant may use  
254 that letter for a period of two (2) years from the date of the  
255 letter to seek employment with any covered entity without the  
256 necessity of an additional criminal history record check. Any  
257 covered entity presented with the letter may rely on the letter  
258 with respect to an employee applicant's criminal background and is  
259 not required for a period of two (2) years from the date of the



260 letter to conduct or have conducted a criminal history record  
261 check as required in this subsection (5).

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

272 (i) The licensing agency shall promulgate regulations  
273 to implement this subsection (5).

274 (j) The provisions of this subsection (5) shall not  
275 apply to:

276 (i) Applicants and employees of the University of  
277 Mississippi Medical Center for whom criminal history record checks  
278 and fingerprinting are obtained in accordance with Section  
279 37-115-41; or

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

283 **SECTION 2.** This act shall take effect and be in force from  
284 and after July 1, 2005.