

By: Representative Warren

To: Public Health and Human Services

HOUSE BILL NO. 368

1 AN ACT TO AMEND SECTION 43-11-13, MISSISSIPPI CODE OF 1972,  
2 TO EXTEND THE DATE OF THE REPEALER ON THE PROVISIONS THAT ALLOW  
3 PERSONAL CARE HOME RESIDENTS TO CONTINUE TO RESIDE THERE EVEN IF  
4 THEY ARE DETERMINED TO NEED SKILLED NURSING SERVICES, REGULATE THE  
5 HANDLING OF RESIDENTS' PERSONAL DEPOSITS, AND REQUIRE CERTAIN  
6 RECORDS TO BE MAINTAINED; AND FOR RELATED PURPOSES.

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

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

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

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

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

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

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

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

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

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

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

101 (d) The State Board of Health shall evaluate the  
102 effects of this section as it promotes adequate care of  
103 individuals in personal care homes in the interest of public  
104 health, safety and welfare. It shall report its findings to the  
105 Chairmen of the Public Health and Welfare Committees of the House  
106 and Senate by January 1, 2003. This subsection (4) shall stand  
107 repealed on June 30, 2008.

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

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

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

113 (iii) "Employee" means any individual employed by  
114 a covered entity, and also includes any individual who by contract  
115 provides to the patients, residents or clients being served by the  
116 covered entity direct, hands-on, medical patient care in a  
117 patient's, resident's or client's room or in treatment or recovery  
118 rooms. The term "employee" does not include health care  
119 professional/vocational technical students, as defined in Section  
120 37-29-232, performing clinical training in a licensed entity under  
121 contracts between their schools and the licensed entity, and does  
122 not include students at high schools located in Mississippi who  
123 observe the treatment and care of patients in a licensed entity as  
124 part of the requirements of an allied-health course taught in the  
125 high school, if:

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

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

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

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

152           Except as otherwise provided in paragraph (c) of this  
153 subsection (5), no such employee hired on or after July 1, 2003,  
154 shall be permitted to provide direct patient care until the  
155 results of the criminal history record check have revealed no  
156 disqualifying record or the employee has been granted a waiver.  
157 In order to determine the employee applicant's suitability for  
158 employment, the applicant shall be fingerprinted. Fingerprints  
159 shall be submitted to the licensing agency from scanning, with the  
160 results processed through the Department of Public Safety's

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

176 (c) Any such new employee applicant may, however, be  
177 employed on a temporary basis pending the results of the criminal  
178 history record check, but any employment contract with the new  
179 employee shall be voidable if the new employee receives a  
180 disqualifying criminal history record check and no waiver is  
181 granted as provided in this subsection (5).

182 (d) Under regulations promulgated by the State Board of  
183 Health, the licensing agency shall require every employee of a  
184 covered entity employed before July 1, 2003, to sign an affidavit  
185 stating that he or she has not been convicted of or pleaded guilty  
186 or nolo contendere to a felony of possession or sale of drugs,  
187 murder, manslaughter, armed robbery, rape, sexual battery, any sex  
188 offense listed in Section 45-33-23(g), child abuse, arson, grand  
189 larceny, burglary, gratification of lust, aggravated assault, or  
190 felonious abuse and/or battery of a vulnerable adult, or that any  
191 such conviction or plea was reversed on appeal or a pardon was  
192 granted for the conviction or plea. No such employee of a covered  
193 entity hired before July 1, 2003, shall be permitted to provide

194 direct patient care until the employee has signed the affidavit  
195 required by this paragraph (d). All such existing employees of  
196 covered entities must sign the affidavit required by this  
197 paragraph (d) within six (6) months of the final adoption of the  
198 regulations promulgated by the State Board of Health. If a person  
199 signs the affidavit required by this paragraph (d), and it is  
200 later determined that the person actually had been convicted of or  
201 pleaded guilty or nolo contendere to any of the offenses listed in  
202 this paragraph (d) and the conviction or plea has not been  
203 reversed on appeal or a pardon has not been granted for the  
204 conviction or plea, the person is guilty of perjury. If the  
205 offense that the person was convicted of or pleaded guilty or nolo  
206 contendere to was a violent offense, the person, upon a conviction  
207 of perjury under this paragraph, shall be punished as provided in  
208 Section 97-9-61. If the offense that the person was convicted of  
209 or pleaded guilty or nolo contendere to was a nonviolent offense,  
210 the person, upon a conviction of perjury under this paragraph,  
211 shall be punished by a fine of not more than Five Hundred Dollars  
212 (\$500.00), or by imprisonment in the county jail for not more than  
213 six (6) months, or by both such fine and imprisonment.

214 (e) The covered entity may, in its discretion, allow  
215 any employee who is unable to sign the affidavit required by  
216 paragraph (d) of this subsection (5) or any employee applicant  
217 aggrieved by an employment decision under this subsection (5) to  
218 appear before the covered entity's hiring officer, or his or her  
219 designee, to show mitigating circumstances that may exist and  
220 allow the employee or employee applicant to be employed by the  
221 covered entity. The covered entity, upon report and  
222 recommendation of the hiring officer, may grant waivers for those  
223 mitigating circumstances, which shall include, but not be limited  
224 to: (i) age at which the crime was committed; (ii) circumstances  
225 surrounding the crime; (iii) length of time since the conviction  
226 and criminal history since the conviction; (iv) work history; (v)

227 current employment and character references; and (vi) other  
228 evidence demonstrating the ability of the individual to perform  
229 the employment responsibilities competently and that the  
230 individual does not pose a threat to the health or safety of the  
231 patients of the covered entity.

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

239 (g) If the results of an employee applicant's criminal  
240 history record check reveals no disqualifying event, then the  
241 covered entity shall, within two (2) weeks of the notification of  
242 no disqualifying event, provide the employee applicant with a  
243 notarized letter signed by the chief executive officer of the  
244 covered entity, or his or her authorized designee, confirming the  
245 employee applicant's suitability for employment based on his or  
246 her criminal history record check. An employee applicant may use  
247 that letter for a period of two (2) years from the date of the  
248 letter to seek employment with any covered entity without the  
249 necessity of an additional criminal history record check. Any  
250 covered entity presented with the letter may rely on the letter  
251 with respect to an employee applicant's criminal background and is  
252 not required for a period of two (2) years from the date of the  
253 letter to conduct or have conducted a criminal history record  
254 check as required in this subsection (5).

255 (h) The licensing agency, the covered entity, and their  
256 agents, officers, employees, attorneys and representatives, shall  
257 be presumed to be acting in good faith for any employment decision  
258 or action taken under this subsection (5). The presumption of  
259 good faith may be overcome by a preponderance of the evidence in



260 any civil action. No licensing agency, covered entity, nor their  
261 agents, officers, employees, attorneys and representatives shall  
262 be held liable in any employment decision or action based in whole  
263 or in part on compliance with or attempts to comply with the  
264 requirements of this subsection (5).

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

267 (j) The provisions of this subsection (5) shall not  
268 apply to:

269 (i) Applicants and employees of the University of  
270 Mississippi Medical Center for whom criminal history record checks  
271 and fingerprinting are obtained in accordance with Section  
272 37-115-41; or

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

276 **SECTION 2.** This act shall take effect and be in force from  
277 and after June 30, 2006.