

By: Senator(s) Doxey

To: Public Health and Welfare

SENATE BILL NO. 2194

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, 2007.

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, 2006.